

June 6, 2019

Memorandum

To: Members of the Committee on Financial Services
From: FSC Majority Staff
Subject: June 11, 2019 Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 2:00 p.m. on Tuesday, June 11, 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

Amendment in the Nature of a Substitute for H.R. 2162, the “Housing Financial Literacy Act of 2019” (Beatty)

Summary: This bill would require the Secretary of the U.S. Department of Housing and Urban Development (HUD) to provide a 25-basis point discount in upfront FHA single-family mortgage insurance premiums for first-time homebuyers who complete a housing counseling program.

Background: Housing counseling and financial literacy programs reduce the rate of 90-day home mortgage delinquencies rates by 29 percent¹ by equipping consumers with the appropriate support and accessible information that is needed early on in the homebuying process.² HUD currently has authority to provide premium discounts to incentivize housing counseling³ but is not currently utilizing this authority. H.R. 2162 would *require* a 25-basis point discount on upfront FHA premiums for first-time homebuyers who complete financial literacy housing counseling programs. The following groups support the bill: The Leadership Conference on Civil and Human Rights, the League of United Latin American Citizens (LULAC), the National Association of Realtors (NAR), the National Association of Real Estate Brokers (NAREB), the National Housing Resource Center (NHRC).

Amendment in the Nature of a Substitute to H.R. 2513, the “Corporate Transparency Act of 2019” (Maloney)

Summary: The ANS to H.R. 2513, The Corporate Transparency Act of 2019, would require corporations and limited liability corporations (LLCs) to disclose their true “beneficial owners” to the Financial Crime Enforcement Network (FinCEN) at the time a company is formed and in annual filings.

¹ Avila, Gabriela et al., “The Benefits of Pre-Purchase Homeownership Counseling.” April 2013.

² Office of Policy Development and Research, “The Evidence on Homeownership Education and Counseling.” Spring 2016.

³ 12 U.S.C. 1709(b)(2)(A)

Background: No U.S. state currently requires companies, including anonymous shell companies,⁴ to disclose their beneficial owners⁵. Anonymous shell companies are business entities formed to hold funds or conduct financial transactions but generally do not have a physical address, employees, business operations, or real assets. They afford a high level of secrecy, enabling criminals, terrorists, and money launderers make use of them to hide their illicit proceeds and facilitate illegal activities.⁶ This lack of transparency is considered by law enforcement, financial institutions, and anti-corruption organizations to be a primary obstacle to tackling financial crime in the modern era.⁷ The ANS would require a company's beneficial owners – defined to include all natural persons who exercise substantial control over a company, own 25% or more of the equity interests of a company, or receive substantial economic benefits from the assets of a company – to be disclosed to FinCEN at the time the company is formed. Companies would also disclose beneficial ownership and changes in beneficial ownership in an annual filing. The FinCEN database of beneficial ownership information would not be publicly available, but instead would be available to law enforcement agencies and, with customer consent, to financial institutions for purposes of complying with the financial institution's "Know-Your-Customer" regulatory requirements. The ANS exempts entities that are already required by Federal or state law to disclose their beneficial owners, such as SEC-regulated public companies, state-regulated insurance companies, and charitable organizations. It also requires FinCEN to act within a year to remove redundancies with its Customer Due Diligence (CDD) rule.

Requiring the disclosure of a company's beneficial owners would bring the United States in line with other developed countries. The European Union (E.U.), for example, enacted the E.U. Fourth Anti-Money Laundering Directive in 2015,⁸ requiring all members states to collect and share beneficial ownership information.

The ANS has the support of several organizations: non-governmental organizations, including AFL-CIO, Global Witness, Oxfam America, Polaris, Friends of the Earth US, the Mainstreet Alliance; religious groups; the National Association of Realtors; and technology coalitions.⁹ In addition, financial institutions and their associations, representing entities of all sizes and types such as the Bank Policy Institute (BPI), the National Association of Federally Insured Credit Unions (NAFCU), and the Independent Community Bankers Association (ICBA), support the bill.

However, the American Bar Association and the National Federation of Independent Business have raised concerns that corporate transparency could cause regulatory burdens on lawyers and small businesses, and

⁴ "What is a Shell Company?" Brian O'Connell, thestreet.com, March 28, 2019. <https://www.thestreet.com/personal-finance/education/what-is-a-shell-company-14908714>

⁵ "Beneficial Owner." Reviewed by James Chen, Investopedia.com, Feb 7, 2019. <https://www.investopedia.com/terms/b/beneficialowner.asp>

⁶ "How Anonymous Shell Companies Finance Insurgents, Criminals, and Dictators." Jodi Vittori, Council on Foreign Relations. September 7, 2017. <https://www.cfr.org/report/how-anonymous-shell-companies-finance-insurgents-criminals-and-dictators>

⁷ "Letter from Fraternal Order of Police to Congress on Corporate Transparency Hearing." Fraternal Order of Police, FACT Coalition website, March 13, 2019 <https://thefactcoalition.org/letter-from-fraternal-order-of-police-to-congress-on-corporate-transparency-hearing> (Last accessed June 3, 2019)

⁸ "Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)" EUR-Lex, European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849>

⁹ Many of these organizations are members of the FACT Coalition or are working in collaboration with the FACT Coalition to advocate for ANS passage. FACT Coalition's website: <https://thefactcoalition.org/>

the American Civil Liberties Union is concerned that the ANS will criminalize a failure to file paperwork with the Federal Government.

Representative Maloney is expected to offer a manager's amendment that will address a number of issues related to the bill.

Amendment in the Nature of a Substitute for H.R. 2763, the “Keeping Families Together Act of 2019” (Garcia, TX)

Summary: This bill would prohibit the Secretary of HUD from implementing a proposed rule that would require every member of a household in which any member of the household receives public housing, Section 8 project-based rental assistance or Section 8 Housing Choice Vouchers to be U.S. citizen or eligible noncitizen.

Background: Under current law, only U.S. citizens and a subset of legally present noncitizens are eligible for federal housing assistance.¹⁰ Longstanding HUD policies allow families that have members with mixed immigration statuses to live under the same roof through prorated rental assistance calculations to ensure that only eligible family members receive rental assistance. For example, if a family consisting of two parents and one child receives a Section 8 Housing Choice Voucher, but only one parent and the child are U.S. citizens while the second parent does not have eligible immigration status, the family of three's rent would be calculated to fully account for the incomes of both parents and then prorated to only provide subsidy for the two qualifying family members. As a result, the family would pay a higher rent than an otherwise identical family of three in which all members had eligible immigration status.

On April 10, 2018, President Trump issued an Executive Order calling for agencies to “adopt policies to ensure that only eligible persons receive benefits and enforce all relevant laws providing that aliens who are not otherwise qualified and eligible may not receive benefits.”¹¹ Despite existing HUD policies described above that ensure that individuals without eligible immigration status do not receive rental subsidies, on May 10, 2019, HUD released a proposed rule to require that every member of a household receiving public housing, Section 8 project-based rental assistance or Section 8 Housing Choice Vouchers be a U.S. citizen or eligible noncitizen. HUD's own Regulatory Impact Analysis acknowledges that implementation of the proposed rule would result in evictions, homelessness, and family separation primarily for U.S. citizens and eligible noncitizens.¹² HUD also acknowledges that implementation of the proposed rule would result in increased costs for HUD, and without additional resources to offset those costs, HUD would have serve less families overall and also reduce the quality of housing for existing residents.

H.R. 2763 would prohibit HUD from implementing, administering, enforcing, or in any manner making effective this proposed rule, or any final rule based substantially on the proposed rule. Similarly, Section 234 of the FY2020 Transportation, Housing, and Urban Development Bill proposes a policy provision to block the administration's rule change.¹³

¹⁰ 42 U.S.C. § 1436a(a); 24 C.F.R. § 5.506

¹¹ <https://www.federalregister.gov/d/2018-07874>

¹² HUD, “Regulatory Impact Analysis; Proposed Rule Docket No: FY-6124-P-01,” Apr. 15, 2019.

¹³

<https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY2020%20THUD%20Sub%20Markup%20Draft.pdf>

Several housing advocacy organizations support this bill, including the National Fair Housing Alliance (NFHA), the National Housing Law Project (NHLP), the National Immigration Law Center (NILC), the National Low Income Housing Coalition (NLIHC), and Texas Housers.

Amendment in the Nature of a Substitute for H.R. 3018, the “Ensuring Equal Access to Shelter Act of 2019” (Wexton)

Summary: This bill would prohibit the Secretary of Housing and Urban Development from implementing a proposed rule that would allow shelter providers to deny transgender and gender non-conforming people equal access to homeless shelters.

Background: HUD’s “Equal Access Rule” requires shelter providers to ensure that their operations and policies support equal access to shelter and services “in accordance with an individual’s gender identity.”¹⁴ This includes ensuring that individuals are placed, served and accommodated in accordance with the gender with which they identify regardless of the sex assigned to them at birth and regardless of their perceived gender identity. It also includes ensuring that an individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical or medical evidence of their gender identity.

Despite the protections in the Equal Access Rule, LGBTQ individuals experiencing homelessness continue to have difficulty gaining equal access to shelters and services. Transgender youth in particular are often turned away from shelters or are placed without regard to their gender identity, which can lead to isolation and even unsafe situations.¹⁵ Today, research indicates that more than half of transgender people experiencing homelessness are unsheltered¹⁶ and LGBTQ youth are 120 percent more likely to experience homelessness than non-LGBTQ youth,¹⁷ accounting for 40 percent of the homeless youth population, based on a survey of a sample population.¹⁸

In response to continued concerns, the Obama Administration put forth a proposal to require owners and operators of HUD-funded shelters to post a notice informing individuals of their rights under the Equal Access Rule. However, the Trump Administration withdrew this proposal in March 2017. While testifying in front of Congress on May 21, 2019, Secretary Carson assured Congresswoman Wexton that he was “not currently anticipating changing the [Equal Access Rule].” However, HUD released a proposed rule the following day that would allow shelter providers to establish policies without regard to the gender that a person identifies. The proposal would permit intrusive questioning and documentation requirements, which may also serve as a barrier to access.¹⁹

H.R. 3018 would prohibit HUD from implementing, administering, enforcing, or in any manner making effective this proposed rule, or any final rule based substantially on the May 22, 2019 proposed rule. The Amendment in the Nature of a Substitute makes technical changes to H.R. 3018

¹⁴ 24 CFR Part 5 <https://files.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf>

¹⁵ Chapin Hall at the University of Chicago, “Missed Opportunities: Youth Homelessness in America.”

¹⁶ National Alliance to End Homelessness, “The Alliance’s Statement on Proposed Changes to HUD’s Equal Access Rule.” May 2019.

¹⁷ Chapin Hall at the University of Chicago, “Missed Opportunities: Youth Homelessness in America.”

¹⁸ Durso, Laura E. and Gates, Gary J., “Serving Our Youth Report.” July 2012.

¹⁹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>

Amendment in the Nature of a Substitute to H.R. 3111, The National Flood Insurance Program Administrative Reform Act of 2019 (Velázquez)

Summary: The ANS to H.R. 3111, The National Flood Insurance Program Administrative Reform Act of 2019, would make changes to the claims process, including providing clarity regarding the terms of flood insurance policies and revising the appeals and litigation process, among other changes.

Background: In late October 2012, Superstorm Sandy made landfall in the United States, resulting in more than 144,000 National Flood Insurance Program (NFIP) policyholders submitting notices of flood loss. The NFIP paid more than \$8.4 billion in flood claims with an average claim of \$64,331.²⁰ Multiple issues with the claims handling process arose in the handling of these claims.

First, some Sandy victims were unfairly denied policy proceeds based on “pre-existing conditions” of the structure, or in some cases, “earth movement.” In response, the ANS would create a 5-year pilot program to inspect pre-existing structural conditions of insured and pre-insured properties and report to Congress within three years. The ANS would also require a U.S. Government Accountability Office (GAO) study on flood insurance coverage treatment of earth movement.

Second, many Sandy victims dissatisfied with their claim amount filed an administrative appeal with FEMA or a lawsuit in U.S. District Court but had difficulties with the appeals process. For example, a March 2016 DHS IG report found that FEMA’s appeals process offered little opportunity for the policyholder to explain their grievances.²¹ The report details how FEMA would either agree with the write-your-own (WYO) company²² on the denial of the claim or return the claim to the company that originally denied it for reevaluation. The report also found that there is little incentive for the WYO companies to minimize litigation costs because FEMA ultimately covers the cost of any litigation expenses that arise within the scope of FEMA’s relationship with the WYO.

The ANS would make a number of changes in response to these issues including: 1) codifying an enhanced policyholder appeals process established by FEMA for individuals appealing a full or partial denial of their claim; 2) requiring the Administrator to make final determinations of claims within 120 days of filing; 3) requiring the Administrator to monitor and oversee litigation conducted by the WYOs to ensure that expenses are reasonable, appropriate, and cost-effective, and that WYOs comply with guidance and procedures related to litigation; 4) prohibiting the hiring of disbarred attorneys; and 5) requiring a GAO study on claims adjustment practices.

Third, in the aftermath of Sandy, there were multiple allegations of engineering reports that were fraudulently altered to deny certain payments without any explanation to the policyholder. One high profile instance of this is that of *Raimey v. Wright National Flood Insurance Company* in which the Court found that this case “exposed reprehensible gamesmanship by a professional engineering company that unjustly frustrated efforts by two homeowners to get fair consideration of their claims.”²³ The ANS would prohibit false or fraudulent statements in connection with the preparation, production, or submission of claims adjustment or engineering reports.

²⁰ Testimony of Roy Wright, Housing and Insurance Subcommittee, Committee on Financial Services, *Flood Insurance Reform: FEMA’s Perspective*. Thursday, March 9, 2017.

²¹ Office of the Inspector General Report entitled, “FEMA Does Not Provide Adequate Oversight of Its National Flood Insurance Write Your Own Program, March 2016, available at <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-47-Mar16.pdf>

²² WYO companies are insurance companies that contract with FEMA to administer NFIP policies.

²³ [In re Hurricane Sandy Cases \(Raimey v. Wright National Flood Insurance Co.\) \(E.D.N.Y. November 7, 2014\).](#)

The ANS would also: 1) require the Administrator to create a coverage disclosure sheet for policyholders detailing the coverage offered and other terms; 2) require sufficient staffing for the Office of the Flood Insurance Advocate; and 3) create a new Technical Insurance Advisory Council consisting of Federal, state, and local experts to review the NFIP's insurance practices and propose new standards to FEMA. Finally, the ANS would require the updating and publication of interagency guidance to assist with lender compliance.

Amendment in the Nature of a Substitute for H.R. 3141, the “FHA Loan Affordability Act of 2019” (Phillips)

Summary: This bill would repeal the requirement that Federal Housing Administration (FHA) borrowers pay mortgage insurance premiums for the life of the loan and reinstate the FHA's previous policy of requiring borrowers to pay premiums until the outstanding principal balance reaches 78 percent of the original home value.

Background: Under current law, private mortgage insurers are required to cancel premiums once the outstanding principal balance reaches 78 percent of the original home value.²⁴ In contrast, the FHA requires its borrowers to pay mortgage insurance premiums for the life of the loan. As a result, FHA borrowers, who are disproportionately low income, minority, and first-time homebuyers, may pay more in premiums over time than non-FHA borrowers.

While FHA borrowers have the option to refinance their loans once they reach the 78 percent threshold to avoid paying annual premiums, refinancing may not make sense if the interest rates are significantly higher than the current loan's rate. Refinancing also involves substantial transaction costs that not all families can afford. To the extent that FHA borrowers with the financial means are encouraged to refinance out of FHA loans, this trend could affect the financial strength of FHA Mutual Mortgage Insurance Fund because borrowers with lower credit risks would leave the portfolio. In fact, after FHA instituted this policy in 2013, its loan retention rate fell from about 50 percent to 15 percent today.²⁵

Prior to 2013, FHA was aligned with the private mortgage insurance industry in charging premiums only until the outstanding principal balance reached 78 percent of the original home value. FHA's justification for the change in its policy was that it was consistent with its efforts to strengthen the Mutual Mortgage Insurance Fund (MMIF), which had dipped below the statutorily mandated capital ratio of 2 percent in the wake of the 2008 financial crisis. However, FHA has since reached and exceeded the capital ratio requirement for four consecutive years and is in strong financial health.²⁶

The following organizations support this bill: The National Association of Realtors (NAR), the National Association of Real Estate Brokers (NAREB), the National Association of Hispanic Real Estate Professionals (NAHREP), the Community Home Lenders Association (CHLA), the National Consumer Law Center (NCLC) (on behalf of its low-income clients), the National Housing Conference (NHC), the National Community Reinvestment Coalition (NCRC), and the California Reinvestment Coalition (CRC).

²⁴ 12 USC 4902(b)

²⁵ National Mortgage News, “Opinion: Holistic approach needed to fix vital federal mortgage programs,” May 17, 2019.

²⁶ FHA, “Annual Report to Congress Regarding the Financial Status of the Mutual Mortgage Insurance Fund,” FY 2018.

Amendment in the Nature of a Substitute for H.R. 3154, the “Homeownership for DREAMers Act” (Vargas)

Summary: This bill would clarify that recipients of Deferred Action for Childhood Arrivals (DACA) cannot be deemed ineligible for mortgage loans backed by FHA, Fannie, Freddie, or the USDA solely on the basis of their status as DACA recipients.

Background: On December 14, 2018, it was reported that the Trump Administration had begun to deny FHA loans to DACA recipients.²⁷ The article includes interviews with employees of lenders who had been successfully originating FHA loans for DACA recipients for years with FHA approval, but had started receiving denials from HUD led by the Trump Administration. HUD denied making any formal change to their policies.

Fannie Mae has since clarified that DACA recipients are and will continue to be eligible for loans that they back.²⁸ Freddie Mac and USDA do not appear to have clarified their policies in this respect. The following organizations support this bill: the Asian Pacific American Community Development (National CAPACD), the Asian Real Estate Association of America, the Center for Responsible Lending (CRL), The Leadership Conference on Civil and Human Rights, the Mortgage Bankers Association (MBA), the NAACP, the National Association of Hispanic Real Estate Professionals (NAHREP), the National Fair Housing Alliance (NFHA), UnidosUS, and United We Dream.

Amendment in the Nature of a Substitute to H.R. xx, The National Flood Insurance Program Reauthorization Act of 2019 (Waters)

Summary: The ANS to H.R. xx, The National Flood Insurance Program Reauthorization Act of 2019, would reauthorize the National Flood Insurance Program (NFIP) and its flood mapping program for five years, and address affordability of premiums by: 1) creating a 5-year demonstration program for means-tested assistance to low-income policyholders; 2) repealing surcharges; 3) enabling policyholders to pay premiums in monthly installments; and 4) creating a state revolving loan fund. The ANS would also make several improvements to floodplain management and mitigation by: 1) raising the amount of funds made available under the Increased Cost of Compliance (ICC) program and expanding the eligible mitigation activities under ICC; 2) helping to target mitigation funding for repeatedly flooded communities; 3) granting credits for alternative forms of mitigation when elevation is not feasible, 4) allowing NFIP coverage for cooperatives and community-based policies; and 5) authorizing floodplain management activities. Lastly, the ANS would authorize funding for flood mapping, requires up-to-date technology and more advanced and granular maps, improve the process for policyholders and communities to appeal FEMA’s mapping decisions, and create new flood map zones for levee-impacted and agricultural areas.

Background: The NFIP is the principal provider of primary flood insurance in the U.S., covering over 5 million households and businesses across the country for a total of over \$1.3 trillion in flood insurance coverage.²⁹ As of the end of FY 2018, approximately 22,324 communities participate in the NFIP, covering an estimated 93 percent of the U.S. population. According to FEMA, the NFIP saves the nation an estimated \$1.87 billion annually in flood losses avoided because of the NFIP’s building and floodplain management regulations.

²⁷ BuzzFeed, “The Trump Administration Is Quietly Denying Federal Housing Loans To DACA Recipients,” Dec. 14, 2018.

²⁸ HousingWire, “Fannie Mae declares support for DACA mortgage borrowers,” Mar. 26, 2019.

²⁹ See Policy Statistics, National Flood Insurance Program, current as of September 30, 2018, *available at* <http://bsa.nfipstat.fema.gov/reports/1011.htm>.

The NFIP is largely self-funded through insurance premiums collected from policy holders. Policyholders are also assessed a number of surcharges and other fees. In FY 2018, policyholders paid \$382 million in surcharges, \$188.162 million in federal policy fees, and \$496.82 million in reserve fund assessments.³⁰

Since FY 2017, the NFIP has been extended by 12 short-term reauthorizations causing uncertainty and instability in the market and is set to expire on September 30, 2019. In the event of a lapse, the NFIP will be unable to enter into new flood insurance contracts and could stall mortgage processing for homes that are statutorily required to have flood insurance. According to the National Association of Realtors, an estimated 40,000 home sales are lost or interrupted every month that the NFIP's authority lapses. The ANS would reauthorize the NFIP for five years.

Policyholder Costs

In 2018, FEMA submitted its congressionally mandated Affordability Framework demonstrating, among other things, that, “generally, incomes are higher outside the Special Flood Hazard Area (SFHA) than they are inside the SFHA. The median household income for residential policyholders is \$82,000, although it is substantially lower in the SFHA than outside the SFHA.”³¹ Further, FEMA found that “the combination of higher premiums and lower incomes in the SFHA creates affordability pressure on households.”³² In response, the ANS would create a five-year demonstration program that would provide means-tested assistance to policyholders at or below 80 percent of area median income whose premiums exceed 2 percent of annual area median income. FEMA estimates that the demonstration program would cost \$47 million and provide premium relief for 62,000 policyholders.

The Homeowner Flood Insurance Affordability Act (HFIAA), which was enacted in 2014, slowed the glide path for reaching actuarial rates and caps premium increases at 15% annually. The ANS maintains these premium protections. HFIAA also mandated surcharges on policyholders that are outside of actuarial risk. Recently, in its report entitled, “Options for Reducing the Deficit: 2019 to 2028,” CBO recommended eliminating this surcharge. The ANS would repeal the surcharges.

Other provisions in the ANS that assist policyholders with payments include allowing for monthly installment payments, which is similar to an amendment to H.R. 2874 from the 115th Congress offered by Rep. David Scott, raising the minimum mandatory coverage amount from \$5,000 to \$25,000 to assist small businesses with small-dollar mortgages, and allowing states to partner with FEMA to create revolving loan funds to provide low-interest loans to communities for mitigation investments, which is similar to H.R. 1610 sponsored by Reps. Crist and Williams.

Mapping

The ANS would reauthorize the NFIP's flood mapping program for five years and authorize \$500 million in flood mapping funding each year for five years. The ANS would also call for FEMA to expand mapping to all areas of the United States, to make improvements to mapping of future flood risk, to utilize up-to-date technology, improve coordination with USGS, states, and communities, to create more advanced and granular maps, which is similar to H.R. 4905 from the 115th Congress, sponsored by Reps. Gonzalez and

³⁰ Federal Insurance and Mitigation Administration report, *The Watermark*, FY18 Volume 4.

³¹ An Affordability Framework for the National Flood Insurance Program, Department of Homeland Security, April 2018, available at: <https://www.fema.gov/media-library-data/1524056945852-e8db76c696cf3b7f6209e1adc4211af4/Affordability.pdf>.

³² *Id.*

Mooney. The ANS would also create a pilot program to enhance mapping of urban flooding, make improvements to the appeals for communities and policyholders, and allow for the adoption of parts of flood maps while other parts are being finalized to bring certainty to communities.

The ANS would also create two new flood map zones: 1) for levee-impacted areas that provides partial protection even if it does not meet the minimum standards of the NFIP; and 2) for agricultural structures in SFHAs. In many farm communities, meeting the current requirement to raise new, expanded, or repaired structures in the SFHA would require raising barns and silos upwards of 10 feet, which is cost prohibitive or simply inconsistent with continued agricultural land use. To address these issues, the ANS would also enable local jurisdictions to provide variances from federal elevation and floodproofing requirements where compliance with such standards is impracticable, where a variance would not threaten public safety, require extraordinary public expense, create nuisances, or conflict with existing laws and ordinances, and where no more than one claim over \$1,000 has been paid in the preceding 10 years. This language is similar to H.R. 830 sponsored by Reps. Garamendi and LaMalfa.

Mitigation

The ANS would increase the amount of Increased Cost of Compliance (ICC) policyholder funds available from \$30,000 to \$60,000 and expands the eligible uses of such funds to include pre-disaster mitigation and buyouts. Areas where buyouts are successful would be required to be maintained for open space, recreational, or wetlands management practices. Any new structure erected would be required to be a public facility related to a designated open space, a restroom, or a structure that the Administrator otherwise approves.

The ANS would also make a number of improvements to address properties that repeatedly flood. Although repetitive loss properties make up just one percent of NFIP policies, they account for 25-30 percent of claims.³³ The ANS would establish clear definitions for repetitive loss properties and allow the Administrator to consider the extent to which a community is working to remedy such repetitive loss properties when allocating mitigation assistance. This will help to better target mitigation assistance to the properties and communities that are the highest risk.

The ANS would also provide mitigation credits for alternative forms of mitigation that may be necessary in dense, urban environments where elevation is not possible. The ANS would also enable the NFIP to provide coverage for cooperatives, similar to H.R. 2868 from the 115th Congress sponsored by Reps. Zeldin and Maloney, and create a three-year community-based flood insurance pilot program to make single, community-wide policies available for purchase.

The ANS would authorize \$200,000,000 each year for five years for purposes of flood mitigation assistance, provide grants to communities for community rating system coordinators, and authorize a technical assistance program for floodplain management.

Private Sector and NFIP Modernization

In February of 2019, the Federal financial regulators released a final rule implementing a provision of the Biggert-Waters Act to allow for the acceptance of certain private flood insurance policies to satisfy the

³³ See, PEW Charitable Trusts, “Repeatedly Flooded Properties Cost Billions”, available at https://www.pewtrusts.org/~media/assets/2016/10/repeatedly_flooded_properties_cost_billions.pdf?la=en.

mandatory purchase requirement.³⁴ However, the regulators did not address the issue of “continuous coverage” meaning policyholders that leave the NFIP to purchase a private policy would lose their subsidies or grandfathered status with their NFIP policy if they ever decided to return. The ANS would allow policyholders to keep their subsidies or grandfathered status if they leave and return to the NFIP after purchasing a private policy. This language is similar to H.R. 1666 sponsored by Reps. Castor and Luetkemeyer.

The ANS would require the NFIP to modernize its policies for multifamily and commercial structures by allowing for “umbrella policies” that provide coverage for multiple structures in a single policy. Currently, umbrella policies are not offered by the NFIP and private umbrella policies do not satisfy the federal mandatory purchase requirement, which means that many businesses are forced to purchase separate NFIP policies for each individual structure, and if the maximum coverage allowed under the NFIP is insufficient, they are then required to purchase a separate private policy that covers losses beyond the NFIP’s maximum coverage limits. The ANS would allow business owners to obtain a single policy to cover their structures.

³⁴ Under the Flood Disaster Protection Act of 1973 regulated lending institutions are prohibited from making, increasing, extending or renewing a loan secured by improved real estate or a mobile home located or to be located in an SFHA in a community participating in the NFIP unless the property securing the loan is covered by flood insurance. Flood insurance may be provided through the NFIP or through a private insurance carrier.