

University of Maryland Francis King Carey School of Law

DigitalCommons@UM Carey Law

---

Maryland Law Review Online

---

2024

## Rising Tides, Rising Solutions: A Maryland Program Proposal to Navigate the Flood Insurance Frontier

Renaee Hee Eun Lee

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/endnotes>

---

### Recommended Citation

Renaee Hee Eun Lee, *Rising Tides, Rising Solutions: A Maryland Program Proposal to Navigate the Flood Insurance Frontier* (2024),

Available at: <https://digitalcommons.law.umaryland.edu/endnotes/99>

This Article from Volume 83 is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review Online by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

---

---

# COMMENT

## RIISING TIDES, RISING SOLUTIONS: A MARYLAND PROGRAM PROPOSAL TO NAVIGATE THE FLOOD INSURANCE FRONTIER

RENAE HEE EUN LEE\*

Mrs. Park walks around her block as she has done every morning for the past thirty years and on her way, runs into her neighbor.<sup>1</sup> They exchange greetings, “you get your damage insurance money yet?” her neighbor asks. “Not yet!” she replies. Despite the lighthearted greeting, the conversation carries a subtle reminder of the tragedy their community endured over a year ago when Hurricane Ian destroyed their homes.<sup>2</sup>

Mrs. Park, a seventy-seven-year-old matriarch and widow, was suffering from shingles while being cared for by her sister when in September 2022, Hurricane Ian (“Ian”) hit Southwest Florida as a dangerous high-end Category 4 storm.<sup>3</sup> Although the governor of Florida declared a state of emergency five days prior,<sup>4</sup> Mrs. Park did not evacuate.<sup>5</sup> She had lived in Cape Coral for over thirty years, and had weathered several disastrous

---

© 2024 Renae Hee Eun Lee.

\* J.D. Candidate, 2025, University of Maryland Francis King Carey School of Law. The author would like to recognize the tireless efforts by the editors of the *Maryland Law Review*, specifically Maya Vazquez and Rosemary Ardman. She would also like to thank Carolyn Wetzel for her invaluable friendship throughout law school. Next, she extends heartfelt appreciation to Professor Martha Ertman for being a guidepost throughout the entire writing process. She would also like to express sincere gratitude to her family—her mother, father, oppa, and unni—for their unending love, prayers, and support that have carried her throughout her academic career. Finally, and most importantly, she would like to dedicate this piece to her aunt, whose resilience in the face of tragedy served as both inspiration and foundation for this paper. 이모 사랑해요.

1. Mrs. Park’s story is based off the author’s personal experience with Hurricane Ian.

2. *Hurricane Ian’s Path of Destruction*, NOAA NAT’L ENV’T SATELLITE, DATA, & INFO. SERV. (Oct. 4, 2022), <https://www.nesdis.noaa.gov/news/hurricane-ians-path-of-destruction>.

3. *Id.*

4. Fla. Exec. Order No. 22-219 (Sept. 24, 2022), <https://www.flgov.com/wp-content/uploads/2022/09/EO-22-219-TS-Ian.pdf>.

5. Andrea McArdle, *Storm Surges, Disaster Planning, and Vulnerable Populations at the Urban Periphery: Imagining A Resilient New York After Superstorm Sandy*, 50 IDAHO L. REV. 19, 42 (2014) (noting minorities and immigrant groups have less trust of official directives, specifically evacuation mandates, and have difficulties accessing information due to language barriers).

hurricanes, including Andrew, Charley, and Irma.<sup>6</sup> Unfortunately, Ian was unlike any storm the area had faced before.<sup>7</sup> Mrs. Park watched helplessly as the waters rose inch by inch, slowly destroying the home she and her late husband stewarded for decades.<sup>8</sup> Trapped within rising waters without any power, Mrs. Park was unsure if she and her sister would make it through the night.<sup>9</sup> She used the little remaining battery she had left in her phone to tell her family in Maryland that they were alive and would wait out the storm in the attic.<sup>10</sup>

Mrs. Park survived the storm, but the catastrophic flooding caused hundreds of thousands of dollars in damage to her home as well as immeasurable emotional turmoil.<sup>11</sup> However, the real ordeal came after the waters receded in the form of a protracted battle with her flood insurance company.<sup>12</sup> As of this writing, Mrs. Park had not received a payout from her flood insurance company which went insolvent shortly after the storm.<sup>13</sup> For future storms, people like Mrs. Park face more risk because home and flood insurance policies have increased as much as \$10,000 per year.<sup>14</sup> Mrs. Park, like many other Florida coastal homeowners, opted to forgo opening a new policy, choosing instead to personally bear the risk of another catastrophic hurricane.<sup>15</sup>

---

6. Hurricane Andrew struck south Florida in 1992 as a Category 5 storm and caused about \$25 billion in damages. Tyler Clifford, *The Worst Hurricanes in Florida's History as Ian Takes Aim*, REUTERS (Sept. 26, 2022, 7:57 PM), <https://www.reuters.com/world/us/worst-hurricanes-floridas-history-ian-takes-aim-2022-09-26/>. Hurricane Charley unexpectedly brought massive destruction as a Category 4 storm in 2004, costing \$6.8 billion in damages. *Id.* In 2007, Hurricane Irma resulted in an estimated \$50 billion in damages, killing seven people directly and 80 people indirectly. *Id.*

7. Angela Fritz & Brandon Miller, *The Ways Hurricane Ian Is an Unprecedented Storm for Florida's Gulf Coast*, CNN (Sept. 29, 2022, 7:44 AM), <https://www.cnn.com/2022/09/28/weather/hurricane-ian-unprecedented-climate/index.html>.

8. *Hurricane Ian's Path of Destruction*, *supra* note 2.

9. *Id.*

10. Nicole Bonaccorso, *Aerial Photos Show the Scale of Damage Left Behind by Ian*, WEATHER CHANNEL (Oct. 4, 2022), <https://weather.com/photos/news/2022-09-29-hurricane-ian-aerial-images> (stating stranded Floridians waited on their roofs for aid during Hurricane Ian).

11. *See, e.g., id.*

12. Phil McCausland, *Hurricane Ian Exposed a Flood Insurance Nightmare for Homeowners in Florida*, NBC NEWS (Oct. 14, 2022, 5:47 PM), <https://www.nbcnews.com/news/us-news/hurricane-ian-florida-flood-insurance-nightmare-homeowners-rcna51514>.

13. *See* Jedidajah Otte, *Florida Rocked by Home Insurance Crisis: I May Have to Sell Up and Move*, GUARDIAN (July 17, 2023, 9:07 AM), <https://www.theguardian.com/us-news/2023/jul/15/florida-hurricane-insurance-crisis-climate> (noting six Florida property insurers went bankrupt in 2022).

14. Greg Allen, *Feeling the Pinch of High Home Insurance Rates? It's Not Getting Better Anytime Soon*, NPR (Oct. 26, 2023, 5:01 AM), <https://www.npr.org/2023/10/26/1208590263/florida-homeowners-insurance-soaring-expensive>.

15. *Id.*

Mrs. Park represents just one among thousands of homeowners adversely affected by the current flood insurance system.<sup>16</sup> In an effort to address the issue, this Comment proposes that Maryland, a state with high flood risk, adopt a compulsory flood insurance program to serve as a blueprint for a nationwide solution.<sup>17</sup> The flaws in the existing flood insurance framework, evident not only in Florida but nationwide, create a situation where insurance companies frequently fall short in compensating policyholders, leading homeowners to resort to self-insurance.<sup>18</sup> This practice leaves already vulnerable communities more vulnerable.<sup>19</sup> Moreover, insurance companies tend to insure those in risk prone areas and lack the necessary capital to provide relief to their policyholders in the event of a disaster.<sup>20</sup> In addition, Congress has yet to establish a sustainable flood insurance system that ensures vulnerable communities have access to affordable post-disaster relief.<sup>21</sup> With the increase in weather-related disasters due to rising sea levels and global warming, it is imperative to find answers to the flood insurance question.<sup>22</sup> Implementing a program in Maryland will help address the shortcomings of the current flood insurance scheme and provide a more equitable solution for homeowners nationwide.<sup>23</sup>

## I. BACKGROUND

Hurricane Ian (“Ian”) wreaked unprecedented havoc on Southwest Florida, serving as a stark reminder of the insufficiencies within the state’s flood insurance system.<sup>24</sup> The maximum sustained winds of 150 miles per hour tied Ian for the fifth-strongest hurricane to ever strike the United

---

16. *Id.*

17. *See infra* Section II.B.

18. Marlei Martinez, *More Florida Homeowners Are Self-Insuring Amid Rising Insurance Costs*, WESH 2 (Sept. 18, 2023, 10:58 AM), <https://www.wesh.com/article/florida-rising-insurance-costs/45161582>.

19. *Id.*

20. Christopher C. French, *America on Fire: Climate Change, Wildfires & Insuring Natural Catastrophes*, 54 U.C. DAVIS L. REV. 817, 855 (2020) [hereinafter French, *America on Fire*].

21. *See infra* Section I.B.

22. *See infra* Section I.A.

23. *See infra* Part II.

24. Fritz & Miller, *supra* note 7. In 1945, Congress passed the McCarran-Ferguson Act (“MFA”), assigning authority over insurance regulation to the states and creating a carve out for federal oversight where federal law supersedes state law. Robert W. Klein, *The Insurance Industry and Its Regulation: An Overview*, in THE FUTURE OF INSURANCE REGULATION IN THE UNITED STATES 13, 33 (Martin F. Grace & Robert W. Klein eds., 2009). While state governments predominantly retain control over insurance regulation, the federal government has asserted influence through alternative means. *Id.* at 34. This includes exerting authority over particular markets, such as in the case of Medicare, and establishing independent insurance programs, like the National Flood Insurance Program. *Id.*

States.<sup>25</sup> Ian tragically claimed the lives of 156 individuals and left in its wake a trail of destruction estimated at \$112.9 billion worth of total damage, earning the title of the third-costliest hurricane on record in the United States.<sup>26</sup> Ian, however, was not the first catastrophic weather event to impact the nation and, unfortunately, will not be the last.<sup>27</sup> Due to the rapid progression of global climate change, the frequency and severity of coastal flooding will inevitably continue to rise.<sup>28</sup> This conjunction of increased flood occurrences and the lack of legislative action to enact comprehensive flood insurance reform has created an atmosphere of uncertainty within the flood insurance landscape for the foreseeable future.<sup>29</sup>

This Background explores the intricate relationship between climate change and flood insurance, providing context on how the current flood insurance framework evolved to what it is today.<sup>30</sup> Section I.A discusses the effects of climate change on coastal flooding and the disparate impact on minority and low-income populations.<sup>31</sup> Section I.B discusses the historic measures taken thus far to address the mounting questions surrounding flood insurance.<sup>32</sup> Finally, Section I.C evaluates the contemporary national flood insurance framework, examining key measures taken by federal and state legislatures, while also exploring international models of flood insurance.<sup>33</sup>

*A. The Growing Threat of Coastal Flooding in the United States  
Disparately Impacts Minority and Low-Income Populations*

There is strong, undeniable evidence that there is a rapid and continuing warming of the global atmosphere and oceans.<sup>34</sup> In 2023 alone, there was a

---

25. *Hurricane Ian's Path of Destruction*, *supra* note 2.

26. LISA BUCCI ET AL., NATIONAL HURRICANE CENTER TROPICAL CYCLONE REPORT: HURRICANE IAN 12–13 (2023), [https://www.nhc.noaa.gov/data/tcr/AL092022\\_Ian.pdf](https://www.nhc.noaa.gov/data/tcr/AL092022_Ian.pdf).

27. U.S. GLOB. CHANGE RSCH. PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT VOLUME II: IMPACTS, RISKS, AND ADAPTATIONS IN THE UNITED STATES 47 (2018), [https://nca2018.globalchange.gov/downloads/NCA4\\_2018\\_FullReport.pdf](https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf) [hereinafter CLIMATE ASSESSMENT].

28. *Id.* at 329.

29. Loren M. Vasquez, *Big Storms, Big Debt, and Biggert-Waters: Navigating Florida's Uncertain Flood Insurance Future*, 5 SEATTLE J. ENV'T L. 109, 122–23 (2015).

30. *See infra* Part I.

31. *See infra* Section I.A.

32. *See infra* Section I.B.

33. *See infra* Section I.C.

34. CLIMATE ASSESSMENT, *supra* note 27, at 94. In 1990, Congress mandated, through the Global Change Research Act, that the U.S. Global Change Research Program (“USGCRP”) deliver an assessment report every four years that:

(1) integrates, evaluates, and interprets the findings of the Program . . . ; (2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social

record-breaking number of billion-dollar weather catastrophes in the United States,<sup>35</sup> and these trends are expected to not only persist but to increase in frequency, severity, and duration.<sup>36</sup> The National Oceanic and Atmospheric Administration (“NOAA”) reported that in 2022, the United States experienced its third-highest number of billion-dollar disasters, totaling \$165.1 billion across the eighteen separate catastrophic weather events.<sup>37</sup> While there is a clear increase in weather-related disasters, there is also an increase in the intensity of extreme weather events that cause billions of dollars’ worth of disasters.<sup>38</sup>

Coastal flooding occurrences are likely to increase due to a combination of changes in ocean circulation, sinking land, and the melting of Antarctic glaciers.<sup>39</sup> The sea level rise is specifically projected to severely impact the Northeast coastlines and the Gulf Coast states, but almost all of the country’s coastlines will likely be affected and see a higher-than-average rise in sea levels in the near future.<sup>40</sup> While these are future predictions, parts of the United States today have already experienced the impacts of rising sea levels as daily tidal flooding occurrences have become five to ten times more frequent since the 1960s.<sup>41</sup>

Coastal flooding distributes its impacts unevenly across the United States, disparately affecting various socioeconomic and racial groups.<sup>42</sup> Currently, flood-risk is largely experienced by impoverished communities.<sup>43</sup> However, this burden is projected to transfer within the next three decades to

---

systems, and biological diversity; and (3) analyzes current trends in global change . . . for the subsequent 25 to 100 years.

Global Change Research Act of 1990, Pub. L. No. 101-606, 104 Stat. 3101.

35. See *United States Summary*, NOAA NAT’L CTRS. ENV’T INFO. (2023), <https://www.ncei.noaa.gov/access/billions/state-summary/US> (noting that 2023, with twenty-four billion-dollar natural disasters, surpassed the previous record set in 2020, which had twenty-two billion-dollar natural disasters).

36. CLIMATE ASSESSMENT, *supra* note 27, at 97.

37. Adam B. Smith, *2022 U.S. Billion-Dollar Weather and Climate Disasters in Historical Context*, NOAA CLIMATE.GOV (Jan. 10, 2023), <https://www.climate.gov/news-features/blogs/beyond-data/2022-us-billion-dollar-weather-and-climate-disasters-historical#>. In 2023, there were twenty-eight weather catastrophes that accumulated losses over \$1 billion each, totaling \$92.9 billion in damages. Adam Smith, *2023: A Historic Year of U.S. Billion-Dollar Weather and Climate Disasters*, NOAA CLIMATE.GOV (Jan. 8, 2024), <https://www.climate.gov/news-features/blogs/beyond-data/2023-historic-year-us-billion-dollar-weather-and-climate-disasters#>.

38. Smith, *supra* note 37.

39. CLIMATE ASSESSMENT, *supra* note 27, at 98.

40. *Id.* at 99.

41. *Id.*

42. See generally Oliver E. J. Wing et al., *Inequitable Patterns of US Flood Risk in the Anthropocene*, 12 NATURE CLIMATE CHANGE 156 (2022), <https://doi.org/10.1038/s41558-021-01265-6>.

43. *Id.* at 158.

Black communities concentrated in the Deep South as well as minority communities in urban and rural areas in states like Texas and Florida.<sup>44</sup> In recent years, a case study on the Galveston region of Texas found that, among those negatively impacted after a major flood insurance reform in 2012, impoverished homeowners were overrepresented by thirty-two percent and minorities were overrepresented by forty-three percent.<sup>45</sup>

The disparate impacts of flooding are primarily evident in the aftermath of weather-related disasters.<sup>46</sup> “[L]ower incomes, fewer savings, greater unemployment, less insurance and less access to communication channels and information” perpetuate the marginalization of minority, low-income populations.<sup>47</sup> For example, in the aftermath of Hurricane Andrew (1992), Black and non-Cuban Hispanic communities on average received lower settlements than their white neighbors.<sup>48</sup> Studies suggest this difference was caused by the segregation of insurance providers with white neighborhoods being insured by well-known insurance companies, such as State Farm and Allstate, and Black communities being insured by secondary market players like Delta, Ocean Casualty, and Florida Fire and Casualty.<sup>49</sup> Additionally, a history of redlining and racially discriminatory housing practices confined minority communities, in particular Black communities, to neighborhoods with poor quality housing that were not built to withstand the damages caused by coastal flooding.<sup>50</sup>

The disparate impact of floods reveal a “painful reality” in that minority and low-income populations are often overlooked and left to fend for themselves.<sup>51</sup> In preparing for Hurricane Katrina’s arrival in 2005, New Orleans officials circulated a DVD to its residents which informed them that the city was broke and emphasized everyone’s individual responsibility to

---

44. *Id.* at 159.

45. Earthea Nance, *Exploring the Impacts of Flood Insurance Reform on Vulnerable Communities*, 13 INT’L J. DISASTER RISK REDUCTION 20, 32 (2015). The author noted that Galveston had generally low rates of poverty and a low percentage of minority residents compared to the rest of the state. *Id.*

46. Alice Fothergill, Enrique G.M. Maestas & Joanne Derouen Darlington, *Race, Ethnicity and Disasters in the United States: A Review of the Literature*, 23 DISASTERS 156, 164 (1999).

47. *Id.*

48. *Id.*

49. Walter Gillis Peacock & Chris Girard, *Ethnic and Racial Inequalities in Hurricane Damage and Insurance Settlements*, in HURRICANE ANDREW: ETHNICITY, GENDER AND THE SOCIOLOGY OF DISASTERS 171, 180 (Walter Gillis Peacock, Betty Hearn Morrow & Hugh Gladwin eds. 1997). In the aftermath of Hurricane Andrew, homeowners spray painted the names of their insurance companies on the outside of their homes, or what was left of their homes, to make finding properties easier, which painted a clear picture of the vast differences in insurers. *Id.*

50. *Id.* at 173.

51. Alexander B. Lemann, *Stronger than the Storm: Disaster Law in a Defiant Age*, 78 LA. L. REV. 437, 474 (2018).

take care of themselves.<sup>52</sup> For many, this message implied abandonment.<sup>53</sup> The disparity in Katrina's impact was glaring, with eighty percent of Black households flooded compared to fifty-four percent of white households.<sup>54</sup> Countless minorities found themselves stranded in flooded homes or cramped in inadequate shelters, waiting for government aid.<sup>55</sup> However, the disparate impacts of the flood did not subside once the water went away.<sup>56</sup> Proposals emerged to demolish homes in minority communities and turn "homes of 80% of the city's black population" into green space.<sup>57</sup> New Orleans was not the first city where the effects of post-disaster relief fell along racial lines and certainly will not be the last.<sup>58</sup>

In Maryland, low-income, minority communities face heightened vulnerability to weather catastrophes.<sup>59</sup> City leadership in Annapolis, a town mainly comprised of middle-class white individuals, has researched, invested in, and implemented flood mitigation plans.<sup>60</sup> Annapolis is also home to the United States Naval Academy, which allocated resources to seawall repairs and flood-prevention planning.<sup>61</sup> Comparatively, the main population of Cambridge, Maryland is low-income African Americans, and no efforts toward flood mitigation or prevention have been made despite Cambridge being a coastal county.<sup>62</sup> The vast difference in approaches to flood management underscores the inequitable impact of climate change on low-income, minority communities, emphasizing the need for more inclusive and equitable strategies.<sup>63</sup>

#### *B. Historic Measures Taken to Address the Flood Insurance Problem*

On September 6, 1965, the United States withstood its first billion-dollar hurricane, Hurricane Betsy.<sup>64</sup> The South Florida residents who experienced flooding were slammed by \$1.4 billion in damages and turned to the federal

---

52. *Id.*

53. *Id.*

54. *Id.* at 474–75

55. *Id.* at 476.

56. *Id.* at 477.

57. *Id.*

58. *Id.* For example, after several disastrous fires in Chicago and San Francisco, government officials proposed to outlaw the construction of wood homes. *Id.* at 478. The proposal faced severe backlash from poorer communities who could not afford more expensive material. *Id.*

59. ERIKA SPANGER-SIEGFRIED ET AL., UNION OF CONCERNED SCIENTISTS, WHEN RISING SEAS HIT HOME: HARD CHOICES AHEAD FOR HUNDREDS OF U.S. COASTAL COMMUNITIES 11 (2017).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Vasquez, *supra* note 29, at 111–12.



government for relief.<sup>65</sup> In response, Congress passed the National Flood Insurance Act of 1968 (“NFIA”) which in turn established the National Flood Insurance Program (“NFIP”).<sup>66</sup>

1. *The Inception of the National Flood Insurance Program*

Through the NFIA, Congress made catastrophic losses resulting from flooding a matter of public policy.<sup>67</sup> In 1979, Congress used the NFIA to establish the NFIP under the Federal Emergency Management Agency (“FEMA”) to assist in disaster preparation, prevention, response, and recovery.<sup>68</sup> The national program subsidizes disaster relief via a pool of money primarily funded by premiums paid by homeowners who opt in to the program.<sup>69</sup> Today, the NFIP policies are written directly by FEMA or issued by private insurers who participate in FEMA’s Write-Your-Own (“WYO”) programs.<sup>70</sup> WYO policies, however, are subjected to strict FEMA oversight and must comply with floodplain management ordinances and construction standards for building in flood-prone areas.<sup>71</sup>

Congress intended for NFIP to adapt to the then-present needs of the nation, considering factors such as population growth, climate change, and the economy.<sup>72</sup> The NFIP’s outlined goals, however, reflect the program’s design for short-term relief rather than long-term sustainability.<sup>73</sup> According to the NFIP’s mission statement, its goals are to (1) provide insurance to people in flood-prone areas who could not afford private insurance; (2) reduce disaster relief costs; and (3) improve floodplain management and implement mitigation tactics to keep disaster costs low.<sup>74</sup> NFIP’s mechanism to accomplish the first two goals was subsidized affordable premiums.<sup>75</sup> But its affordable subsidized premiums did not accurately reflect flood risk, and thus burdened NFIP with much of the losses sustained.<sup>76</sup> Efforts to make

---

65. *Id.* at 112.

66. *Id.*

67. *Id.* at 113.

68. *Id.* at 110.

69. MATT SIENKIEWICZ, SABIN CTR. CLIMATE CHANGE L., LEGAL TOOLS FOR CLIMATE ADAPTATION ADVOCACY: FLOOD INSURANCE 4 (2015).

70. Vasquez, *supra* note 29, at 114.

71. *Id.* at 115.

72. *Id.* at 119–20.

73. Jennifer Wriggins, *Flood Money: The Challenge of U.S. Flood Insurance Reform in a Warming World*, 119 PENN ST. L. REV. 361, 384 (2014) [hereinafter Wriggins, *Flood Money*].

74. *Id.*

75. *Id.* at 385.

76. *Id.* For example, Congress authorized the NFIP to borrow up to its upper limit and waived sixteen billion dollars in debt to meet the claims resulting from the 2017 Hurricanes Harvey, Irma, and Maria. DIANE P. HORN, CONG. RSCH. SERV., IN11049, A BRIEF INTRODUCTION TO THE NATIONAL FLOOD INSURANCE PROGRAM IN THE 118TH CONGRESS 2 (2023).

NFIP solvent by increasing premiums have failed as homeowners were unwilling to support such efforts in the voting booths due to the high costs associated with such change.<sup>77</sup>

Another cause of the NFIP's insolvency is its focus on providing insurance to people in flood-prone areas, which creates an issue of adverse selection.<sup>78</sup> Other government insurance programs, such as the Affordable Care Act ("ACA"), require that all citizens have some form of insurance and contribute to premiums, which spreads risk more effectively.<sup>79</sup> For the NFIP, only those who are at high-risk of flood damage buy-in to the program, and, when a major flood occurs, the NFIP cannot provide relief to all the policyholders at one time.<sup>80</sup> The NFIP then must borrow money to fulfill their contractual obligations, plunging the program into more debt.<sup>81</sup>

Furthermore, NFIP's outdated floodplain maps fail to provide homeowners with the necessary risk information and result in many homeowners not buying flood insurance.<sup>82</sup> This lack of insurance is made more risky because the NFIP has historically been slow to update its floodplain maps despite having it as its third main goal.<sup>83</sup> For instance, in the wake of Sandy in 2012, New York residents based their flood insurance decisions off of thirty-year-old maps that did not reflect half of the houses that were actually located in high-risk flood zones.<sup>84</sup> Although the NFIP sought to improve floodplain management and implement mitigation tactics to address flood risk, they have largely failed to accomplish this goal due to poor funding.<sup>85</sup>

The Biggert-Waters Flood Insurance Reform Act of 2012 ("BW-12") sought to update and, indeed, save the NFIP from its billions of dollars of debt and status as a "'high-risk' governmental program" according to the U.S. Government Accountability Office ("GAO").<sup>86</sup> Most notably, BW-12 sought to shift to an actuarial model to reflect the actual risk associated with properties by raising premiums for policyholders.<sup>87</sup> Other provisions in the

---

77. SIENKIEWICZ, *supra* note 69.

78. Christopher C. French, *Insuring Floods: The Most Common and Devastating Natural Catastrophes in America*, 60 VILL. L. REV. 53, 61–62 (2015) [hereinafter French, *Insuring Floods*]. While this may make initial sense, as states with low flood risk do not necessarily need flood insurance, this emphasis creates a fundamental flaw in the program. *Id.*

79. Vasquez, *supra* note 29, at 132–33.

80. *Id.*

81. SIENKIEWICZ, *supra* note 69, at 8.

82. Jacob T. Bradt, Carolyn Kousky & Oliver E.J. Wing, *Voluntary Purchases and Adverse Selection in the Market for Flood Insurance*, 110 J. ENV'T ECON. MGMT. 1, 13 (2021).

83. French, *Insuring Floods*, *supra* note 78, at 70.

84. *Id.*

85. *Id.*

86. Vasquez, *supra* note 29, at 120.

87. *Id.*

bill (1) commissioned updated flood maps to demonstrate the effects of climate change; (2) increased premiums to correlate with the updated maps; and (3) initiated efforts to transfer the flood risk to the private sector through the purchase of reinsurance.<sup>88</sup>

BW-12 initially received bipartisan and bicameral support as conservatives supported the decreased government spending and liberals appreciated how the actuarial model better represented the gravity of climate change.<sup>89</sup> BW-12 mandated higher rates for homes with severe and repeated flooding and an annual twenty-five-percent increase on rates across the board.<sup>90</sup> Therefore, in the wake of Hurricane Sandy in 2013, policyholders across the nation saw flood insurance premiums skyrocket ten-fold.<sup>91</sup> Legislators little expected their reform efforts to have such disastrous consequences and called the director of FEMA to stop enforcing BW-12 only one year after its passing.<sup>92</sup> Soon after, Congress enacted the Homeowner Flood Insurance Affordability Act of 2014 (“HFIAA”) which repealed key provisions of BW-12 to restrain public anger.<sup>93</sup> Congress also instructed FEMA to study flood insurance affordability and create solutions on how to construct an affordable flood insurance framework that NFIP could implement.<sup>94</sup>

## 2. *FEMA’s Findings in Response to the HFIAA*

FEMA’s 2018 report proposed four program design options to create an affordable flood insurance scheme: (1) income-based premium sharing; (2) premium burden-based benefit; (3) housing burden-based benefit; and (4) mitigation grants and loans.<sup>95</sup> This Section will explore FEMA’s specific findings and weigh the benefits and risks associated with each model.<sup>96</sup>

### *a. Income-Based Premium Sharing*

Under the income-based premium sharing model, the cost of the premium is allocated between low-income residents and the government.<sup>97</sup>

---

88. *Id.* at 121.

89. *Id.* at 122.

90. *Id.* at 121.

91. *Id.* at 122.

92. *Id.* at 123.

93. *Id.* at 124.

94. FED. EMERGENCY MGMT. AGENCY, AN AFFORDABILITY FRAMEWORK FOR THE NATIONAL FLOOD INSURANCE PROGRAM 1–2 (2018), [https://www.fema.gov/sites/default/files/2020-05/Affordability\\_april\\_2018.pdf](https://www.fema.gov/sites/default/files/2020-05/Affordability_april_2018.pdf) [hereinafter AFFORDABILITY FRAMEWORK].

95. *Id.* at 20.

96. *Id.*

97. *Id.* at 24.

The portion of the premium that the homeowner is responsible for depends on income of the household.<sup>98</sup> The area-median-income (“AMI”) is used to determine eligibility as the AMI reflects regional differences across the country.<sup>99</sup> Additionally, participants in the program would be notified of the full-risk rate of their property to make policyholders aware that the premiums and benefit they receive do not accurately represent the level of risk that they bear by living in a flood hazard zone.<sup>100</sup> The main factors to this design model include: (1) how much aid would be given to lowest-income households; (2) the income cutoff for households receiving the highest level of benefit; and (3) the income cutoff to receive any aid from the federal government.<sup>101</sup>

A key advantage to this model is that it is relatively simple to implement given that the essential information to create the system, namely household size and income, is readily available.<sup>102</sup> Additionally, because the model would be tiered with multiple benefit-to-burden ratios, policyholders would not have to worry about receiving drastically different benefits should their earning slightly increase.<sup>103</sup> Notable disadvantages are that a model based solely on household income could be manipulated and households with low incomes but high net worths could receive benefits.<sup>104</sup> This issue becomes evident in scenarios involving retired individuals with low income but significant wealth in their retirement accounts or properties, or young individuals with low incomes but inherited wealth.<sup>105</sup> There is also no existing legislative guidance or precedent that offers instruction on how to select the parameters of the benefit structure.<sup>106</sup>

*b. Premium Burden-Based Benefit*

In the premium burden-based benefit model, homeowners would allocate a percentage of their income to flood insurance and if the required percentage does not cover the entire flood insurance premium, the government would cover the rest.<sup>107</sup> The percentage of income to be allocated would be calculated by the AMI and wealthier households would need to use a higher percentage of their income on flood insurance.<sup>108</sup>

---

98. *Id.*

99. *Id.*

100. *Id.* at 26.

101. *Id.* at 24.

102. *Id.* at 26.

103. *Id.*

104. *Id.*

105. PEW RSCH. CTR., FEWER, POORER, GLOOMIER: THE LOST DECADE OF THE MIDDLE CLASS 82 (Paul Taylor ed., 2012).

106. AFFORDABILITY FRAMEWORK, *supra* note 94, at 26.

107. *Id.*

108. *Id.* at 27.

Similar to the first model, the premium burden-based benefit relies on information that is readily obtainable and easy to process.<sup>109</sup> Since the benefit is a set percentage of the homeowners' income rather than a percentage of the premium, premium increases would not create additional burdens on policyholders.<sup>110</sup> A primary disadvantage is that since the premium is capped based on income, premiums that homeowners pay do not represent actual risk and actual premium increases.<sup>111</sup> Therefore, there would be no incentive to participate in mitigation efforts to avoid flood risk.<sup>112</sup> Furthermore, as this model is based off of one metric alone—household income—the model would not differentiate between a low-income household with a high mortgage and a low-income household with no mortgage.<sup>113</sup>

*c. Housing Burden-Based Benefit*

The housing burden-based benefit model seeks to ameliorate some of the issues with the first two models and their use of only one metric to determine benefits.<sup>114</sup> In this option, eligibility is determined based on whether a homeowner is income *and* housing-burdened.<sup>115</sup> This model still limits eligibility to households with incomes below a certain AMI threshold, however, and homeowners must demonstrate that they spend more than a fixed percentage of their income on housing to be eligible for benefits.<sup>116</sup>

Factoring in both income and the level of housing burden would aid in distinguishing households with similar incomes but drastically different mortgage requirements.<sup>117</sup> The price of precision is that the model is more complex and requires information that is not always readily available to FEMA.<sup>118</sup> Information on household mortgage payments, property tax, and insurance payments would need to be gathered in order to determine eligibility with any accuracy.<sup>119</sup> The model could also potentially create incentives to overextend on housing costs in order to receive more federal aid and would discourage households with more frugal homeownership practices.<sup>120</sup>

---

109. *Id.*

110. *Id.* at 27–28.

111. *Id.* at 28.

112. *Id.*

113. *Id.*

114. *Id.* at 29.

115. *Id.*

116. *Id.*

117. *Id.* at 30.

118. *Id.* at 31.

119. *Id.*

120. *Id.*

*d. Mitigation Grants and Loans*

The mitigation grants and loans option focuses more on prevention by providing mitigation grants/loans in order to achieve effective flood mitigation.<sup>121</sup> By investing in upfront mitigation efforts, the burden to the government would be reduced by way of reducing the overall disaster relief costs.<sup>122</sup> This model could be a standalone affordability framework or could be tacked on to any of the previous models as an addendum.<sup>123</sup> FEMA recommended that mitigation grants and loans be added to any of the other models in order to achieve the most effective affordability framework for policyholders and the federal government.<sup>124</sup>

A key disadvantage to adding a mitigation grant and loan system to any of the previous models would be that interest in spending and borrowing money for mitigation efforts may not be popular.<sup>125</sup> Homeowners would only be able to benefit from this model if in fact their mitigation efforts do curb the cost of flood damage.<sup>126</sup> Additionally, the program may only be applicable to a few policyholders who could afford an increased premium to undertake mitigation efforts which would be counterintuitive to creating more affordable flood insurance policies. Lastly, government grant and loan programs are often administratively complex and give rise to a host of logistical issues.<sup>127</sup>

One key factor that FEMA emphasized in every model was the importance of communicating actual risk and giving notice that the premiums policyholders pay in any of these models would not be indicative of the level of risk they are taking in living within flood hazard zones.<sup>128</sup> A big issue with NFIP is that risk is not accurately represented, and policyholders do not feel the need or urgency to participate in mitigation practices because their premiums stay low.<sup>129</sup> Therefore, FEMA urged legislatures to implement reform while balancing these considerations of affordability and actuarial risk.<sup>130</sup>

---

121. *Id.* at 32.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 34.

126. *Id.* at 33.

127. *Id.* at 34. For example, mitigation projects would have to be property specific and rely on external agencies to conduct assessments and cost-benefit analyses which may drive up costs. *Id.*

128. *Id.* at 51.

129. *Id.*

130. *Id.* at 52.

### C. *The Contemporary Flood Insurance Framework*

A closer inspection of the modern flood insurance system reveals a complex landscape, rife with challenges and uncertainty.<sup>131</sup> The Section first discusses the retreat of private insurers from flood coverage, citing moral hazard, correlated risk, and outdated flood maps as primary reasons.<sup>132</sup> Next, the Section examines congressional attempts for reform, notably the National Flood Insurance Program Reauthorization Act of 2023, highlighting the persistent struggle for comprehensive solutions.<sup>133</sup> The Section then outlines state-level actions in flood-risk regions like Louisiana, Texas, Florida, and Maryland<sup>134</sup> and, lastly, offers a comparative analysis of European flood insurance models.<sup>135</sup>

#### 1. *Retreat of Private Insurers from the Flood Insurance Market*

Due to the ever-growing risk of catastrophic flood occurrences, many private insurers today refuse to insure high-risk properties and many basic homeowners insurance packages specifically exclude coverage for damages caused by catastrophic weather events.<sup>136</sup> Both moral hazard and correlated risk drive this change.<sup>137</sup> Moreover, outdated flood maps and a lack of information regarding real flood risk contribute to the reluctance of private insurers to cover these damages.

Moral hazard is the theory that safety nets encourage bad behavior.<sup>138</sup> In consideration of moral hazard, insurers are hesitant to insure high-risk homes as the theory supports the notion that those who have insurance are less likely to make mitigation efforts to prevent or minimize their losses.<sup>139</sup> In reality, the economics of moral hazard are used to undervalue efforts to protect the injured, sick, and poor and systematically favor the interests of the insurance companies rather than the insured.<sup>140</sup> Some private insurers have criticized subsidized flood insurance, such as NFIP policies, for increasing people's willingness to live in flood-prone areas and not participate in mitigation

---

131. See generally Vasquez, *supra* note 29.

132. See *infra* Section I.C.1.

133. See *infra* Section I.C.2.

134. See *infra* Section I.C.3.

135. See *infra* Section I.C.4.

136. French, *America on Fire*, *supra* note 20, at 832–33. For more information about when private insurers stopped insuring catastrophic losses, see generally Howard Kunreuther, *All-Hazards Homeowners Insurance: Challenges and Opportunities*, 21 RISK MGMT. & INS. REV. 141 (2018).

137. French, *Insuring Floods*, *supra* note 78, at 61–62.

138. Tom Baker, *On the Genealogy of Moral Hazard*, 75 TEX. L. REV. 237, 237 (1996).

139. French, *Insuring Floods*, *supra* note 78, at 62.

140. Baker, *supra* note 138, at 240.

efforts because the subsidized policy does not represent the true risk of living in that area.<sup>141</sup>

Secondly, due to the unpredictability of catastrophic weather events, insurers do not want to associate themselves with correlated risks, or risks of loss that happen to many people at the same time in one concentrated area.<sup>142</sup> Correlated risks can be especially daunting for catastrophe insurers who operate in specific, risk-prone areas and, therefore, feel the burdens from damage caused by natural disasters simultaneously and immensely.<sup>143</sup>

Since most home insurance packages explicitly exclude coverage for damage from catastrophic weather events, homeowners are given the option to buy into catastrophe insurance policies.<sup>144</sup> These policies suffer from three problems: (1) adverse selection; (2) high premiums; and (3) low take-up rates.<sup>145</sup> Adverse selection is the phenomenon that someone who lives in a state with high risk of coastal flooding or wildfire will more likely purchase catastrophe insurance than someone who lives in a state with less risk.<sup>146</sup> If only people with the highest risk opt in to the insurance, the risk is not evenly distributed across the nation and one catastrophic event could leave an insurance company insolvent, unable to cover all who were affected.<sup>147</sup> Secondly, because the only people who opt in to these insurance policies are those in high-risk areas, premiums consequentially increase and become unaffordable.<sup>148</sup> Lastly, because catastrophe insurance policies are optional, many homeowners choose to not buy in to them because they do not know they need the extra insurance or they are unable to afford it.<sup>149</sup>

Private insurers are further reluctant to participate in private flood insurance because of the lack of accurate flood maps that would aid in determining actual risk.<sup>150</sup> The National Flood Insurance Reform Act of 1994 required FEMA to update their flood zone maps every five years in order to inform the NFIP on how it should change in response to the changing flood landscape.<sup>151</sup> Although Congress mandated that FEMA use relevant data from the National Oceanic and Atmospheric Administration and the U.S. Geological survey to compile an accurate set of data points regarding sea

---

141. Wiggins, *Flood Money*, *supra* note 73, at 388.

142. French, *Insuring Floods*, *supra* note 78, at 63.

143. *Id.* at 63–64.

144. French, *America on Fire*, *supra* note 20, at 854.

145. *Id.*

146. *Id.* at 855.

147. *Id.*

148. *Id.* at 856.

149. *Id.* at 857.

150. KRISTIAN S. BLICKLE & JOÃO A. C. SANTOS, FED. RESRV. BANK OF N.Y., UNINTENDED CONSEQUENCES OF “MANDATORY” FLOOD INSURANCE 8 (2022).

151. *Id.*



levels, climate change, precipitation, and intensity of hurricanes, FEMA has consistently failed to meet these goals.<sup>152</sup> In 2020, FEMA revealed that about 3,300 communities had maps that were fifteen years old and did not account for new building developments or changes in weather patterns.<sup>153</sup> Private insurers are understandably hesitant to operate in a flood insurance system working off of outdated information that does not accurately reflect risk.<sup>154</sup>

## 2. Failed Congressional Efforts Since 2017

FEMA's 2018 report to Congress outlined alarming statistics, particularly about how many low-income residents in high-risk flood areas remained wholly uninsured and unprepared to withstand any future catastrophic flood event.<sup>155</sup> Despite this data, Congress has not passed necessary reform that would fix the NFIP's funding issues, the outdated FEMA flood maps, and actuarial risk inconsistencies.<sup>156</sup> Though the NFIP owes billions to the Treasury and has no way to repay this debt, the program was never capitalized by Congress.<sup>157</sup> The program was designed with the authority to borrow money from the Treasury with no consideration of how it would repay its debt following a catastrophic flooding event or year with multiple catastrophes.<sup>158</sup> In 2012, Congress sought to fix this funding issue through BW-12 with the creation of a reserve fund maintained by FEMA.<sup>159</sup> The issue with this remedy was that the reserve fund would take decades to amass the required funds necessary to fix the program's solvency issues.<sup>160</sup> Through the 2014 Homeowner Flood Insurance Affordability Act that repealed much of BW-12, Congress authorized the NFIP to purchase reinsurance, insurance for insurers, to solve its funding issues; however, the purchase of reinsurance was costly and Congress did not explicitly lay out where the NFIP would get funding to purchase the reinsurance as premium

---

152. *Id.*

153. *Id.*

154. *Id.* at 13–14.

155. Specifically, FEMA found that twenty-six percent of homeowners who had flood insurance and lived in high-risk flood zones were low-income and fifty-one percent of homeowners who lived in high-risk zones and did not have flood insurance were low-income. AFFORDABILITY FRAMEWORK, *supra* note 94, at 6.

156. SIENKIEWICZ, *supra* note 69, at 9.

157. Carolyn Kousky, *Financing Flood Losses: A Discussion of the National Flood Insurance Program*, 21 RISK MGMT. & INS. REV. 11, 26 (2018) [hereinafter Kousky, *Flood Losses*].

158. *Id.*

159. *Id.* Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012 ("BW-12") as a huge scale reform bill in order to shift the NFIP to an actuarial model in order to reflect the actual risk associated with properties by raising premiums for policyholders. *Id.* Through BW-12, Congress instructed FEMA to start building a reserve fund; basically, a savings fund to set aside money to pay out future claims when the original funds are depleted. *Id.* at 27.

160. *Id.* at 27.

increases were not politically possible.<sup>161</sup> Funding issues remain and Congress has yet to pass legislation that would map out how the NFIP plans to pay back its debt.<sup>162</sup>

Notwithstanding the persisting funding issues that Congress has yet to resolve, FEMA faces additional constraints under BW-12.<sup>163</sup> Prior to BW-12, FEMA flood maps did not incorporate climate change data into their maps but rather used historical data to predict future flood risk.<sup>164</sup> BW-12 sought to fix this by providing additional funding for FEMA to update flood maps using projected climate change data.<sup>165</sup> However, FEMA claims their inability to accurately update their maps is because the funding from Congress is still insufficient and a history of short-term reauthorizations has left mapping funds unchanged.<sup>166</sup> Additionally, some members of Congress, in a political strategy, have taken issue with updating flood maps because of the influence on premium increases that affect their constituents.<sup>167</sup> As of 2024, FEMA's flood maps remain woefully out of date with little account for developed climate change data, exasperating participation issues as homeowners continue to detrimentally rely on outdated floodplain maps.<sup>168</sup>

Another failed reform was the 2014 repeal of the BW-12 provision that eliminated “grandfathered” rates in order to address actuarial inconsistencies.<sup>169</sup> Previously, with the grandfathered rates, flood policies did not reflect actual flood risk because policyholders would maintain their old premium rates despite their homes being remapped into a new riskier flood rate class.<sup>170</sup> The elimination under BW-12 was met with widespread public disapproval due to the increased premiums, so Congress reinstated these

---

161. *Id.*

162. Press Release, Sen. Bob Menendez, Menendez, Cassidy, Pallone, Higgins Rollout Bipartisan, Bicameral Legislation to Reform the National Flood Insurance Program (June 22, 2023), <https://www.menendez.senate.gov/newsroom/press/menendez-cassidy-pallone-higgins-rollout-bipartisan-bicameral-legislation-to-reform-the-national-flood-insurance-program>.

163. SIENKIEWICZ, *supra* note 69, at 8.

164. *Id.*

165. *Id.* at 9.

166. Jake Carmin, *Better Than Noah's Ark: Flood Insurance that Works*, 167 J.L. ECON. & POL'Y 167, 175 (2022).

167. *Id.* at 175–76.

168. *Id.* at 176.

169. Kousky, *Flood Losses*, *supra* note 157, at 25, 28. The author notes that the term “grandfathered” has racist origins, as it was used during the Civil War to disenfranchise African-American men by forcing literacy tests on those who could not prove they were descendants of eligible voters. John G. Browning, *Should Legal Writing Be Woke?*, 20 SCRIBES J. LEG. WRITING 25, 27 (2022). The term is used here only in reference to the original language in the 2014 Homeowner Flood Insurance Affordability Act § 4. However, the author does not condone the use of this term and cautions against the continued use of the term in legal scholarly writing. For more discussion on the topic, see generally Browning, *supra* note 169.

170. Kousky, *Flood Losses*, *supra* note 157, at 25, 28.

rates.<sup>171</sup> This led to property owners paying rates that were not commensurate with the actuarial rate—actual flood risk—specific to that area.<sup>172</sup> Currently, these rates have not been repealed and the discounts given are offset by charging higher rates on other policies in the same flood rate class.<sup>173</sup> It remains unclear whether the offset high rates actually make up for the lost amount equal to the discount.<sup>174</sup>

Despite Congress' previous attempts in BW-12 and the Homeowner Flood Insurance Affordability Act of 2014, Congress has been unable to solve funding issues, and since 2017, has only passed twenty-two short-term reauthorizations of the NFIP that have left the program largely as is: insolvent and ineffective.<sup>175</sup> Congress's inability to pass long-term sustainable legislation is likely due to the fact that flood insurance is not on the current Congressional agenda and only becomes ephemerally relevant directly after a weather catastrophe.<sup>176</sup> Nevertheless, a few policymakers have demonstrated some commitment to passing comprehensive legislation for flood insurance reform.<sup>177</sup> In June 2023, Senators Menendez and Cassidy introduced the bipartisan and bicameral S.2142 National Flood Insurance Program Reauthorization Act of 2023 ("S.2142").<sup>178</sup> The legislation would reauthorize the NFIP for five years as well as mandate a number of reforms to the NFIP.<sup>179</sup> Most notably, the bill would (1) cap annual premium increases at nine percent, safeguarding policyholders from drastic rate increases for the five-year authorization period, and (2) implement a new "means-tested" program where the NFIP would provide graduated discounted policies for eligible policyholders.<sup>180</sup>

Along the same lines of NFIP reform, the House introduced H.R. 1540 The National Flood Insurance Program Affordability Act of 2023 ("H.R.

---

171. *Id.*

172. *Id.*

173. DIANE P. HORN & BAIRD WEBEL, CONG. RSCH. SERV., R44593, INTRODUCTION TO THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) 19 (2024).

174. *Id.*

175. DIANE P. HORN, CONG. RSCH. SERV., IN10835, WHAT HAPPENS IF THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) LAPSES? 1 (2022).

176. Jon Prior, *Why Won't Congress Fix Flood Insurance?*, AM. BANKER (Sept. 23, 2020, 9:30 PM), <https://www.americanbanker.com/podcast/why-wont-congress-fix-flood-insurance>.

177. Thomas Frank, *Pressure Builds on Congress to Help People Afford Pricey Flood Insurance*, SCI. AM. (Apr. 6, 2021), <https://www.scientificamerican.com/article/pressure-builds-on-congress-to-help-people-afford-pricey-flood-insurance/>.

178. *Menendez*, *supra* note 162.

179. *Id.*

180. National Flood Insurance Program Reauthorization and Reform Act of 2023, H.R. 4349/S. 2142, 118th Cong. § 103(a)(2) (2023) (noting eligible policyholders are those with household incomes not more than 140% AMI).

1540”) in March 2023.<sup>181</sup> The bill would require FEMA to provide discounted rates of NFIP premiums to low-income households, small businesses, and not-for-profit entities through a means-tested program where eligibility is defined as having a household income that is not more than 120% AMI.<sup>182</sup> Both S. 2142 and H.R. 1540 were introduced earlier this year but did not make it out of committee, let alone pass.<sup>183</sup> In addition to legislation aimed at NFIP reform, efforts by lawmakers in other areas of flood reform include changing flood disclosure requirements aimed at giving home buyers updated information about their potential flood risk.<sup>184</sup>

### 3. *Modern State Action to Address Affordable Flood Insurance*

States have generally been reluctant to mandate flood insurance but states with extraordinary flood risk have found ways to avoid outright mandates.<sup>185</sup> For example, Louisiana, Texas, Maryland, and Florida have all established flood insurance mandates for certain homeowners who have mortgages or are participating in government flood insurance programs.<sup>186</sup> While this requirement poses as an equitable safeguard for high-risk homes, lender-required flood insurance policies only protect lenders and explicitly leave out vulnerable communities such as heirs property holders.<sup>187</sup> While states have managed to avoid explicit flood insurance mandates, the lack of

---

181. National Flood Insurance Program Affordability Act, H.R. 1540, 118th Cong. § 2 (2023).

182. *Id.*

183. See H.R. 4349/S. 2142; H.R. 1540.

184. Flood History Information Act of 2021, H.R. 5256, 117th Cong. (2021). Congresswoman Luria introduced H.R. 5256, the Flood History Information Act, in 2021, which would have created a national flood disclosure requirement as a part of the NFIP; however, the bill died in committee and has not been reintroduced. *Id.* The Natural Resources Defense Council found that twenty-one states have no flood disclosure laws and most other states have inadequate laws to give residents and prospective buyers actual notice. René Marsh, *Lack of Flood Disclosure Laws Is Putting Home Buyers at Risk as Extreme Storms Become More Frequent*, CNN (Oct. 1, 2022, 7:19 AM), <https://www.cnn.com/2022/10/01/us/flood-disclosure-laws-home-buyers-climate/index.html>. Of particular importance are flood-prone states like Florida, West Virginia, and New York that have no statutory requirement to disclose flood-risk. *Id.* Sen. Menendez also included a similar flood disclosure requirement as part of S.2142 that has also not passed yet. H.R. 4349/S. 2142.

185. See generally Property Insurance Act of 2022, 2022 Leg., S.B. 2-A, Spec. Sess. (Fla. 2022); RESTORE LA., HOMEOWNER ASSISTANCE PROGRAM, FLOOD INSURANCE REQUIREMENTS: HOMEOWNER ASSISTANCE PROGRAM (2022), <https://cdnrestorela.s3.us-west-2.amazonaws.com/wp-content/uploads/2019/05/28101119/RestoreLA-Flood-Insurance-5-24-19.pdf>; TEX. INS. CODE ANN. § 2210.203.

186. See *supra* note 185.

187. See *supra* text accompanying notes 42–58; see also Amy Fontinelle, *Understanding Lender-Required Flood Insurance*, INVESTOPEDIA (May 21, 2023), <https://www.investopedia.com/articles/insurance/10/understanding-lender-required-flood-insurance.asp>. For more information about heirs’ property in relation to flood insurance, see generally Kendall B. Bargeman, *The Heirs’ Property Dilemma: How Stronger Federal Policies Can Help Narrow the Racial Wealth Gap*, 27 N.C. BANKING INST. 320 (2023).

such mandates has created issues with spreading risk across the state.<sup>188</sup> Additionally, due to the high cost, many homeowners who need flood insurance choose to take the risk of not insuring themselves.<sup>189</sup>

Louisiana, a state uniquely impacted by flooding, does not require flood insurance; however, flood insurance is required for certain residents living in high-risk flood areas in order to qualify for a mortgage.<sup>190</sup> Additionally, Louisiana signed a grant agreement with the U.S. Department of Housing and Urban Development in September 2022, establishing a \$600 million line of credit for recovery from Hurricanes Laura and Delta.<sup>191</sup> Homeowners who received assistance through this grant were required to obtain flood insurance in order to maintain eligibility for the grant or risk having to pay back any funding they received.<sup>192</sup>

Similar to Louisiana, Texas does not require flood insurance.<sup>193</sup> Texas does require policyholders who have homeowners insurance through the Texas Windstorm Insurance Association (“TWIA”) to carry flood insurance if they live in a flood hazard zone.<sup>194</sup> TWIA was created by the Texas legislature to provide coverage to residents unable to obtain insurance from the private insurance market.<sup>195</sup> Notably, Texas lawmakers sought to repeal TWIA in March 2023, citing high costs to the taxpayers.<sup>196</sup>

Maryland is yet another state that does not mandate flood insurance even though sea levels have risen more rapidly than in any other coastal state.<sup>197</sup> Instead, flood insurance is only required of homeowners who have a federally

---

188. Anamika Roy, *Redmer: Most Main Street Businesses Don't Have Flood Insurance*, DAILY REC. (Aug. 2, 2016), <https://thedailyrecord.com/2016/08/02/main-street-ellicott-city-flood-insurance/>.

189. *Id.*

190. *Flood Insurance*, LA. DEP'T INS., <https://ldi.la.gov/consumers/insurance-type/flood> (last visited Apr. 5, 2024).

191. *Gov. Edwards Announces the State Has Signed a \$600 Million HUD Grant Agreement for Recovery from Hurricanes Laura and Delta*, RESTORE LA. (Sept. 29, 2023), <https://www.restore.la.gov/news/state-signs-hud-grant-agreement-600-million-recovery-funding-hurricanes-laura-delta>.

192. *Id.*

193. *Flood Insurance Requirements*, TEX. WINDSTORM INS. ASS'N, <https://www.twia.org/flood-requirement/> (last visited Apr. 5, 2024).

194. *Id.*

195. *Governing Laws*, TEX. WINDSTORM INS. ASS'N, <https://www.twia.org/about-us/governing-laws/> (last visited Apr. 5, 2024).

196. S.B. 2556, 88th Leg. (Tex. 2023). Notably, the bill proposed to return all insurance policies back to private insurers with a caveat that there could not be any increased premiums. *Id.*

197. SPANGER-SIEGFRIED ET AL., *supra* note 59, at 13 (noting that Maryland's Eastern Shore is a hotspot for sea level rising because of its low land elevation, sudden land sinking, and regional currents).

sponsored mortgage and live in a designated flood hazard zone.<sup>198</sup> The dangers associated with no insurance mandate were evident in 2016 when Ellicott City sustained a thousand-year storm—rainfall so intense that there is a 1-in-1,000 chance of it occurring in any given year—which caused approximately \$10.8 million in public infrastructure damage and about \$67.2 million in business economic loss.<sup>199</sup> Sixty-four percent of the properties on Main Street did not have flood insurance citing high costs or misinformation about their eligibility for subsidized flood insurance.<sup>200</sup> Without any mandate in place, the property owners found no need to safeguard their properties against flood damage.<sup>201</sup> As of 2020, the number of insured properties on Main Street has significantly decreased with less than twenty-five percent of businesses having an active flood insurance policy.<sup>202</sup> Many owners say that they decided to forgo insurance because of the sky-rocketed premiums after Ellicott City’s flooding events, and others are still unsure about their eligibility given their flood zone designation.<sup>203</sup> However, because the NFIP only insures properties with exceptional flood risk and because they are insolvent, even if all Main Street property owners opted into the NFIP insurance, there would be no guarantee that they would see a substantial payout after a major storm.<sup>204</sup> This underscores the need for a flood insurance mandate across the state to ensure property owners protect themselves from flood risk and there is enough money in the fund to provide relief.<sup>205</sup>

Unlike other state activity, the Florida Senate’s swift response to the aftermath of Ian through the enactment of SB 2-A marked a groundbreaking shift in flood insurance policy and practice.<sup>206</sup> The Florida Senate passed a unique legislation, SB 2-A, in a special session quickly and without amendment on December 16, 2022, to respond to the devastating destruction

---

198. *Flood Insurance*, MD. INS. ADMIN., <https://insurance.maryland.gov/Consumer/Pages/flood-insurance.aspx> (last visited March 26, 2024).

199. Linda Poon, *In a Town Shaped by Water, the River Is Winning*, BLOOMBERG (May 24, 2019, 12:51 PM), <https://www.bloomberg.com/news/articles/2019-05-24/a-historic-river-town-confronts-a-flooded-future>; *see also* HOWARD CNTY. OFF. OF EMERGENCY MGMT., 2016 CASE STUDY: ELLICOTT CITY FLOOD EVENT 8 (2017) [hereinafter OEM CASE STUDY].

200. Roy, *supra* note 188; *see also* OEM CASE STUDY, *supra* note 199, at 9 (noting many property owners who were not in designated flood zones mistakenly thought they were ineligible for NFIP policies).

201. Poon, *supra* note 199.

202. NAT’L ACADS. OF SCIS., ENG’G, & MED., COMMUNITY ENGAGEMENT FOR FLOOD MITIGATION: ELLICOTT CITY, MD CASE STUDY 17 (2020).

203. *Id.* at 20.

204. *See supra* text accompanying notes 79–82.

205. SPANGER-SIEGFRIED ET AL., *supra* note 59, at 13.

206. Thomas Frank, *Fla. Lawmakers Force Homeowners to Buy Flood Insurance*, POLITICO (Dec. 15, 2022, 6:35 AM), <https://www.eenews.net/articles/fla-lawmakers-force-homeowners-to-buy-flood-insurance/>.

caused by Ian and an exodus of private flood insurers from the state.<sup>207</sup> SB-2-A was the first of its kind and demarcated a new era of aggressive policymaking by mandating specific changes to the state-based insurer: Citizens Property Insurance Corporation (“Citizens”).<sup>208</sup>

The Florida state legislature created Citizens to respond to the growing need for affordable homeowners insurance.<sup>209</sup> Citizens policyholders are generally low-income residents who are unable to afford insurance in the private market.<sup>210</sup> While Citizens purported itself to be “Florida’s insurer of last resort,” it is now the largest property insurer in the state as private insurers have continued to scale back their presence.<sup>211</sup> While private insurers can go bankrupt after a particularly destructive catastrophe, public companies like Citizens cannot go bankrupt, but rather, must turn to drastic legislative measures that ultimately trickle the burden down onto low-income policyholders.<sup>212</sup>

SB 2-A’s key provisions (1) eliminated one-way attorney fees, (2) prohibited the assignment of benefits, (3) allowed a binding arbitration clause, (4) limited bad-faith litigation, (5) reduced the claim filing deadline from two years to one year, and most notably (6) mandated flood insurance for all residents who carry Citizens home insurance.<sup>213</sup> For policyholders who live in flood hazard zones, the requirement went into effect immediately in order to maintain or open a new Citizens policy.<sup>214</sup> Citizens policyholders who do not live in flood zones will still be required to get flood insurance eventually, but would feel the effects of the bill much more gradually as the

---

207. See generally Property Insurance Act of 2022, S.B. 2-A, 2022 Leg., Spec. Sess. (Fla. 2022).

208. Frank, *supra* note 206.

209. *Who We Are*, CITIZENS PROP. INS. CORP., <https://www.citizensfla.com/who-we-are> (last visited Apr. 5, 2024).

210. *Id.*

211. Tom Urban & Jim Saunders, *Citizens, Florida’s Insurer of Last Resort, on Path to Hit 1.7 Million Policies by 2024*, ORLANDO WKLY. (July 13, 2023, 10:02 AM), <https://www.orlandoweekly.com/news/citizens-floridas-insurer-of-last-resort-on-path-to-hit-17-million-policies-by-2024-34621161>.

212. Alejandro De La Garza, *The ‘Hurricane Tax’ Hitting Florida Alongside Idalia*, TIME (Aug. 30, 2023, 4:47 PM), <https://time.com/6309815/floridas-broken-home-insurance-market-is-creating-a-hurricane-tax/> (noting another catastrophic weather event could trigger an assessment where the legislature may levy taxes on private insurance policies (home and auto) across the state in order to make up the difference). Mandated flood insurance requirements reduce access to mortgage credits, particularly for low-income applicants, and given the present circumstances (banks unwilling to lend to low-income applicants in flood risk areas and low-income residents not being able to afford their required insurance/mortgage payments), ownership of water-front properties is being limited to wealthy residents. BLICKLE & SANTOS, *supra* note 150, at 9.

213. Property Insurance Act of 2022, S.B. 2-A, 2022 Leg., Spec. Sess. (Fla. 2022).

214. *Id.*

bill rolls out in phases.<sup>215</sup> Regardless, residential policies will be required to have flood insurance by 2027.<sup>216</sup>

#### 4. *European Models for Flood Insurance*

Several European jurisdictions, similarly situated to the United States in terms of varied flood risk throughout their countries, show a wide variety of approaches to flood insurance embedded in each country's unique legal systems.<sup>217</sup> Notably, they balance different considerations and have different priorities in relation to mitigation and prevention versus disaster response.<sup>218</sup> The United Kingdom ("U.K.") has a mandatory reinsurance program which operates as a partnership program between their state and private insurance markets.<sup>219</sup> Contrastingly, France imposes mandatory comprehensive disaster insurance for all homeowners.<sup>220</sup> Lastly, in Germany, the government relies on ad hoc legislation following natural disasters due to the explicit exclusion of natural disaster coverage in standard home insurance policies.<sup>221</sup>

In the U.K., while flood insurance is not required, catastrophe insurance, which covers flooding, is generally included in home insurance policies.<sup>222</sup> Most households are also required to insure against flood damage per their mortgage lending agreements.<sup>223</sup> Historically, the U.K. had a flood insurance model that operated under a "gentleman's agreement" between the government and private insurance companies.<sup>224</sup> The government promised to stay out of directly insuring citizens and to research and invest in flood prevention and mitigation tactics.<sup>225</sup> Private insurers, on the other hand, promised to provide generous flood insurance policies that would keep flood insurance available and affordable.<sup>226</sup> This model operated successfully from the 1960s to the early 2010s, but after a slew of large flood events, private insurance companies demanded reform in the agreement as they felt that the

---

215. *Id.*

216. *Id.*

217. Qihao He & Michael Faure, *Regulation by Catastrophe Insurance: A Comparative Study*, 24 CONN. INS. L.J. 189, 208 (2018); Véronique Bruggeman & Michael Faure, *The Compensation for Victims of Disasters in Belgium, France, Germany, and the Netherlands*, 31 LOY. CONSUMER L. REV. 259, 263 (2019).

218. He & Faure, *supra* note 217, at 208; Bruggeman & Faure, *supra* note 217, at 263.

219. He & Faure, *supra* note 217, at 209.

220. *Id.* at 220.

221. Bruggeman & Faure, *supra* note 217, at 312–13.

222. He & Faure, *supra* note 217, at 209.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*



government failed to discharge their duty to research and implement flood prevention measures.<sup>227</sup> Consequentially, the government and private insurers agreed to a Memorandum of Understanding in 2013, known as Flood Re.<sup>228</sup> In 2014, the U.K. legislature gave Flood Re official authority under the U.K. Government Water Act.<sup>229</sup>

Flood Re is a mandatory reinsurance program that every insurer who offers home insurance must buy into.<sup>230</sup> Homeowners directly purchase home insurance with flood coverage from private insurers, but Flood Re underwrites the flood policy through its Flood Re fund that is sustained by the premiums homeowners pay and an extra tax on the private insurance companies.<sup>231</sup> Although private insurers control the insurance policies, Flood Re funding is managed by the government and, therefore, the U.K. flood insurance model is a partnership between the two.<sup>232</sup> The partnership is particularly salient in years with catastrophic weather events where the government will take responsibility to ensure all citizens are covered if the Flood Re funds are insufficient.<sup>233</sup>

Unlike the U.K., where flood insurance is generally only required of mortgage holders, in France, flood insurance is required by all homeowners through the Act of 13 July 1982 (“1982 Act”), which mandated comprehensive disaster insurance through the Catastrophes Naturelles System (“Cat.Nat”).<sup>234</sup> Cat.Nat is a government sponsored reinsurance program funded by mandatory additional premiums.<sup>235</sup> Specifically, the system applies a twelve percent premium on all property insurance policies, regardless of whether the property has a high risk of natural catastrophe exposure.<sup>236</sup> Cat.Nat meets its goal of providing insurance damage that is normally uninsurable by imposing a duty on all homeowners to purchase insurance.<sup>237</sup> In this system, insurers are held liable to compensate for damages if, and only if, the government declares a weather event as a natural disaster.<sup>238</sup> There are also incentives written into the program to encourage

---

227. *Id.* at 209–10.

228. *Id.* at 210.

229. *Id.*

230. Swenja Surminski, *Fit for Purpose and Fit for the Future? An Evaluation of the UK’s New Flood Reinsurance Pool*, 21 RISK MGMT. & INS. REV. 33, 36 (2018).

231. He & Faure, *supra* note 217 at 210.

232. *Id.*

233. *Id.* at 210–11.

234. *Id.* at 220.

235. Bruggeman & Faure, *supra* note 217, at 299.

236. *Id.*

237. *Id.* at 299–300.

238. *Id.* at 300.

flood mitigation.<sup>239</sup> For example, a citizen's deductible could be lowered if their particular municipality has a "prevention of risk plan."<sup>240</sup> Consequentially, this encourages homeowners to push their municipal leaders to adopt these plans.<sup>241</sup> Although such rewards exist, recent studies show that lower deductibles do not necessarily provide enough incentive for municipalities to engage in expensive prevention efforts.<sup>242</sup>

While the U.K. and France both implement catastrophe insurance frameworks that focus on preparation and mitigation, Germany takes a post-disaster, ad hoc approach to catastrophe insurance.<sup>243</sup> As damage caused from natural disasters is specifically excluded from home insurance policies, the German government has formed a habit of responding to natural disasters with ad hoc legislation that seeks to provide some financial relief to victims.<sup>244</sup> The failure of the German government to impose sustainable catastrophe insurance legislation is partially due to the fact that ad hoc responses to natural disasters offer political capital and good publicity for politicians and their respective parties during election seasons.<sup>245</sup>

Examining the modern flood insurance system in the United States uncovers a complex and challenging landscape that demands urgent attention and holistic solutions.<sup>246</sup> A myriad of factors, including the flight of private insurers from flood insurance and congressional inaction underscore how broken the system is.<sup>247</sup> Although some states have begun to look for solutions, no state has come close to ensuring affordable and accessible flood insurance for all.<sup>248</sup> As the United States navigates the intricate terrain of flood insurance, it becomes increasingly clear that a collaborative, multi-dimensional approach that takes inspiration from foreign policies is essential for crafting effective and sustainable solutions to the flood insurance problem.<sup>249</sup>

---

239. He & Faure, *supra* note 217, at 222.

240. *Id.*

241. *Id.*

242. *Id.* at 222–23.

243. Bruggeman & Faure, *supra* note 217, at 312.

244. *Id.* at 313.

245. *Id.* at 313–14.

246. See *supra* Section I.C.1.

247. See *supra* Sections I.C.1–2.

248. See *supra* Section I.C.3.

249. See *supra* Section I.C.4.

## II. ANALYSIS

Congress created the NFIP after Hurricane Betsy, the first billion-dollar hurricane in the U.S., hit Florida and the central Gulf Coast in 1965.<sup>250</sup> By 2012, when Hurricane Sandy hit, Congress had to act fast in reforming the NFIP to counteract the skyrocketing premiums.<sup>251</sup> Since Hurricane Ian hit in 2022, causing \$112.9 billion in damages and taking the lives of 156 individuals, Congress has again turned their interest to flood reform.<sup>252</sup> Although flood insurance reform is back at the forefront of legislators' minds, inadequate congressional action in the past signals that any meaningful reform is still distant.<sup>253</sup>

The heightened risk of catastrophic flooding events, coupled with a legislative inability to make meaningful and effective flood reform, demonstrates the urgent need for new solutions before the next billion-dollar hurricane strikes again.<sup>254</sup> This Comment advocates for Maryland to take a significant step forward in the flood insurance sphere and adopt a state-wide mandatory flood insurance program.<sup>255</sup> Section II.A articulates reasons why Maryland specifically should take on this program.<sup>256</sup> The Section then proposes that Maryland should adopt parts of the French Cat.Nat system to mandate flood insurance across the state and use one of FEMA's affordability models to calculate premiums.<sup>257</sup> Section II.B discusses the justifications for compulsory insurance as a form of socialized insurance to address the current disparities in the flood insurance sphere.<sup>258</sup>

---

250. Vasquez, *supra* note 29, at 112.

251. *Id.* at 122.

252. Press Release, Sen. Bob Menendez, *supra* note 162.

253. *Congress Could Have Reformed Flood Insurance – But Let the Opportunity Float Away*, WASH. POST (Aug. 3, 2018, 7:07 PM) [hereinafter *Float Away*], [https://www.washingtonpost.com/opinions/congress-could-have-reformed-flood-insurance—but-let-the-opportunity-float-away/2018/08/03/8926e9ce-9676-11e8-810c-5fa705927d54\\_story.html](https://www.washingtonpost.com/opinions/congress-could-have-reformed-flood-insurance—but-let-the-opportunity-float-away/2018/08/03/8926e9ce-9676-11e8-810c-5fa705927d54_story.html).

254. Frank, *supra* note 177.

255. *See infra* Part II.

256. *See infra* Section II.A.

257. *See infra* Section II.A.

258. *See infra* Section II.B. Aimed at addressing critical social and economic issues, states have led various successful initiatives that the federal government has subsequently adopted and fine-tuned. *See* Jonathan Oberlander, *The Ten Years' War: Politics, Partisanship, and the ACA*, 39 HEALTH AFFS. 471, 472 (2020), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2019.01444> (stating the 2006 Massachusetts model for health care reform created the blueprint for the 2010 ACA); Daniel Nelson, *The Origins of Unemployment Insurance in Wisconsin*, 51 WIS. MAG. HIST., no. 2, 1967, at 109, 121 (noting the Wisconsin legislature passed the nation's first unemployment insurance legislation in 1932 which served as the precursor to the federal unemployment insurance system in the Social Security Act of 1935).

A. *The Case for a Maryland Statewide Compulsory Flood Insurance Program*

Great endeavors often begin at the state level and Maryland has a proud tradition of being on the forefront of economic, social, and environmental change.<sup>259</sup> For example, Maryland has led other states in family leave,<sup>260</sup> benefit corporation recognition,<sup>261</sup> and wind power support.<sup>262</sup> Maryland has innovated in social, economic, and environmental legislation and, as a coastal state, is well-situated to implement a state-wide compulsory flood insurance program.<sup>263</sup> No state currently has a state-wide mandatory flood insurance scheme, allowing Maryland to be a flagship in this arena to test whether compulsory flood insurance is feasible nationwide.<sup>264</sup> Furthermore, a state-based flood insurance program could avoid many of the defects of the current NFIP model.<sup>265</sup>

1. *Why Maryland Is Well Suited for the Task*

Implementing any type of compulsory national insurance program is no easy feat.<sup>266</sup> For proof, one need only look at the culture war that ensued following the nation's reluctance to the Affordable Care Act and the political divisiveness of health insurance coverage.<sup>267</sup> Justice Brandeis popularized the phrase *laboratories of democracy* referring to how states are uniquely positioned to “try novel social and economic experiments without risk to the

---

259. See, e.g., Michael R. Deskins, Comment, *Benefit Corporation Legislation, Version 1.0—A Breakthrough in Stakeholder Rights*, 15 LEWIS & CLARK L. REV. 1047, 1048 (2011) (stating that Maryland was the first state to enact Benefit corporation (“B Corp”) legislation aimed at addressing the social responsibility gaps in corporate law).

260. The Maryland state legislature passed the Maryland Healthy Working Families Act of 2018, making Maryland only the ninth state to adopt a state-mandated paid sick leave law. WINSTON & STRAWN LLP, MARYLAND CONTINUES NATIONAL TREND BY PASSING PAID SICK LEAVE LAW 1 (2018).

261. *Id.*

262. Maryland passed the POWER Act (S.B.781/H.B.793) which set a production goal of 8.5 gigawatts of offshore wind power by 2031, making Maryland's goal one of the largest wind goals in the nation. *Maryland's “POWER Act” Establishes One of the Nation's Largest Offshore Wind Goals*, NAT'L CAUCUS OF ENV'T LEGISLATORS (May 22, 2023),

<https://www.ncelenviro.org/articles/marylands-power-act-establishes-one-of-the-nations-largest-offshore-wind-goals/>.

263. See *infra* Section II.B.1.

264. See *supra* Section I.C.3. Although some may argue that Maryland should not bear the burden of trying, and potentially failing, to enact a compulsory flood insurance program, the state has long served as a pioneer in enacting ambitious legislation. See *supra* text accompanying notes 233–236.

265. See *infra* Section II.B.3.

266. See Oberlander, *supra* note 258, at 471.

267. *Id.* at 474.

rest of the country.”<sup>268</sup> Therefore, before rolling out the system nation-wide and exposing the system to political opinion and the culture war, Maryland could adopt a version of this compulsory flood insurance program to assess its viability, workout issues, and workshop solutions.<sup>269</sup>

As discussed above, other states have implemented catastrophe insurance programs in the past, but none were compulsory systems and most have fallen short of addressing the dire need of affordable flood insurance.<sup>270</sup> The majority of state flood insurance programs have been established shortly after states were faced with catastrophic flood damage.<sup>271</sup> For example, Louisiana initiated Citizens homeowners insurance following Hurricane Camille (1969), the Texas Windstorm Insurance Association was born out of Hurricane Celia (1983), and the precursor to Florida’s Citizens insurance followed directly after Hurricane Andrew (1992).<sup>272</sup> The issue with these states’ responses is that, in the wake of natural disaster, private insurance companies limited the number of new policies they would write so as to not incur more costs on an already strained industry.<sup>273</sup> This limitation placed stress on state insurance programs to insure those who could not find private insurance, but the states, having just entered into the flood insurance sphere, were not prepared to take on that many policies.<sup>274</sup> Maryland cannot wait to address flood insurance issues until after tragedy strikes.<sup>275</sup> As evidenced by Louisiana, Texas, and Florida, and their strained flood insurance industries, once a catastrophic flooding event occurs, it is already too late to prepare.<sup>276</sup> Instead, Maryland should adopt a proactive approach, implementing a comprehensive state-wide flood insurance system now.<sup>277</sup>

---

268. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

269. See David L. Markell, *States as Innovators: It’s Time for a New Look to Our “Laboratories of Democracy” in the Effort to Improve Our Approach to Environmental Regulation*, 58 ALB. L. REV. 347, 355 (1994) (“[I]nnovations at the state level are likely to hold a great deal of promise as potential strategies for addressing concerns about federal . . . regulation.”); Jonathan M. Kucskar, *Laboratories of Democracy: Why State Health Care Experimentation Offers the Best Chance to Enact Effective Federal Health Care Reform*, 11 J. HEALTH CARE L. & POL’Y 377, 401 (2008) (noting federal governments may cherry-pick elements of state programs that have worked in order to create the more effective federal programs).

270. Carolyn Kousky, *Managing Natural Catastrophe Risk: State Insurance Programs in the United States*, 5 REV. ENV’T ECON. & POL’Y 153, 153 (2011) [hereinafter Kousky, *State Insurance*]; see also *supra* Section I.C.3.

271. Kousky, *State Insurance*, *supra* note 270, at 156–57.

272. *Id.* at 157.

273. *Id.* at 161.

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

With 3,190 miles of shoreline, Maryland is among the coastal states that are at particular risk of storm surge and destructive flooding.<sup>278</sup> More than one hundred Maryland communities are at risk and a third of those communities are low-income, vulnerable populations with fewer resources to mitigate the risk, recover from catastrophic damage, and relocate.<sup>279</sup> Studies indicate that flooding will become a major issue for Maryland in the future, indicating, for the reasons stated above, that flood concerns should be at the forefront of state legislators' minds.<sup>280</sup> An alarming statistic indicates that due to a myriad of factors, including gravitational influences and ocean temperature, Maryland will experience greater rises in sea-level compared to the rest of the world.<sup>281</sup> By 2100, Baltimore is projected to experience a sea-level rise approximately seventeen percent higher than the global estimate.<sup>282</sup> While this gradual projection may not cause immediate alarm to some individuals, it is important to recognize that even a small amount of water can bring significant destruction.<sup>283</sup> For instance, the storm surge from Hurricane Isabel in 2003 flooded only about 1.4 miles of Baltimore but resulted in approximately twenty-nine million dollars in damages.<sup>284</sup> Annapolis has also experienced a thirty percent increase in the duration of city flooding since the 2000s, with the figure exponentially growing.<sup>285</sup>

Although Maryland's flood risk is increasing, Maryland is the perfect state to adopt this type of program because, currently, the flooding events are not as frequent and catastrophic compared to other states like Florida or other Gulf Coast states.<sup>286</sup> By adopting a Maryland program long before a catastrophic flooding event occurs, the program's funding will have time to

---

278. DONALD F. BOESCH ET AL., UNIV. OF MD. CTR. FOR ENV'T SCI., SEA-LEVEL RISE: PROJECTIONS FOR MARYLAND 2 (2023), <https://www.umces.edu/sites/default/files/Maryland%20Sea-Level%20Rise%20Projections%202023%20report.pdf>.

279. *Id.*

280. Alexander R. Davies et al., *Sustained Wind Forcing and Water Level Anomalies in Annapolis, Maryland*, 26 EARTH INTERACTIONS 52, 52 (2022); *see also* text accompanying notes 259–265.

281. BOESCH ET AL., *supra* note 278, at 14.

282. *Id.*

283. *Id.* at 21.

284. *Id.*

285. Davies et al., *supra* note 280, at 53–54 (noting that from 2000–2009, Annapolis was flooded for a total of 52 hours, and from 2010–2019, the number rose to 194 hours of flood duration).

286. Kousky, *State Insurance*, *supra* note 270, at 153. For example, in 2022, about 26.97% of Louisiana residents, and about 13.84% of Florida residents had active flood insurance contracts compared to 1.7% of residents in Maryland. FED. EMERGENCY MGMT. AGENCY, FLOOD RISK DISCLOSURE 13–14 (2022), [https://www.fema.gov/sites/default/files/documents/fema\\_state-flood-risk-disclosure-best-practices\\_07142022.pdf](https://www.fema.gov/sites/default/files/documents/fema_state-flood-risk-disclosure-best-practices_07142022.pdf). This discrepancy in open flood policies is indicative of the varied flood risk. *Id.*

take root without the fear of a major catastrophic event destroying the program before it begins.<sup>287</sup>

## 2. *Framework for the New Flood Insurance Model*

Maryland has long participated in the flood arena, demonstrated by the General Assembly's establishment of the Comprehensive Flood Management Grant Program ("CFMGP") in 1976.<sup>288</sup> In response to the aftermath of Hurricane Agnes—the nation's costliest weather catastrophe at that time—this program, administered under the Maryland Department of the Environment, aimed to assist local jurisdictions with capitalizing their flood management projects.<sup>289</sup> Projects included infrastructure repairs after catastrophic flooding, watershed restoration, and other initiatives aimed at mitigating the impact of flooding.<sup>290</sup> Essentially, CFMGP houses funds that counties and municipalities can submit applications to access.<sup>291</sup> Despite Maryland's active role in flood mitigation and recovery, the only available government-sponsored flood insurance in Maryland is the NFIP.<sup>292</sup> The creation of a state-funded compulsory flood insurance program could close this gap.<sup>293</sup> Given its existing work in addressing the flood risk in the state, the Department of the Environment is well-suited to establish and have jurisdiction over the program.<sup>294</sup> Establishing a Maryland flood insurance program would complement and extend the existing efforts that CFMGP is engaged in, providing a holistic approach to tackling flood-related challenges in the state.<sup>295</sup> Specifically, under this new program, CFMGP would continue to fund flooding mitigation efforts while the Department of the Environment would set up another program to house and regulate reinsurance funds using the system outlined below.<sup>296</sup>

---

287. Amudalat Ajasa & Kasha Patel, *Why Florida Is More Prone to Hurricanes*, WASH. POST (Sept. 11, 2022, 12:48 PM), <https://www.washingtonpost.com/climate-environment/2022/09/27/florida-hurricane-vulnerability-explainer/> (noting that 40% of all hurricanes to ever hit the U.S. have touched Florida, making Florida the most hurricane-ravaged state in the country).

288. *Comprehensive Flood Management Grant Program*, MD. DEP'T OF ENV'T, <https://mde.maryland.gov/programs/Water/StormwaterManagementProgram/Pages/floodmgmt.aspx> (last visited Feb. 12, 2024).

289. *Id.*

290. *Id.*

291. *Id.*

292. *Floods and Flood Relief Assistance*, MD. DEP'T OF ENV'T, <https://mde.maryland.gov/programs/Water/StormwaterManagementProgram/FloodHazardMitigation/Pages/reliefassistance.aspx> (last visited Feb. 12, 2024).

293. *Id.*

294. *Comprehensive Flood Management Grant Program*, *supra* note 288.

295. *Id.*

296. *Id.*

Maryland should implement a program that adopts portions of the French Cat.Nat system and FEMA's premium burden-based benefit affordability framework.<sup>297</sup> At its core, the program would operate like a public-private partnership: (1) homeowners would be required to purchase home insurance with a mandatory flood insurance add on; (2) private insurers would pay a flood tax to the state that creates a pool of reinsurance funds to underwrite all the flood insurance policies; (3) homeowners would pay a flood premium based on their income with the state reinsurance fund paying for the rest.<sup>298</sup>

The French model is internationally praised and widely regarded as a trailblazing model in the flood insurance sector.<sup>299</sup> The system is successful because, unlike the U.K. model, coverage is mandatory for all citizens, irrespective of their risk to weather-related catastrophe, and it includes deductibles for citizens who participate in mitigation efforts.<sup>300</sup> Furthermore, the French model significantly differs and improves upon the German model because Germany outright excludes damages caused by natural disasters from their insurance schemes and instead chooses to deal with compensating victims as catastrophic weather events occur.<sup>301</sup> As such, the French model is unequivocally the European framework Maryland should take inspiration from in its own program.<sup>302</sup>

Though the French program is compulsory, insurers have the option of choosing from differently priced reinsurance policies and can purchase a relatively cheap policy if they undertake higher-risk properties.<sup>303</sup> This model functions well because it does not make the private insurance system obsolete; instead, it regulates it in a way that safeguards both the private sector and vulnerable communities.<sup>304</sup> Furthermore, the French system adopts a flat-rate premium framework rather than a risk-based premium framework.<sup>305</sup> While critics of the NFIP have argued that the lack of risk-based premiums is a key factor in the NFIP's insolvency, flat-rates are the reason that insurance premiums can stay affordable.<sup>306</sup> Rather than

---

297. He & Faure, *supra* note 217, at 220; AFFORDABILITY FRAMEWORK, *supra* note 94, at 26.

298. *Id.*

299. Bruggeman & Faure, *supra* note 217, at 299.

300. *Id.* at 300.

301. *Id.* at 312. Germany's model is not only unsustainable, but also reveals covert intentions to exploit tragedies for political gain. *Id.* at 313–14.

302. *Id.*

303. He & Faure, *supra* note 217, at 223.

304. *Id.* at 220.

305. *Id.* at 221.

306. Kousky, *Flood Losses*, *supra* note 157, at 21, 23.



implementing calculated premiums based off of risk, this new system should adopt FEMA's burden-based benefit premium calculation system.<sup>307</sup>

FEMA's burden-based benefit model allows room for premiums to increase based on program needs, but puts the burden of the increased premiums on the government.<sup>308</sup> For example, in a burden-based benefit model, the policyholder's premium is a set percentage of their income that only fluctuates if their income drastically changes.<sup>309</sup> This is a more desirable system than an income-based premium sharing model where premium increases would burden the policyholder first.<sup>310</sup> The entire purpose of this proposed flood insurance model is to ensure flood coverage for all, no matter their ability to pay premiums, by spreading risk and compelling homeowners to pay only what they can afford.<sup>311</sup> By adopting the burden-based model, policyholders would be able to see the full premium and understand the risk they are taking by living in a flood-prone zone, while still being able to afford flood insurance.<sup>312</sup>

Such a program in Maryland would effectively resolve NFIP's three main issues: funding, outdated FEMA flood maps, and actuarial risk inconsistencies.<sup>313</sup> The existing government-backed flood insurance system faces funding challenges due in large-part to its limitation of providing coverage solely in high-risk regions and imposing strict eligibility requirements, thereby aiming to encourage homeowners to seek private insurance before turning to government assistance.<sup>314</sup> In practice, this causes only the most vulnerable homeowners—low-income communities with high flood risk—to buy into government sponsored insurance programs.<sup>315</sup> Alternatively, state-wide mandatory flood insurance would solve the problem of low-coverage and insufficient capital by spreading the risk across the state and generating enough capital from the state's citizens.<sup>316</sup>

Risk-spreading is the insurance practice of pooling money from many people to pay for the misfortunes of the few.<sup>317</sup> Auto-insurance, for example, is a prime example of an insurance mandate where the premiums of the many

---

307. AFFORDABILITY FRAMEWORK, *supra* note 94, at 2.

308. *Id.* at 26.

309. *Id.*

310. *Id.* at 24.

311. *Id.* at 26.

312. *Id.*

313. SIENKIEWICZ, *supra* note 69, at 9.

314. Kousky, *State Insurance*, *supra* note 270, at 156.

315. *Id.* at 161.

316. Kousky, *Flood Losses*, *supra* note 157, at 21.

317. Jennifer B. Wriggins, *Mandates, Markets, and Risk: Auto Insurance and the Affordable Care Act*, 19 CONN. INS. L.J. 275, 295 n.80 (2013) [hereinafter Wriggins, *Mandates*].

help cover the costs of the few who get into accidents.<sup>318</sup> Because automobile insurance is required, the primary motivation to purchase insurance for most comes from a desire to avoid the penalties associated with non-compliance, as opposed to the fear of being involved in an accident.<sup>319</sup> The widespread success of mandated automobile insurance systems indicates that the proposed Maryland flood insurance program would likewise be met with great success.<sup>320</sup>

In addition to solving funding issues, this program would address the outdated floodplain map problem.<sup>321</sup> Currently, Maryland works in conjunction with FEMA to update flood insurance maps and reports that the average age of each map is only three to four years old.<sup>322</sup> However, as discussed previously, even up-to-date FEMA flood maps suffer from inaccuracies because they nevertheless fail to factor in population growth and climate change, specifically, rises in sea-levels due to increased rain.<sup>323</sup> Additionally, Congress has not sufficiently funded the NFIP to undertake extensive remapping efforts, opting instead for passing several short-term reauthorizations that do not address the need for updated flood maps.<sup>324</sup>

Given FEMA's failure to provide accurate maps, some cities have taken it upon themselves to undertake flood mapping efforts.<sup>325</sup> Annapolis, for example, endured several flooding events due to its proximity to the Chesapeake Bay and began flood mapping and mitigation efforts in 2017.<sup>326</sup> Unfortunately, other cities in Maryland are not similarly situated in the resources they have to allocate to flood mitigation efforts.<sup>327</sup> Alternatively, if the state adopted efforts to update floodplain maps without FEMA by funding the updates through mandated flood insurance policies rather than through the NFIP, Maryland may be able to update flood maps and incorporate new data regarding population growth and climate change.<sup>328</sup> Even if Maryland did not take on redrawing floodplain maps, another benefit of a compulsory flood insurance program would be that flood maps would not be used to

---

318. *Id.* at 296.

319. *Id.* at 306.

320. French, *America on Fire*, *supra* note 20, at 857.

321. SIENKIEWICZ, *supra* note 69, at 9.

322. *DFIRM Outreach, DFIRM OUTREACH PROGRAM*, <https://mdfloodmaps.net/#:~:text=The%20State%20of%20Maryland%20in,over%20the%20past%20several%20years> (last visited Apr. 5, 2024).

323. Carmin, *supra* note 166, at 174–75; *see also supra* text accompanying notes 163–168.

324. *Id.* at 175.

325. Christopher Joyce, *Mapping Coastal Flood Risk Lags Behind Sea Level Rise*, NPR (July 27, 2017, 4:53 PM), <https://www.npr.org/2017/07/27/539506529/mapping-coastal-flood-risk-lags-behind-sea-level-rise>.

326. *Id.*

327. SPANGER-SIEGFRIED ET AL., *supra* note 59, at 11.

328. SIENKIEWICZ, *supra* note 69, at 8.

decide whether or not to buy insurance because every homeowner, regardless of flood risk, will be included in the program.<sup>329</sup> Nevertheless, floodplain maps would still remain important as it pertains to understanding risk when purchasing new homes.<sup>330</sup>

Lastly, a Maryland program could address actuarial rate inconsistencies. One of the principal flaws of the NFIP is that the program is not actuarially sound, meaning the money collected in the reserve is not commensurate with the funding needed to pay out potential losses.<sup>331</sup> By making flood insurance mandatory throughout the state and enforcing a flood tax on private insurers to fund the reinsurance fund, the program would be able to generate enough capital through its policies to cover potential losses due to flooding catastrophes.<sup>332</sup>

In an ideal world, the model Maryland program would be adopted by all states, which would eventually turn into a nationwide mandatory flood insurance program.<sup>333</sup> However, in the meantime, the adoption of a Maryland-based initiative would represent a significant stride toward resolution, serving as a valuable interim measure until broader implementation occurs.<sup>334</sup>

#### *B. Justifications for the Proposed Maryland Flood Program*

While the NFIP is flawed in many ways, the program succeeded in underscoring the necessity of government intervention to establish an affordable and sustainable flood insurance framework.<sup>335</sup> Anticipated critiques of this Comment's proposed program may question the efficacy of a mandatory insurance program, the affordability and equity of the system, and the role of the government in insurance regulation.<sup>336</sup> Thus, this Section argues that mandatory flood insurance is essential to protect vulnerable populations.<sup>337</sup> Moreover, the Section examines how the funding system proposed would ensure equitable contributions and makes comparisons to preexisting insurance frameworks.<sup>338</sup> Finally, this Section discusses how

---

329. French, *Insuring Floods*, *supra* note 78, at 75.

330. *Id.* at 70.

331. Vasquez, *supra* note 29, at 118–19.

332. Kousky, *Flood Losses*, *supra* note 157, at 21. The success of foreign flood systems, like U.K. and France, give credence to this proposal's assertion that a similar model could be effective in Maryland. *See supra* text accompanying notes 222–242.

333. *See generally* Oberlander, *supra* note 258 (detailing the uphill battle of trying to implement nation-wide mandatory health insurance).

334. Kousky, *Flood Losses*, *supra* note 157, at 21.

335. *See supra* Section I.A.1.

336. *See infra* Sections II.B.1–2.

337. *See infra* Section II.B.1.

338. *See infra* Section II.B.3.

socialized insurance underscores the significance of the collective social responsibility to mitigate the posed risks of climate change.<sup>339</sup>

*1. Addressing Concerns Against State-Wide Mandatory Flood Insurance*

Insurance law scholars have advocated for mandatory national catastrophe insurance that would consolidate coverage for a range of natural disasters, including wildfires, hurricanes, tornadoes, and other weather events that are typically deemed uninsurable.<sup>340</sup> One scholar specifically advocates for a bundled insurance model to replace the standalone insurance<sup>341</sup> model for catastrophic weather currently utilized in the United States.<sup>342</sup> The bundled model of insurance would be feasible in Maryland because the insurance industry is already so heavily regulated at both the state and federal level.<sup>343</sup> Most notably, virtually all states, including Maryland, mandate automobile insurance—largely similar across state lines—even though no federal mandate exists.<sup>344</sup> For example, all states, excluding New Hampshire and Florida, require bodily injury and property damage liability to be included on any automobile insurance policy, essentially creating a take-it-or-leave-it contract.<sup>345</sup> Additionally, all states already have some form of government-sponsored residual risk insurance plans as a last resort for property owners who cannot buy private homeowners insurance, such as FAIR Plans or Citizens Insurance.<sup>346</sup>

---

339. See *infra* Section II.B.3.

340. French, *America on Fire*, *supra* note 20, at 854.

341. Standalone insurance refers to insurance that only covers one single natural disaster, as compared to a bundled model that encompasses multiple natural disasters under one comprehensive policy. *Id.*

342. *Id.*

343. *Id.* at 851.

344. *Id.*; see also Susan Randall, *Freedom of Contract in Insurance*, 14 CONN. INS. L.J. 107, 124–25 (2007) (noting that in some lines of insurance, including automobile insurance, companies offer “take-it-or-leave-it” policies which are essentially uniform policies that offer consumer’s little choice on terms).

345. Rachel Brennan & Stephanie Nieves, *Minimum Car Insurance Requirements by State (2024)*, POLICYGENIUS (June 28, 2023), <https://www.policygenius.com/auto-insurance/car-insurance-required-in-every-state/>.

346. French, *America on Fire*, *supra* note 20, at 851. Fair Access to Insurance Requirements (“FAIR”) Plans are state sponsored plans in multiple states that offer homeowners insurance to homeowners who have unusually high risks when they cannot get insurance on the private market. Ashley Kilroy & Jason Metz, *FAIR Plans for Home Insurance: What Is It and How Does It Work?*, FORBES ADVISOR (Oct. 26, 2023, 2:54 AM), <https://www.forbes.com/advisor/homeowners-insurance/fair-plans/>. FAIR Plans are usually only offered to those that cannot get traditional homeowners insurance on the private market and have no other options. *Id.* Similarly, Citizens Property Insurance is Florida’s insurer of last resort and offer state sponsored plans to homeowners that cannot get insurance on the private market. *Who We Are*, *supra* note 209.

In a state-wide mandated program, Maryland homeowners would not be subject to the whims of the private insurance market, and doing so would take the unpredictability out of whether losses were covered after catastrophic weather events.<sup>347</sup> The leap from no mandatory *flood insurance* to mandatory *catastrophe insurance* is vast.<sup>348</sup> Therefore, starting with flood insurance alone before expanding the program to include bundled catastrophe insurance may be an easier transition for Maryland.<sup>349</sup>

## 2. *Ensuring Equity and Affordability in a Mandated Flood Insurance Program*

Another potential argument against a mandatory flood insurance program is the inevitability that some people's premiums will cover other people's homes.<sup>350</sup> The arguments posit that because some homes will never face any flooding, paying a premium that one will never benefit from is counterintuitive.<sup>351</sup> Tangentially, there is a concern that the funding will be inequitably distributed since the risk is spread across everyone regardless of wealth.<sup>352</sup> In response, it is important to note that individuals across the nation are currently subsidizing coastal properties through the NFIP, which siphons billions of dollars from taxpayers who do not benefit from the program.<sup>353</sup> Therefore, the proposed model would only change how evident people's contributions are to the flood fund.<sup>354</sup> Additionally, because the proposed system employs the premium burden-based benefit framework, premiums would be income-based and uniquely tailored per household.<sup>355</sup> While everyone will be responsible for contributing to the fund, the burden on each home will, essentially, be the same.<sup>356</sup>

Recalling the previous discussion on automobile insurance, mandatory car insurance forces drivers to purchase insurance to protect themselves and strangers on the road.<sup>357</sup> Although people may be perfectly capable of setting aside their own money to ensure they are covered should an accident happen, the laws in a majority of jurisdictions mandate that they purchase car insurance regardless of their safe-driving record.<sup>358</sup> This system "is an

---

347. French, *America on Fire*, *supra* note 20, at 851.

348. *Id.*

349. *Id.* at 858.

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.* at 858 n. 196.

354. *Id.*

355. *Id.* at 858–59.

356. *See supra* text accompanying notes 308–312.

357. Wriggins, *Mandates*, *supra* note 317, at 295; *see supra* text accompanying notes 317–320.

358. Wriggins, *Mandates*, *supra* note 317, at 294.

example of the government telling [individuals] that they are not allowed to bear risks that they might want to, and might be perfectly capable of, bearing themselves.”<sup>359</sup> Automobile insurance is so functional and established in society that most people do not question the necessity of buying a policy.<sup>360</sup> Similarly, flood insurance draws on analogous principles of a shared responsibility to others around us and a Maryland program would take a significant step forward finding a workable and duplicable framework.<sup>361</sup>

### 3. *Why the Government Should Not Decrease Its Presence in the Flood Insurance Arena*

Socialized insurance programs come with a host of preconceptions and opinions regarding the role of government in the insurance sphere.<sup>362</sup> Although socialized insurance may seem like a modern liberal ideal, its roots are deeply conservative and stem from a desire to stabilize the market and encourage capitalism.<sup>363</sup> Socialized insurance is necessary for the maintenance of market capitalism because it insures against risks that private insurers are either reluctant to deal with or deal with poorly.<sup>364</sup> As previously discussed, private insurance struggles with adverse selection and moral hazard.<sup>365</sup> Without government intervention, private insurance policies can become extremely unaffordable, leaving behind vulnerable, marginalized communities that often have the most need for insurance coverage.<sup>366</sup> Alternatively, socialized insurance helps to bring down costs, making insurance coverage more accessible and equitable.<sup>367</sup>

Existing socialized insurance programs, such as unemployment insurance and Medicare, mitigate poverty, as most beneficiaries rely solely on money from social insurance programs for most of their income.<sup>368</sup> Despite trends showing increased reliance on social insurance programs, recent government action has trended toward deregulation and replacing social insurance programs with privatized accounts.<sup>369</sup> But social insurance

---

359. *Id.* at 295.

360. *Id.* at 299.

361. *Id.*

362. Theodore R. Marmor & Jerry L. Mashaw, *Understanding Social Insurance: Fairness, Affordability, and the “Modernization” of Social Security and Medicare*, 15 *ELDER L.J.* 123, 125 (2007).

363. *Id.* at 126.

364. *Id.*

365. *Id.*; *see also supra* Section I.C.1.

366. Marmor & Mashaw, *supra* note 362, at 127.

367. *Id.*

368. Renée M. Landers, *Buffering Against Vicissitudes: The Role of Social Insurance in the COVID-19 Pandemic and in Maintaining Economic Stability*, 49 *GA. J. INT’L & COMPAR. L.* 505, 509 (2021).

369. *Id.*

is necessary to meet the risks of the contemporary economy and the threat of unprecedented environmental disaster, particularly in Maryland.<sup>370</sup>

For example, critics of social security insurance stem from disagreements in political ideology—a mistrust by the public of the government to hold their finances and a misconception that the government will offer them lower returns than the private market.<sup>371</sup> In reality, social security systems avoid individual inflation risks, bankruptcy risks, and market risks.<sup>372</sup> They have also been running for over sixty years without missing a payment to any individual policyholder.<sup>373</sup>

Another objection raised by critics of socialized insurance is that the government should decrease its presence in private industries and leave it up to the private market to evolve and develop rather than adopt a mandatory catastrophe insurance scheme.<sup>374</sup> This argument is flawed for a number of reasons—primarily, as illustrated above, the government has a strong, existing interest in regulating the insurance industry because of public policy concerns.<sup>375</sup> For instance, to protect vulnerable populations and to ensure victims are fairly compensated for injuries, state governments already regulate private insurers regarding their policy language, premium rate maximums, and how much capitalization they must maintain.<sup>376</sup> Additionally, states facilitate guarantee associations, which are systems to cover claims made to private insurers who do not have the capital to fulfill their pay out obligations.<sup>377</sup> Government regulation is necessary to protect not only vulnerable citizens, but also private businesses who are critically important to the insurance industry.<sup>378</sup>

Socialized insurance responds to notions of fairness and collective responsibility.<sup>379</sup> The risks covered are generally not attributable to the fault of the beneficiary such as their age, health, and unprecedented weather events.<sup>380</sup> Additionally, financing the insurance program by partial contributions through premiums puts some responsibility on policyholders and allows for active participation in the program, which in turn makes socialized flood insurance socially respectable.<sup>381</sup>

---

370. *Id.* at 523.

371. Marmor & Mashaw, *supra* note 362, at 137.

372. *Id.*

373. *Id.*

374. French, *America on Fire*, *supra* note 20, at 861.

375. *Id.* at 851.

376. *Id.*

377. *Id.*

378. *Id.* at 860.

379. Marmor & Mashaw, *supra* note 362, at 127–28.

380. *Id.*

381. *Id.* at 127.

In Maryland, the communities set to endure the harshest effects of the climate crisis are those already underserved and marginalized, like West Baltimore.<sup>382</sup> Decades of neglect, crumbling infrastructure, and systemic racism have left these regions particularly vulnerable to bear the brunt of the burden of rising sea levels and flooding.<sup>383</sup> Socialized insurance—i.e., government sponsored insurance—is critical for environmental justice and to ensure Maryland’s most vulnerable communities are not abandoned when disaster strikes.<sup>384</sup>

## CONCLUSION

Over a year after Hurricane Ian, Mrs. Park remains uninsured and has not seen a dime from her previous flood insurance company that went bankrupt shortly after the storm.<sup>385</sup> Her story is not uncommon—it is indicative of a systemic issue that underscores the broken state of the flood insurance system in the United States.<sup>386</sup> The current institution is not built to withstand the catastrophic hurricanes and flooding events that are barreling toward the country.<sup>387</sup> Immediate action is essential to protect marginalized communities who bear the brunt of risks akin to those suffered after Hurricane Ian.<sup>388</sup>

This Comment proposes for Maryland to adopt a compulsory flood insurance program, taking inspiration from FEMA frameworks and successful foreign models to create an affordable and sustainable flood insurance system.<sup>389</sup> Establishing a robust flood insurance program in Maryland might just be the initial push needed to pave the way for a more secure future for individuals facing similar challenges across the nation.<sup>390</sup> Maryland has the opportunity to establish the first-ever statewide mandatory flood insurance program, offering a potential solution that could catalyze significant movement in the flood insurance arena.<sup>391</sup>

---

382. CAROLYN HEAPS ET AL., UNIV. OF VA. INST. FOR ENGAGEMENT & NEGOT. PROJECT, MARYLAND CLIMATE ADAPTATION AND RESILIENCE FRAMEWORK RECOMMENDATIONS 35 (2021).

383. *Id.* For more about the stark racial and economic disparities in Maryland, particularly in Baltimore City, see generally ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY (2010).

384. HEAPS ET AL., *supra* note 382, at 35.

385. *See supra* Part I.

386. *See supra* Part I.

387. *See supra* Part I.

388. *See supra* Section I.A.

389. *See supra* Section II.A.

390. *See supra* Section II.A.

391. *See supra* Section II.B.