

January 2013

# FLOOD INSURANCE

## Participation of Indian Tribes in Federal and Private Programs



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## Why GAO Did This Study

Indian tribes' participation in NFIP is extremely low, even though some Indian lands are at high risk of flooding. In response to a Moving Ahead for Progress in the 21st Century Act mandate, GAO examined (1) factors affecting Indian tribes' participation in NFIP, (2) FEMA's efforts to increase tribes' participation in NFIP, and (3) administrative and legislative actions that could increase tribes' participation. GAO reviewed FEMA data on community participation in NFIP and prior GAO reports on flood insurance and Indian tribes, interviewed officials from selected Indian tribes and insurance companies, and collected information from relevant agencies and industry officials.

## What GAO Recommends

GAO recommends that the FEMA Administrator examine ways to make mapping of tribal lands in flood-prone areas a higher priority. FEMA agreed with our recommendation.

# FLOOD INSURANCE

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### What GAO Found

As of August 2012, just 37 of 566 federally recognized tribes (7 percent) were participating in the National Flood Insurance Program (NFIP), and 3 tribes accounted for more than 70 percent of policies. A number of factors have affected tribes' participation. First, the Federal Emergency Management Agency (FEMA) has not placed a high priority on mapping rural areas, including many Indian lands, for flood risk, and most tribal lands remain unmapped. Without flood hazard maps, tribal communities may be unaware of their flood risk, even in high-risk areas. Partly for this reason, the risk of flooding is perceived as relatively low on many tribal lands. Further, tribes may lack the resources and administrative capacity needed to administer NFIP requirements, and NFIP premiums are often too high for low-income tribal members. Finally, unique tribal issues can make participation difficult. For example, some Indian tribes do not have reservations over which they can enact and enforce the land use ordinances that are required for NFIP participation. Instead, many have lands that were allotted to individuals rather than to a tribal entity, limiting the tribes' jurisdiction.

FEMA has done some outreach to tribes, largely through emergency management and homeland security training for tribal officials, technical assistance to tribes that are preparing their multihazard mitigation plans, and marketing through the NFIP FloodSmart campaign. FEMA officials told us that the courses offered through its Emergency Management Institute helped to educate tribal officials about NFIP and floodplain management and that its curricula included courses for floodplain managers on their roles and responsibilities, flood insurance, and NFIP rules and regulations. One tribal representative told us that he was participating in an ongoing curriculum and several tribes had developed multihazard mitigation plans. Finally, both the Department of Housing and Urban Development and the U.S. Department of Agriculture, Rural Development may provide NFIP information to Indian tribes as they provide assistance in the form of housing and infrastructure grants, loans, and loan guarantees.

Tribal representatives suggested steps that FEMA could take to encourage participation in NFIP—for example, placing a higher priority on mapping Indian lands and increasing FloodSmart marketing to tribal leaders rather than individuals. Given ongoing congressional interest in private sector alternatives to NFIP, GAO also explored whether private alternatives exist that could offer affordable coverage to low-income tribal members—for example, by expanding access to risk-pooling programs that could help insure more tribal households. One such program already insures thousands of Indian properties. Another relatively new product, microinsurance, would involve insurers offering less expensive policies with relatively low coverage limits but coverage for all tribes. FEMA said that its NFIP privatization study mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 would include an assessment of these alternatives.

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## Abbreviations

BIA	Bureau of Indian Affairs
CRS	Congressional Research Service
EMI	Emergency Management Institute
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
HUD	Department of Housing and Urban Development
ICDBG	Indian Community Development Block Grant
IHBG	Indian Housing Block Grant
NAHASDA	Native American Housing Assistance and Self-Determination Act of 1996
NFIP	National Flood Insurance Program
SFHA	Special Flood Hazard Area
USDA	U.S. Department of Agriculture

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United States Government Accountability Office  
Washington, DC 20548

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January 4, 2013

The Honorable Tim Johnson  
Chairman  
The Honorable Richard C. Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Flooding is the most common and destructive natural hazard facing the nation, resulting in billions of dollars in losses each year. Between 1980 and 2005, about 97 percent of the U.S. population lived in counties that had experienced at least one declared flood disaster, and 45 percent lived in counties that had experienced six or more.<sup>1</sup> Further, federal estimates show that more than half of the U.S. population now lives in coastal watershed counties or floodplain areas.<sup>2</sup>

Congress created the National Flood Insurance Program (NFIP) in 1968 to mitigate future flood losses nationwide through community floodplain management ordinances and to provide access to affordable, federally backed flood insurance protection for property owners.

Indian lands have experienced their share of flooding. Some have flooded repeatedly, yet few tribes participate in NFIP. In a July 2011 hearing on emergency preparedness for natural disasters in Native American communities, the Senate Committee on Indian Affairs questioned why

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<sup>1</sup>We used data that we had reported previously to show trends over time—in this case, a 25-year period. See GAO, *Natural Hazard Mitigation, Various Mitigation Efforts Exist, but Federal Efforts Do Not Provide a Comprehensive Strategic Framework*, [GAO-07-403](#) (Washington, D.C.: Aug. 22, 2007).

<sup>2</sup>Congressional Research Service, *National Flood Insurance Program: Background, Challenges, and Financial Status*, R40650 (Washington, D.C.: June 12, 2012).

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tribal participation in NFIP was low and whether efforts to encourage greater participation had been successful.<sup>3</sup> Congress included a mandate in section 100237 of the Moving Ahead for Progress in the 21st Century Act that required us to examine the factors contributing to the current rates of NFIP participation by Indian tribes and members of Indian tribes and methods of encouraging such participation.<sup>4</sup> In addition, the mandate required us to describe steps that the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security should take to increase awareness and encourage participation in NFIP by Indian tribes and members of Indian tribes and to identify any legislative changes that would encourage such participation. In response to the mandate, this report examines (1) factors contributing to the current low levels of NFIP participation by Indian tribes, (2) FEMA's efforts to increase tribes' participation in NFIP, and (3) administrative and legislative actions that could encourage Indian tribes and their members to increase their participation in NFIP and potentially other flood insurance programs.

For the purposes of this review, we limited our study primarily to flood insurance policies held on Indian tribal lands (such as reservations), because FEMA does not collect demographic data such as race or ethnic origin of NFIP policyholders. Therefore, no comprehensive data are available on members of Indian tribes who are living in nontribal communities and may carry individual NFIP policies. We also interviewed representatives from Alaska, because many Alaska Native communities are vulnerable to floods but the tribes lack jurisdiction to adopt and enforce land use ordinances, a requirement for community participation in NFIP.

In conducting this work, we reviewed NFIP laws and policy documents. We reviewed FEMA data on communities participating in NFIP, including those designated as tribal communities, and on tribes that had flood hazard maps but were not participating in NFIP for various reasons. FEMA provided us with information on its process for collecting and analyzing the data in its Community Information System database and on

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<sup>3</sup>*Facing Floods and Fires: Emergency Preparedness for Natural Disasters in Native Communities: Hearing before the S. Comm. on Indian Affairs*, 112th Cong. 44-45 (statement of Sen. Mike Johanns, Member, S. Comm. on Indian Affairs), 2011.

<sup>4</sup>Pub. L. No. 112-141, § 100237, 126 Stat. 405, 957-58 (2012).

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the agency's data reliability measures.<sup>5</sup> We determined that the data FEMA provided to us were sufficiently reliable for our reporting purposes. In addition, we reviewed our prior work on flood insurance, Indian tribes, and disaster preparedness. We also interviewed and gathered documentation from officials at FEMA and other federal agencies with programs that assist Indian tribes, such as the Bureau of Indian Affairs (BIA) within the Department of the Interior, Department of Housing and Urban Development (HUD), and the U.S. Department of Agriculture (USDA) Rural Development. In addition, we reviewed regulations for those agencies' programs. We spoke with representatives from the State of Alaska; the National Flood Determination Association, which provides flood mapping data to mortgage lenders and insurers; the insurance and reinsurance industries; a nonprofit risk-pooling organization; FloodSmart, which administered FEMA's NFIP media campaign; and selected Indian tribes.

We selected the tribes from among those on FEMA's lists of tribes that were participating in NFIP as well as those that had flood hazard maps but were not participating in NFIP. We selected a purposive non-representative sample of eight participating tribes for interviews based on the number of individual policies within each tribe, geographic diversity, and tribe size. We also selected a purposive non-representative sample of six nonparticipating tribes for interviews based on the reason for nonparticipation, geographic diversity, and tribe size. In addition, our prior work related to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) program partially informed the tribes we selected.<sup>6</sup> Specifically, because we had already established communication with certain tribes, we selected them over comparable tribes on either list. Because of our time constraints and several selected tribes being impacted by a natural disaster (Superstorm Sandy), we were able to interview five participating and five nonparticipating tribes. We

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<sup>5</sup>FEMA maintains data on communities, including Indian tribes, that participate in NFIP and on their floodplain management activities in its Community Information System database. The data include the FEMA region in which each tribe is located (including state and county), community identification numbers and names, date of the most recent flood maps, and number of NFIP policies in place for each tribe. The database also contains information on mapped communities that do not participate in NFIP. FEMA designates communities as "tribal" based on self-reported data from the tribes themselves.

<sup>6</sup>See GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvement*, [GAO-10-326](#) (Washington, D.C.: Feb. 25, 2010).

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also judgmentally selected a tribe in Alaska that we had contacted previously to obtain a perspective on NFIP from a tribe in that state. To obtain perspectives from the insurance industry, we interviewed representatives from an insurance company that we contacted while conducting prior work related to the Write-Your-Own insurance program, a vendor that administers NFIP policies for Write-Your-Own insurance companies, and an insurance broker that specializes in working with Indian tribes.<sup>7</sup> Appendix I contains a detailed description of our scope and methodology.

We conducted this performance audit from August 2012 to January 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Floods can result in the loss of lives, extensive damage to property and agriculture, and large-scale disruptions to business and infrastructure, such as transportation and water and sewer services.<sup>8</sup> The National Oceanic and Atmospheric Administration estimates that floods cause about 140 deaths in the United States each year, and the Army Corps of Engineers estimates that floods cause \$6 billion in average annual losses. Congress established NFIP in the National Flood Insurance Act of 1968 to provide policyholders with some insurance coverage for flood damage as an alternative to disaster assistance, and to try to reduce the escalating costs of repairing flood damage.<sup>9</sup> The program was subsequently modified by various amendments, including the Flood Disaster Protection Act of 1973 (1973 Act) and the National Flood

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<sup>7</sup>See GAO, *Flood Insurance: Opportunities Exist to Improve Oversight of the WYO Program*, [GAO-09-455](#) (Washington, D.C.: Aug. 21, 2009).

<sup>8</sup>[GAO-07-403](#).

<sup>9</sup>Pub. L. No. 90-448, Tit. XIII, 82 Stat. 572 (1968).



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Insurance Reform Act of 1994.<sup>10</sup> And most recently, NFIP was amended by the Biggert-Waters Flood Insurance Reform Act of 2012.<sup>11</sup>

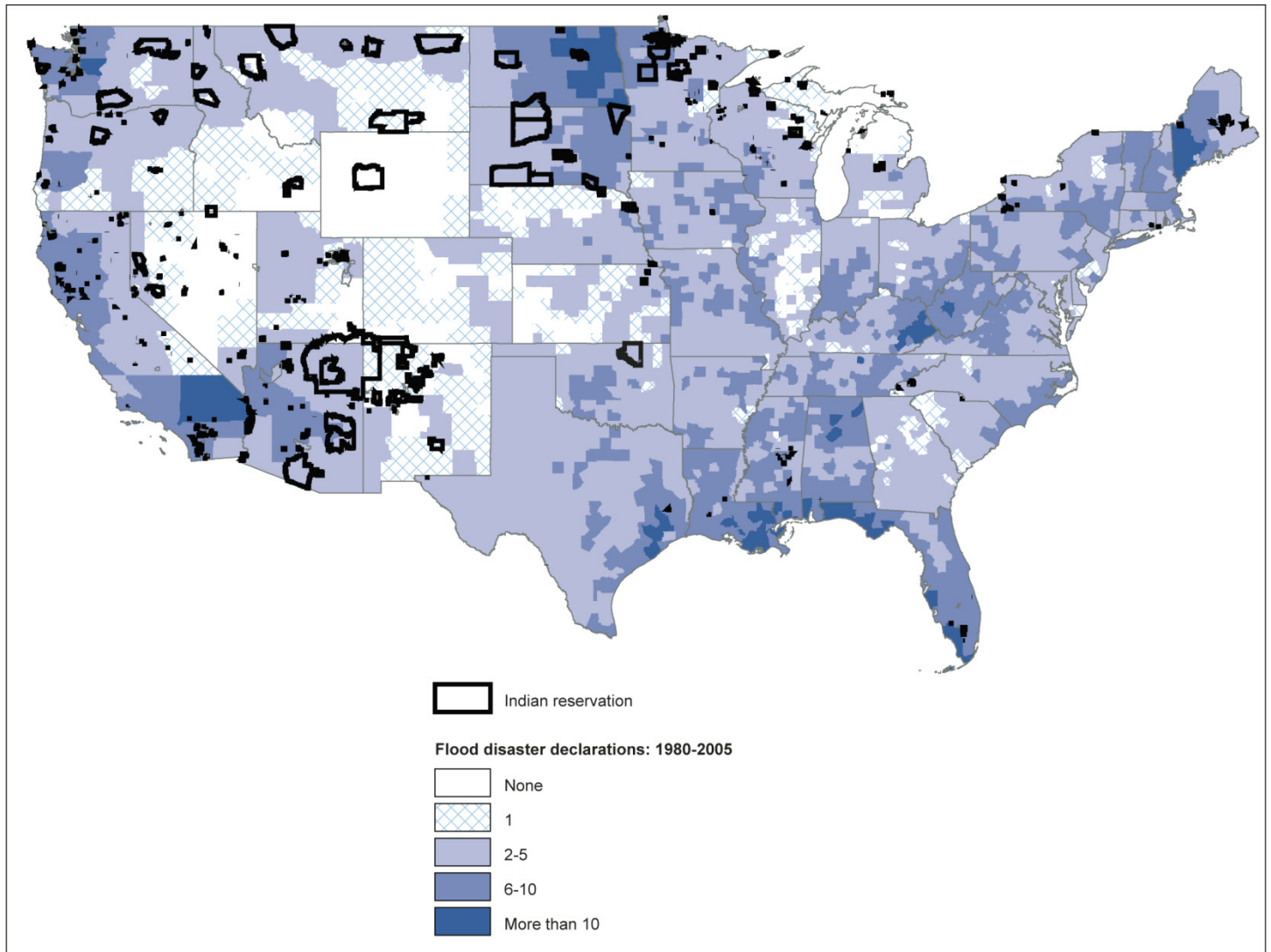
The 1973 Act added certain requirements that, according to FEMA officials, were intended to encourage community participation in NFIP. Specifically, as a condition of future federal financial assistance, communities are required to participate in NFIP and to adopt adequate floodplain ordinances with effective enforcement provisions consistent with federal standards in order to reduce or avoid future flood losses. Figure 1, which shows the location of U.S. Indian reservations and major flood disaster declarations over a 25-year period, indicates that many Indian tribes reside in areas that have experienced multiple floods.

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<sup>10</sup>Pub. L. No. 93-234, 87 Stat. 975 (1973); Pub. L. No. 103-325 Tit. V, 108 Stat. 2160 (1994).

<sup>11</sup>Pub. L. No. 112-141, Div. F, Tit. II, Subtit. A, 126 Stat. 405, 916 (2012).

Figure 1: Number of Major Flood Disaster Declarations by County and U.S. Indian Reservation (1980-2005)



Source: GAO; MapInfo.

The 1973 Act denied direct federal financial assistance and financing by private lending institutions regulated by federal regulators for acquisition or construction purposes in participating communities where flood insurance was available unless the property was covered by flood insurance. Prior to the 1973 Act, the purchase of flood insurance had been voluntary. However, this mandatory purchase requirement, further amended by the National Flood Insurance Reform Act of 1994, effectively

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requires owners of property to obtain flood insurance if they are located in a Special Flood Hazard Area (SFHA) within a community participating in NFIP and obtain a mortgage from a federally regulated lending institution or a federal agency lender or receive direct federal financial assistance for acquisition or construction purposes.

The mandatory purchase requirement applies to secured mortgage loans from financial institutions such as banks, savings and loan associations, savings banks, and credit unions that are supervised by federal agencies, including the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. It also applies to all mortgage loans secured by real estate on which a building is constructed in an SFHA for which flood insurance is available if purchased by Fannie Mae and Freddie Mac in the secondary mortgage market. Loans and grants through financial assistance programs from agencies such as the Federal Housing Administration and the Department of Veterans Affairs are also affected.<sup>12</sup> The requirement also extends to several federal programs that assist Indian tribes. For example, recipients of funds from BIA's Housing Improvement Program, HUD's Indian Housing Block Grant (IHBG) and Indian Community Development Block Grant (ICDBG), and several USDA Rural Development loan programs are required to purchase flood insurance if an assisted structure is in an SFHA.<sup>13</sup> Finally, individuals in SFHAs who receive federal disaster assistance after September 23, 1994, for flood disaster losses to real or personal property are required,

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<sup>12</sup>Owners of properties that receive federal financial assistance for acquisition or construction purposes in SFHAs in communities that participate in NFIP are required to purchase and retain flood insurance. It is important to note that FEMA is prohibited from providing certain types of disaster assistance in connection with floods to applicants located in SFHAs if the community does not participate in NFIP. See 42 U.S.C. § 4106.

<sup>13</sup>BIA's Housing Improvement Program funds home repair, renovation, and replacement. The program provides grants to the neediest Indian families who live in substandard housing or are without housing and have no other resource for assistance. The IHBG is authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) program. The IHBG and ICDBG are available to qualifying tribal entities to fund several eligible activities related to housing and community development, respectively. For additional details on NAHASDA, see [GAO-10-326](#). USDA Rural Development provides low-income housing assistance through several programs for which Indian tribes or their members are eligible, including the section 515 (Rural Rental Housing) and section 502 (Single-Family Housing) loan programs and the section 504 (Rural Housing Repair and Rehabilitation) loan and grant program. USDA Rural Development also provides financing for community infrastructure to tribes through multiple programs that may require flood insurance as a loss mitigation measure.

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as a condition for receiving future disaster assistance, to purchase and maintain flood insurance coverage on the property. According to FEMA, in December 2012 the average NFIP policy cost about \$600 per year, with policies in SFHAs typically costing more and some policies outside SFHAs costing less.

FEMA identifies and maps flood-prone areas throughout the United States and its territories that are eligible to participate in NFIP. According to a Congressional Research Service (CRS) report on NFIP, FEMA also makes flood hazard information available on its website for viewing or purchasing.<sup>14</sup> The report notes that FEMA works with communities to develop new flood hazard data as part of a flood insurance study, issues public notification about maps, and engages in education and outreach to help ensure that community leaders and residents understand the mapping process and the appropriate use of flood maps. The CRS report further notes that reliable flood risk data, including updated flood maps, and educating residents about flood risk, contribute to mitigating future flood losses. Most areas of flood hazard are commonly identified on Flood Insurance Rate Maps (FIRM), and areas not yet identified by a FIRM may be mapped on Flood Hazard Boundary Maps.<sup>15</sup> Several areas of flood hazard are identified on these maps, one of which is the SFHA. The SFHA is a high-risk area defined as any land that would be inundated by a flood having a 1 percent chance of occurring in a given year (base flood); this is the equivalent of a 26 percent chance of flooding over a 30-year mortgage. According to FEMA, the SFHA constitutes a reasonable compromise between the need for building restrictions to minimize potential loss of life and property and the economic benefits to be derived from floodplain development. Development may take place within an SFHA as long as it complies with local floodplain management ordinances, which must meet minimum federal requirements. Flood insurance is required for insurable structures within high-risk areas to protect federal financial investments and assistance used for acquisition or construction purposes within communities participating in NFIP.

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<sup>14</sup>CRS, R40650.

<sup>15</sup>A FIRM is an official map of a community on which FEMA has delineated both the SFHAs and risk premium zones applicable to a community. A Flood Hazard Boundary Map is based on approximate data and identifies the SFHAs within a community.

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In July 2012, Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012.<sup>16</sup> The act extends NFIP for 5 years and makes reforms to the program that include (1) phasing out subsidies for many properties, (2) raising the cap on annual premium increases for other policies from 10 to 20 percent, (3) clarifying that certain multifamily properties are eligible for NFIP policies, (4) imposing minimum deductibles for flood claims, (5) requiring NFIP to establish a reserve fund, and (6) establishing a technical mapping advisory council to deal with map modernization issues. The act also calls for an assessment by FEMA and GAO, separately, of options and strategies for privatizing NFIP in the future and authorizes FEMA to pursue private risk-management initiatives to determine the capacity of private insurers and markets to assist communities in managing the full range of financial risks associated with flooding.

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## NFIP Status

Because of its subsidized premium rates and catastrophic hurricane-related floods in recent years, NFIP has accrued a substantial debt that stood at nearly \$18 billion as of October 2012.<sup>17</sup> We previously reported that NFIP was designed to pay operating expenses and flood insurance claims with premiums collected on flood insurance policies rather than with tax dollars, and that FEMA had statutory authority to borrow funds from Treasury to keep NFIP solvent in years when losses were high.<sup>18</sup> We noted that by design NFIP was not actuarially sound, because Congress authorized subsidized insurance rates for policies covering certain structures to encourage communities to join the program. Since 2000, NFIP has experienced several catastrophic loss years (years with \$1 billion or more in losses). These years include 2001, 2004, 2005, and 2008.<sup>19</sup> By the end of 2012, NFIP is expected to have experienced

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<sup>16</sup>Pub. L. No. 112-141, Div. F, Tit. II, Subtit. A.

<sup>17</sup>The Biggert-Waters Flood Insurance Reform Act of 2012 eliminated insurance premium subsidies on new policies and phased out subsidies for certain existing policies, including properties that have severe repetitive losses and properties that have incurred flood-related damage that exceeds the fair market value of the property. Pub. L. No. 112-141, § 100205.

<sup>18</sup>See GAO, *FEMA: Action Needed to Improve Administration of the National Flood Insurance Program*, [GAO-11-297](#) (Washington, D.C.: June 9, 2011).

<sup>19</sup>Flooding events corresponding with these losses are Tropical Storm Allison (2001), Hurricane Ivan (2004), the Gulf Coast Hurricanes (2005), and Hurricane Ike (2008).

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another catastrophic loss year because of the enormous damage from the October storm known as Superstorm Sandy.

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## Community Participation

Under FEMA's NFIP regulations, a community is defined as any state or area or political subdivision thereof or any Indian tribe or authorized tribal organization, or Alaska Native Village or authorized native organization, that has the authority to adopt and enforce floodplain management ordinances for the area under its jurisdiction.<sup>20</sup> Indian tribes, authorized tribal organizations, Alaska Native villages, and authorized native organizations that have land use authority are considered communities by NFIP and can join the program even if no flood hazard map exists that covers all tribal lands.

NFIP has three components: (1) the provision of flood insurance, (2) a requirement that participating communities adopt and enforce floodplain management regulations, and (3) the identification and mapping of floodplains. Community participation in NFIP is voluntary, although some states require participation as part of their floodplain management program. Each identified flood-prone community must assess its risk of flood hazards and determine whether flood insurance and floodplain management would benefit the community. However, a community that chooses not to participate in NFIP within 1 year of identifying the flood hazard and receiving a flood hazard map may face consequences as a result of its nonparticipation, because no flood insurance can be sold in the community and it may be ineligible for certain types of federal assistance because of the acquisition and construction prohibition of 42 U.S.C. § 4106 such as Stafford Act disaster benefits for home repairs.<sup>21</sup> A community must join NFIP and adopt FEMA-approved floodplain management requirements in order for residents to purchase federal flood insurance. Once a community begins participating in NFIP, property owners can purchase individual NFIP policies. Current law prohibits lenders from making loans for real estate in areas at high risk for flooding,

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<sup>20</sup>44 C.F.R. § 59.1. Although Indian tribes are not explicitly mentioned in the National Flood Insurance Act, the Federal Insurance Administrator and subsequently FEMA have issued rulemakings that define "community" as including Indian tribes for purposes of NFIP. Like all communities, tribal communities must have the authority to adopt and enforce floodplain management regulations for the areas within their jurisdiction in order to be eligible for participation in NFIP.

<sup>21</sup>See 44 C.F.R. § 206.110(k).

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where the community is participating in NFIP, unless the property is covered by flood insurance.<sup>22</sup> Participating communities can receive discounts on flood insurance if they establish floodplain management programs that go beyond the minimum requirements of NFIP. FEMA can suspend communities that do not comply with the program and communities can withdraw from the program (both with sanctions). Currently, more than 21,000 communities participate in NFIP.

Communities participating in NFIP do so as part of either the regular or emergency program. A community participating in the regular NFIP program is usually provided with a FIRM and a flood insurance study. As part of their agreement to participate in NFIP, communities adopt and enforce floodplain management ordinances and FIRMs. If communities do not adopt and enforce these ordinances, they can be placed on probation or suspended from the program. However, such actions take place only after FEMA has taken steps to help the community become compliant. The NFIP emergency program is the initial phase of a community's participation in NFIP and was designed to provide a limited amount of flood insurance. A community participating in the emergency program either does not have an identified and mapped flood hazard or has been provided with a Flood Hazard Boundary Map, and the community is required to adopt limited floodplain management standards to control future use of its floodplain. According to FEMA, fewer than 3 percent of the more than 21,000 communities participating in NFIP are in the emergency program.

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## Indian Tribes

The federal government has consistently recognized Indian tribes as distinct, independent political communities with the inherent powers of a limited sovereignty that has never been extinguished. As of August 2012, there were 566 federally recognized tribes—341 in the contiguous 48 states and 225 in Alaska.<sup>23</sup> To help manage tribal affairs, tribes have formed governments and subsidiaries of tribal governments, including schools, housing, health, and other types of corporations. The United States has a trust responsibility to recognized Indian tribes and maintains a government-to-government relationship with them.

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<sup>22</sup>42 USC § 4012a.

<sup>23</sup>Since 1979, BIA has regularly published a list of federally recognized Indian tribes in the *Federal Register*. For the latest list, see 77 Fed. Reg. 47,868 (Aug. 10, 2012).

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Tribal lands vary dramatically in size, demographics, and location. They range from the Navajo Nation, which consists of about 27,000 square miles across portions of Arizona, New Mexico, and Utah, to some tribal land areas in California of less than 1 square mile. Over 176,000 American Indians live on the Navajo reservation, while some other tribal lands have fewer than 50 Indian residents. Some Indian reservations have a mixture of Indian and non-Indian residents. Most tribal lands are rural or remote, although some are near metropolitan areas.<sup>24</sup>

Over half of Indian tribes, however, do not have reservations or other lands over which they could enact and enforce land use ordinances—which is required for participation in NFIP—and even tribes with reservations often do not have authority to enact such ordinances for all land within the reservation’s boundaries.<sup>25</sup> For example, the Alaska Native Claims Settlement Act revoked all existing Indian reservations in Alaska except one and, as a result of this law and a Supreme Court case, tribes in Alaska generally do not have authority to enact land use ordinances.<sup>26</sup> Also, a number of Indian reservations, primarily in Oklahoma, were disestablished through the allotment of reservation land to individual tribal members.<sup>27</sup> Upon an Indian allottee’s death, these allotments passed to heirs and ownership of some allotted land has continually been divided with each generation of heirs, resulting in large numbers of heirs holding interest in the land as tenants in common. In some cases, such “fractionated lands” have up to several hundred ownership interests. Fractionation complicates basic homeownership issues such as whether to take out a flood insurance policy, because such decisions may require agreement among entities with shared ownership. Some of these allotments, as well as parcels of land within

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<sup>24</sup>GAO, *Indian Issues: Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands*, [GAO-11-543T](#) (Washington, D.C.: Apr. 7, 2011).

<sup>25</sup>We have reported in the past that some tribes are landless. See table 4 in GAO, *Indian Issues: BLM’s Program for Issuing Individual Indian Allotments on Public Lands Is No Longer Viable*, [GAO-07-23R](#) (Washington, D.C.: Oct. 20, 2006). See *Brendale v. Confederated Tribes and Bands of Yakima Indian Nations*, 492 U.S. 408 (1989).

<sup>26</sup>Pub. L. No. 92-203, 85 Stat. 688 (1971), *codified as amended at* 43 U.S.C. §§ 1601-1629h.

<sup>27</sup>The Act of February 8, 1887, commonly referred to as the General Allotment Act, authorized the President to allot parcels of land—generally in sizes of 40, 80, or 160 acres—to individual Indians on Indian reservations and on public lands. Indian General Allotment Act, 24 Stat. 388 (1887). See [GAO-07-23R](#).



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reservation boundaries, have been inherited or purchased by non-Indians and Indian tribes generally lack jurisdiction over land owned by non-Indians.

In some cases, although a tribe is not an NFIP participant, the tribe may be located in another community that participates in NFIP.

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### Proposed Amendment to the Stafford Disaster Relief and Emergency Assistance Act

A proposed amendment to the Robert T. Stafford Disaster Relief and Emergency Assistance Act would allow Indian tribes to request a major disaster declaration by the President.<sup>28</sup> The proposed amendment would provide Indian tribes with this authority so that they would not be required to rely on assistance through a presidential declaration requested by the state or locality.<sup>29</sup> Federal officials with whom we spoke generally viewed this amendment as a positive action in the interest of tribes. For example, USDA Rural Development officials said that this authority would make it easier for tribes to access disaster relief resources. Representatives of several tribes we interviewed said that such a change would open up direct communication between the federal government and Indian tribes. However, questions remained about how the proposed amendment would be implemented. It is not yet clear how the proposed Stafford Act amendment would affect Indian tribes' willingness to participate in NFIP.

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### A Number of Factors Contribute to Indian Tribes' Low NFIP Participation Rate

According to FEMA, as of August 2012, 37 out of 566 federally recognized tribes nationwide—roughly 7 percent—were participating in NFIP (see table 1). The number of policies for each tribe ranged from 1 to 175, and 14 participating tribes had no individual policies. Across all participating Indian tribes, 414 policies were in place, accounting for less than 1 hundredth of a percent of all NFIP policies.<sup>30</sup>

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<sup>28</sup>S. 2283, 112th Cong. (2012).

<sup>29</sup>The proposed amendment, however, would not prohibit a tribe from receiving assistance through a presidential declaration at the request of a state if the President does not make a declaration at the request of a tribe.

<sup>30</sup>According to FEMA, there were nearly 5.6 million NFIP policies in place as of August 2012.

**Table 1: Participation in NFIP among Federally Recognized Indian Tribes (August 2012)**

Measure	Number
Number of federally recognized Indian tribes	566
Number of tribes participating in NFIP	37
Number of participating tribes with insurance policies in place	23
Concentration of insurance policies in place	5 tribes (82 percent of policies) 3 tribes (70 percent of policies)

Source: FEMA.

FEMA's data also show that, among communities that have received flood hazard maps but are not participating in NFIP, there are 46 tribal communities.

Federal agency officials, tribes, and others described several factors that affect whether tribes purchase flood insurance through NFIP or other programs.

**FEMA does limited mapping in tribal communities.** Flood maps show communities and homeowners the level of flood risk they face. According to FEMA, as of October 2012, 78 tribal communities had received flood hazard maps.<sup>31</sup> Representatives of the National Flood Determination Association, which provides FEMA flood mapping data to mortgage lenders and insurers, told us that some tribes that were not participating in NFIP had not been mapped and that because they did not know their flood risk, they likely did not see the advantages to NFIP participation. In discussing the agency's mapping efforts, FEMA officials explained that tribal communities generally included small rural areas that were not a high priority for the agency. The officials said that FEMA had focused its mapping efforts on heavily populated urban and coastal areas with a high risk of flooding. The officials also noted that because of the tribes' sovereignty, the agency needed permission to enter tribal lands and conduct mapping activities and that such permission could be difficult to obtain. Additionally, they were concerned that tribes might not grant

<sup>31</sup>According to FEMA, 8 of the 37 tribes participating in NFIP did not have their own flood hazard maps. Three had their tribal lands mapped on county maps and 5 were participating without a map in the NFIP emergency program. As noted, there were also 46 mapped tribes not participating in NFIP.

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permission for FEMA to publish a map if tribal borders were in dispute. They explained that if FEMA could not overcome these challenges, it might exclude the tribal area from the watershed map.<sup>32</sup> However, they did not provide us with any specific examples of maps with such exclusions.

Representatives of a Washington tribe that received its flood hazard maps from FEMA in 2004 told us the tribe had participated in NFIP since 1997, 7 years prior to receiving the maps. The tribe initially participated in NFIP's emergency program and then became a regular participant once its maps were finalized. They explained that the tribe had largely been motivated by a need to clarify its jurisdictional (land and water) area, which flood mapping allowed them to do. Further, they said that joining NFIP had provided an opportunity to obtain flood insurance as a tribal community instead of participating as part of the surrounding county, supporting the tribe's interest in self-determination.<sup>33</sup> However, this tribe is vulnerable to flooding from several sources, and the representatives noted that it had long been proactive in disaster mitigation efforts as a whole. Emergency officials from another tribe told us that approximately 10 percent of their reservation was mapped and that the mapping had been done by the Army Corps of Engineers. They said their understanding was that until recently, FEMA did not conduct flood mapping on federal reservations.

**Most nonparticipating tribes that have been mapped face relatively low flood risk.** According to FEMA, most of the nonparticipating tribal communities have very low flood risk. Thirty-five of the 46 tribal communities that FEMA told us had been mapped but were not participating in NFIP had been determined to have low flood risk. Another

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<sup>32</sup>A watershed (also a basin or catchment area) may be defined as an area that drains into a lake, stream, or other body of water. In fiscal year 2010, FEMA implemented a watershed-based approach for conducting flood hazard studies. Specifically, FEMA officials explained that mapping is done at a county and watershed level rather than community-by-community. According to FEMA, the overarching principle of the watershed approach is to develop a complete, consistent, and connected flood engineering analysis within a watershed.

<sup>33</sup>As previously noted, FEMA assigns a unique community identification number to each community listed in its NFIP Community Information System database. The actions of a specific community under NFIP directly impact the availability and cost of NFIP policies for its residents. For example, a community's actions could result in its residents receiving NFIP policy discounts. For more on Indian self-determination, see [GAO-10-326](#).

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9 were in the 1-year “opportunity period” for addressing any identified flood hazards and joining NFIP, and 2 had been determined to have some flood risk but were not participating.

One representative of a participating Washington tribe suggested that tribes that are most at risk for flooding should be given priority in efforts to encourage tribal participation in NFIP. The tribal representative said that expecting those not highly vulnerable to flooding to purchase costly flood insurance when they have other priorities would be difficult. When we spoke with an emergency management official from a nonparticipating Wisconsin tribe, he agreed that because the tribe had not experienced a major flood, there was a general lack of urgency on the part of tribal leadership about NFIP participation.

**Many tribes lack the resources or administrative capacity to join NFIP.** FEMA officials told us that affordability affected tribes’ participation in NFIP as it did other low-income communities and individuals. The officials also told us that they had seen slow to no insurance policy growth in areas of the country where the economy was not performing well. A representative of the National Flood Determination Association agreed that the cost of coverage could limit tribes’ participation, noting that there is a general lack of funding for mapping. Further, he said that many rural communities, including tribal communities, were not in favor of adopting land use regulations and did not have the resources to adopt and implement them.

Representatives of the participating Washington tribe with the highest number of individual policies as of August 2012 acknowledged that NFIP participation was administratively burdensome and costly. In particular, they explained that developing flood damage reduction ordinances and then implementing the ordinances required dedicated staff that not all tribes have. In general, they acknowledged that many tribes lacked the resources that this tribe had to pursue NFIP participation. Similarly, a Wisconsin tribal official said that pursuing NFIP participation could be especially challenging for tribes that lacked emergency, planning, or zoning functions and tribes that may not even have developed building codes on their lands. He emphasized that such limitations should be taken into account in examining why tribes may not be participating in NFIP.

**Many tribes view affordability as a significant issue for their members in purchasing NFIP policies.** Many tribal representatives said that affordability would be an issue for tribal members. For instance,

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representatives of an Oklahoma tribe told us that while affordability would not affect the tribe's decision to participate in the program, because the tribe would use NFIP to insure its government and commercial buildings, it would be a factor for individual tribal members. Specifically, they explained that paying flood insurance premiums would be challenging for individuals who already lacked the resources to afford homeowner, renter, and automobile insurance. Representatives of other tribes agreed that NFIP premiums would be costly for the members of their tribes. Emergency management representatives of a large western tribe told us they were not aware of any tribal members who had flood insurance on their homes and that even homeowner insurance coverage was rare. They explained that the average annual household income on the reservation was between \$12,000 and \$15,000 and that unemployment was at least 28 percent. A tribal housing official from Alaska whose members can participate in NFIP through the surrounding borough told us that he had found that most members of his tribe dropped their homeowners insurance as soon as their homes were paid off and that he expected they would do the same with required flood insurance, which can cost more than \$1,000 a year.<sup>34</sup> An official for another Oklahoma tribe that was participating in NFIP but had no active individual policies said he did not believe flood insurance was a priority for members of his tribe, whose average annual household income was \$6,000. Figure 2 shows a Native Alaska fishing village that has experienced flooding but whose residents, according to the tribe's housing director, have not purchased NFIP flood insurance due to the high cost.

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<sup>34</sup>As previously noted, under NAHASDA, recipients of HUD grant funds are required to obtain flood insurance coverage when the development assisted with those funds is in an identified SFHA. The required period for insurance coverage is the useful life of the property, as defined by the grantee with HUD approval.

**Figure 2: Alaska Native Fishing Village That Has Experienced Flooding (August 2009)**



Source: GAO.

**Unique Indian issues also impact tribal participation in NFIP.** As previously noted, all but one of the tribes in Alaska lack a reservation. Because the tribes lack jurisdiction to enact and enforce land use ordinances over the land where they reside, they cannot directly participate as communities in NFIP. In many cases, the tribes are co-located with other government entities that may participate in NFIP, such as cities and boroughs, and their members may access NFIP through those other entities. Alaska state officials told us that an estimated 66 percent of the Alaska Native population could participate in NFIP because they lived in a city or borough that participated in the program. Based on data we compiled and analyzed, 58 of 225 Alaska tribes were co-located with a participating community (see table 2).

**Table 2: NFIP Access for Tribes in Alaska (2012)**

<b>Measure of access</b>	<b>Number</b>
Tribes in Alaska located in an incorporated area that participates in NFIP	58
Tribes in Alaska located in an incorporated area that does not participate in NFIP	102
Tribes in Alaska located in unincorporated boroughs or municipalities (unincorporated areas are not eligible to participate in NFIP)	64
Metlakatla Indian Community, Annette Island Reserve (does not participate in NFIP)	1
<b>Total</b>	<b>225</b>

Source: GAO analysis of data from FEMA, the State of Alaska, and the Bureau of Indian Affairs.

Notes: (1) For this table we focused on the geographic location of specific Alaska Native entities. As a result, we counted some entities separately that would normally be combined and we excluded two other regional entities. Specifically, we counted Arctic Village and the Village of Venetie separately rather than combined under the Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie) umbrella entity. Similarly, we counted Saint George Island and Saint Paul Island separately rather than combined under the Pribilof Islands Aleut Communities of St. Paul and St. George Islands umbrella entity. Finally, we excluded the Central Council of the Tlingit and Haida Indian Tribes and the Inupiat Community of the Arctic Slope because they do not have geographic locations similar to individual tribes in Alaska. (2) Not all of the villages where the tribes in Alaska were historically located are occupied year round. Twenty-four tribes are associated with village locations that the state has identified as unpopulated, seasonal-use areas, or of undetermined population.

Tribes in Oklahoma and elsewhere that do not have reservations—as well as tribes with reservations—face similar challenges in adopting and enforcing land use ordinances because they lack jurisdiction over certain land. Tribes with reservations do not generally have authority to adopt and enforce land use ordinances for land within the reservation’s boundaries owned by non-Indians. Likewise, representatives of an Oklahoma tribe told us that its lack of participation in NFIP was due in part to a reluctance to face possible sanctions because of the tribe’s limited ability to enact and enforce ordinances for land owned by non-Indians.<sup>35</sup> For example, they explained that if a home that had

<sup>35</sup>According to FEMA, a community could face consequences if it had been identified as having an SFHA but chose not to participate in NFIP. A community becomes ineligible for certain types of assistance 1 year after the effective date of the community’s flood hazard map. Participating communities that fail to adopt adequate ordinances or correct deficiencies are subject to sanctions. FEMA-imposed sanctions under NFIP may include an added premium for each policy sold or renewed in the community or a suspension on new policy purchases and existing policy renewals.

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experienced repeated flooding was located on land where the tribe had limited jurisdiction, the tribe could not take action to mitigate future flood damage without the owner's permission. They said they were aware that NFIP does not have a workaround for such circumstances. The tribe had chosen to insure all tribal structures and vehicles under a private policy.

In addition, representatives of several tribes explained that tribal structures differ from other local government structures but that FEMA did not take those differences into account, making participation difficult for some tribes. For example, representatives of a participating Washington tribe told us that in preparing its multihazard mitigation plan for FEMA approval, the tribe realized that the plan template had been created for states, as it called for input from counties within the jurisdiction. Instead of counties, the tribe had to substitute less specific geographic areas within the tribal community. The same tribe was participating in NFIP's Community Rating System program, which allows communities to receive discounts on policies for their residents based on floodplain management actions the community takes beyond NFIP's minimum requirements. The representatives explained that NFIP also lacked a tribal template for the Community Rating System program, which they said would facilitate the tribe's participation.

Without flood hazard maps, tribal communities, including those that may be in areas with a higher risk of flooding, may not be sufficiently aware of their flood risk. Tribes also may be reluctant to pursue NFIP participation if they are uncertain about whether they would qualify and could meet the program's requirements. Further, those with fewer resources and less administrative capacity may be less proactive in requesting that FEMA map their communities, even though they may be vulnerable to floods.

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## **FEMA Has Provided Indian Tribes with Training and Technical Assistance on Hazard Mitigation, Including Flood Insurance**

FEMA's outreach to tribes in the last few years has largely consisted of emergency management and homeland security training for tribal officials through its Emergency Management Institute (EMI), direct technical assistance to tribes in preparing their multihazard mitigation plans, and nationwide outreach for NFIP through its regional offices and the NFIP FloodSmart marketing campaign. FEMA officials told us that the agency helped to educate tribal officials about NFIP and floodplain management through courses offered by EMI under a mitigation curriculum that includes courses for floodplain managers on their roles and responsibilities, flood insurance, and NFIP rules and regulations. FEMA has also developed an emergency management tribal curriculum to collaborate with tribal governments in building emergency management



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capability and partnerships to ensure continued survival of tribal nations and communities.

To some extent, FEMA's efforts have helped some tribes better understand the flood hazards that they face. According to FEMA officials, more than 2,000 members from more than 300 Indian tribes have taken courses through EMI. The officials added that each regional office had a floodplain management specialist as the NFIP point of contact for Indian tribes. Officials from two tribes told us that they had participated in EMI training. One tribal emergency management official in Wisconsin told us that he participated in training with an EMI tribal curriculum group that communicated monthly.

FEMA officials also described the direct technical assistance that they provided to tribes that were preparing hazard mitigation plans. According to FEMA, developing the plans involves identifying the tribe's critical infrastructure, major risks and vulnerabilities, and actions to reduce those risks and vulnerabilities for various types of disasters, including floods. This assistance provides tribes with an opportunity to learn about the risks that their individual communities may face. Representatives from several tribes told us that they had completed approved mitigation plans or were in the process of completing their plans. Two of the tribes with whom we spoke had their plans approved in 2010.

FEMA FloodSmart officials explained that they tried to reach communities nationwide with the FloodSmart campaign, but that they targeted those communities that were most at risk for flooding. Among these communities, they focused on urban areas which had a higher concentration of potential flood insurance buyers than rural areas. They explained that FloodSmart used a tiered marketing strategy that was based on a number of factors that point to a high potential return on investment of federal dollars, including: (1) flood insurance policy purchase history, (2) potential flood risk as determined by volume of SFHA properties, (3) flood event history, (4) volume of structures, and (5) media cost. As such, rural areas, including Indian areas, generally received lower priority.

FloodSmart officials told us that since February 2007, a total of 671,000 acquisition-based direct mail pieces had been sent to approximately 383,000 distinct household addresses within zip codes that intersected with Indian reservations. Moreover, according to FloodSmart officials, on average, 112,000 direct mail pieces were sent to Indian reservations each year, the majority of which were sent to addresses for properties in an

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SFHA. However, several tribal representatives with whom we spoke still told us that they would like more information about NFIP and its requirements so that they could decide whether to participate in the program and encourage their members to purchase policies through the program. In addition, representatives from a few tribes and from an insurance company told us that marketing campaigns or other outreach efforts may have little effect in Indian communities without the buy-in of tribal leaders.

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### HUD and USDA Work with Tribes on Housing Issues and May Provide Some Information on NFIP

HUD and USDA Rural Development provide assistance in the form of housing and infrastructure grants, loans, and loan guarantees to Indian tribes. According to officials from both agencies, while neither HUD nor USDA is required to provide NFIP outreach, the agencies worked with tribes on housing issues that may include determining flood risk to housing assistance projects and assessing housing-related issues after disasters, such as floods. In addition, the officials said that their field staff had FEMA FloodSmart program material on hand for interested parties, including Indian tribes.

As part of the IHBG and ICDBG programs, HUD officials in the Office of Native American Programs told us that they worked with tribes to identify their priorities and to help them determine how to best use HUD funds as an investment in addressing their needs. In addition, under both IHBG and ICDBG, recipients can use program funds to cover flood insurance premiums for properties in some high-risk areas. HUD officials said that they conducted outreach to housing authorities in locations where floods and other disasters had occurred to assess the status of HUD housing stock and to identify displaced families. HUD officials also said that they coordinated with FEMA and other agencies locally so that the agencies could work together to assess grantees' damages and needs following a disaster, but that they did not know which tribes participated in NFIP. HUD regional officials said that they worked closely with individual tribes that had been impacted by flooding and other disasters and could offer technical and financial assistance to the tribes. Officials from three tribes told us that in their experience, HUD officials generally did not approve of using HUD assistance to build in an SFHA. An official from one of these tribes told us that to address HUD's requirements for one of its HUD-assisted housing developments, the tribe built pads on all of the houses it was constructing to elevate them out of the flood zone. In addition, officials in HUD's Office of Environment and Energy told us that they provided environmental training and invited grantees, including tribes, to attend this training.

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USDA Rural Development has a Native American Coordinator who interacts with tribes on programmatic issues, including challenges and issues that arise due to flooding. We spoke with the national coordinator, who explained that each state office serving a federally or state recognized Indian tribe designated an individual to serve as the USDA Rural Development state Native American Coordinator. He explained that the role had typically been a collateral duty although, in the past, three states had employed full-time Native American Coordinators. The coordinator's efforts related to NFIP primarily would be liaising between tribal staff and the appropriate Rural Development staff tasked with ensuring compliance with program requirements for USDA-funded construction or development. Specifically, USDA officials told us that they ensured compliance with NFIP requirements only for USDA-funded projects where construction or development occurred in an SFHA in an NFIP participating community. They explained that USDA's evaluation of NFIP applicability was part of National Environmental Policy Act reviews.<sup>36</sup> In these cases, USDA officials said they ensured that mitigation actions were taken and when this was impractical, the applicant for USDA funding purchased flood insurance. The officials told us they did not provide any assistance for developing floodplain management approaches, but required that borrowers comply with applicable state or local floodplain ordinances or permits. Both HUD and USDA officials told us that when an area had not been mapped, they might rely on tribal elders or another knowledgeable source in determining the location of flood-prone areas.

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## Boosting Tribes' Participation in Flood Insurance Programs

Representatives from HUD and USDA, tribal representatives, and private insurers all agreed that more could be done to encourage tribes to participate in flood insurance programs. However, FEMA noted that it was limited in its efforts by the unique legal issues surrounding Indian tribes and their lands. FEMA also told us its focus was on mapping more highly populated areas, which typically did not include Indian tribal communities. HUD and USDA acknowledged that more information and support could

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<sup>36</sup>National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970), codified as amended at 42 U.S.C. §§ 4321-4347 (2012). Under the National Environmental Policy Act, agencies evaluate the likely environmental effects of projects they are proposing using an environmental assessment or, if the projects likely would significantly affect the environment, a more detailed environmental impact statement. Some actions are not subject to review, including those excluded by section 316 of the Stafford Act and certain emergency actions.

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encourage tribes to participate in NFIP. For instance, HUD officials in the Northern Plains region, where more than 30 federally recognized tribes are located, told us that there was likely a need for more education among tribes.<sup>37</sup> The officials said that they were aware that FEMA had to prioritize limited federal dollars for flood mapping activities and that tribal lands might not be a top priority. However, they noted that tribes also might not be proactive in requesting flood maps for their communities because they had received conflicting information about FEMA's authority to map tribal lands. The officials said they had invited FEMA to a regional meeting in the last year to share information on disaster topics, including floods and flood insurance, with tribal housing officials from the region. As previously noted, officials from HUD's Office of Environment and Energy also told us that they were increasing opportunities for HUD grantees, including tribes, to obtain information and training on environmental topics such as flood risks.

Tribal representatives had a number of suggestions that could lead to increased tribal participation, ranging from expanding FEMA outreach and education to requiring tribes to have flood insurance. They suggested, among other things,

- more emphasis on educating tribes on the importance of flood insurance, as at least one tribe had been experiencing more rain each year;
- more outreach to tribes, including those without flood hazard maps, to help them understand their vulnerability to floods and the advantages of NFIP participation;
- meetings that brought together FEMA officials and elected tribal councils that could make decisions on behalf of their tribes;
- federal grants to help tribes develop elevation certificates and to retrofit older properties to lower risk and make the policies more affordable for members;

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<sup>37</sup> HUD's six regional Office of Native American Programs offices are located in Anchorage (Alaska), Chicago (Eastern Woodlands), Denver (Northern Plains), Seattle (Northwest), Oklahoma City (Southern Plains), and Phoenix (Southwest).

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- a simulation exercise that included the host tribe, FEMA officials, and other government officials with whom tribes would need to coordinate in a flood-related disaster; and
  - an amendment to the NFIP statute to address issues specific to tribes' limited ability to adopt and enforce land use ordinances.

At least one tribal representative said that it would be reasonable for Congress to require a flood mitigation plan across communities and tribal lands, regardless of risk level, and that tribes with critical infrastructure in a flood-prone area should be required to participate in NFIP or sign a waiver of future flood assistance. However, another representative suggested that FEMA should address the land use ordinance issue and determine, with the tribes' input, whether NFIP had been financially beneficial to tribal members who were able to purchase flood insurance in the nontribal community where they lived.

Insurance company officials we spoke with, including a Write-Your-Own company and a broker, emphasized the importance of respecting the cultural issues of dealing with tribes in any targeted outreach activities. As we have seen, for example, the FloodSmart campaign sent thousands of pamphlets to individual residents on Indian lands. One insurance broker that targets Indian tribes told us that the company had received three requests for policies after the mailing. She told us that the company had learned that tribal members tend to rely on the views of their tribal leaders for guidance and that without the buy-in of these leaders, marketing FloodSmart materials to individual members would likely not be a successful strategy.

Insurance and reinsurance company officials we spoke with were aware of the Biggert-Waters Flood Insurance Reform Act of 2012 requiring FEMA and GAO to assess options and strategies for privatizing NFIP in the future and authorizing FEMA to pursue private management initiatives.<sup>38</sup> A reinsurance official said that his company had begun to examine whether it would be in its interest to become more involved now, given that future legislation would likely increase the private sector's role in flood insurance. This official added that his company recognized that NFIP was not actuarially sound and that expected additions to the nearly

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<sup>38</sup>Pub. L. No. 112-141, § 100232.

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\$18 billion deficit from Superstorm Sandy could accelerate congressional interest in greater private sector involvement in providing flood insurance.

Other private sector insurance options may offer tribes an alternative to NFIP. A private insurer proposed two related options that could allow tribes to purchase flood insurance at a potentially lower cost than under NFIP. The first would involve expanding the existing eligible flood insurance risk-sharing pools to obtain the critical mass of policies necessary to make low-cost flood insurance policies affordable to Indian households. The second would establish a new private “microinsurance” program offering low-premium policies with small coverage limits tailored specifically to Indian tribes, based on similar operations in developing countries.

- **Nonprofit Insurance Risk Pool:** Two of the tribes we contacted had purchased flood insurance through an insurance risk pool offered by AMERIND Risk Management Corporation. AMERIND was organized in 1986 as a collaborative program between HUD and some Indian housing authorities to provide insurance protection for Native American low-income housing. It currently operates as a multitribal nonprofit corporation working with over 400 tribes and administers risk-sharing pools. Since 2002, AMERIND has offered a flood insurance endorsement to its standard policy, limited to HUD-assisted Indian housing.<sup>39</sup> Company officials explained that through a members-only risk pool, the flood endorsement provides flood coverage to about 56,000 structures on tribal lands and charges a universal rate of \$10 per structure per year (see table 3).<sup>40</sup> AMERIND has a coverage limit of \$15,000 for each covered structure.

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<sup>39</sup>The International Risk Management Institute, Inc. defines an endorsement as an insurance policy form that changes or adds to the provisions included in one or more of the forms that construct a policy, and notes that endorsements may serve to broaden the scope of coverage.

<sup>40</sup>See GAO, *Natural Hazard Mitigation and Insurance: The United States and Selected Countries Have Similar Natural Hazard Mitigation Policies but Different Insurance Approaches*, [GAO-09-188R](#) (Washington D.C.: Dec. 22, 2008) for information on the private natural perils risk pool in Switzerland that includes flood coverage.

**Table 3: Tribal Flood Insurance Policies in Place with AMERIND (November 2012)**

<b>Measure</b>	<b>Number</b>
Number of Indian tribal entities participating	400+
Number of flood insurance policies	206
Number of structures insured	45,000
Residential (95 percent)	
Commercial (5 percent)	

Source: AMERIND Risk Management Corporation.

An Arizona tribe we contacted uses AMERIND insurance on its HUD-assisted tribal housing, and the policies included the flood protection endorsement. According to the tribal representative, the tribe has used this insurance option for about 8 years. One Oklahoma tribe we contacted had not purchased AMERIND's flood insurance endorsement but had purchased property insurance from the company. This representative said that because of its affordability compared with NFIP and because the company is a multitribal corporation, he would refer individual members to AMERIND if they lived in HUD IHBG-assisted housing within a floodplain and needed to purchase flood insurance. USDA Rural Development also has approved AMERIND as an eligible nonflood insurer for its single-family housing programs, so Indian tribes and their members can use an appropriate AMERIND product to insure projects financed through these programs. According to USDA, the intent is to facilitate use of its programs by Indian tribes and their members for projects on trust land when conventional insurance coverage is unavailable, difficult to access, or expensive.

However, the current nonprofit insurance risk-pooling option has limitations. First, while the premium rate may be lower than NFIP's, the coverage limits for flood insurance are also generally lower. Representatives for AMERIND told us that coverage limits were low because the company had not been successful in obtaining reinsurance on the private market that would allow the company to mitigate its risk and offer full replacement costs for each structure. AMERIND does offer to provide double coverage (\$30,000 per structure) for flood losses, but the premiums are more than 10 times the universal rate, ranging from about \$150 to \$200 per structure. These premiums are generally below NFIP rates for properties with similar coverage inside SFHAs and are generally comparable to NFIP rates for similar coverage outside SFHAs. Second, because AMERIND's flood insurance coverage is available for HUD IHBG-

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assisted structures only, tribes cannot use it for all structures on tribal lands. The tribes we interviewed that used AMERIND for flood insurance were able to obtain coverage only for HUD IHBG-assisted structures.<sup>41</sup> Because of this limitation, AMERIND does not have the critical mass of policies necessary to offer private low-cost flood insurance to all Indian households. Third, communities may still face consequences if they are identified as having SFHAs and choose to obtain non-NFIP flood insurance. According to FEMA, NFIP aims to do more than simply encourage property owners to purchase flood insurance. It also encourages them to take measures to mitigate potential flood damage to their properties, and NFIP coverage is available only when certain flood protection standards have been implemented.

- **Private Microinsurance:** Another potential private sector option would be a private microinsurance program. Microinsurance is a relatively new product that allows insurers to offer low-premium policies with small coverage limits in developing areas. The concept operates much like AMERIND's risk pool and is structured to provide low-income policyholders with a degree of "livelihood protection" or emergency expense support rather than full indemnity for loss. We spoke with officials from a reinsurance company that was recently awarded a grant from a member of the World Bank group to develop a market for microinsurance in an agriculture-based developing country. These officials and officials from the reinsurance company's insurance subsidiary said that, given the recent congressional interest in looking into private options for flood insurance, they would be interested in working with AMERIND or helping to develop another Native American flood insurance program that would cover all tribal member homeowners and businesses. They said that a mandatory coverage provision would solve the coverage problem and reduce uncertainty, making the provision of microinsurance more attractive to and sustainable for insurers and reinsurers. But they added that even with mandatory group coverage, they saw benefits to mapping all lands, because a private microinsurance risk pool would need to charge more for properties that were located on unmapped tribal lands than for similar properties located on mapped tribal lands.

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<sup>41</sup>However, they were able to obtain traditional nonflood property coverage from AMERIND on structures receiving Rural Development assistance.



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During the course of our work for this report, FEMA developed a draft statement of work for its upcoming private market assessment of NFIP. The draft statement, dated December 17, 2012, included a requirement for the contractor to assess a broad array of instruments, including reinsurance, microinsurance, and flood insurance pools. FEMA officials confirmed that the inclusion of microinsurance and insurance pools in the study was finalized after we raised and discussed those alternatives with them and that they considered both alternatives to be worth studying. FEMA officials told us that they planned to issue the statement of work early in January 2013.

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## Conclusions

Congress created NFIP with the intent of providing affordable flood insurance to communities and households in order to financially protect property owners and reduce the cost of federal postdisaster assistance, but participation by Indian tribes has been low. Even on Indian lands that have experienced flooding, tribes and tribal members often do not participate, and the total number of policies written to tribes and tribal members accounts for less than 1 hundredth of a percent of FEMA's portfolio. FEMA has provided tribes with training and technical assistance and has to some extent helped tribes to understand the flooding risks they face. However, several factors have contributed to the low participation rate, including limited mapping on Indian lands; affordability; lack of information on NFIP; and tribal land use issues, including confusion about legal restrictions on activities on Indian lands. Limited mapping, in particular, has contributed to a lack of awareness both of the risk of flooding and of the benefits of NFIP. FEMA has generally focused its mapping efforts on densely populated and coastal areas in order to make the best use of its resources. However, increased mapping of less densely populated rural areas, including Indian lands, is in line with Congress's focus on increasing tribes' participation in NFIP and is key to raising awareness of the types of flood risks residents of these areas face. Expanding its flood mapping efforts will challenge FEMA to balance its need to make the best use of scarce resources with the needs of these previously underserved communities.

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## Recommendation

To help increase Indian tribes' participation in NFIP, we recommend that the Administrator of FEMA examine the feasibility of making mapping of tribal lands a higher priority.

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## Agency Comments

We provided a draft of this report for review and comment to USDA Rural Development, FEMA within the Department of Homeland Security, HUD, and BIA within the Department of the Interior. A letter from the Director of the Departmental GAO-OIG Liaison Office within the Department of Homeland Security stated that FEMA will take steps to make mapping of tribal lands a higher priority. The director also stated that doing so will be challenging due to FEMA's scarce resources and noted the agency's appreciation for GAO's acknowledgment of its resource limitations. In addition, the director said that FEMA will consider the suggestions made by tribal representatives for increasing tribal participation in flood insurance programs. The letter is reprinted in appendix II. We also received technical comments from USDA Rural Development, FEMA, and HUD, which we incorporated in the report as appropriate. BIA did not provide any comments.

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We are sending copies of this report to appropriate congressional committees, and the Secretaries of Agriculture, Homeland Security, Housing and Urban Development, and Interior. This report will also be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or [cackleya@gao.gov](mailto:cackleya@gao.gov). Contact points for our Offices of Congressional Affairs and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.



Alicia Puente Cackley  
Director, Financial Markets and  
Community Investment

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to examine (1) factors contributing to the current low levels of National Flood Insurance Program (NFIP) participation by Indian tribes, (2) the Federal Emergency Management Agency's (FEMA) efforts to increase tribes' participation in NFIP, and (3) administrative and legislative actions that could encourage Indian tribes and their members to increase their participation in NFIP and potentially other flood insurance programs. For the purposes of this review, we limited our study primarily to flood insurance policies held on Indian tribal lands (such as reservations), because FEMA does not collect demographic data such as race or ethnic origin of NFIP policyholders. Therefore, no comprehensive data are available on members of Indian tribes who are living in nontribal communities and may carry individual NFIP policies. We also interviewed representatives from Alaska, because many Alaska Native communities are vulnerable to floods, but do not have designated reservations that could participate in NFIP. With only one reservation in the state, tribes in Alaska can participate in NFIP only through the municipalities in which their communities are located.

To address all three objectives, we reviewed NFIP laws and policy documents. We reviewed FEMA data on communities participating in NFIP, including those designated as tribal communities, and on tribes that had flood hazard maps but were not participating in NFIP for various reasons. FEMA provided us with information on its process for collecting and analyzing the data in its Community Information System database and on the agency's data reliability measures. We determined that the data FEMA provided to us were sufficiently reliable for our reporting purposes. In addition, we reviewed prior GAO work on flood insurance, Indian tribes, and disaster preparedness, and reports by the Congressional Research Service, to compile background information on NFIP. We interviewed and gathered documentation from officials at FEMA and other federal agencies with programs that assist Indian tribes, such as the Bureau of Indian Affairs (BIA) within the Department of the Interior, Department of Housing and Urban Development (HUD), and the U.S. Department of Agriculture (USDA) Rural Development. In addition, we reviewed regulations for those agencies' programs. We spoke with representatives from the State of Alaska; the National Flood Determination Association, which provides flood mapping data to mortgage lenders and insurers; the insurance and reinsurance industries; a nonprofit risk-pooling organization; FloodSmart, which administered FEMA's NFIP media campaign; and selected Indian tribes.

We selected the tribes from among those on FEMA's lists of tribes that were participating in NFIP and those that had flood hazard maps but were

not participating in NFIP. We selected a purposive non-representative sample of eight participating tribes for interviews based on the number of individual policies within each tribe, geographic diversity, and tribe size. We also selected a purposive non-representative sample of six nonparticipating tribes for interviews based on the reason for nonparticipation, geographic diversity, and tribe size. In addition, our prior work on the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) program partially informed the tribes we selected. Specifically, because we had already established communication with certain tribes, we selected them over comparable tribes on either list. Because of our time constraints and several selected tribes being impacted by a natural disaster (Superstorm Sandy), we were able to interview five participating and five nonparticipating tribes. We also judgmentally selected a tribe in Alaska that we had contacted previously to obtain a perspective on NFIP from a tribe in that state. To obtain perspectives from the insurance industry, we interviewed representatives from an insurance company that we contacted while conducting prior work related to the Write-Your-Own insurance program, a vendor that administers NFIP flood policies for Write-Your-Own insurance companies, and an insurance broker that specializes in working with Indian tribes.

To determine factors contributing to the current low levels of NFIP participation by Indian tribes, we reviewed FEMA's data on tribal community participation. We also asked FEMA officials about the agency's process for mapping Indian lands (or providing flood hazard maps to Indian communities), and options for tribes to participate in NFIP. In our interviews with other federal officials, tribal representatives, and others, we asked about factors that may positively or negatively affect whether tribes participate in NFIP.

To determine the efforts FEMA was making to increase awareness of and encourage participation in NFIP by Indian tribes, we asked officials at FEMA about outreach and technical assistance they provided to Indian tribes related to floods and flood insurance. In addition, we asked FloodSmart representatives about any efforts to market NFIP to Indian tribes and their members. We also asked officials at BIA, HUD, and USDA about information they may share with tribes on flood insurance in providing program support. Further, we asked tribal representatives about their interactions with FEMA and other agencies and information or assistance they had received related to NFIP.

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To determine what administrative or legislative actions could encourage Indian tribes and their members to increase their participation in NFIP and potentially other flood insurance programs, we reviewed NFIP regulations and legislation and guidance on FEMA coordination with and outreach to Indian tribes. We interviewed representatives from the insurance and reinsurance industries about other flood insurance options, in addition to NFIP, that may facilitate tribes' purchase of flood insurance. We also asked federal officials and tribal representatives about actions that FEMA or Congress could take to encourage tribes participating in NFIP to increase their use of the program and tribes not participating to join NFIP.

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## Tribe Selection Process

Participating: Based on number of individual NFIP policies held by the tribe, size of tribe, and geographic diversity, a total of eight tribes were selected for inclusion as well as six backup tribes. Tribes and backup tribes were selected within each region, except in the Northeast region where there was only one tribe included in our sample frame. One group of selected tribes had the largest number of policies and the backups had the second largest number of policies. The other group of tribes had the lowest number of policies. Among the cohort of lowest policies, within each region, tribes selected were those with the largest enrollment and the backups were those with the second largest enrollment.

Nonparticipating: Based on reason for nonparticipation (such as withdrawn or suspended from the program), size of tribe, and geographic diversity, a total of six tribes were selected for inclusion as well as three back-up tribes. Tribes and backup tribes were selected within each region, except in the Northeast region where there was only one tribe included in our sample frame. Additionally, the one withdrawn tribe and the one suspended tribe are also included in our selected tribes. In the other three regions, one group of selected tribes had the largest number tribal enrollment and the backups had the second largest tribal enrollment.

We conducted this performance audit from August 2012 to January 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Federal Emergency Management Agency

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

December 28, 2012

Alicia Puente Cackley  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Draft Report GAO-13-226, "FLOOD INSURANCE: Participation of Indian Tribes in Federal and Private Programs"

Dear Ms. Cackley:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's acknowledgement of efforts undertaken by the Federal Emergency Management Agency (FEMA) to inform and encourage Tribal participation in the National Flood Insurance Program (NFIP). The draft report contained one recommendation, with which the Department concurs. Specifically, GAO recommended that the Administrator of FEMA:

**Recommendation:** Examine the feasibility of making mapping of tribal lands a higher priority.

**Response:** Concur. FEMA's Federal and Insurance and Mitigation Administration will examine the feasibility of making mapping of tribal lands a higher priority by continuing to use FEMA's Risk Map products to assist Indian Tribes in making informed decisions regarding risk. FEMA will continue to expand its outreach to Tribal governments through Regional Tribal Liaisons and Floodplain Management Specialists when developing Risk Map products ensuring Indian Tribe participation is obtained through meaningful dialogue regarding the Tribe's risk and opportunities for mitigation. We appreciate GAO's recognition that reprioritizing FEMA's flood mapping efforts will be challenging in so far as balancing the need to make the best use of increasingly scarce and limited resources with the needs of tribal communities. FEMA will also consider and take action, as appropriate, on the suggestions made by tribal representatives for increasing tribal participation in flood insurance programs. Estimated Completion Date: June 30, 2013.

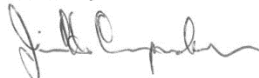
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**Appendix II: Comments from the Federal  
Emergency Management Agency**

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Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Alicia Puente Cackley, (202) 512-8678, [cackleya@gao.gov](mailto:cackleya@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Andy Finkel (Assistant Director), Bernice Benta-Jackson, Emily Chalmers, Brian Friedman, Jeffery Malcolm, Marc Molino, Patricia Moye, Roberto Pinero, and Andrew Stavisky made key contributions to this report.



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