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Legal Requirements for Equitable Design and Implementation of Flood Buyout Programs in Rhode Island

June 2020



THE
UNIVERSITY
OF RHODE ISLAND

This study is a product of the Marine Affairs Institute at Roger Williams University School of Law and the Rhode Island Sea Grant Legal Program. Sarah Friedman, Rhode Island Sea Grant Law Fellow, authored this study with guidance from Read Porter, Senior Staff Attorney. All errors and omissions are the responsibility of the Marine Affairs Institute. This study is provided only for informational and educational purposes and is not legal advice.

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- Educate the next generation of marine law and policy professionals both within the classroom and in the community;
- Serve as a legal and policy resource for the marine community by producing high quality research in partnership with stakeholders in Rhode Island, New England, the US, and around the world; and
- Convene diverse experts to discuss cutting-edge issues in marine law and policy.

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MAI is a partnership of Roger Williams University School of Law, The University of Rhode Island (URI), and Rhode Island Sea Grant. Through this partnership, MAI has access to the resources of two universities and the Sea Grant Legal Network. Through the partnership with URI, MAI has access to faculty, staff, and research facilities at both URI's Graduate School of Oceanography and College of the Environment and Life Sciences. Located at Roger Williams University's School of Law, the only law school in Rhode Island, MAI is home to Rhode Island Sea Grant's Legal Program, one of only four dedicated Sea Grant Legal Programs in the country and the only one in the Northeast. In addition, the Sea Grant Law Fellow Program, housed at MAI, matches qualified law students with constituent groups to answer important and timely questions in ocean and coastal law and policy.

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Legal Requirements for Equitable Design and Implementation of Flood Buyout Programs in Rhode Island

In a recent exposé on flood zone disaster relief, National Public Radio (NPR) reported that “[s]tudies by sociologists, as well as climate scientists, urban planners and economists, suggest that disasters, and the federal aid that follows, disproportionately benefit wealthier Americans. The same is also true along racial lines, with white communities benefitting disproportionately.”¹ One form of disaster relief, the buyout program, is designed to buy high-risk properties and prevent recurrent flood damage. Funding for buyouts is supposed to be allocated through a process that is objective but which could have a disparate impact² on vulnerable communities in practice.³

Rhode Island has ventured into the area of flood buyouts. Following major flooding in 2010, the state and municipalities began to use federal funding to purchase properties at high risk for flooding in order to convert the land to natural space.⁴ Rhode Island’s program has been implemented on a small scale thus far in Cranston, Cumberland, Johnston, and Westerly. However, additional flood buyouts are likely in the future, and it is important to take potential equity problems into account prior to disasters. Rhode Island can learn from past litigation over flood zone buyouts, other forms of disaster relief, and urban revitalization projects to anticipate potential equity problems, avoid violating state and federal laws, and create fair programs in the future.

This paper discusses potential equity problems associated with voluntary flood buyout programs and suggest how the program can be implemented in a way that will minimize these issues. Part I of this paper explains the types of programs that fund buyouts and discusses how Rhode Island has implemented buyout programs in the past. Part II introduces state and federal civil rights laws that might be violated by inequitable buyout programs and analyzes the potential legal challenges that can be anticipated based on past cases involving flood zone buyouts, other types of disaster relief for flooding and hurricanes, and urban revitalization projects. It also draws connections between the relevant case law and Rhode Island’s voluntary flood buyout program to suggest ways that the program can be developed in the future to produce equitable outcomes. Part III considers specific issues affecting the ability of low-income homeowners and tenants to participate in buyouts, with a specific focus on legal assistance for these individuals and gaps in assistance programs that may hinder equitable administration of buyouts. Part IV reviews recent proposals to change federal flood

¹ Rebecca Hersher & Robert Benincasa, *How Federal Disaster Money Favors the Rich*, NPR (Mar. 5, 2019, 5:00 AM), <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>.

² *Disparate impact*, BLACK’S LAW DICTIONARY (5th ed. 2016) (“The adverse effect of a facially neutral practice (esp. an employment practice) that nonetheless discriminates against persons because of their race, sex, national origin, age, or disability and that is not justified by business necessity. Discriminatory intent is irrelevant in a disparate-impact claim.”).

³ Hersher & Benincasa, *supra* note 1.

⁴ R.I. OFFICE OF HOUS. & CMTY. DEV., STATE OF RHODE ISLAND ACTION PLAN 2010 FLOODS 6 (2017).

insurance and related programs and identifies proposed changes that would alter buyout program administration. Finally, Part V concludes.

1 Background

When natural disasters occur, the federal government may allocate funding to state and local governments, which the state and local governments may distribute to various disaster relief efforts.⁵ A portion of the federal funding can be used to purchase properties that are repeatedly flooded, which helps residents move out of flood zones and saves the cost of repeatedly repairing flooded properties.⁶ Buyout programs have not been widely used in Rhode Island to date, but a few Rhode Island municipalities used federal disaster relief money to purchase a small number of properties after record flooding in 2010. With this initial experience, Rhode Island and its municipalities may use flood buyouts more frequently in the future to address repetitive flooding. This section reviews federal programs that may fund such buyouts and Rhode Island's experience with buyouts to date.

1.1 Programs Funding Buyouts

A number of federal programs provide funds to state and local governments to assist with disaster recovery programs. These programs, which allocate funding for buyouts, include the Department of Housing and Urban Development's (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) Program, the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program (HMGP), Individual Assistance (IA), and Increased Cost of Compliance (ICC) programs, and the United States Department of Agriculture's (USDA) Emergency Watershed Protection Floodplain Easement Program. Understanding how these programs work can help to identify requirements that might produce a disparate impact for certain groups of people.

- CDBG-DR funding, provided by HUD, assists states in their disaster recovery efforts.⁷ State and local governments can apply for grant money and the CDBG-DR funding can be used to supplement other disaster relief funding from FEMA, the United States Army Corps of Engineers, and the Small Business Administration.⁸ HUD requires that a significant portion of the funds be used to assist low- and moderate-income communities.⁹ States and municipalities that use CDBG-DR funds for buyout programs typically undergo the following steps: (i) defining the area that will be bought out and determining how the land will be used; (ii) marketing the program to property owners in the targeted area; (iii) completing intake and collecting documentation to determine applicants' eligibility; (iv) calculating the amount to be awarded for each property; (v) purchasing the properties and relocating the residents; and (vi) demolishing buildings on the properties.¹⁰ Individual states

⁵ See Katherine J. Mach et al., *Managed Retreat Through Voluntary Buyouts of Flood-Prone Properties*, 5 SCI. ADVANCES eaax8995, at 1 (2019) (evaluating buyout outcomes).

⁶ See *id.*

⁷ U.S. DEP'T OF HOUS. & URBAN DEV., [CDBG-DR FACT SHEET](#).

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. DEP'T OF HOUS. & URBAN DEV., [DISASTER RECOVERY BUYOUT PROGRAM OVERVIEW, CONSIDERATIONS, AND STRATEGIES](#) (2013).

determine whether compensation should be based on the fair market value of the properties before or after the flood.¹¹

- FEMA’s HMGP funding may be used for projects like “buyouts, elevations, and safe rooms” that help to limit the harmful effects of natural disasters.¹² FEMA allocates HMGP funds for local governments to distribute after a presidential declaration of a major disaster.¹³ Municipalities seeking HMGP funding must complete an application process that must follow state and FEMA guidelines.¹⁴ Once FEMA has approved an application, it provides funding to the state and the state apportions the funding to the municipalities.¹⁵ The process for distributing the funding can be slow and “it often takes a year before the total amount of HMGP funding is made available following a disaster.”¹⁶ FEMA uses a benefit-cost analysis to determine which properties to purchase and it provides compensation based on the value of the structure and the land.¹⁷
- FEMA’s IA program provides disaster relief funding directly to citizens.¹⁸ IA funding provides individuals affected by disasters with resources and services for recovery.¹⁹ The program’s Replacement Assistance provides individuals with funding which can be used to purchase replacement housing after their primary residence is destroyed by a disaster.²⁰ This type of funding might be useful for assisting individuals who are displaced from properties that are purchased in buyouts.
- FEMA’s ICC Coverage helps to fund recovery after repeated flooding. The ICC Coverage “will pay up to \$30,000 to bring the building into compliance with State or community floodplain management laws or ordinances. Usually this means elevating or relocating the building so that it is above the base flood elevation (BFE).”²¹ To qualify for this program, a property must be “determined to be substantially damaged” or “meet the criteria of a repetitive loss structure.”²² For a property to be substantially damaged, the damage must be greater than or equal to fifty percent of the value of the building.²³ For a building to be

¹¹ Julie M. Curti, *Strategies for Equitable Climate Change Adaptation: Lessons from Buyback and Elevation Programs in Rhode Island* 26 (June 2015) (unpublished M.C.P. thesis, Massachusetts Institute of Technology) (on file with the Massachusetts Institute of Technology Library).

¹² *Hazard Mitigation Assistance*, FEMA (last visited Nov. 4, 2019), <https://www.fema.gov/hazard-mitigation-assistance>.

¹³ *Id.*

¹⁴ Curti, *supra* note 11, at 18.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 81.

¹⁸ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., [INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE](#) 3 (2019).

¹⁹ *Id.* at 6.

²⁰ *Id.* at 91.

²¹ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., [INCREASED COST OF COMPLIANCE COVERAGE FACT SHEET](#) 1 (2017).

²² *Id.*

²³ *Id.* at 2.

considered a repetitive loss structure, it must be covered by flood insurance, suffer flood damage twice over a ten year period, and each time the repairs must cost at least 25% of the market value of the building before the flood damage occurred.²⁴ ICC Coverage can be used to fund elevation, floodproofing of non-residential buildings, relocation of an entire building, or demolition of buildings in especially poor conditions.²⁵

- The Floodplain Easement Program, which is funded through the USDA, allows the National Resources Conservation Service (NRCS) to purchase permanent easements for properties located in floodplains and restore the properties to natural conditions.²⁶ Easements are available for residential, agricultural, and open land.²⁷ The easement grants NRCS surface and other rights so that it can restore the property, while the property owner maintains ownership.²⁸ The amount of compensation is based on the fair market value of the land, the geographic area rate cap, or an offer written by the property owner, and the property owner will receive whatever amount is the lowest.²⁹

While flood buyout programs are facially neutral, these programs may raise challenging issues of equity and access. For example, NPR found, at least for the FEMA-funded buyouts that it investigated, that:

[W]hite communities nationwide have disproportionately received more federal buyouts after a disaster than communities of color. Federal disaster aid is allocated based on a cost-benefit calculation meant to minimize taxpayer risk. That means money is not necessarily doled out to those who need it most but rather to those whose property is worth more — and to those who own property in the first place. That mirrors the existing racial wealth gap in the United States.³⁰

These findings are echoed in scholarly studies of buyout programs. In characterizing the academic literature on buyouts, Katherine J. Mach et al., found that “previous case-based analyses have suggested that, when social equity is not explicit, inequitable implementation practices or outcomes may occur” as a result of “perceived coercion, local-level political pressures favoring flood hazard mitigation for the privileged over the marginalized, more deliberate findings of substantial damage in socially vulnerable areas, or relocations to areas with equal flood risk and greater social

²⁴ *Id.* at 1.

²⁵ *Id.*

²⁶ *EWPP Floodplain Easement Program – Floodplain Easement Option (EWPP-FPE)*, NATURAL RESOURCES CONSERVATION SERVICE (last visited Nov. 25, 2019), https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/landscape/ewpp/?cid=nrcs143_008216.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Hersher & Benincasa, *supra* note 1.

vulnerability.”³¹ Close attention to program design and implementation may be required to ensure that flood buyout programs do not result in inequitable or discriminatory outcomes.

States and municipalities are subject to legal obligations relevant to equity issues when implementing flood buyout programs. Government entities that receive funding through federal agencies must comply with associated processes and requirements required by those agencies. In addition, as described below, federal statutory and constitutional law may limit the discriminatory impact of buyout programs. Rhode Island and its municipalities can benefit from understanding these legal obligations and from carefully planning and implementing future buyouts to ensure equitable outcomes.

1.2 Previous Flood Buyouts in Rhode Island

In 2010, Rhode Island experienced record flooding, leaving significant damage and leading President Obama to declare a state of emergency.³² Following the floods, Rhode Island cities and towns began to acquire a small number of flood-prone houses in Cranston, Cumberland, Johnston, and Westerly, as described below.

- Cranston implemented the largest buyout program in Rhode Island to date. After the 2010 floods, Cranston city officials spoke individually with property owners in the neighborhoods targeted by the city’s buyout program to determine their interest in participating.³³ The city applied for seven to eight million dollars in HMGP funding to purchase 33 houses in two Cranston neighborhoods.³⁴ FEMA approved funding for one neighborhood but denied it for the Perkins Avenue neighborhood, which did not qualify for the program based on the benefit-cost analysis.³⁵ The city instead used CDBG-DR funds to purchase 11 Perkins Avenue homes.³⁶ HMGP funding was used in other neighborhoods that did not qualify as low- or moderate-income areas under the CDBG-DR requirements.³⁷ The median home value in Cranston at the time of the buyouts was \$191,000.³⁸ Homes purchased with CDBG-DR funding ranged in value from \$115,00 to \$150,000, while the homes purchased with HMGP funding ranged from \$150,000 to \$200,000.³⁹
- Cumberland purchased one high-risk property using federal funding.⁴⁰ Cumberland was awarded \$222,158 in HMGP funding and \$79,053 in CDBG-DR funding following the 2010

³¹ Mach et al., *supra* note 5, at 6.

³² See *Rhode Island Flooding: “Nobody was prepared.”* CNN (Apr. 2, 2010, 11:23 AM), <http://www.cnn.com/2010/US/weather/04/01/northeast.flooding/index.html>.

³³ Curti, *supra* note 11, at 46.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 47-48.

³⁷ *Id.* at 47-8.

³⁸ *Id.* at 51.

³⁹ *Id.*

⁴⁰ TOWN OF CUMBERLAND, STRATEGY FOR REDUCING RISKS FROM NATURAL HAZARDS IN CUMBERLAND, RHODE ISLAND 25 (2017).

flooding to purchase and demolish a repetitive-loss property.⁴¹ The town prioritized the property that was selected for the buyout because it had already suffered over \$130,000 in damage from flooding in 2005 and 2010.⁴² The property was not acquired until 2014 and has since been demolished to create open public space.⁴³

- Westerly has purchased a handful of flood-prone properties. The town targeted a particular neighborhood that was at high risk for flooding and spoke to each property owner individually about participating in the program.⁴⁴ After submitting the application for HMGP funding, Westerly waited two years for approval.⁴⁵ The town spent another two years completing preparations for implementing the program after FEMA awarded over one million dollars in funding.⁴⁶ Following the four year-long delay, half of the property owners who were originally interested in participating in the buyout program decided that they no longer wanted to participate.⁴⁷ Four properties were purchased in buyouts in Westerly using HMGP funding.⁴⁸ Three of those properties were rental properties, where tenants were given ninety days' notice to vacate and some funding for relocation assistance, while the property owner collected the proceeds from the sale of the property.⁴⁹ Westerly purchased the properties for \$114,000 to \$230,000, below the town's median home value of \$307,000.⁵⁰
- Johnston has only recently begun to develop a program to purchase properties that have repeatedly flooded. In 2019, the NRCS received funding to purchase permanent easements over Belfield Drive properties, with the intention of restoring the area to its natural conditions to reduce future flood damage.⁵¹ The easements target properties in the area that were flooded in the last year or twice in the past ten years, or where easements could reduce the impact of flooding elsewhere.⁵² It is still unclear how many easements will be purchased and the amount of funding that Johnston will receive because the program is still in the early stages.⁵³ The median value of owner-occupied housing units in Johnston between 2013 and 2017 was \$211,800.⁵⁴

⁴¹ *Id.*

⁴² *Id.* at 125. According to census data, the median value of owner-occupied housing units in Cumberland from 2013 to 2017 was \$266,500. *Cumberland town, Providence County, Rhode Island*, UNITED STATES CENSUS BUREAU (last visited Nov. 28, 2019), <https://www.census.gov/quickfacts/fact/table/cumberlandtownprovidencescountyrhodeisland/HSG495217>.

⁴³ TOWN OF CUMBERLAND, STRATEGY FOR REDUCING RISKS FROM NATURAL HAZARDS IN CUMBERLAND, RHODE ISLAND 61 (2017).

⁴⁴ Curti, *supra* note 11, at 55-6.

⁴⁵ *Id.* at 57.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 55.

⁴⁹ *Id.* at 58.

⁵⁰ *Id.* at 62.

⁵¹ Diane Petit, *USDA announces funding for floodplain easements on flood-prone properties on Belfield Drive, Johnston*, (June 17, 2019), <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/ri/newsroom/releases/?cid=NRCSEPRD1465819>.

⁵² *Id.*

⁵³ *See id.*

⁵⁴ *Johnston town, Providence County, Rhode Island*, UNITED STATES CENSUS BUREAU (last visited Nov. 28, 2019), <https://www.census.gov/quickfacts/johnstontownprovidencescountyrhodeisland>.

Although Rhode Island’s experience implementing buyout programs is limited, challenges are already apparent. Thus far, the Rhode Island municipalities have not faced any legal challenges, but the combination of program eligibility requirements and Rhode Island’s demographics have proven challenging. Only the programs that used CDBG-DR funding were explicitly required to take income levels into account when selecting properties to purchase, and some high-risk neighborhoods were not eligible for the program. Similarly, distribution of HMGP funding is based on a benefit-cost analysis, and Westerly officials noted that high-value coastal properties were often too expensive to qualify for the program, despite high flooding risk.⁵⁵ While municipalities may want to target particular areas for buyouts, the constraints of the low- to moderate-income requirement for the CDBG-DR funding and the cost-benefit analysis for HMGP funding may prevent them from doing so, and at best—as in Cranston—may require that municipalities combine multiple programs to achieve desired outcomes. The delay between the time of the disaster and the time at which the properties were actually purchased presents another challenge, as property owners who might want to participate may lose interest in participating or be unable to wait. These challenges in eligibility and timing are already apparent, but officials may also need to consider additional equity issues that are not yet apparent due to the small scale of the buyouts to date.

2 Civil Rights Protections and Flood Buyout Programs

Federal and state laws protect individuals from discrimination and apply to flood buyout programs. These laws enumerate particular groups, known as “protected classes,” that are protected from discrimination. If not carefully planned out and implemented, buyout programs could result in a “disparate impact” to one or more protected classes. Such unfair outcomes may violate civil rights laws and could result in legal challenges and liability. This section briefly reviews applicable laws before turning to past legal challenges to buyout programs and similar types of government programs.

2.1 Overview of Applicable Civil Rights Laws

States and municipalities can risk legal challenges if they do not align their buyout programs with civil rights laws. Rhode Island and its municipalities are subject to the fourteenth amendment of the U.S. Constitution, which protects the rights to due process and equal protection of the law.⁵⁶ Rhode Island’s constitution also independently protects the rights to due process and equal protection.⁵⁷ Federal and state civil rights statutes build upon and extend these constitutional protections as applied to enumerated classes of protected individuals (e.g., disability) and to specific activities (e.g., housing). This section provides an overview of constitutional and statutory protections most applicable to flood buyouts in Rhode Island.

⁵⁵ See Curti, *supra* note 11, at 59.

⁵⁶ U.S. CONST. amend. XIV, § 1.

⁵⁷ R.I. CONST. art. I § 2.

2.1.1 Constitutional Rights: Due Process and Equal Protection

The fundamental rights to due process and equal protection of the law are protected by both the federal and state constitutions. The U.S. Constitution protects these rights through the Fourteenth Amendment, which states “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁵⁸ Rhode Island’s constitution echoes the language of its federal counterpart and is interpreted equivalently, but it includes an additional explicit prohibition on discrimination:

No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state.⁵⁹

These provisions provide the foundation for litigation challenging government action that results in disparate treatment of different groups of people.

In essence, the equal protection clause “is essentially a direction that all persons similarly situated should be treated alike.”⁶⁰ The Rhode Island constitution explicitly prohibits racial, gender, and disability discrimination, but state and federal equal protection clauses also protect against other forms of discrimination. If buyout programs have a discriminatory effect on enumerated protected classes or similarly-situated individuals, the agencies administering the programs may risk violating state and federal guarantees of equal protection. However, equal protection is violated only by purposeful and intentional discrimination, such that discriminatory treatment resulting from negligence is not a constitutional violation.⁶¹ As a result, challenges to facially-neutral laws and programs require plaintiffs to show a discriminatory intent.⁶²

Due process protections also may be meaningful to flood buyout program administration. While due process and equal protection are commonly considered together, they differ in that due process “emphasizes fairness between the state and the individual dealing with the state.”⁶³ In the context of buyouts, the state and federal due process clauses require that individual sellers be treated fairly throughout the duration of the program. For example, sellers may need to be effectively notified, participate voluntarily and receive just compensation for their properties. Program administrators thus must be sure both that program implementation provides an equal opportunity for similarly-situated individuals to participate in the program and that the program in practice is fair to all participants.

⁵⁸ U.S. CONST. amend. XIV, § 1.

⁵⁹ R.I. CONST. art. I, § 2.

⁶⁰ 16B AM. JUR.2D CONST. L. § 823.

⁶¹ *Id.* § 834.

⁶² *Id.*

⁶³ *Id.* § 830.

2.1.2 Civil Rights Statutes: Fair Housing and Disabilities

Federal and state civil rights statutes apply to flood buyout programs. While a complete review of these statutes is beyond the scope of this study, this section provides a brief overview of two anti-discrimination statutes that are likely to or have been used to challenge flood buyout programs or analogous programs, as described below. Rhode Island and its municipalities must consider and comply with these and other federal and state statutes when distributing disaster relief funding, including flood buyouts.

State and federal fair housing legislation protects individuals from discrimination in residential real estate transactions. The federal Fair Housing Act (FHA) provides that:

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.⁶⁴

Thus, differential treatment of purchasers or actual or prospective tenants is unlawful if that difference is based on one of the “protected classes” listed above. Rhode Island has enacted a similar law, the Fair Housing Practices Act, which extends federal protections to additional protected classes.⁶⁵ In addition to the protected classes identified in the FHA, the Rhode Island act also prohibits discrimination on the basis of “sexual orientation, gender identity or expression, marital status, military status as a veteran . . . , servicemember in the armed forces, country of ancestral origin, disability, age,” or threatened domestic abuse or seeking judicial relief against domestic abuse.⁶⁶ The use of any of these criteria as a basis for housing opportunities violates state law.

Anti-discrimination law may also be relevant to flood buyout program implementation. The Americans with Disabilities Act (ADA) protects the rights of individuals with disabilities, including in the housing context.⁶⁷ The ADA states that: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”⁶⁸ Thus, the ADA requires that disabled residents be given an equal opportunity as other residents to participate in buyouts, such that failure to provide such opportunity could expose agencies administering buyout programs to liability.

Civil rights statutes demand that cities and towns offering to buy properties subject to repeated flooding avoid discriminatory treatment when implementing their programs. Buyouts must be

⁶⁴ 42 U.S.C. § 3605.

⁶⁵ R.I. GEN. LAWS § 34-37-2.

⁶⁶ R.I. GEN. LAWS § 34-37-2.

⁶⁷ 42 U.S.C. § 12132.

⁶⁸ 42 U.S.C. § 12132.

designed and administered with attention to the demographics of the areas under consideration to avoid disparate impacts on vulnerable protected groups.

2.2 Legal Challenges to Buyout and Disaster Relief Programs

This section addresses past and ongoing legal challenges to flood buyout programs and related programs. It begins with challenges to the specific flood buyout programs discussed in section 1.2. However, few such cases have been litigated to date. To provide a more nuanced picture of potential future challenges, this section also reviews past challenges to other forms of hurricane and flood disaster relief before turning to urban revitalization program challenges, which involved government procurement of private properties. While the cases and issues discussed here may not be a comprehensive picture of potential litigation related to flood buyout programs, they provide a foundation for understanding the types of equity-based claims that may be most common in the future.

2.2.1 Flood Buyout Programs

This section reviews past legal challenges to flood buyout programs. Because buyouts have not been widely implemented, there are not many cases resolving legal challenges to buyouts based on inequitable treatment. However, the few available cases are discussed in this section and involve challenges to CDBG-DR and HMGP-funded buyouts. They have raised concerns related to fair administration of buyout programs and the need to weigh transparency against the privacy of sellers who participate in the program.

Legal issues might arise when citizens are not given appropriate notice of a buyout program and when the officials selecting applicants make choices about which properties to purchase on discriminatory bases. In *Hazzouri v. West Pittston Borough*, the plaintiffs lived in a Pennsylvania county that received CDBG-DR funding to purchase flood-damaged properties, but they did not learn of the program until it was in its final stages.⁶⁹ The Plaintiffs were not selected to participate in the buyouts because their application was submitted late, and they filed suit, alleging violations of their constitutional rights to due process and equal protection.⁷⁰ The Plaintiffs alleged that the program was designed “to ensure that sufficient funding existed so that properties owned by selectively notified and/or politically connected residents would be bought out and to ensure that there was no reduction in the Borough's real estate and income tax base.”⁷¹ This case is still being litigated, and the district court recently ruled that the plaintiffs pled sufficient facts to defeat the defendants’ motion to dismiss. The plaintiffs have raised questions about the process by the Borough of giving notice and selecting applicants, which are central issues in buyout programs. Similar legal challenges could arise for other programs that fail to give equal notice to eligible individuals or to fairly consider every applicant.

⁶⁹ No. 3:18cv1982, 2019 U.S. Dist. LEXIS 153873 (M.D. Pa. Sept. 10, 2019).

⁷⁰ *Id.* at *3-4.

⁷¹ *Id.* at *17.

Concern over the transparency of the programs and the privacy of those who participate in them has also given rise to floodplain buyout litigation. In a 2017 case, an NPR reporter sought information about the identities of sellers who participated in HMPG-funded buyouts.⁷² NPR requested that FEMA turn over information under the Freedom of Information Act; while FEMA provided 66 pages of documents, it “withheld the sellers’ names, as well as the addresses and GIS coordinates of the properties they sold,” arguing that the information would violate the buyout participants’ privacy rights.⁷³ NPR challenged the limited disclosures, and the court found that sellers did have an interest in not having their names, addresses, and financial information released because it could expose them to solicitation and the jealousy of neighbors.⁷⁴ However, it was in the public interest for FEMA to release the records because it would increase transparency and allow the public to uncover instances of fraud or other unfair practices in the administration of the HMPG buyouts.⁷⁵ The court found that the public’s interest outweighed the seller’s privacy rights, so the information could be released.⁷⁶ This case suggests that the transparency of government funded buyouts could be at odds with the rights of sellers who participate. Requiring agencies to release information about who is participating in buyouts holds agencies accountable and allows the community to evaluate whether funding is being distributed fairly, but some potential sellers might not want their information to be made public. Sellers could turn to private buyers instead of participating in buyouts to avoid scrutiny, which could undermine the success of the buyout programs.

2.2.2 Other Disaster Relief for Hurricanes and Flooding

This section reviews legal challenges to post-disaster relief programs other than buyouts to expand the number of potentially-applicable cases. Non-buyout disaster relief programs that provide direct assistance following flooding and hurricanes may raise similar potential legal issues as buyouts, and therefore cases challenging these programs may shed light on additional types of legal challenges that could arise in the buyout context. Disaster relief procedures can have disparate impacts on specific protected classes when put into practice, and these procedures and programs have been challenged on rare occasions. Considering challenges to other disaster relief programs can help to predict the types of challenges that could arise out of buyout programs.

Disaster relief programs that appear neutral on their face can sometimes produce unfair and unlawful results for some members of the community. *Brooklyn Center for Independence of the Disabled v. Bloomberg* is one example of a disaster relief plan that failed to anticipate the needs of citizens.⁷⁷ Shortly after Hurricane Sandy, a lawsuit was brought on behalf of all disabled individuals living in New York alleging that:

⁷² Nat’l Pub. Radio, Inc. v. Fed. Emergency Mgmt. Agency, No. 17-91 (BAH), 2017 U.S. Dist. LEXIS 192374, *3-5 (D.D.C. Nov. 21, 2017). *See also* Hersher & Benincasa, *supra* note 1 (reporting based on case outcome).

⁷³ Nat’l Pub. Radio, Inc., 2017 U.S. Dist. LEXIS 192374, at *6-7.

⁷⁴ *Id.* at *14-23.

⁷⁵ *Id.* at *28-33.

⁷⁶ *Id.* at *33.

⁷⁷ *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013).

...the City's emergency preparedness program fails to accommodate their needs by, among other things, inadequately planning for the evacuation of people with disabilities, from multi-story buildings and generally; failing to provide a shelter system that is accessible within the meaning of the ADA; ignoring the unique needs of people with disabilities in the event of a power outage; failing to communicate adequately with people with special needs during an emergency; and failing to account for the needs of people with disabilities in recovery operations following a disaster.⁷⁸

The court found that the city's emergency preparedness plan violated the ADA, because it denied disabled citizens the ability to be effectively informed about emergency planning and services and it failed to take into account the need to locate, evacuate, transport, and shelter disabled individuals in the event of an emergency.⁷⁹ The court did not find intentional discrimination, but the city's "benign neglect" led to unintentional discrimination against disabled residents.⁸⁰ The goal of emergency preparedness plans is similar to the goal of flood zone buyouts: to assist the community as a whole by minimizing the harm caused by disasters. These programs are most effective when they are inclusive as possible and work to meet the needs of all members of the community.

It can be challenging for the Plaintiffs to be successful in legal challenges against government administered disaster relief programs, but even when the claim is unsuccessful in court, the complaints that the Plaintiffs raise can point to divisiveness and alienation caused by the way the programs have been implemented. In *People's Workshop, Inc. v. FEMA*, the plaintiff affordable housing corporation alleged that FEMA and local officials unlawfully implemented disaster response after historic flooding in Louisiana in 2016.⁸¹ More specifically, the plaintiffs argued that the defendants engaged in discrimination in violation of the Civil Rights Act of 1964, the ADA, and their due process rights by denying aid to disabled individuals, refusing to allow the victims to have FEMA trailers in their city, and by calculating lower home values for African-American residents.⁸² The court dismissed the case because the plaintiffs' complaint was unclear and did not have facts or case law supporting injunctive relief.⁸³ The local officials successfully argued that the plaintiffs failed to plead specific facts as required to support civil rights liability,⁸⁴ and FEMA avoided liability due to sovereign immunity.⁸⁵ As a result, the case sheds little substantive light on the application of civil rights law to disaster relief. However, it suggests that problems with transparency and community involvement in disaster relief programs can result in a perception of unfairness among disabled, African-American, or other protected classes of residents. While the facts of the *People's Workshop*

⁷⁸ *Id.* at 596.

⁷⁹ *Id.* at 658.

⁸⁰ *Id.* at 597.

⁸¹ *People's Workshop, Inc. v. FEMA*, No. 17-107-JWD-RLB, 2019 U.S. Dist. LEXIS 39455, *6 (M.D. La. Mar. 12, 2019).

⁸² *Id.*

⁸³ *See id.* at *27-8.

⁸⁴ *See id.* at *20-3.

⁸⁵ *See id.* at *23-7.

case are unclear, it appears that the primary failure of the claim arose from poor representation. Similar future cases could have different results if plaintiffs are represented by more sophisticated legal counsel. Effective communication with the community about how assistance is administered and acceptance of input from residents who felt that they may not be receiving equal treatment may be important to avoid the perception of unfairness and to minimize associated litigation risk.

2.2.3 Urban Revitalization

Urban renewal or revitalization projects may be a useful analogue for flood buyout programs because they involve procurement of private property by government agencies. These projects differ from buyouts because they are not voluntary, but like buyouts they typically target a specific area and risk forcing groups of people out of housing that they can afford.⁸⁶ These programs therefore have a long history of civil rights challenges based on displacement of individuals living in communities affected by the renewal projects.⁸⁷

When a court finds that an urban revitalization project has unfairly impacted a particular group, it must decide how to correct the disparate treatment. In *Garrett v. Hamtramck*, the plaintiffs, all African-Americans in the city of Hamtramck who were affected by urban revitalization projects, claimed that the city violated their due process and equal protection rights when it displaced them and did not create sufficient low and moderately priced public housing to accommodate the displaced individuals.⁸⁸ The court ordered the defendants, which included the city, HUD, and local and federal officials, to create affordable housing to replace the housing that was destroyed.⁸⁹ Despite the court's order, the defendants delayed the process of replacing the lost units, so the court had to issue another order requiring the defendants to contact every African-American person who was displaced by the urban renewal project to determine how much replacement housing and relocation expenses would be necessary.⁹⁰ The court established a process for reaching the plaintiff class members, requiring the defendants to advertise the new program for replacement housing on television, in newspapers, and on the radio, and making visits to the homes of displaced persons to inform them about replacement housing options and determine whether the displaced residents were interested in getting replacement housing within the city.⁹¹ This case demonstrates how a government program like urban revitalization or floodplain buyouts can affect a particular protected class when they target a specific neighborhood and there must be procedures in place that make it possible for individuals to find comparable alternative housing.

⁸⁶ Urban revitalization projects that involuntarily take property constitute takings under the Fifth Amendment of the Constitution. U.S. CONST. amend. V; *see also* *Kelo v. City of New London*, 545 U.S. 469 (2005).

⁸⁷ *See, e.g.,* Note, *Civil Rights--Urban Renewal--Allegation of Conspiracy to use Eminent Domain Power for Racially Discriminatory Purpose in Urban Renewal Program does not State a Federal Claim Under Civil Rights Act*, 42 U.S.C. § 1983, 81 HARV. L. REV. 1568 (1968) (citing *Green Street Ass'n v. Daley*, 373 F.2d 1 (7th Cir. 1967)).

⁸⁸ *Garrett v. Hamtramck*, 503 F.2d 1236, 1240-41 (6th Cir. 1974).

⁸⁹ *Garrett v. Hamtramck*, 394 F. Supp. 1151, 1155 (E.D. Mich. 1975).

⁹⁰ *Id.* at 1156.

⁹¹ *Id.* at 1156-57.

2.3 Considerations for Future Rhode Island Buyouts

Case law related to buyout programs is limited, so it is challenging to draw conclusions about potential legal issues that may arise. Nonetheless, informed by the limited case law that is available, this section discusses some potential equity issues that could arise in future buyout programs. The case law suggests that legal troubles can arise when municipalities fail to provide effective notice to eligible residents, lack transparency in selecting applicants, use unfair processes to make their selections, and do not assist property owners with the costs that flow from participating in a buyout program. By taking these issues into account when designing and implementing buyout programs, Rhode Island municipalities may be able to anticipate and address potential equity problems before they result in litigation.

2.3.1 Notice

An effective and equitable buyout program must try to make information about buyouts available to as many people as possible. Both *Brooklyn Center for Independence of the Disabled v. Bloomberg* and *Garrett v. Hamtramck* discuss how information should be distributed equitably. In *Brooklyn Center for Independence of the Disabled*, the Court found that the city did not violate civil rights laws in its communications, because it dispersed information through “. . . traditional media, government websites, social media, the 311 system—the City's non-emergency, government services hotline—and door-to-door notification.”⁹² Although New York City's communications might have had some flaws, the court did not find that the methods of communication violated the ADA because they made an effort to inform people in a variety of different ways to maximize outreach to as many people as possible.⁹³ The court in *Garrett* also specifically addressed giving effective notice to the Plaintiff class by making information available through different media and by having people reach out to the displaced residents personally, at a time that was convenient for those residents.⁹⁴ The court's goal was to right the wrong inflicted by the Defendants for as many displaced people as possible. Future buyout programs may be able to avoid legal challenges like these by providing effective notice, publicized in a variety of formats to meet the varied needs of individuals, prior to program implementation.

Rhode Island municipalities can reduce liability in flood buyout programs under state and federal civil rights statutes and constitutional law by providing notice to all potentially-eligible residents. The notice element of buyout programs may require community meetings where residents can learn about the program and having representatives go door-to-door in neighborhoods where buyouts will be offered to inform people about the program and answer any questions. Interpreters may be required to ensure that notice is effective for people who speak languages other than English. In addition, information should be produced in different formats so that people with disabilities and people with different schedules and needs can access it in a convenient way. By recognizing the

⁹² *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 631 (S.D.N.Y. 2013).

⁹³ *Id.* at 654.

⁹⁴ *Garrett*, 394 F. Supp. at 1155.

needs of different members of the community, and adapting how the program is promoted to meet those needs, Rhode Island can develop programs that give people a fair opportunity to participate.

Effective notice is also dependent upon understanding the demographics of the areas where buyouts are offered. Rhode Island's buyout program could benefit from research on the populations in the municipalities that are considering buyouts in the future.⁹⁵ Knowing the makeup of an area can allow officials to anticipate the different needs of different neighborhoods and design their program to accommodate those needs effectively post-disaster. By understanding who is living in the areas where buyouts are offered before beginning the program, Rhode Island buyouts can ensure that residents feel that their needs are not taken into consideration and avoid future legal challenges resulting from poor planning or lack of transparency.

2.3.2 Fair Criteria for Choosing Buyout Recipients

Rhode Island's buyout programs can also avoid legal challenges by establishing fair methods for selecting properties to buy and by making the process as transparent as possible. The challenge to the buyout program in *Hazzouri v. W. Pittston Borough* involved allegations of unfair administration of the program, which the Plaintiffs believed favored people connected to local officials.⁹⁶ Those entrusted with administering funding for buyouts need to avoid favoring any particular person or group by establishing clear guidelines for selection and by making the guidelines known to applicants. Buyout programs can be competitive when there is not enough available funding to meet the demand of property owners who would like to participate. Providing information about the selection process, and who was selected to participate, may help to foster trust in the process and prevent law suits over unfair selection processes. This information, if not provided prospectively, will likely be public record in part due to such concerns. The *National Public Radio, Inc. v. Federal Emergency Management Agency* case required FEMA to release records of buyout participants because making this information available could prevent officials from using unfair practices.⁹⁷ Making information available to the public will allow them to scrutinize potentially-discriminatory decisions and feel involved in the program, and this transparency could prevent legal challenges to buyouts.

2.3.3 Assisting Sellers with the Process and Costs of Relocation

The long process for completing the buyout and the cost of relocation may be a factor that could prevent low income individuals from being able to participate in buyouts. In addition to requiring the Defendants to create replacement housing, the court in *Garrett* required that the Defendant's "provide funds for adequate moving expenses and other relocation payments to displacees."⁹⁸ Because the Plaintiff class was displaced from low and moderate income housing, the court

⁹⁵ See also ROBERT FREUDENBERG ET AL., BUY-IN FOR BUYOUTS: THE CASE FOR MANAGED RETREAT FROM FLOOD ZONES (2016). Researchers analyzed the income, race, and housing tenure makeup of the New York metropolitan area to evaluate "how receptive certain communities may be to buyout programs or how programs can be better tailored to communities to increase participation or reduce attrition." Rhode Island might also consider doing similar research in neighborhoods where buyouts will be offered.

⁹⁶ *Hazzouri*, No. 3:18cv1982, 2019 U.S. Dist. LEXIS 153873, at *17.

⁹⁷ *Nat'l Pub. Radio, Inc.*, No. 17-91 (BAH), 2017 U.S. Dist. LEXIS 192374, at *28-33.

⁹⁸ *Garrett*, 394 F. Supp., at 1158.

recognized that they may not be able to afford to relocate to the replacement housing that the court had ordered the Defendants to produce.⁹⁹ Failing to provide relocation assistance would have defeated the purpose of the replacement housing, because people would be unable to afford to take advantage of it. Similarly, in the context of buyouts, low income individuals may be unable to participate in the program if they cannot afford to wait for federal funding for a buyout to arrive, if they cannot afford the expenses that come with moving, or if they cannot find comparable affordable housing elsewhere.

Failure to account for issues related to timeliness and relocation in buyout programs could result in disparate impacts for protected classes. Although socioeconomic status is not a protected class under federal or Rhode Island law,¹⁰⁰ NPR's investigation suggests that disaster relief funding tends to exacerbate wealth inequality for racial minorities.¹⁰¹ In other words, protected classes may be more likely to be socioeconomically disadvantaged, such that a buyout program that unfairly benefits the wealthy in comparison to other socioeconomic classes might have discriminatory impacts on protected classes such as race, age, or disability. Disparate impacts affecting these or other protected classes potentially could be challenged as violations of constitutional rights or statutory protections.

Rhode Island might consider preparing for buyout programs before a disaster so they can be more efficient after flooding has occurred. For example, the state could prospectively appropriate or otherwise allocate funds to compensate property owners while they await the arrival of federal buyout program funds after future disasters. This could lead more property owners to participate in the program, because they may feel less pressure to repair the damaged property if they can use the state funding shortly after a disaster to pay for replacement housing. The programs might also be completed more quickly if municipalities do as much preparation as possible for federal buyout program funding before a disaster occurs, instead of beginning the buyout process in the wake of flooding. For example, Westerly did not distribute buyout money for two years after receiving FEMA funding because of the legal work and planning that needed to be completed.¹⁰² As municipalities continue to develop and implement buyout programs, these challenges should be reduced: they will learn about the process and requirements, be able to prepare beforehand, and be positioned to assist other municipalities that are beginning to use buyout programs by sharing information about the process.

Reserving funding to aid property owners with the costs of moving could also provide incentives for property owners to participate in buyout programs. For example, assistance in finding new housing would benefit disabled sellers, who need to find comparable housing with any accommodations that they may need. Buyout programs could potentially be made more efficient by assisting sellers with moving expenses and with finding affordable housing elsewhere. Although it may cost more in the short term to assist sellers with relocation expenses, in the long term, such assistance may yield

⁹⁹ *Id.*

¹⁰⁰ *See* R.I. GEN. LAWS § 34-37-2.

¹⁰¹ Hersher & Benincasa, *supra* note 1.

¹⁰² Curti, *supra* note 11, at 57.

savings and strengthen the community because the properties with high flood risks will not need to be repaired repeatedly.

2.4 Conclusion

There have been few legal challenges to buyouts to date, so it is still unclear what types of legal issues could arise in the implementation of these programs. Rhode Island can get a sense of the equity problems that it could encounter by accounting for the legal challenges to buyouts, other forms of disaster relief, and urban revitalization programs that have been criticized for producing inequitable results. Past cases suggest that Rhode Island can support equitable buyout programs by providing effective notice to as many people as possible, having a fair and transparent process for selecting the properties that will be bought out, and by helping sellers to complete the buyout process, locate new housing, and cover the expenses of moving. By being mindful of the community that buyout programs are designed to aid, Rhode Island can produce programs that address the problem created by repeated flooding while having a lower risk of infringing on the rights of citizens.

3 Resources for Homeowners and Tenants Following Disasters and During the Buyout Process

Buyout programs may be a useful disaster mitigation tool for Rhode Island property owners, but these programs can also pose challenges for homeowners and tenants. Participation in buyout programs may be problematic for low-income homeowners who cannot wait for the completion of the long buyout process. Tenants living in properties bought out are displaced from housing that they can afford, and finding new housing may be a challenge, especially for low-income tenants. One study on income inequality in the context of natural disasters concluded that:

[N]atural hazard damages [] play an important, growing, and largely hidden role [in wealth inequality], especially along the lines of race, education, and homeownership. These findings are disconcerting because such damages are widespread; they are projected to increase dramatically over coming years; and, FEMA aid – as currently administered – appears to exacerbate the problem.¹⁰³

Thus, the facially-neutral buyout programs that are intended to support people affected by flooding might not be very helpful to residents experiencing financial instability. Making resources available to assist low-income individuals could help to level the playing field.

Westerly's buyout program provides one example of how issues can arise for tenants and homeowners during the buyout process. As noted above, Westerly agreed to purchase eight residential properties in the aftermath of the 2010 floods, but it took two years for the town to get its application approved by FEMA and another two years to prepare the program. By the time the

¹⁰³ Junia Howell & James R. Elliot, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, 66 SOCIAL PROBLEMS 448, 464 (2019).

town began buying the properties, half of the property owners who initially wanted to participate had opted out.¹⁰⁴ Westerly actually purchased four properties, three of which housed tenants who were given notice that they would have to move.¹⁰⁵ Westerly's buyouts demonstrate two significant equity issues that buyouts currently face—access by homeowners and forced displacement of tenants.

Low-income homeowners may struggle to access buyout programs if they cannot afford to wait for the buyout process to be completed. Some homeowners backed out of Westerly's program during the long waiting period because they were “losing interest in the program, particularly since the delay meant that they had to borrow more money to repair their properties.”¹⁰⁶ Low-income homeowners may not be able to afford to take out loans for years before they can finally sell their homes, so this could preclude them from being able to take advantage of the program.

Low-income tenants living in purchased properties lose their housing and may need assistance to find alternative housing. Westerly had challenges dealing with displaced tenants, because the town “does not have a housing agency or real estate expertise, [and] it took staff time and capacity to assist tenants.”¹⁰⁷ Tenants may not know where they can find the resources that they need to help them find housing, and working with town officials who are not experts on housing issues may make the process of relocating even more challenging. Identifying resources equipped to help tenants with housing and encouraging displaced tenants to use those resources might make the process go more smoothly and ensure that tenants understand and claim their legal rights to receive assistance when they are forced to relocate.

This section assists in connecting legal assistance and other resources with low-income homeowners and tenants during flood-related buyout programs. It discusses these resources and assistance under federal and Rhode Island law before considering gaps and challenges that may limit the applicability of these tools in the buyout context. By understanding how these challenges affect low-income homeowners and tenants, Rhode Island and its municipalities may be able to design buyout programs that address the financial burdens associated with buyouts and more equitably implement programs to move more residents out of the dangerous and unhealthy conditions of flood-prone properties.¹⁰⁸ Specific information on accessing these programs is provided in Appendix A.

3.1 Legal Resources and Assistance for Homeowners and Tenants Under Federal Law

Two key federal laws require FEMA and HUD to provide resources and assistance to displaced residents following a disaster declaration or during the completion of voluntary buyout programs.

¹⁰⁴ *Id.* at 56-57.

¹⁰⁵ Julie M. Curti, Strategies for Equitable Climate Change Adaptation: Lessons from Buyback and Elevation Programs in Rhode Island 58 (June 2015) (unpublished M.C.P. thesis, Massachusetts Institute of Technology) (on file with the Massachusetts Institute of Technology Library).

¹⁰⁶ *Id.* at 57.

¹⁰⁷ *Id.* at 58.

¹⁰⁸ See generally A.R. Siders, [Social Justice Implications of U.S. Managed Retreat Buyout Programs](#), 152 CLIMATIC CHANGE 239 (2019) (discussing recommendations for reducing inequalities, including wealth inequality).

This section describes legal resources and assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)¹⁰⁹ and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).¹¹⁰ The Stafford Act sets forth federal guidelines for the distribution of aid following a disaster. It created two programs that may be useful to homeowners and renters following a presidentially-declared disaster: the Individual and Household Program (IHP)¹¹¹ and the Disaster Legal Services (DLS) Program.¹¹² The URA provides relocation assistance for forced relocation caused by a federal government program. Both of these Stafford Act programs and assistance available under the URA are described below.

3.1.1 Individual and Household Program

The IHP provides housing assistance to homeowners and renters whose property is damaged or destroyed.¹¹³ IHP housing assistance is available after a presidentially-declared disaster to residents who have been displaced because their property is uninhabitable.¹¹⁴ IHP housing assistance may come in the form of financial assistance (direct payment of funds to individuals for lodging expenses, rental assistance, and repair or replacement costs) or direct assistance (FEMA directly provides assistance by providing temporary housing units or repairing or constructing housing).¹¹⁵ This program thus can provide rental assistance which would allow displaced homeowners and renters to relocate and may ease some of the financial burdens placed on residents immediately after a disaster.

The IHP program is only available to qualified applicants. Applicants must demonstrate that they are United States citizens, non-citizen nationals, or qualified aliens and FEMA must be able to verify their identities.¹¹⁶ Applicants must also demonstrate that insurance and other disaster assistance does not meet their needs and that their needs and expenses are caused by the disaster.¹¹⁷ Homeowners must document that they own and occupied the damaged property to be able to receive housing assistance, while renters must document that they occupied the damaged property.¹¹⁸ Applicants can apply for IHP assistance online, on FEMA's smartphone application, through a toll-free helpline, in

¹⁰⁹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207.

¹¹⁰ Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. §§ 4601-4655. *See* Appendix A *infra* p. 12-13 for more information about applying for URA assistance.

¹¹¹ *Id.* § 5174.

¹¹² *Id.* § 5182.

¹¹³ *See* Appendix A *infra* p. 11-12 for more information about applying for IHP assistance.

¹¹⁴ *Id.*

¹¹⁵ FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE 44-5 (2019).

¹¹⁶ *Id.* at 47.

¹¹⁷ *Id.*

¹¹⁸ *See id.* at 52-56. Documentation to verify occupancy includes utility bills; merchant's statements; employer's statements; lease/housing agreements; rent receipts; public official's statements; and current driver's licenses, state issued ID cards, or voter registration cards. *Id.* at 53. Documentation to verify ownership includes deeds or official records; mortgage documentation; real property insurance documents, bills, or payment records; structural insurance documentation; property tax receipts or property tax bills; manufactured home certificates of title; real estate provisions; contracts for deeds; land installment contracts; quitclaim deeds; bill of sales or bonds for title; and wills naming an applicant heir to the property and a death certificate. *Id.* at 55.

person at a Disaster Recovery Center, or in emergency shelters with the assistance of a FEMA staff member who is a part of a Disaster Survivor Assistance Team.¹¹⁹ Most affected homeowners and tenants may be able to prove that they qualify, but low-income individuals with insecure housing arrangements may face difficulty in documenting occupancy. These individuals may require additional assistance in obtaining benefits.

The IHP program is active for a limited time after a disaster. IHP assistance is only available for eighteen months following a presidential disaster declaration, but “[t]he President may extend the period of assistance due to extraordinary circumstances if an extension would be in the public interest.”¹²⁰ The time limit on IHP assistance makes it useful for homeowners and tenants immediately following a disaster, but the program is unlikely to help residents participating in buyout programs which might be far from completion at the end of the eighteen month period. Expiration of IHP assistance may limit the ability of low-income homeowners to participate in buyout programs.

3.1.2 Disaster Legal Services

The DLS Program provides legal assistance to homeowners and renters related to flooding disasters.¹²¹ As described in the following passage, the Stafford Act authorizes support for legal assistance through private attorneys.

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.¹²²

This program provides free legal services for low-income individuals through the American Bar Association. The service is limited to “those disaster survivors who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or resulted from the major disaster.”¹²³ Eligible individuals can access the legal services by contacting a toll-free number that is established for the disaster region or by speaking with a DLS representative at a FEMA Disaster Recovery Center.¹²⁴

¹¹⁹ *Id.* at 68-69.

¹²⁰ *Id.*

¹²¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5182; *see also* *Disaster Relief*, AMERICAN BAR ASSOCIATION (Oct. 10, 2018), https://www.americanbar.org/groups/committees/disaster/disaster_relief/. *See* Appendix A *infra* p. 12 for more information about accessing DLS assistance.

¹²² Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5182.

¹²³ 44 C.F.R. § 206.164(a) (2003).

¹²⁴ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE, 220 (2019).

DLS services are provided by local lawyers and managed through the local bar association. The local lawyers participating in the program can assist qualified individuals with a range of legal issues, such as insurance claims, home repair contracts, and landlord-tenant issues. However, DLS lawyers are not permitted to take any fee-generating cases, which are cases “which would not ordinarily be rejected by local lawyers as a result of [their] lack of potential remunerative value.”¹²⁵ Fee-generating cases “such as lawsuits[] are not covered by this service and may be referred to private lawyers through existing lawyer referral services in the affected area.”¹²⁶ While DLS may not address all legal needs of qualifying users, the opportunity to speak with a local attorney for free could be valuable to both tenants and homeowners who are trying make decisions related to housing, including buyout programs.

The DLS program is activated when the President declares a major disaster for which Individual Assistance (IA) is available and remains active for an indeterminate time.¹²⁷ “DLS can be activated immediately following the IA declaration and continue until FEMA, in coordination with the legal representatives and the state, territorial, or tribal government determine [*sic*] that the hotline and services are no longer needed.”¹²⁸ Although the program may be discontinued before an entire buyout process has been completed, property owners could learn more about the process of selling their property and resources that are available by speaking with an attorney, and tenants would be able to discuss their rights and options for relocation. This program may also be valuable because lawyers who participate in the DLS program are from the impacted area¹²⁹ and may recommend other local legal services that may be able to continue providing assistance after DLS is no longer available.

3.1.3 URA Relocation Assistance

The URA may provide financial assistance to tenants forced to move due to a buyout program funded in whole or part by the federal government. The URA is available to individuals subject to forced relocation caused by any federal government program—including, but not limited to, presidentially-declared disasters.¹³⁰ It establishes standards for federal projects that displace residents,¹³¹ including acquisition projects by or funded by FEMA and HUD.¹³² “Displaced persons”

¹²⁵ 44 C.F.R. § 206.164(b) (2003).

¹²⁶ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE, 219 (2019).

¹²⁷ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., [INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE](#), 218 (2019).

¹²⁸ *Id.*

¹²⁹ *See id.* at 218.

¹³⁰ Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. §§ 4601-4655. *See* Appendix A *infra* p. 12-13 for more information about applying for URA assistance.

¹³¹ 42 U.S.C. § 4601 (defining “displaced persons” to include “any person who moves from real property, or moves his personal property from real property[,] as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance”); *id.* § 4622 (moving and related expenses).

¹³² *URA Relocation Assistance for Tenants Fact Sheet*, FEMA, https://www.fema.gov/pdf/government/grant/resources/hbf_ii_3.pdf; U.S. DEP’T OF HOUS. & URBAN DEV., [RELOCATION ASSISTANCE TO TENANTS DISPLACED FROM THEIR HOMES](#) 1 (2016).

are entitled to relocation assistance in the form of moving expenses or payments that can be used to rent or lease replacement housing for up to 42 months.¹³³ Homeowners who choose to participate in voluntary buyout programs are not “displaced persons” under the URA, because they do not have to move as a result of a federally funded program.¹³⁴ However, tenants living in rental properties that are acquired in a voluntary buyout can be considered displaced persons and may apply for assistance.¹³⁵ URA assistance might be helpful to tenants at the time a buyout is being completed, which may be years after a disaster when the assistance triggered by a disaster is no longer available.

3.2 Legal Resources for Homeowners and Tenants in Rhode Island

Rhode Island residents who require legal assistance associated with buyout programs may qualify for assistance through several programs. This section describes three resources that may be useful for low-income individuals who need help to assert their legal rights and access federal assistance. They include the Rhode Island Bar Association’s Volunteer Lawyer Program (VLP) and Lawyer Referral Service (LRS) and the Rhode Island Legal Services (RILS) Housing Law Center. These resources are always available, even when there has been no recent disaster declaration, which may make them the most useful resources for residents who are involved in buyout programs.

3.2.1 Volunteer Lawyer Program

The Rhode Island Bar Association offers pro bono legal services through its VLP.¹³⁶ In order to be eligible for free legal assistance through this program, a potential client’s household cannot exceed 125% of the federal poverty line.¹³⁷ Upon intake, potential clients are asked for contact information, statistical data (i.e. race, date of birth, gender, citizenship), and information about the client’s case.¹³⁸ The program matches clients with an attorney who is knowledgeable about the area of law at issue, so the program would try to match a client with questions related to housing with an attorney who has experience in housing law.¹³⁹ Following a disaster, the VLP increases its efforts to recruit attorneys to meet the heightened demand for legal services.¹⁴⁰ Although the eligibility requirements do not change when there is a disaster, the program will take into account the potential client’s circumstances at the time that they seek assistance.¹⁴¹ Therefore, individuals who may not have qualified for the program before a disaster may become eligible if they or a member of their household loses their income as a result of a disaster. Because the program relies on volunteers, it is not guaranteed that there will always be enough available attorneys who are knowledgeable about

¹³³ 42 U.S.C. §§ 4622, 4624.

¹³⁴ *Id.* § 4601.

¹³⁵ *Id.*

¹³⁶ *Volunteer Lawyer Program Sign-Up Intro*, RHODE ISLAND BAR ASSOCIATION, <https://ribar.com/page.aspx?id=127>. See Appendix A *infra* p. 13 for more information about contacting the Volunteer Lawyer Program.

¹³⁷ Telephone Interview with Rhode Island Bar Association Volunteer Lawyer Program (Apr. 16, 2020).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

housing issues that could be raised by disasters and buyouts, but this resource could be a useful starting place for people who need help finding an attorney who can assist with their cases.

3.2.2 Lawyer Referral Service

Individuals who are not eligible for free VLP assistance can get help through the LRS.¹⁴² Anyone may contact the LRS for a free half hour consultation with an attorney.¹⁴³ After the initial consultation, the client can discuss fees with the attorney if they choose to pursue further assistance.¹⁴⁴ Following previous disasters, including the 2010 floods, Hurricane Katrina, the 1996 Buzzards Bay oil spill, and the Station Nightclub fire, the LRS responded to increased demand for legal assistance by seeking volunteers from the Rhode Island Bar Association.¹⁴⁵ During these crises, attorneys have assisted clients with housing issues, obtaining benefits, and insurance issues.¹⁴⁶ Similar to the VLP, this may be a good starting point for Rhode Island residents who have legal questions, but the availability of assistance may be limited in times of high demand due to the program's dependence on volunteers. The program may be useful to homeowners and tenants at the time of a buyout because it is always available, even when no disaster has been declared.

3.2.3 Rhode Island Legal Services

The RILS Housing Law Center provides free legal representation to low-income Rhode Island residents with issues related to federally subsidized housing, private landlords and tenants, and public housing.¹⁴⁷ The services are available to individuals and families who are at 125% or lower of the United States Poverty Guidelines (with exceptions for victims of domestic violence and elderly individuals, who can receive assistance regardless of income levels).¹⁴⁸ The intake process varies depending on whether the potential client calls, has an appointment, walks in, or is referred by the family court, but all applicants are asked for a range of personal and financial information and information about their legal problem.¹⁴⁹ RILS may be able to assist low-income homeowners in selling their property to the government in a buyout, and they may be able to advise tenants who are evicted because their landlord is selling a property in a buyout. In either case, RILS would assist clients in asserting their legal rights and finding resources available to assist them in finding alternative housing.

¹⁴² *Finding and Choosing a Lawyer*, RHODE ISLAND BAR ASSOCIATION, <https://ribar.com/for-the-public/finding-and-choosing-a-lawyer/>. See Appendix A *infra* p. 13 for more information about contacting the Lawyer Referral Service.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ E-mail from Susan Fontaine, Public Services Dir., R.I. Bar Ass'n., to Sarah Friedman, Sea Grant Law Fellow (Apr. 17, 2020) (on file with author).

¹⁴⁶ *Id.*

¹⁴⁷ *Housing*, RHODE ISLAND LEGAL SERVICES, http://rils.org/practice_areas.cfm?areaid=7.

¹⁴⁸ E-mail from Janet Gilligan, Deputy Dir., R.I. Legal Services., to Sarah Friedman, Sea Grant Law Fellow (Apr. 24, 2020) (on file with author).

¹⁴⁹ *Id.* (noting that applicants are asked for their “name; address; income; amount of available financial assets, i.e. bank accounts; marital status; household members, their names, relationships and ages; the name of the opposing party in their case; their citizenship status, U.S. citizen, legal resident, or other excepted category i.e. certain refugees; and the nature of their legal problem.”)

3.3 Gaps in Legal Resources for Homeowners and Tenants

Federal law authorizes some assistance for homeowners and renters and state legal programs are available to help residents access those benefits, but there are some areas where available benefits and legal assistance may be lacking. Between the time that a disaster occurs and the time at which a buyout program is completed and the residents must relocate, low-income homeowners and renters may need continuous support, but the resources may not exist to provide continuous support.

3.3.1 Availability of Legal Assistance

Low-income tenants and homeowners may face several challenges when seeking legal assistance when navigating buyout programs. A number of legal services are available after a disaster, including the Stafford Act DLS program, the Rhode Island Bar's VLP and LRS programs, and RILS's Housing Law Center. Individuals affected by buyout programs may not be assisted by these programs due to limited availability of free and low-cost legal assistance, income limits on obtaining assistance through these programs, and limits on the type of work that may be available through legal assistance programs. This section discusses each of these issues.

Legal assistance programs may not be able to meet the demand for legal services following a disaster. All of the programs other than the Housing Law Center rely on volunteers, so the availability of services depends on the number of attorneys with the appropriate expertise who choose to participate in the program and the demand for their services—which is likely to be substantial after a disaster. The Housing Law Center is staffed by attorneys who are knowledgeable about housing issues, but they can only take on a limited number of cases. The time lag between a disaster and a buyout program may ease demand for legal services, but also means that the federally-supported DLS program will not be available, reducing the available legal assistance. The programs try to meet demand, including increased the needs caused by disasters, but everyone who needs legal assistance may not be able to get it.

A second challenge with availability of legal assistance relates to income limits. While DLS is available to anyone with insufficient resources to obtain at-cost legal services, services through VLP and RILS are limited to 125% of federal poverty guidelines—currently \$32,750 for a family of four.¹⁵⁰ Low-income tenants and homeowners whose earnings exceed this amount can consult with a private lawyer for 30 minutes for free through the LRS, which may result in free or low-cost services. However, there is no guarantee of this support, which may result in affected persons navigating the buyout and associated benefit processes without legal counsel.

Finally, legal assistance associated with buyout programs may be limited in scope. Individuals in buyout programs may need a range of assistance, from help successfully claiming assistance to negotiating buyouts to landlord-tenant issues. While most legal assistance resources can include any type of legal assistance, DLS cannot be used for work that would ordinarily generate fees for attorneys, such as litigation. This limitation could apply to certain legal needs associated with buyout

¹⁵⁰ Annual Update of the HHS Poverty Guidelines, 85 Fed. Reg. 3060 (Jan. 17, 2020) (listing 2020 poverty guidelines).

programs, such as landlord-tenant and property purchase negotiations. Affected individuals would need to find alternative counsel for these services.

3.3.2 Time Limits on Disaster Relief

Time limitations on post-disaster assistance poses a particular challenge for low-income homeowners. Stafford Act IHP assistance is tied to a disaster declaration and ends 18 months after the disaster has ended unless extended by the President.¹⁵¹ If a buyout takes several years, like the buyouts in Westerly, homeowners may not be able to afford to wait for the government to purchase their home after they stop receiving disaster relief assistance. Low-income homeowners who rely on the IHP and lack other adequate insurance or other support may be particularly affected by the cessation of IHP benefits. URA benefits, where available, do not fill this gap, as these benefits start with the closing date of the acquisition. Without funding that runs through consummation of a buyout, low-income homeowners may be unable to participate equitably in the program.

Time limits on relief have different effects on tenants than homeowners in the context of buyout programs. Tenants may be eligible for IHP assistance if forced to move after a disaster, and tenants who are occupying a residence will be eligible for URA benefits if forced to relocate due to a federally-funded voluntary or involuntary buyout program. Thus, time limits on post-disaster aid may be less important to low-income tenants occupying purchased property than other challenges, such as the availability of alternative housing. In certain cases, however, time limits on assistance may pose direct challenges for tenants. Landlords who are planning to participate in a buyout program may not invest in returning leased units to a livable condition. In such instances, affected tenants may not be able to reoccupy their dwelling, even after IHP assistance expires, and their eligibility for URA assistance may be affected if they are not occupying the dwelling when the buyout is consummated. As a result, while federal assistance may be available for many tenants, time limits may affect tenants in specific circumstances.

3.3.3 Availability of Replacement Housing

Low-income homeowners and tenants may be particularly affected by limited availability of replacement housing. Low-income homeowners may be unwilling to participate in voluntary buyout if they cannot afford equivalent housing elsewhere, and low-income tenants may face challenges finding affordable rental units. Other jurisdictions have developed models to address these challenges.

Low-income homeowners may benefit from relocation assistance analogous to that provided by the URA. The URA does not provide any assistance to homeowners who voluntarily participate in buyouts, because they are not “displaced persons” as defined in the Act.¹⁵² However, localities can choose to apply the URA model to voluntary buyouts as a matter of policy. Austin, Texas applies the URA requirements to all flood buyouts, including voluntary buyouts, in order “to provide a

¹⁵¹ See FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE 68-69, 218 (2019).

¹⁵² 42 U.S.C. § 4601

consistent benefit to displaced owners regardless of whether the project was approved as voluntary or involuntary.”¹⁵³ This additional financial support includes relocation assistance, moving costs, and incidental expenses, including “financial assistance provided to displaced owners to buy a home when the cost of comparable home is more than the original home.”¹⁵⁴ While this program increases costs for the city, it enables voluntary sellers to more easily find equivalent replacement housing.

Low-income tenants who are displaced from their housing may find that there may not be alternative affordable housing available in their community, even with URA and other relocation benefits. It may be particularly difficult for low-income tenants who rely on the Housing Choice Voucher (HCV) Program to find housing where their voucher is accepted due to source-of-income discrimination. The HCV program is designed to assist low-income renters who choose to rent from private landlords by paying a portion of their rent,¹⁵⁵ but landlords are free to turn renters away simply because they are voucher recipients.¹⁵⁶ In a 2018 study of Rhode Island rental housing by SouthCoast Fair Housing, researchers discovered that “9300 households rely on the HCV program to afford quality rental housing, and participating renters should be able to afford more than a third of statewide listings. Yet the same tenants will ultimately be shut out of approximately 93% of units, regardless of their individual qualifications.”¹⁵⁷ These challenges will likely be exacerbated when tenants are displaced after a disaster. Thus, HCV recipients may not be able to find alternative housing where a landlord will accept a housing voucher when they are displaced or evicted because of a buyout.

Challenges related to the availability of subsidized housing units may be ameliorated in several ways. A bill currently before the Rhode Island General Assembly proposes to add “lawful source of income” to the classes protected under the Rhode Island Fair Housing Practices Act.¹⁵⁸ This amendment would make it illegal to discriminate against voucher recipients, increasing the supply of available housing units for low-income tenants. The 2016 NY Rising Buyout and Acquisition Program Policy Manual addresses a different approach. It notes that tenants who are dislocated from “Section 8” subsidized housing due to a buyout are “relocated to an equivalent subsidized replacement dwelling” unless they “relocate into a market-rate dwelling.”¹⁵⁹ The state directly helps

¹⁵³ CITY OF AUSTIN OFFICE OF THE CITY AUDITOR, [AUDIT REPORT: FLOOD BUYOUT PROGRAM](#) 5 (2017).

¹⁵⁴ *Id.*

¹⁵⁵ See Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, 24 C.F.R. § 982; see also *Housing Choice Voucher Fact Sheet*, HUD.GOV,

https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Oct. 28, 2019). The Housing Choice Voucher Program is frequently referred as the “Section 8” Program.

¹⁵⁶ See CLAUDIA WACK, SOUTHCOAST FAIR HOUSING, INC., [“IT’S ABOUT THE VOUCHER”: SOURCE OF INCOME DISCRIMINATION IN RHODE ISLAND](#) 1 (2019). SCFH is a non-profit organization that provides education and resources to promote fair housing in Southeastern Massachusetts and Rhode Island. *Id.* at 2.

¹⁵⁷ *Id.* at 4.

¹⁵⁸ See S.B. 2134, 2019-20 Legis. Sess. (R.I. 2020); H.B. 7594, 2019-20 Legis. Sess. (R.I. 2020).

¹⁵⁹ NEW YORK STATE HOMES AND COMMUNITY RENEWAL, GOVERNOR’S OFFICE OF STORM RECOVERY, [NY RISING BUYOUT AND ACQUISITION PROGRAM: POLICY MANUAL](#) 42 (2016). It specifically notes that “[r]elocation counsel may be particularly important to tenants displaced from subsidized housing” due to the potential challenges of leaving subsidized housing. *Id.* The most recent version of the policy manual, published in 2019, no longer includes this

subsidized housing recipients find alternative replacement housing. However, the Manual notes that “[s]ometimes, it is not possible to locate an affordable comparable replacement dwelling for a displaced tenant.”¹⁶⁰ In such instances, the state offers “Housing of Last Resort” support on a case-by-case basis to affected tenants.¹⁶¹ Changes to state anti-discrimination law could increase the supply of replacement housing for HCV residents in Rhode Island, while direct support may be needed to enable affected tenants to find comparable replacement housing.

3.4 Conclusion

Federal and state assistance programs provide some support to low-income homeowners and tenants who are affected by buyouts. These programs include IHP and DLS programs under the Stafford Act and relocation assistance under the URA, as well as legal services offered by RILS and the Rhode Island Bar Association. Each of these programs offers specific assistance, which may be helpful to qualified low-income homeowners and tenants involved in buyouts, but each also has limitations that may affect the usefulness of these resources in the context of buyout programs.

This study identified three specific challenges associated with assistance for low-income homeowners and tenants in the buyout context. Both tenants and homeowners who turn to the free and low-cost legal assistance programs to seek help with obtaining benefits and other housing issues could benefit from speaking with a knowledgeable local attorney, but they may not be able to access these services for reasons including limited availability of lawyers, income caps on assistance, and limits on the types of services provided. Second, time limits on financial assistance may pose a challenge for low-income homeowners, who may need continuous assistance from a disaster declaration until the property purchase. There may be a substantial period when post-disaster assistance is not available but buyouts are not completed, which could prevent low-income homeowners from participating in a buyout program. Tenants will be less affected by time limits on disaster assistance in many cases, as they are eligible for URA assistance when displaced by a buyout, but they may be affected by gaps in assistance in certain circumstances. Third, low-income tenants and homeowners alike may have difficulty finding equivalent replacement housing, particularly for those who are dependent on the HCV program. Without additional financial support for relocation, low-income individuals may be pushed out of their communities following buyouts. Other jurisdictions have adopted policies to ensure that alternative housing is available. By addressing gaps in the availability of legal resources for low-income individuals, Rhode Island and its municipalities may be able to make buyout programs more equitable.

4 Recent Proposed Federal Legislation Affecting Buyout Programs

Federal buyout programs are part of a larger suite of flood protection programs, including the National Flood Insurance Program (NFIP). The law establishing the NFIP, the National Flood

language. *See* GOVERNOR’S OFFICE OF STORM RECOVERY, [POLICY MANUAL: NY RISING BUYOUT AND ACQUISITION PROGRAM](#) (2019).

¹⁶⁰ NEW YORK STATE HOMES AND COMMUNITY RENEWAL, GOVERNOR’S OFFICE OF STORM RECOVERY, [NY RISING BUYOUT AND ACQUISITION PROGRAM: POLICY MANUAL](#) 43 (2016).

¹⁶¹ *Id.*

Insurance Act of 1968 (NFIA),¹⁶² has been periodically extended and amended, along with associated laws such as the Stafford Act. The Biggert-Waters Flood Insurance Reform Act of 2012 was the last major legislation to extend and reform the NFIP.¹⁶³ It extended the National Flood Insurance Program for five years and modified the program to meet the large number of insurance claims that followed Hurricane Katrina and other flood events.¹⁶⁴ With respect to buyout programs, the Act allocated funding to support flood zone mitigation programs that “will eliminate future payments from the National Flood Insurance Fund for severe repetitive loss structures through an acquisition or relocation activity.”¹⁶⁵ The Act also maintained the NFIA’s mitigation assistance program, which allows grants from the National Flood Mitigation Fund to be used to acquire repetitive loss properties.¹⁶⁶ This section outlines how Congressional actions subsequent to the Biggert-Waters Act would affect buyout programs. A complete list of relevant legislation and associated bill summaries is provided in Appendix B.

Most flood insurance reform legislation since 2012 has dealt with delaying or repealing Biggert-Waters and has not directly related to buyouts.¹⁶⁷ The provisions in Biggert-Waters focused on the actuarial soundness of the NFIP caused a sharp increase in flood insurance premiums, affecting the affordability of insurance and negatively affecting property values.¹⁶⁸ These challenges were controversial, leading to a substantial number of legislative proposals to repeal, delay, amend, or reform the Act. A few of these proposals have been enacted into law. The Homeowner Flood Insurance Affordability Act of 2014 delayed the original timeline for implementation of the Biggert-Waters reform.¹⁶⁹ The NFIP has more recently been extended without substantive amendment in 2018 and 2019. While buyout programs have not been directly amended by this legislation, several proposed bills since 2012 would amend or extend flood mitigation programs, including buyout programs.

Bills that mention funding for mitigation measures (including buyouts) generally support increasing funding for disaster mitigation programs.¹⁷⁰ The measures included in this legislation has included both direct assistance to grant recipients and, more recently, capitalization of revolving loan programs to be managed at the state level.

¹⁶² Pub. L. 90-446, 82 Stat. 572, incorporated as amended at 42 U.S.C. §§ 4001-4131.

¹⁶³ Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141, §§ 100201-100203, 126 Stat. 916, 916 (2012).

¹⁶⁴ *See id.*

¹⁶⁵ Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141, § 100225, 126 Stat. 938, 939 (2012).

¹⁶⁶ 42 U.S.C. § 4104c.

¹⁶⁷ *See* Appendix B *infra*, pp.14-39.

¹⁶⁸ Austin Johnson, *Bigger-Waters and Rising Tides: Searching for Enduring Reform for the National Flood Insurance Program in Today's Politics*, 57 HOUS. L. REV. 227, 239 (2019).

¹⁶⁹ Homeowner Flood Insurance Affordability Act of 2014, Pub. L. No. 113-89, 28 Stat. 1022 (2014).

¹⁷⁰ *See* Flood Mitigation Expense Relief Act of 2013, H.R. 1268, 113th Cong. (2013); Responsible Implementation of Flood Insurance Reform Act of 2013, H.R. 3156, 113th Cong. (2013); Responsible Implementation of Flood Insurance Reform Act of 2013, S. 1098, 113th Cong. (2013); National Flood Insurance Program Reauthorization Act of 2019, H.R. 3167, 116th Cong. (2019); National Flood Insurance Program Reauthorization and Reform Act of 2019, H.R. 3872, 116th Cong. (2019).

Bills in the 113th Congress (2013-14) focused on increasing direct appropriations for flood mitigation or requiring the expenditure of a certain percentage of appropriated funding for mitigation activities. Three bills in the House (one with a Senate counterpart) proposed in 2013 mentioned funding for mitigation programs.

- The Flood Mitigation Expense Relief Act of 2013, H.R. 1268, called for increased funding for mitigation. The bill proposed appropriating \$100,000,000 for the Stafford Act’s predisaster hazard mitigation program¹⁷¹ and \$100,000,000 for the NFIA’s flood mitigation assistance program,¹⁷² which could be used by states and local governments to acquire properties in flood zones.¹⁷³
- The HOME Act of 2014, H.R. 3924, would similarly authorize appropriations for flood risk mitigation under the NFIA and authorize increased appropriations for pre-disaster mitigation under the Stafford Act.¹⁷⁴
- The Responsible Implementation of Flood Insurance Reform Act of 2013, H.R. 3156 and S. 1098, proposed in both the House and the Senate, also promoted the use of funding to complete mitigation projects and stated “that not less than 25 percent of the estimated aggregate amount of such assistance provided to a grant recipient is used to elevate, acquire, or relocate eligible properties.”¹⁷⁵

These proposals reflect an understanding that funding for mitigation activities can reduce flood exposure, increasing actuarial soundness without raising flood insurance rates.

Legislative activity related to flood mitigation died down for several years following the passage of Homeowner Flood Insurance Affordability Act of 2014. Only three bills were identified in the 114th Congress (2015-16), none containing amendments affecting buyout programs. The impending end to NFIP appropriations led to a higher volume of legislation in 115th Congress (2017-18), which included 22 introduced bills. This activity resulted in a one-year extension to the NFIP but did not yield substantive amendments, and none of the proposed legislation contained provisions relevant to buyout programs.

Attention to flood reform has continued in the 116th Congress (2019-present) due to the need to further extend the NFIP. One bill to extend the program for a year was enacted in 2019 but again made no substantive amendments to the law. However, several currently-pending bills do contain provisions relevant to buyout programs.

- The National Flood Insurance Program Reauthorization Act of 2019, H.R. 3167, sponsored by Representative Maxine Waters (D), proposes allocation of funds for predisaster

¹⁷¹ See Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5133.

¹⁷² See National Flood Insurance Act of 1969, 42 U.S.C. § 4104c.

¹⁷³ Flood Mitigation Expense Relief Act of 2013, H.R. 1268, 113th Cong. § 3 (2013).

¹⁷⁴ Helping Owners Mitigate Effectively Act of 2014 (HOME Act of 2014), H.R. 3924, 113th Cong. (2014).

¹⁷⁵ Responsible Implementation of Flood Insurance Reform Act of 2013, H.R. 3156, 113th Cong. § 5 (2013); Responsible Implementation of Flood Insurance Reform Act of 2013, S. 1098, 113th Cong. § 5 (2013).

mitigation projects, including acquisition projects that will convert structures to open space.¹⁷⁶ H.R. 3167 would increase funding for the Increased Cost of Compliance (ICC) program to an aggregate liability of \$60,000 for a single property and allow that coverage to be used for property acquisition and relocation.¹⁷⁷

- The National Flood Insurance Program Reauthorization and Reform Act of 2019, H.R. 3872 is sponsored by Representative Pallone (D-NJ) and is cosponsored by sixteen Democrats and two Republicans.¹⁷⁸ It has a companion bill in the Senate, S. 2187, which is sponsored by Sen. Menendez (D-NJ) and has six Democratic and four Republican cosponsors. Like H.R. 3167, H.R. 3872 proposes use of Increased Cost of Compliance Coverage to acquire property to convert to open space.¹⁷⁹ H.R. 3872 states that “[t]he President shall set aside from the Disaster Relief Fund an amount equal to 10 percent of the average amount appropriated to the Fund during the preceding [ten] fiscal years to provide assistance for mitigation activities under section 1366 of the National Flood Insurance Act of 1968.”¹⁸⁰
- The State Flood Mitigation Revolving Fund Act of 2019, which has both House and Senate versions, would authorize FEMA to make capitalization grants to create state revolving loan funds which could be used for several purposes, including property acquisition by local governments.¹⁸¹

These bills suggest an increasing focus in the current Congress on increasing resources for mitigation activities through continuing funding approaches that do not rely on continued appropriations.

Flood insurance reform has been the source of significant attention in Congress since passage of the Biggert-Waters Act in 2012. Much of the proposed legislation related to flood insurance focuses on issues of flood mapping and amending the timeline of the Biggert-Waters insurance rate reforms. However, a few bills have mentioned acquisition of flood-prone properties. Based on these bills, there appears to be support for mitigation programs to acquire repetitive loss properties to decrease the burden that these properties place on the flood insurance system. Buyout programs further the goal of reducing the financial burden of repeated claims on repetitive loss properties, and future legislation related to Biggert-Waters and the National Flood Insurance is likely to continue to support that mitigation approach.

5 Conclusion

Buyouts are a novel approach to mitigating flood risks in Rhode Island. While these programs can permanently mitigate the flood risks associated with coastal properties, their administration can also

¹⁷⁶ National Flood Insurance Program Reauthorization Act of 2019, H.R. 3167, 116th Cong. § 301 (2019).

¹⁷⁷ *Id.*

¹⁷⁸ National Flood Insurance Program Reauthorization and Reform Act of 2019, H.R. 3872, 116th Cong. (2019).

¹⁷⁹ *Id.* at § 202.

¹⁸⁰ *Id.* at § 201.

¹⁸¹ H.R.1610, 116th Cong. (2019); S. 2187, 116th Cong. (2019). The Senate version of this bill is sponsored by Jack Reed (D-RI).

raise a variety of equity challenges. This study has discussed three types of equity issues in this context: (i) how civil rights laws may affect buyout programs and give rise to liability for governments; (ii) how buyout programs raise particular challenges for low-income homeowners and tenants and the gaps in legal resources to ameliorate those challenges; and (iii) federal legislative proposals to amend federal laws governing buyout programs associated with flood insurance. By considering and developing policy responses to address equity challenges, Rhode Island and its municipalities can ensure that future buyout programs remain compliant with federal civil rights laws and available to all residents of areas where buyouts are considered, regardless of income.

Appendix A: Guide to Legal Resources

This appendix provides information on how tenants may apply for assistance, eligibility limitations on assistance, cost of services provided, and the timeframe during which programs are available.

1 Individual and Household Program

- Applying for assistance:
 - Online Application: <https://www.disasterassistance.gov/>
 - FEMA Mobile App: <https://www.fema.gov/mobile-app>
 - Telephone Number: (800) 621-3362 (toll-free helpline)
 - FEMA sets up Disaster Recovery Centers near impacted areas where people can learn about available resources and apply for assistance in person.¹⁸²
 - FEMA may also send Disaster Survivor Assistance Teams to affected area so that FEMA staff can assist with applications and accessing other resources in emergency shelters.¹⁸³
- Eligibility:
 - “The applicant must be a U.S. citizen, non-citizen national, or qualified alien.”¹⁸⁴
 - “FEMA must be able to verify the applicant's identity.”¹⁸⁵
 - “The applicant’s insurance, or other forms of disaster assistance received, cannot meet their disaster-caused needs.”¹⁸⁶
 - “The applicant’s necessary expenses and serious needs are directly caused by a declared disaster.”¹⁸⁷
 - Renters applying for Housing Assistance must establish occupancy; homeowners must establish occupancy and ownership¹⁸⁸
- Timeframe: Eighteen months, unless the president chooses to extend the program¹⁸⁹

2 Disaster Legal Services

- Applying for assistance:
 - Website: https://www.americanbar.org/groups/young_lawyers/projects/disaster-legal-services/
 - When a disaster has been declared, the website is updated to provide information about resources that are available in the impacted states and the relevant contact information.

¹⁸² See *Disaster Recovery Centers Fact Sheet*, FEMA (2019), https://www.fema.gov/media-library-data/1565187021337-6c65cb031104bf24f64a58e68dbb927a/FACTSHEET_DisasterRecoveryCenters_FINAL2019Compliant.pdf.

¹⁸³ FED. EMERGENCY MGMT. AGENCY, U.S. DEP’T OF HOMELAND SEC., *INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE*, 69 (2019).

¹⁸⁴ *Id.* at 47.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ See *id.* at 52-56.

¹⁸⁹ *Id.* at 68-69.

- Eligibility:
 - “[T]hose disaster survivors who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or resulted from the major disaster.”¹⁹⁰
- Cost:
 - Free
- Timeframe:
 - “DLS can be activated immediately following the IA declaration and continue until FEMA, in coordination with the legal representatives and the state, territorial, or tribal government determine that the hotline and services are no longer needed.”¹⁹¹

3 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

- Applying for assistance:
 - HUD Regional Relocation Specialists (“HUD's Regional Relocation Specialists serve as the primary technical resource for local real estate acquisition and relocation matters”)¹⁹²:
 - Office Address: U.S. Dept. of Housing and Urban Development Office of Community Planning and Development, 10 Causeway Street, 5th Floor, RM 535 Boston, MA 02222-1092
 - Telephone Number: (617) 994-8357
 - HUD Residential Claim for Moving and Related Expenses (Families and Individuals) Form: <https://www.hudexchange.info/programs/relocation/forms/>
 - FEMA Region I
 - Office address:¹⁹³ 99 High St. Boston, MA 02110
 - Telephone Number: 1-877-336-2734
- Eligibility:
 - Tenants, who fall into the category of displaced persons, because they “must move as a direct result of rehabilitation, demolition or acquisition for a project in which Federal funds are used.”¹⁹⁴ Tenants must certify that they are United States citizens or nationals or that they are lawfully in the United States.¹⁹⁵
- Timeframe:

¹⁹⁰ 44 C.F.R. § 206.164(a) (2003).

¹⁹¹ FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE, 218 (2019).

¹⁹² *Contacts*, HUD EXCHANGE, <https://www.hudexchange.info/programs/relocation/contacts/#RI>.

¹⁹³ *Region I: CT, ME, MA, NH, RI, VT*, FEMA (2020), <https://www.fema.gov/region-i-ct-me-ma-nh-ri-vt>

¹⁹⁴ *Relocation Assistance to Tenants Displaced from Their Homes*, U.S. DEP'T OF HOUS. & URBAN DEV. 1 (2016), <https://www.hud.gov/sites/documents/1042CPD.PDF>.

¹⁹⁵ *Id.*

- Rental assistance may be available for up to forty-two months¹⁹⁶

4 Rhode Island Bar Association Volunteer Lawyer Program

- Applying for assistance:
 - Website: <https://ribar.com/for-the-public/finding-and-choosing-a-lawyer/>
 - Telephone Number: (401) 421-7758 or 1-800-339-7758
 - E-mail: jellis@ribar.com
- Eligibility:
 - Applicants cannot earn more than 125% of the federal poverty line
- Cost:
 - Free
- Timeframe:
 - Always available

5 Rhode Island Bar Association Lawyer Referral Service

- Applying for assistance:
 - Website: <https://ribar.com/for-the-public/finding-and-choosing-a-lawyer/>
 - Telephone Number: (401) 421-7799
 - Online Form: <https://ribar.com/LRS/Referral.aspx>
 - Individuals who may qualify for reduced fee services should use the phone number.
- Eligibility:
 - No eligibility requirements for consultation
- Cost:
 - Free half hour consultation. After the consultation, the client can discuss fees with the attorney.
- Timeframe:
 - Always available

6 Rhode Island Legal Services Housing Law Center

- Applying for assistance:
 - Website: <https://rils.org/programs.cfm?programid=2>
 - Telephone Number:
 - Providence: (401) 274-2652
 - Newport: (401) 846-2264
 - E-mail: ncarrara@rils.org
- Eligibility:
 - Limited to Rhode Island residents and those referred from other states' legal services programs to address a Rhode Island legal issue

¹⁹⁶ *Id.* at 5.

- Limited to families and individuals who are at 125% or lower of the United States Poverty Guidelines¹⁹⁷
- Cost:
 - Free (client may be asked to pay litigation costs)¹⁹⁸
- Timeframe:
 - Always available

¹⁹⁷ E-mail from Janet Gilligan, Deputy Dir., R.I. Legal Services., to Sarah Friedman, Sea Grant Law Fellow (Apr. 24, 2020) (on file with author).

¹⁹⁸ *Id.*

Appendix B: List of Bills

This appendix provides information on proposed legislation to amend the National Flood Insurance Act, as amended, and related legislation. It covers legislation after the enactment of the Biggert-Waters Flood Insurance Reform Act of 2012. Bills that include language related to buyout programs are noted in bold lettering and the relevant section is noted, and bills that were enacted into law are also so noted. The list is organized by Congress and bill number. Senate bills for each Congress follow House bills and refer to companion bills. Unless otherwise specified, all quoted language in this appendix is from the Congressional Research Service bill summary or introductory language for the relevant legislation at the site linked to the bill's title.

1 Flood Insurance Reform Bills from the 113th Congress (2013-14)

This research identified 22 flood insurance reform bills from the 113th Congress. Of these, only the [Homeowner Flood Insurance Affordability Act of 2013](#), H.R. 3370, was enacted into law. This bill contained elements of other proposed legislation, however. One additional bill passed the Senate but not the House - [A bill to delay the implementation of certain provisions of the Biggert-Waters \[Act\] . . . and to reform the National Association of Registered Agents and Brokers, and for other purposes](#), S. 1926. Three proposed bills would amend substantive provisions related to buyout programs.

- The [Flood Mitigation Expense Relief Act of 2013](#), H.R. 1268 would authorize appropriations to be used for mitigation activities, including property acquisition in higher flood risk areas.
- The [Responsible Implementation of Flood Insurance Reform Act of 2013](#), H.R. 3156, S. 1098, would require that 25 percent of FEMA-provided flood hazard mitigation assistance be used to “elevate, acquire, or relocate eligible properties.”
- The [HOME Act of 2014](#), H.R. 3924, would affect buyout programs by authorizing appropriations for flood risk mitigation and authorizing increased appropriations for pre-disaster mitigation under the Stafford Act.

Additional information on each of these bills is provided below.

1.1 [National Flood Insurance Program Termination Act of 2013](#), H.R. 1194, 113th Cong. (2013).

“Prohibits the Administrator of the Federal Emergency Management Agency (FEMA) from providing any new flood insurance coverage after December 31, 2013, or renewing any coverage provided before such date, under the National Flood Insurance Act of 1968. Terminates the National Flood Insurance Program on such date. Makes conforming repeal amendments to the National Flood Insurance Act of 1968, the Biggert-Waters Flood Insurance Reform Act of 2012, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, the National Flood Insurance Reform Act of 1994, the Federal Flood Insurance Act of 1956, the Real Estate Settlement Procedures Act of 1974, and the Housing and

Community Development Act of 1974. Grants the consent of Congress to any two or more states to enter into agreements or compacts for making flood insurance available to interested persons for loss and damage arising from any flood occurring in the United States.”

1.2 [Flood Insurance Premium Relief Act of 2013](#), H.R. 1267, 113th Cong. (2013).

“States that the flood insurance risk premium rate for property purchased between July 6, 2012, and January 1, 2015, shall, during the 12-month period beginning upon such purchase, be the amount chargeable for such property immediately before its purchase (thus delaying implementation of the rate increase). Requires phase-in of the rate increase, following expiration of such 12-month period, over a 10-year period, at 10% for each year. Makes conforming amendments to the National Flood Insurance Act of 1968.”

1.3 [Flood Mitigation Expense Relief Act of 2013](#), H.R. 1268, 113th Cong. (2013).

Section 3 of this bill (Increased Funding for Mitigation Programs) would affect buyout programs.

“Amends the Internal Revenue Code to allow qualified taxpayers a tax credit, up to \$5,000 in a taxable year, for flood mitigation expenses. Defines "qualified taxpayer" as: (1) a taxpayer who is the holder of a flood insurance policy under the National Flood Insurance Act of 1968 and who owns insured property for which the chargeable premium rate under such policy was increased or will increase and which has an elevation lower than the base flood elevation or is located in an area designated as having a higher flood risk, and (2) a small business with 50 or fewer employees. Terminates such credit after 2022. Authorizes appropriations to the Administrator of the Federal Emergency Management Agency (FEMA) to carry out: (1) the predisaster hazard mitigation program authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and (2) the flood mitigation assistance program authorized by the National Flood Insurance Act of 1969. **Specifies that such funds may be used only for mitigation activities and acquisition by states and communities of properties located in higher flood risk areas.** Terminates the Energy Star program of the Department of Energy (DOE) and the Environmental Protection Agency (EPA) and rescinds any amounts not obligated or expended for such program.”

1.4 [Flood Insurance Implementation Reform Act of 2013](#), H.R. 2199, 113th Cong. (2013).

“Delays until three years after enactment of this Act the requirement of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) that any property located in an area participating in the national flood insurance program have the risk premium rate charged for flood insurance on the property adjusted to accurately reflect its current risk of flood. Amends the National Flood Insurance Act of 1968 to delay until five years after enactment of Biggert-Waters the prohibition against provision to prospective insureds of flood insurance by the Federal Emergency Management Agency (FEMA) at (subsidy) rates less

than full actuarial estimates for property purchased after enactment of Biggert-Waters. Prohibits FEMA, when determining whether a community has made adequate progress on flood protection improvement systems, from counting federal funding or participation in such efforts. Makes flood insurance available at certain special flood hazard area rates to riverine and coastal levees located in a community which FEMA has determined to be in the process of restoring a flood protection system previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but which no longer does so. Requires such rates to apply without regard to the level of federal funding or participation. Amends Biggert-Waters to authorize FEMA to [] use other funds in addition to those specified in that Act to carry out a specified affordability study. Requires FEMA, upon notice to certain congressional committees that it cannot submit the report on that study by the current deadline, to specify in such notice an alternative method of gathering the requisite information and subsequently to submit the information so gathered. Directs FEMA to: (1) identify, review, update, maintain and publish National Flood Insurance rate maps pertaining to areas protected by non-structural flood mitigation features; and (2) work with states, local communities, and property owners to identify such areas and features.”

1.5 [Home Protection Act of 2013](#), H.R. 3013, 113th Cong. (2013).

“Amends the Biggert-Waters Flood Insurance Reform Act of 2012 to direct the Administrator of the Federal Emergency Management Agency (FEMA) to review, update, maintain, and publish National Flood Insurance Program rate maps under the National Flood Mapping Program with respect to areas protected by pumping stations, decertified levees, or non-federal or non-structural flood protection and mitigation measures, as well as the level of protection they provide. Directs the Administrator to: (1) work with states, local communities, and property owners to identify such areas and measures; and (2) include in flood map updates any relevant information that leads to the appropriate use of circular wind models for the application of stillwater elevation calculations.

Amends the National Flood Insurance Act of 1968 to prohibit the Administrator from estimating flood insurance premium rates for property which, after July 6, 2012, has experienced or sustained substantial improvement exceeding 50% (currently 30%) of its fair market value. Makes eligible for flood insurance coverage any communities that have made adequate progress, acceptable to the Administrator, on reconstruction of a flood protection system which will afford protection from the 100-year frequency flood. Prohibits the Administrator, in determining whether adequate progress on construction or reconstruction has been made, from considering the level of federal funding involved in the enterprise. Makes flood insurance available in communities restoring certain discredited flood protection systems, regardless of the level of either federal funding or participation in such restoration. Directs the Administrator to issue regulations permitting a state or local government, either on its own accord or in conjunction with other state or local

governments, to submit to FEMA payments necessary to cover part or all of the cost of any premium for any property within the government's jurisdiction.

Prohibits the Administrator from publishing either a flood insurance rate map or an update for an area unless: (1) it adequately reflects the level of protection provided by any flood protection system for the area, including a pumping station, decertified levee, or non-federal or non-structural flood mitigation measure, against the 100-year frequency flood, regardless of the system's accreditation status; or (2) the community for which a system provides protection elects not to give the data necessary for the Administrator to publish a rate map or update that adequately reflects such protection. Nullifies the prohibition against extending premium rate subsidies to properties not insured before July 6, 2012, or to properties purchased after that date, until either of these two conditions applies.

Expresses the sense of the House of Representatives that a Bipartisan Task Force on Innovation in Financing Flood Risk should be established to: (1) compile data on innovative market-based solutions to make flood insurance more accessible and affordable, and (2) report on future flood-risk analysis and risk innovation in pricing.”

1.6 [Responsible Implementation of Flood Insurance Reform Act of 2013](#), H.R. 3156, 113th Cong. (2013).

Section 5 of this bill would affect buyout programs. It provides: “In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of the Federal Emergency Management Agency shall ensure that not less than 25 percent of the estimated aggregate amount of such assistance provided to a grant recipient is used to elevate, acquire, or relocate eligible properties, to the extent that eligible properties exist within the jurisdiction of the grant recipient.”

“Amends the National Flood Insurance Act of 1968 to limit the requirements for flood insurance premium rate adjustments to reflect the current risk of flood only to property located in an area participating in the national flood insurance program for which the Administrator of the Federal Emergency Management Agency (FEMA) has published in the Federal Register projected base flood elevations and designations of areas having specified flood hazards on or after December 31, 2013. Increases by 20% annually the flood insurance risk premium rates for certain properties sold on or after enactment of the Biggert-Waters Flood Insurance Reform Act of 2012 (July 6, 2012), and which are not subject to a specified 25% per year phase-in, until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties within a specified single risk classification. Directs FEMA to establish a means by which a state or local government may submit to FEMA payments to fully cover the cost of any premium for property within its jurisdiction.

Amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to direct FEMA, in providing hazard mitigation assistance in connection with flooding, to ensure that

not less than 25% of the estimated aggregate amount of such assistance is used by a grant recipient to elevate, acquire, or relocate eligible properties within the recipient's jurisdiction.

Prohibits FEMA, in determining whether a community has made adequate progress on the construction, reconstruction, or improvement of a flood protection system, from considering the level of federal funding or participation in such efforts. Revises requirements for the availability of flood insurance in a community which FEMA has determined to be in the process of restoring flood protection afforded by a system previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so. Declares that such requirements shall apply without regard to the level of federal funding of or participation in the construction, reconstruction, or improvement of the flood protection system.

Prohibits FEMA from issuing a flood insurance rate map, or an update to one, unless: (1) the map or update adequately reflects the protection provided by any levee system in the area against the base flood, regardless of the system's accreditation status; or (2) the community in which any levee system is located elects not to provide the data necessary for FEMA to issue either a map or an update that adequately reflects the protection the system provides against the base flood.”

1.7 [Flood Insurance Fairness Act of 2013](#), H.R. 3218, 113th Cong. (2013).

“Prohibits the taking effect of specified flood insurance premium changes under the Biggert-Waters Flood Insurance Reform Act of 2012 and the National Flood Insurance Act of 1968 (which prohibit the estimating of flood insurance premium rates for severe repetitive loss and other specified properties or extending premium subsidies to new or lapsed flood insurance policies, and which also require certain flood insurance risk premium rate adjustments) until 180 days after both chambers of Congress have completed consideration of a qualified joint resolution providing for legislative changes to ensure that risk premium rates for flood insurance coverage under the national flood insurance program are substantially affordable for all homeowners. Directs the Administrator of the Federal Emergency Management Agency (FEMA) to submit to Congress and make publicly available a determination of whether the risk premium rates for flood insurance coverage under the national flood insurance program resulting from such legislative changes are substantially affordable for all homeowners. Sets forth procedures for expedited congressional consideration of the proposed joint resolution.”

1.8 [Homeowners Flood Insurance Relief Act of 2013](#), H.R. 3312, 113th Cong. (2013).

“Amends the National Flood Insurance Act of 1968 to direct the Administrator of the Federal Emergency Management Agency (FEMA) to provide certain policy holders the option of paying their premiums monthly (or annually or in more frequent installments, as under current law). Declares the maximum annual chargeable premium rate for a property to

be the total appraised value of all structures located on it at the time of its purchase by the current owner of the property divided by 30. Sets forth a ten-year phase-in period for risk premium rate increases resulting from enactment of the Biggert-Waters Flood Insurance Reform Act of 2012, at the rate of 10% for each year following the effective date of such Act. Directs FEMA to refund or provide credit to insureds for any flood insurance premiums collected in excess of the mandatory phase-in of rates prescribed by this Act.”

- 1.9 [Homeowner Flood Insurance Affordability Act of 2013](#), Pub. L. 113-89, 128 Stat. 1020, H.R. 3370, 113th Cong. (2014).

This bill was enacted into law.

This bill delayed the implementation of certain rate adjustment provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and made other amendments to the National Flood Insurance Act related to affordability of flood insurance; mapping; and mitigation measures by property owners (not including property acquisition). It did not directly amend provisions affecting property acquisition.

- 1.10 [To delay any increases in premium rates for flood insurance coverage under the National Flood Insurance Program](#), H.R. 3380, 113th Cong. (2013).

“Prohibits the risk premium rates for flood insurance coverage made available under the National Flood Insurance Program from being increased from such rates in effect as of September 30, 2013, until: (1) the Administrator of the Federal Emergency Management Agency (FEMA) completes a first comprehensive review and updating of all flood insurance rate maps for such Program pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012, and (2) the Chief of Engineers reviews and certifies that such updated rate maps accurately reflect all flood mitigation and flood control projects completed within the affected watershed by the Army Corps of Engineers. Directs the Administrator to refund to insureds any premiums for flood insurance coverage under the National Flood Insurance Program collected in excess of the rates required under this Act.”

- 1.11 [Keeping Flood Insurance Affordable Act of 2013](#), H.R. 3511, 113th Cong. (2013).

“Prohibits the Administrator of the Federal Emergency Management Agency (FEMA) from: (1) increasing flood insurance risk premium rates to reflect the current risk of flood for certain property located in specified areas subject to a certain mandatory premium adjustment, or (2) reducing such subsidies for any property not insured by the flood insurance program as of July 6, 2012, or any policy that has lapsed in coverage as a result of the policyholder's deliberate choice (Pre-Flood Insurance Rate Map or pre-FIRM properties). Sets forth expiration dates for such prohibitions. Amends the National Flood Insurance Act of 1968 (NFIA) to prohibit FEMA from providing flood insurance to prospective insureds at rates less than those estimated for any property purchased after the expiration of such six-month period (currently, any property purchased after July 6, 2012).

Prohibits FEMA from reducing flood insurance risk premium rate subsidies for one non-primary residential property of an owner, with an appraised value that does not exceed \$1 million. Applies the same prohibition with respect to business properties, except that any single business may insure only a single property with such risk premium rate subsidies. Makes such business property coverage available for an aggregate liability of \$1 million with respect to any single building, with another \$1 million for contents owned by the building owner, and another \$1 million for each unit within the building for contents owned by the tenant. Directs FEMA to: (1) restore during such six-month period specified estimated risk premium rate subsidies for flood insurance for pre-FIRM properties and properties purchased after such six-month period, and (2) submit to certain congressional committees a draft affordability framework addressing the affordability of flood insurance sold under the NFIA.

Prescribes procedures for expedited congressional consideration of legislation on FEMA affordability authorities. Permits FEMA to enter into an agreement with another federal agency either to: (1) complete the affordability study, or (2) prepare the draft affordability framework. Directs FEMA submit to certain congressional committees the affordability study and report. Amends NFIA to authorize FEMA to reimburse homeowners for successful map appeals.

Makes any community that has made adequate progress on the construction (as under current law) or reconstruction (new) of a flood protection system which will afford flood protection for the one-hundred year frequency flood eligible for flood insurance at premium rates not exceeding those which would apply if such flood protection system had been completed. Revises guidelines governing availability of flood insurance in communities restoring discredited flood protection systems to include riverine and coastal levees. Requires FEMA to: (1) rate a covered structure using the elevation difference between the floodproofed elevation of the covered structure and the adjusted base flood elevation of the covered structure; and (2) designate a Flood Insurance Advocate to advocate for the fair treatment of policy holders under the National Flood Insurance Program and property owners in the mapping of flood hazards, the identification of risks from flood, and the implementation of measures to minimize the risk of flood.”

1.12 [Flood Insurance Relief and Transparency Act of 2013](#), H.R. 3693, 113th Cong. (2013).

“Delays until March 1, 2015, the effective date of specified changes in risk premium rates for flood insurance under the National Flood Insurance Program (NFIP). Directs the Administrator of the Federal Emergency Management Agency (FEMA) to make publicly available all data affecting any changes in such risk premium rates. Amends the Biggert-Waters Flood Insurance Reform Act of 2012 to remove the \$750,000 restriction from the maximum amount of funds available to FEMA for the study of participation in and affordability of NFIP for certain flood insurance policyholders. Amends the National Flood Insurance Act of 1968 to require FEMA to provide policyholders with the option of paying

chargeable risk premiums for flood insurance coverage on an annual (as under current law) or a monthly basis. Sets forth criteria for policyholder eligibility to exercise the monthly option.”

- 1.13 [To Repeal the Biggert-Waters Flood Insurance Reform Act of 2012](#), H.R. 3815, 113th Cong. (2013).

“Repeals the Biggert-Waters Flood Insurance Reform Act of 2012, but retains, until September 30, 2017, the financing of the National Flood Insurance Program.”

- 1.14 [Flood Safe Basements Act](#), H.R. 3834, 113th Cong. (2014).

“Directs the Administrator of the Federal Emergency Management Agency (FEMA) to rate a covered structure using the elevation difference between the floodproofed elevation and the adjusted base flood elevation of such structure. Defines "covered structure" as a residential structure: (1) located in a community that has adopted flood plain management measures approved by FEMA and satisfying requirements for an exception for floodproofed residential basements, and (2) built in compliance with the applicable flood plain management measures.”

- 1.15 [Helping Owners Mitigate Effectively Act of 2014](#) (HOME Act of 2014), H.R. 3924, 113th Cong. (2014).

This bill would affect buyout programs by authorizing appropriations for flood risk mitigation and authorizing increased appropriations for predisaster mitigation under the Stafford Act.

“Delays any change in risk premium rates for flood insurance under the National Flood Insurance Program resulting from amendments made by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) until five years after the enactment date of such Act. Amends the National Flood Insurance Act of 1968 to provide that the maximum annual chargeable flood insurance premium rate for a property shall be the appraised value of the property when purchased by its current owner divided by 30. Amends the Internal Revenue Code to allow a tax credit of up to \$7,500 for flood mitigation expenses in a taxable year for policy holders of flood insurance coverage and small businesses. Terminates such credit after December 31, 2022. Amends the Biggert-Waters Act to authorize the Administrator of the Federal Emergency Management Agency (FEMA) to use any other amounts available to the Administrator to carry out the [] study of participation in the National Flood Insurance Program and of the affordability of risk-based premiums under such Program. **Amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize increased appropriations for predisaster hazard mitigation for FY2014-FY2018. Authorizes appropriations for flood risk mitigation assistance for FY2014-FY2018.**”

- 1.16 [Flood Insurance Premium Parity Act of 2014](#), H.R. 4313, 113th Cong. (2014).

Text from this bill was placed in H.R. 3370, which was enacted.

This bill “[a]mends the National Flood Insurance Act of 1968 (NFIA) to prohibit the Administrator of the Federal Emergency Management Administration (FEMA) from estimating reduced (subsidized) risk premium rates for flood insurance for residential property that is neither the primary residence of an individual (as under current law) nor the secondary residence of the property owner. Directs FEMA to establish standards for a residential property to qualify as a secondary residence eligible for subsidized risk flood insurance premium rates that: (1) require the owner to occupy the property for an appropriate minimum period of time each year, and (2) limit subsidized risk premium rates to but a single property of the owner. Repeals the prohibition against estimating subsidized risk premium rates for business property (thus qualifying business property for such rates). Directs FEMA to refund directly to insureds any flood insurance premiums collected in excess of the rates required under this Act.”

- 1.17 [Saving Homeowners from Onerous Rate Escalations Act of 2013](#), S. 1075, 113th Cong. (2013):

“Amends the National Flood Insurance Act of 1968 to direct the Administrator of the Federal Emergency Management Agency (FEMA) to phase in, over an eight-year period, any increase in the flood insurance risk premium rate caused by the prohibition against extending subsidies to new or lapsed policies.”

- 1.18 [Responsible Implementation of Flood Insurance Reform Act of 2013](#), S. 1098, 113th Cong. (2013).

This is the companion bill to H.R. 3156. **This bill would affect buyout programs.**

- 1.19 [Flood Safe Basements Act](#), S. 1601, 113th Cong. (2013).

This bill is the companion to H.R. 3834.

- 1.20 [Homeowner Flood Insurance Affordability Act of 2013](#), S. 1610, 113th Cong. (2013).

This is the companion bill to H.R. 3370, which was enacted into law.

- 1.21 [Homeowner Flood Insurance Affordability Act of 2013](#), S. 1846, 113th Cong. (2013).

“Prohibits the Administrator of the Federal Emergency Management Agency (FEMA) from implementing a requirement of the National Flood Insurance Act of 1968 (NFIA) that would: (1) increase flood insurance risk premium rates to reflect the current risk of flood for certain property located in specified areas subject to a specified mandatory premium adjustment, or (2) reduce statutory subsidies for any property not insured by the National Flood Insurance Program (NFIP) as of July 6, 2012, or any policy that has lapsed in

coverage as a result of the policyholder's deliberate choice (pre-Flood Insurance Rate Map or pre-FIRM properties). Sets an expiration date for such prohibitions six months after one or another of three specified alternative events takes place. (A pre-FIRM property contains a structure neither constructed nor substantially improved after the later of December 31, 1974, or the effective date of the initial flood insurance rate map published by the FEMA Administrator under NFIA for the pertinent area.) Amends the National Flood Insurance Act of 1968 (NFIA) to prohibit FEMA from providing flood insurance to prospective insureds at rates less than those estimated for property purchased after the expiration of such six-month period (currently, any property purchased after July 6, 2012). Prohibits FEMA from reducing the risk premium rate subsidy for flood insurance for a property purchased on or before the expiration of the same six-month period based upon the fact that: (1) the property was not insured by NFIP as of the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012, or (2) on or before the expiration of the six-month period the policy for the property had lapsed in coverage owing to the policy holder's deliberate choice because the property was no longer required to retain such coverage. Directs FEMA to: (1) restore during such six-month period specified estimated flood insurance risk premium rate subsidies for certain pre-FIRM properties with respect to which FEMA is not allowed to implement certain prohibitions against subsidies to new or lapsed policies; and (2) submit to certain congressional committees a draft affordability framework addressing the affordability of flood insurance sold under NFIP.

Prescribes procedures for expedited congressional consideration of legislation on FEMA affordability authorities. Permits FEMA to enter into an agreement with another federal agency either to: (1) complete the affordability study, or (2) prepare the draft affordability framework. Directs FEMA submit to certain congressional committees the affordability study and report.

Amends NFIA to authorize FEMA to reimburse homeowners for successful map appeals.

Makes any community that has made adequate progress on the construction (as under current law) or reconstruction (new) of a flood protection system which will afford flood protection for the one-hundred year frequency flood eligible for flood insurance at premium rates not exceeding those which would apply if such flood protection system had been completed. Revises guidelines governing availability of flood insurance in communities restoring discredited flood protection systems to include riverine and coastal levees. Requires FEMA to: (1) rate a covered structure using the elevation difference between the floodproofed elevation of the covered structure and the adjusted base flood elevation of the covered structure; and (2) designate a Flood Insurance Advocate to advocate for the fair treatment of policy holders under NFIP and property owners in the mapping of flood hazards, the identification of risks from flood, and the implementation of measures to minimize the risk of flood.”

- 1.22 [A bill to delay the implementation of certain provisions of the Biggert-Waters \[Act\] . . . and to reform the National Association of Registered Agents and Brokers, and for other purposes](#), S. 1926, 113th Cong. (2014).

This bill passed the Senate but was not taken up by the House.

Title I of this bill, the Homeowner Flood Insurance Affordability Act, “prohibits the Administrator of the Federal Emergency Management Agency (FEMA) from implementing during a specified six-month period a requirement of the National Flood Insurance Act of 1968 (NFIA) that would: (1) increase flood insurance risk premium rates to reflect the current risk of flood for property located in specified areas subject to a certain mandatory premium adjustment, or (2) a prohibition against extending subsidies for property not insured by the flood insurance program as of July 6, 2012 (the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012), or any policy that has lapsed because the property was no longer being required to retain coverage (Pre-Flood Insurance Rate Map or pre-FIRM properties).

Title II of this bill, the National Association of Registered Agents and Brokers Reform Act, “[a]mends the Gramm-Leach-Bliley Act to repeal the contingent conditions under which the National Association of Registered Agents and Brokers (NARAB) shall not be established. Establishes the NARAB without contingent conditions as an independent nonprofit corporation to prescribe, on a multi-state basis, licensing and insurance producer qualification requirements and conditions.” It makes other changes relevant to NARAB and its operations.

2 Flood Insurance Reform Bills from the 114th Congress (2015-16)

This research identified three flood insurance reform bills introduced during the 114th Congress. None passed either the House or the Senate, and none proposed substantive changes to property acquisition.

2.1 [Flood Insurance Premium Parity Act of 2015](#), H.R. 141, 114th Cong. (2015).

“Amends the National Flood Insurance Act of 1968 to prohibit the Administrator of the Federal Emergency Management Agency (FEMA) from estimating reduced (subsidized) risk premium rates for flood insurance for residential property that is neither the primary residence of an individual (as under current law) nor the secondary residence of the property owner. Directs FEMA to establish standards for a residential property to qualify as a secondary residence eligible for subsidized risk flood insurance premium rates that: (1) require the owner to occupy the property for an appropriate minimum period of time each year, and (2) limit subsidized risk premium rates to but a single property of the owner. Repeals the prohibition against estimating subsidized risk premium rates for business

property (thus qualifying business property for such rates). Requires FEMA, when developing guidance and rate tables necessary to implement this Act, to consult with Write Your Own companies, which are participating property and casualty insurance companies that write and service standard flood insurance policies in cooperation with FEMA. Write Your Own companies shall have between six and eight months following issuance of final guidance and rate tables to implement the changes required by them. Directs FEMA to refund directly to insureds any flood insurance premiums collected in excess of the rates required under this Act.”

2.2 [Flood Insurance Fairness Act of 2015](#), H.R. 2918, 114th Cong. (2015).

“Amends the National Flood Insurance Act of 1968 to repeal provisions that prohibit the Federal Emergency Management Agency (FEMA) from estimating subsidized risk premium rates for flood insurance coverage on: (1) residential property which is not the primary residence of an individual, and (2) any business property. Qualifies those properties for such rates. Requires FEMA, when developing guidance and rate tables necessary to implement this Act, to consult with Write Your Own companies, which are participating property and casualty insurance companies that write and service standard flood insurance policies in cooperation with FEMA. Directs Write Your Own companies to implement the changes required by the final guidance and rate tables within six to eight months after their issuance.”

2.3 [Fairness in Flood Insurance Act of 2015](#), H.R. 3297, 114th Cong. (2015).

This bill would amend the National Flood Insurance Act of 1968 to change existing provisions governing appeals of projected Special Flood Hazard Areas; revisions of and appeals of existing and revised flood insurance maps; consideration of flood mitigation factors in setting flood hazard areas; consideration of coastal and inland flooding in setting premium rates; streamlining of flood mapping; requiring sufficient staffing of the Office of the Flood Insurance Advocate; and requiring GAO studies of flood map adequacy and effects of changes to the base flood elevation.

3 [Flood Insurance Reform Bills from the 115th Congress \(2017-18\)](#)

Research for this project identified 22 introduced bills related to flood insurance reforms. Of these, one, the [National Flood Insurance Program Extension Act of 2018](#), S. 1182, was enacted into law but made no substantive changes to the existing legislation. One substantive bill, the [21st Century Flood Reform Act of 2017](#), H.R. 2874, passed the House but failed in the Senate. Neither this bill nor other legislation identified in this research would have affected buyout programs.

3.1 [Private Flood Insurance Market Development Act of 2017](#), H.R. 1422, 115th Cong. (2017).

“This bill amends the Flood Disaster Protection Act of 1973 to revise requirements for federal and private flood insurance. The bill revises the financial requirements that apply to

flood insurance for home loans or loan guarantees by the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and other federal mortgage entities. Private flood insurance must meet any financial strength requirements set forth by the Federal Housing Finance Agency. Private flood insurance may include nonadmitted insurers (including surplus lines insurance) as long as the insurer is eligible to provide insurance in the home state of the insured and complies with the laws and regulations of that state. The National Flood Insurance Act of 1968 is amended to direct the Federal Emergency Management Agency (FEMA) to consider any period during which a property was continuously covered by private flood insurance to be a period of continuous insurance coverage, including for the purposes of National Flood Insurance Program subsidies.”

3.2 [National Flood Insurance Program Reauthorization and Improvement Act of 2017](#), H.R. 1423, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to extend the National Flood Insurance Program (NFIP) through FY2027. Every policy issued under NFIP must include documents describing the type of loss covered, a summary of the costs of the policy, and an explanation of the policy's parameters. The Federal Emergency Management Agency (FEMA) is directed to establish a program for "Write Your Own" companies (a company that writes and services federal standard flood insurance policies in its own name) to investigate preexisting structural conditions in properties. Participation in this program shall be voluntary. In the event a policyholder prevails in a lawsuit regarding claims against an insurance company or FEMA, the court may award litigation costs. Costs of an administrative appeal shall be awarded to a prevailing claimant. Engineers providing services in connection with NFIP must be certified by FEMA and be professionally licensed as an engineer. FEMA must establish a publicly searchable online registry of companies and individuals providing services related to NFIP. The bill establishes criminal and civil penalties for committing fraud or making false statements in connection with NFIP. The bill establishes whistleblower protections for individuals performing tasks related to NFIP, including federal employees, Write Your Own employees, and third-party administrators and service providers. It is unlawful for Write Your Own companies to violate the independence of a provider of engineering services in connection with flood insurance coverage. The Government Accountability Office must report on: (1) the effects of global warming on NFIP solvency, and (2) Hurricane Sandy claims handled by Write Your Own companies.”

3.3 [Repeatedly Flooded Communities Preparation Act](#), H.R. 1558, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to require a community that participates in the National Flood Insurance Program (NFIP) and has been repeatedly flooded to: (1) assess the continuing risks to community areas repeatedly damaged by floods; and (2) develop and implement a publicly available, community-specific plan for mitigating continuing flood risks to such areas. The Federal Emergency Management Agency (FEMA)

must, upon request, provide a community with data to assist in preparation of the required plan. In making decisions with respect to awarding mitigation grants under the Act, FEMA may consider the extent to which a community has complied with these requirements and is working to remedy problems with repeatedly flooded areas. A community that does not comply with these requirements shall be subject to sanctions.”

3.4 [Taxpayer Exposure Mitigation Act of 2017](#), H.R. 2246, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to limit the required purchase of flood insurance in certain circumstances to only residential properties (currently, the requirement applies to all types of property). It also requires the Federal Emergency Management Agency (FEMA) to annually transfer a portion of the risk from the National Flood Insurance Program (NFIP) to private reinsurance or capital markets. The amount of transferred risk must be based on a probable maximum loss target for NFIP established by FEMA each fiscal year. The bill amends the Biggert-Waters Flood Insurance Reform Act of 2012 to require FEMA to establish standards for the development of alternative flood insurance rate maps by local and state governments. FEMA must consider recommendations made by the Technical Mapping Advisory Council when establishing these standards. FEMA must approve the use of these alternative maps under NFIP.”

3.5 [To require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes](#), H.R. 2565, 115th Cong. (2017).

“This bill directs the Federal Emergency Management Agency (FEMA) to incorporate the replacement cost value of a structure insured under the National Flood Insurance Program of 1968 in its consideration of chargeable premium rates. FEMA must conduct a study regarding risk rating redesign utilizing replacement cost and report the findings to Congress.”

3.6 [National Flood Insurance Program Policyholder Protection Act of 2017](#), H.R. 2868, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to limit the chargeable flood insurance premium for a residential property having 4 or fewer residences to no more than \$10,000 a year, subject to adjustments for future inflation . . . In determining chargeable premium rates, the Federal Emergency Management Agency (FEMA) shall offer a rate reduction if policyholders implement specified mitigation methods. Mitigation techniques that qualify for such rate reduction include methods that can be utilized on a block or neighborhood scale, and the elevation of mechanical systems. . . . FEMA shall conduct a study of the feasibility of providing coverage for individual units in cooperative housing projects.”

3.7 [21st Century Flood Reform Act of 2017](#), H.R. 2874, 115th Cong. (2017).

This bill passed the House but was not enacted into law.

This bill was introduced “[t]o achieve reforms to improve the financial stability of the National Flood Insurance Program, to enhance the development of more accurate estimates of flood risk through new technology and better maps, to increase the role of private markets in the management of flood insurance risks, and to provide for alternative methods to insure against flood peril, and for other purposes.” It incorporates elements of many other bills introduced during this session.

Title I addresses “policyholder protections and information” through changes to flood insurance requirements. Title II focuses on “increasing consumer choice through private market development.” Title III, “mapping fairness,” reforms flood mapping requirements. Title IV, “protecting consumers and individuals through improved mitigation,” changes mitigation requirements and in part “requires a community that participates in NFIP and has been repeatedly flooded to: (1) assess the continuing risks to community areas repeatedly damaged by floods; and (2) develop and implement a publicly available, community-specific plan for mitigating continuing flood risks to such areas.” It does not appear to amend property acquisition programs. Title V, “program integrity,” addresses the actuarial soundness of the NFIP. Title VI makes administrative reforms to the program.

3.8 [National Flood Insurance Program Administrative Reform Act of 2017](#), H.R. 2875, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to direct the Federal Emergency Management Agency (FEMA) to revise the appeals process for National Flood Insurance Program (NFIP) policyholders seeking review of a flood insurance claim denial by their insurer. The bill also establishes penalties for "Write Your Own" companies that knowingly underpay NFIP claims. (A Write Your Own company writes and services federal standard flood insurance policies in its own name.) Civil enforcement actions, penalties, and suspension from the program may result from fraud and false statements in connection with a flood insurance claim under NFIP. Claims under NFIP must be approved or denied no later than 90 days after the claim is made, with provisions for an extension in extraordinary cases. The bill gives FEMA litigation oversight, strategy authority, and substitution powers in litigation conducted by Write Your Own companies. FEMA may not hire in connection with NFIP any disbarred or suspended attorney. FEMA must make additional coverage available under its Increased Cost of Compliance program. Currently, the program provides coverage to insure the cost of mitigating future flood damage to an NFIP-insured structure that has been substantially or repetitively damaged by floods. This bill directs FEMA to ensure sufficient staff for the Flood Insurance Advocate, authorizes FEMA to credit reserve funds to the National Flood Insurance Fund, and establishes pilot programs and committees. The

Government Accountability Office must report on claims adjustment practices under NFIP and NFIP coverage of earth movement and subsidence.”

3.9 [Sustainable, Affordable, Fair, and Efficient \(SAFE\) National Flood Insurance Program Reauthorization Act of 2017](#), H.R. 3285, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to extend through FY2023 the National Flood Insurance Program (NFIP). NFIP policy coverage limits for residential and nonresidential buildings are increased. NFIP premiums, surcharges, and fees may not be increased by more than 10% each year. The Federal Emergency Management Agency (FEMA) must provide: (1) loans for mitigation projects, and (2) other financial assistance to qualified households for NFIP premium payments and mitigation projects. The limitation on Increased Cost of Compliance (ICC) coverage (offered by NFIP to cover the cost of flood mitigation measures on certain structures) is increased to \$100,000 and ICC eligibility is expanded. This bill prevents the Department of the Treasury from charging interest to FEMA on amounts borrowed for NFIP through FY2023. This bill directs FEMA to revise: (1) directives related to the Write Your Own program, (2) specified elements of the claims process, (3) the appeals process for claims and flood map determinations, and (4) certain flood risk zones. FEMA must study business interruption coverage and participation rates in specified flood zones. This bill also makes changes to: (1) FEMA's mitigation assistance programs, (2) the usage and collection of specified surcharges and fees, (3) the scope of coverage available under NFIP, (4) requirements of NFIP engineers and adjusters, and (5) regulations relating to the disclosure of flood risks on rental property. This bill amends the Biggert-Waters Flood Insurance Reform Act of 2012 to reauthorize through FY2023 the National Flood Mapping Program.”

3.10 [National Flood Insurance Program Extension Act of 2018](#), H.R. 6379, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through November 30, 2018.”

3.11 [National Flood Insurance Program Extension and Enhanced Consumer and Community Protections Act of 2018](#), H.R. 6402, 115th Cong. (2018).

“This bill extends through November 30, 2018, the National Flood Insurance Program and otherwise modifies the program, including with respect to coverage and premiums.”

3.12 [National Flood Insurance Program Further Extension Act of 2018](#), H.R. 7187, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through December 7, 2018.”

- 3.13 [National Flood Insurance Program Competition and Extension Act of 2018](#), H.R. 7388, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through May 31, 2019. The bill shall take effect as if it had been enacted on December 21, 2018. The Federal Emergency Management Agency (FEMA) must allow a Write Your Own company to sell private flood insurance. (A Write Your Own company writes and services federal standard flood insurance policies in its own name.)”

- 3.14 [National Flood Insurance Program Consultant Accountability Act of 2017](#), S. 1058, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to allow the Federal Emergency Management Agency (FEMA) to terminate certain contracts under the National Flood Insurance Program on the basis of detrimental conduct to the program by a "covered entity" (an attorney, law firm, consultant, or third-party company that provides certain services under the contract). Specifically, on such basis, FEMA may terminate a contract between a covered entity and a "Write Your Own" company (a property and casualty company that writes and services standard flood insurance policies in its own name). FEMA shall establish a process for a covered entity to appeal such a termination. Neither FEMA nor a Write Your Own company is required to make an early-termination payout to a covered entity with respect to a contract terminated under the bill.”

- 3.15 [National Flood Insurance Program Extension Act of 2018](#), Pub. L. 115-225, 132 Stat. 1624, S. 1182, 115th Cong. (2018).

This bill was enacted into law.

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through November 30, 2018.”

- 3.16 [Flood Insurance Affordability and Sustainability Act of 2017](#), S. 1313, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to extend the National Flood Insurance Program (NFIP) through FY2027 (currently, certain provisions expire FY2017). The Federal Emergency Management Agency (FEMA) is directed to base the coverage limit of flood insurance obtained through NFIP on the maximum confirmation loan limit determined by the Federal National Mortgage Association (Fannie Mae). Under current law, coverage is limited to \$250,000 for residential dwellings and \$500,000 for nonresidential buildings. The Increased Cost of Compliance (ICC) coverage limitation is increased to \$75,000 (currently \$30,000). ICC coverage is offered by NFIP to cover the cost of flood mitigation measures on certain structures.”

A portion of this bill is titled the *Agreed Value Flood Protection Program Act of 2017*. Under this portion, “FEMA must establish an Agreed Value Flood Protection Pilot Program that bases policy payouts on flood height reached in participating covered structures. “Write Your Own” companies are authorized to offer private flood insurance to specified properties under a two-year pilot program. This bill amends the Biggert-Waters Flood Insurance Reform Act of 2012 to reauthorize the National Flood Mapping Program through 2027.”

- 3.17 [Sustainable, Affordable, Fair, and Efficient \(SAFE\) National Flood Insurance Program Reauthorization Act of 2017](#), S. 1368, 115th Cong. (2017).

This bill is the Senate counterpart to H.R. 3285. See section 3.9 for more detailed information.

- 3.18 [National Flood Insurance Program Reauthorization Act of 2017](#), S. 1571, 115th Cong. (2017).

“This bill amends the National Flood Insurance Act of 1968 to extend through FY2023 the National Flood Insurance Program (NFIP). NFIP policy coverage limits for residential and nonresidential buildings are increased. NFIP premiums, surcharges, and fees may not be increased by more than 10% each year. The Federal Emergency Management Agency (FEMA) must provide: (1) loans for mitigation projects, and (2) other financial assistance to qualified households for NFIP premium payments and mitigation projects. The limitation on Increased Cost of Compliance (ICC) coverage (offered by NFIP to cover the cost of flood mitigation measures on certain structures) is increased to \$100,000 and ICC eligibility is expanded. This bill prevents the Department of the Treasury from charging interest to FEMA on amounts borrowed for NFIP through FY2023. This bill directs FEMA to revise: (1) directives related to the Write Your Own program, (2) specified elements of the claims process, (3) the appeals process for claims and flood map determinations, and (4) certain flood risk zones. FEMA must study business interruption coverage and participation rates in specified flood zones. This bill also makes changes to: (1) FEMA's mitigation assistance programs, (2) the usage and collection of specified surcharges and fees, (3) the scope of coverage available under NFIP, (4) requirements of NFIP engineers and adjusters, and (5) regulations relating to the disclosure of flood risks on rental property. This bill amends the Biggert-Waters Flood Insurance Reform Act of 2012 to reauthorize through FY2023 the National Flood Mapping Program.”

- 3.19 [Municipality Empowerment Mapping Achievement Act of 2017](#), S. 2090, 115th Cong. (2017).

“This bill amends the Biggert-Waters Flood Insurance Reform Act of 2012 to require National Flood Insurance Program (NFIP) rate maps to be published by the Federal Emergency Management Agency (FEMA) for the entire United States (current law directs the mapping of certain risk areas). In developing these rate maps, FEMA must use the most

current remote sensing technology. In coordination with the Technical Mapping Advisory Council, FEMA shall establish a digital database to display the flood hazard risk of buildings in NFIP. The database must contain specified information about each property, including a certification of the building's elevation. FEMA shall provide a one-time premium credit for the purchase of an elevation certificate by a policyholder. The bill amends the National Flood Insurance Act of 1968 to allow reimbursement to local governments that assist FEMA in developing flood risk zone data.”

3.20 [National Flood Insurance Program Extension Act](#), S. 3628, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through May 31, 2019. The bill shall take effect as if it had been enacted on December 7, 2018.”

3.21 [National Flood Insurance Program Extension Act of 2018](#), S. 3670, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through December 7, 2018. The bill shall take effect as if it had been enacted on November 30, 2018.”

3.22 [NFIP Extension Act of 2018](#), S. 3703, 115th Cong. (2018).

“This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through September 30, 2019. The bill shall take effect as if it had been enacted on December 7, 2018.”

4 Flood Insurance Reform Bills from the 116th Congress (2019-20)

This research identified 16 bills introduced during the current Congress. One, the [National Flood Insurance Program Extension Act of 2019](#), S. 1693, has been enacted into law. No other relevant legislation has passed either the House or the Senate to date. The following three bills introduced this session include provisions relevant to buyout programs.

- The [State Flood Mitigation Revolving Fund Act of 2019](#), H.R.1610 and S. 2192 would create a revolving loan fund for mitigation activities, including property acquisition.
- The [National Flood Insurance Program Reauthorization Act of 2019](#), H.R. 3167 would require FEMA to provide funds to capitalize state revolving funds for mitigation, including property acquisition, in low-income communities.
- The [National Flood Insurance Program Reauthorization and Reform Act of 2019](#), H.R. 3872 and S. 2187, which would require funds from the Disaster Relief Fund under the Stafford Act be used for mitigation, including property acquisition, and which would allow Increased Cost of Compliance funds be used for property acquisition.

Additional information on these bills is provided below.

4.1 [Scientific Flood Mapping Act](#), H.R. 1402, 116th Cong. (2019).

This bill provides for the transfer of functions, responsibilities, and user fees related to the preparation of flood maps from the Federal Emergency Management Agency (FEMA) to the U.S. Geological Survey.

4.2 [State Flood Mitigation Revolving Fund Act of 2019](#), H.R.1610, 116th Cong. (2019).

This bill would affect buyout programs by creating a revolving loan fund which states could use to support property acquisition.

“This bill permits the Federal Emergency Management Agency (FEMA) to provide capitalization grants to states. These grants must establish revolving funds to address flood risks. Revolving funds may be used to provide (1) financial assistance to participants in the National Flood Insurance Program, including homeowners, businesses, nonprofit organizations, and local governments; or (2) support for leveraged loans or state bonds. Financial assistance may be used for elevation projects, flood-proofing activities, relocation or removal of buildings, environmental restoration, **acquiring property**, obtaining protective easements, and other activities identified by FEMA. States must annually submit to FEMA a plan that identifies the intended uses of the state loan fund. **States may provide additional subsidies to low-income homeowners and recipients of financial assistance in low-income areas.**”

4.3 [To amend the National Flood Insurance Act of 1968 to allow for the consideration of private flood insurance for the purposes of applying continuous coverage requirements, and for other purposes](#), H.R.1666, 116th Cong. (2019).

This bill would amend the National Flood Insurance Act of 1968 to allow for the consideration of private flood insurance for the purposes of applying continuous coverage requirements.

4.4 [Flood Insurance Rate Map Interagency Technology \(FIRM IT\) Act of 2019](#), H.R. 2318, 116th Cong. (2019).

“This bill modifies technical requirements for National Flood Insurance Program (NFIP) rate maps. Specifically, the Federal Emergency Management Agency (FEMA) must consult with the Department of Defense, the U.S. Geological Survey, and the National Oceanic and Atmospheric Administration to obtain information relevant to NFIP rate maps. FEMA may include this data, as well as specified property survey information, in NFIP rate maps. The format of NFIP rate maps must conform to specified data and protocols.”

4.5 [Flood Mapping Modernization and Homeowner Empowerment Pilot Program Act of 2019](#), H.R.2462, 116th Cong. (2019).

This bill would be enacted to “establish a pilot program to enhance the mapping of urban flooding and associated property damage and the availability of such mapped data to homeowners, businesses, and localities to help understand and mitigate the risk of such flooding, and for other purposes.”

4.6 [National Flood Insurance Program Administrative Reform Act of 2019](#), H.R. 3111, 116th Cong. (2019).

“This bill directs the Federal Emergency Management Agency (FEMA) to revise the appeals process for National Flood Insurance Program (NFIP) policyholders seeking review of a flood insurance claim denial by their insurer. The bill prohibits fraud and false statements in connection with a flood insurance claim under NFIP. Claims under NFIP must be approved or denied no later than 120 days after the claim is made, with provisions for an extension in extraordinary cases. The bill gives FEMA oversight in litigation conducted by Write Your Own companies. (A Write Your Own company writes and services federal standard flood insurance policies in its own name.) FEMA may not hire in connection with NFIP any disbarred or suspended attorney.

This bill directs FEMA to ensure sufficient staff for the Flood Insurance Advocate, authorizes FEMA to credit reserve funds to the National Flood Insurance Fund, and establishes pilot programs and committees.

The Government Accountability Office must report on claims adjustment practices under NFIP and NFIP coverage of earth movement and subsidence.”

4.7 [Fair Flood Insurance Act of 2019](#), H.R.3146, 116th Cong. (2019).

“This bill exempts from rulemaking the Federal Emergency Management Agency's (FEMA's) implementation of monthly premium payment schedules for flood insurance. FEMA may implement this schedule as a pilot program. The Government Accountability Office must report on the costs associated with monthly payment of premiums. FEMA must annually report on these costs.”

4.8 [National Flood Insurance Program Reauthorization Act of 2019](#), H.R. 3167, 116th Cong. (2019).

Section 105 of this bill would affect buyout programs by creating a new section 1326 to Title I of the National Flood Insurance Act authorizing the FEMA Administrator to enter into an agreement with an eligible state to provide a capitalization grant to establish a revolving fund to be used to assist low-income homeowners and communities reduce flood risk. Funds could be used to acquire properties from willing sellers providing that other requirements of the program are met.

“This bill generally revises the National Flood Insurance Program (NFIP) and reauthorizes the program through FY2024. Among other things, the bill

- expands the NFIP mapping program,
- establishes capitalization grants for states to provide low-interest loans,
- establishes pilot programs for means-tested flood insurance rates and community-based NFIP coverage, and
- revises continuous coverage requirements.”

4.9 [National Flood Insurance Program Reauthorization and Reform Act of 2019](#), H.R. 3872, 116th Cong. (2019).

Section 201 of this bill would affect buyout programs by amending the Stafford Act to require that an amount equal to average appropriations to the Disaster Relief Fund be set aside and used for mitigation activities for severe repetitive loss structures and properties with the greatest increases in actuarial risk.

Section 202 of this bill would affect buyout programs by authorizing mitigation activities (including property acquisition) as eligible uses of Increased Cost of Compliance coverage and by establishing guidelines for eligible acquisition programs.

4.10 [Flood Insurance Rate Map Interagency Technology \(FIRM IT\) Act of 2019](#), S. 1144, 116th Cong. (2019).

“This bill modifies technical requirements for National Flood Insurance Program (NFIP) rate maps. Specifically, the Federal Emergency Management Agency (FEMA) must consult with the Department of Defense, the U.S. Geological Survey, and the National Oceanic and Atmospheric Administration to obtain information relevant to NFIP rate maps. FEMA may include this data, as well as specified property survey information, in NFIP rate maps. The format of NFIP rate maps must conform to specified data and protocols.”

4.11 [Flood Mapping Modernization and Homeowner Empowerment Pilot Program Act of 2019](#), S.1276, 116th Cong. (2019).

This bill is intended “[t]o require the Administrator of the Federal Emergency Management Agency to carry out a pilot program to enhance the mapping of urban flooding and associated property damage and the availability of that mapped data to homeowners, businesses, and localities to help understand and mitigate the risk of such flooding, and for other purposes.”

4.12 [National Flood Insurance Program Extension Act of 2019](#), S. 1693, 116th Cong. (2019).

This bill was enacted into law.

This bill reauthorizes the National Flood Insurance Program through June 14, 2019. The bill shall take effect as if it had been enacted on May 31, 2019.

- 4.13 [National Flood Insurance Program Consultant Accountability Act of 2019](#), S. 2122, 116th Cong. (2019).

This bill is intended “[t]o authorize the Administrator of the Federal Emergency Management Agency to terminate certain contracts on the basis of detrimental conduct to the National Flood Insurance Program, and for other purposes.”

- 4.14 [Municipality Empowerment Mapping Achievement \(MEMA\) Act of 2019](#), S. 2170, 116th Cong. (2019).

“This bill requires the Federal Emergency Management Agency (FEMA) to publish National Flood Insurance Program (NFIP) rate maps for the entire United States (current law directs the mapping of certain risk areas). In developing these rate maps, FEMA must use the most current remote sensing technology. In coordination with the Technical Mapping Advisory Council, FEMA must establish a digital database to display the flood hazard risks of buildings in NFIP. The database must contain specified information about each property, including a certification of the building's elevation. FEMA must provide a one-time premium credit for the purchase of an elevation certificate by a policyholder. The bill allows reimbursement to local governments that assist FEMA in developing flood risk zone data.”

- 4.15 [National Flood Insurance Program Reauthorization and Reform Act of 2019](#), S. 2187, 116th Cong. (2019).

Companion bill to H.R. 3872.

- 4.16 [State Flood Mitigation Revolving Fund Act of 2019](#), S. 2192, 116th Cong. (2019).

Companion Bill to H.R. 1610.