

FLOOD INSURANCE REFORM: FEMA'S PERSPECTIVE

HEARING BEFORE THE SUBCOMMITTEE ON HOUSING AND INSURANCE OF THE COMMITTEE ON FINANCIAL SERVICES U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

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FLOOD INSURANCE REFORM: FEMA'S PERSPECTIVE

Thursday, March 9, 2017

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Sean P. Duffy [chairman of the subcommittee] presiding.

Members present: Representatives Duffy, Ross, Royce, Pearce, Posey, Luetkemeyer, Stivers, Hultgren, Rothfus, Zeldin, Trott, MacArthur, Budd; Cleaver, Velazquez, Capuano, Sherman, Beatty, Kildee, and Kihuen.

Ex officio present: Representatives Hensarling and Waters.

Also present: Representatives Kustoff and Green.

Chairman DUFFY. The Subcommittee on Housing and Insurance will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may participate in today's hearing for the purposes of making an opening statement and questioning our witness.

Today's hearing is entitled, "Flood Insurance Reform: FEMA's Perspective."

The Chair now recognizes himself for 3 minutes for an opening statement. As I said at our first hearing last month, this subcommittee has a full agenda this year. Our top priority is a timely reauthorization of the National Flood Insurance Program (NFIP) and its key authorities, which are set to expire on September 30th.

Over the past few weeks, my staff and I have taken over 50 meetings with stakeholders on top of the multiple meetings that were taken by Chairman Luetkemeyer in the last Congress.

On Monday, I had the opportunity to visit Louisiana with Majority Whip Steve Scalise, where I visited local parish leaders, levee district representatives, bankers, retailers, homebuilders, and many others. I also toured the southern part of the State which was devastated, as we know, by Hurricane Katrina, in which 1,800 people lost their lives.

The NFIP is critical to many Americans. Over and over again, some of the same things continue to emerge in the meetings that I hold.

First, a lapse in the program would be irresponsible and would be damaging to communities.

Second, policies must be accessible and affordable for those who are in need.

Third, there is a strong interest in the growth of a robust private market that can offer consumers a choice in flood insurance.

Fourth, communities are frustrated by the accuracy of FEMA's flood maps and the amount of time it takes for maps to be approved.

Fifth, we should explore new options for mitigation and community resiliency.

Sixth, the financial integrity of the program is weak. Today, the NFIP is more than \$24.6 billion in debt and runs an annual deficit of \$1.5 billion. This is absolutely unsustainable.

And finally, we must address some of the egregious claims processing problems that the northeast in particular experienced during Superstorm Sandy.

I am grateful to Mr. MacArthur, Mr. King, Mr. Zeldin, and Ms. Velazquez for the input they have given us as we have gone through this process, input on behalf of their constituents.

So I look forward to a robust discussion with Mr. Wright this morning about FEMA's perspective on these issues and others as we ready legislation for reauthorization of this program, which is so important to millions of Americans.

I now recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

And thank you, Mr. Wright, for being here today. Over the past few years, this subcommittee has held a number of hearings to assess the National Flood Insurance Program (NFIP) and to discuss the program's reauthorization. And as we all know, authorization for the program will expire on September 30, 2017.

Should the program expire without reauthorization, no new flood insurance contracts will be able to be extended, which means that homebuyers will not be able to obtain mortgages and close on their homes in flood hazard areas.

Additionally, the NFIP's ability to borrow from the Treasury will be drastically reduced. Given the importance of the NFIP to our constituents, it is absolutely critical that this committee work together to reauthorize the program before the September deadline.

The NFIP was created in 1968 to provide flood coverage to consumers who were unable to obtain coverage from the limited private market. The NFIP is funded primarily through premiums and fees from policyholders, and a portion of the premiums is used to fund mapping and mitigation activities.

Currently, the program covers about 5 million homes nationwide for a total of \$1 trillion in flood insurance coverage. It is important to reiterate that the threat of flooding impacts all of our communities, from coastal regions in Florida to parts of Texas and New York, and even to my own State of Missouri. There are over 200,000 Missourians who live in areas where flooding is a risk.

As options for reauthorization are discussed, we need to work to ensure that flood insurance remains affordable to our constituents. And to this end, it is essential that FEMA completes the affordable

framework that was mandated by the Homeowner Flood Insurance Affordability Act.

Additionally, it is important for us to continue exploring the best methods for keeping our flood maps updated and to provide sufficient funding for the process. Mitigation is key to preventing flood damage, and I am eager to further assess how best to improve those efforts.

Lastly, as we move forward in this legislative process we need to assess the current role of the private market and the role that it plays in our future.

Mr. Chairman, with that, I yield to the ranking member of the full Financial Services Committee, Ms. Waters.

Ms. WATERS. Thank you, Mr. Chairman. Reauthorization of the National Flood Insurance Program is critical. Our housing market has struggled in the past as Congress continued to extend the NFIP for months at a time.

These short-term extensions sometimes led to lapses in the program's authorization, which caused instability, wreaked havoc on our housing market, and placed communities at risk.

That is why I worked with Mrs. Biggert on what ultimately became the Biggert-Waters Act, to put forth a bipartisan, long-term reauthorization. We accomplished a lot of good things in the Biggert-Waters Act, but what I will never forget are the unintended consequences of the rate increases that caused great concern for homeowners, businesses, and renters across the country.

In response, I worked tirelessly with my colleagues across the aisle to enact much-needed rate relief for thousands of homeowners and put FEMA back on the path to addressing affordability issues. Let's continue in that bipartisan spirit to ensure that the NFIP remains able to provide affordable flood insurance.

The affordability challenges are great, but the risk of failing to protect homes and businesses in the face of catastrophe is greater. Congress must address the \$24.6 billion debt the program has accumulated responding to catastrophic storms like Hurricane Katrina and Superstorm Sandy.

I will continue to call for the cancellation of this enormous burden that has already cost the NFIP nearly \$4 billion in interest alone.

Mr. Chairman, as we move forward, we should remember that in the past 5 years, Congress has made sweeping reforms to nearly every aspect of the flood insurance process. In our efforts to quickly move a reauthorization, let us not repeat the mistakes of the past, when we may have acted with good intentions, but due to unintended consequences ended up with bad outcomes for families and businesses.

I yield back the balance of my time.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the vice chairman of the subcommittee, the gentleman from Florida, Mr. Ross, who has done a lot of work on flood insurance both on this committee, and in his prior life in the legislature in Florida. The gentleman is recognized for 2 minutes.

Mr. ROSS. Thank you, Mr. Chairman. I want to thank our distinguished guest, Mr. Roy Wright, for being here to discuss FEMA's

perspective on flood insurance reform. The NFIP is something that we have a responsibility to reauthorize in a very brief period of time, as was pointed out by my colleagues.

The fact is the NFIP is in need of significant reforms. Floods are a costly and deadly peril, and as has been pointed out, the NFIP has an outstanding debt of \$24.6 billion. We must thoroughly consider reforms to protect taxpayers and improve the program now and for the future.

Ultimately, when I consider reforms to the NFIP, I do so with my Florida homeowners in mind. I am committed to ensuring that Florida homeowners have uninterrupted access to affordable and comprehensive flood insurance policies. As such, my priorities for reauthorizing the NFIP are as follows.

First, Floridians and all Americans across the country would greatly benefit from more choices when it comes to flood insurance policies, and private competition in this market will lead to greater innovation and more affordable and comprehensive policies for consumers. We must enact reforms that remove regulatory barriers and allow for the development of a private flood insurance market.

Yesterday, I reintroduced my bipartisan legislation that passed the House last session by a vote of 419–0. This bill will do just that with regard to competition and consumer choice.

Second, we must place the NFIP on sound fiscal footing and ensure that there is no lapse in authorization of the program that would create an interruption to the real estate markets.

Third, we must recognize the importance of mitigation and reducing the risk exposures for floods and other disasters. Our witness today has testified that for every \$1 investment in mitigation, communities see a savings of \$4 in disaster relief. The importance of mitigation cannot be understated or overlooked.

I look forward to working with my colleagues to address these and other important issues related to the reauthorization and reform of the NFIP.

I thank the chairman again for calling this hearing, and I yield back the balance of my time.

Chairman DUFFY. The gentleman yields back the balance of his time.

We now welcome our witness, Mr. Roy Wright, who serves as FEMA's Deputy Associate Administrator for the Federal Insurance and Mitigation Administration. In that capacity, Mr. Wright directs the National Flood Insurance Program, the Mitigation and Resiliency programs under FEMA's Stafford Act authorities, the National Earthquake Hazard Reduction Program, and the National Dam Safety Program.

Mr. Wright will now be recognized for 5 minutes to give an oral presentation of his testimony. And without objection, his written statement will be made a part of the record.

Once the witness has finished presenting his testimony, each member of the subcommittee will be given 5 minutes within which to ask questions.

On your table, as you know, Mr. Wright, you have three lights: green means go; yellow means you have a minute left; and red means your time is up.

With that, Mr. Wright, you are now recognized for 5 minutes.

STATEMENT OF ROY E. WRIGHT, DEPUTY ASSOCIATE ADMINISTRATOR, FEDERAL INSURANCE AND MITIGATION ADMINISTRATION, FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. WRIGHT. Good morning, Chairman Duffy, Chairman Hensarling, Ranking Member Cleaver, Ranking Member Waters, and other members of the subcommittee. Thank you for the opportunity to testify today.

I want to discuss four core principles for reauthorization with you this morning.

First, we need an on-time multiyear reauthorization.

Second, we need to increase flood insurance coverage across the Nation through both the expansion of private flood insurance markets as well as the National Flood Insurance Program.

Third, we need to address barriers to meeting the needs and demands of our customers.

And fourth, we need to bring transparency to the financial framework of the National Flood Insurance Program.

Flooding is the most frequent and expensive disaster in the United States: 90 percent of natural disasters in the United States involve a flood, and 22,235 communities across the Nation rely on the National Flood Insurance Program. That represents 98 percent of the Nation's population.

We work with 73 private insurance companies who participate with FEMA in delivering these policies to our 5.1 million policyholders.

So let's look with some perspective over the last couple of decades. Due to the nature of flooding, impacts can vary significantly each year.

After 15 years of lower-than-expected damages, Hurricanes Katrina, Rita, and Wilma all hit the Nation in 2005. These 3 catastrophic events resulted in NFIP claims that totaled 8 times the size of any prior year in the program's history.

Rather than directly providing the funds to meet these requirements, Congress directed the NFIP to pay for catastrophic losses through funds borrowed from the Treasury. Paying the insured losses in 2005 required the NFIP to borrow \$17.5 billion.

In 2012, Hurricane Sandy hit the East Coast and resulted in more than 144,000 NFIP claims. The program paid out an initial \$8.4 billion to policyholders. With the corrective actions that FEMA has taken, the NFIP has since paid out an additional \$350 million.

Since Hurricane Sandy, FEMA has been transforming the NFIP customer experience and has been improving our oversight and engagement with the Write Your Own (WYO) companies. Using our own authorities, we have implemented a new appeals process. We have improved the oversight of the Write Your Own companies, with special attention to litigation.

FEMA has streamlined the process for making regular changes to the relationships with the private sector partners. And we have begun to modernize the product to better provide the coverages that policyholders want and expect.

The NFIP is also going to change as being more proactive in disaster readiness and response. I think 2016 is a case in point. We

began issuing advanced payments to policyholders, up to \$10,000, while their full claim was processed.

We increased coordination with State insurance commissioners. We deployed our insurance staff directly downrange in the field. And we have far more proactive communication with policyholders and the companies. I would assert that FEMA's performance in 2016 demonstrates the proactive progress we have made.

While there was no single catastrophic disaster in 2016, multiple events in Louisiana, Texas, and several other States involved in Hurricane Matthew all resulted in the third largest claims payout in NFIP history, with incurred losses of more than \$4 billion.

So to the reauthorization, the core principles, first, it has been said by numerous people today, and I would wholly agree, that the NFIP needs an on-time, multiyear reauthorization. The stability of the real estate and mortgage markets depend on this.

Second, the reauthorization should recognize the need to increase flood insurance coverage across the Nation in both high- and moderate-risk areas.

FEMA recognizes that there is a growing interest by private insurers to offer flood insurance protection. FEMA supports this because an insured survivor, whether they get their coverages on the private market or through the NFIP, will recover more quickly and more fully.

To these ends, we must realize that it will take time for the private market to adapt to the market currently served by a public program.

And if the private market were to glean only the lower-risk policies, the NFIP would be left with all of the high-risk policies. This could lower NFIP premium revenue while increasing potential claims payout. Such action would leave the program with even more financial risk, with greater reliance on taxpayers and the Treasury each and every year.

As we look forward, a number of opportunities should be explored. Congress could identify a future point in time by which flood policies for all new construction would be provided solely by the private market. When coupled with ongoing floodplain management and building code enforcement, these new residential structures would be built to insurable levels for risk to the private market.

Third, we need to remove barriers to providing policyholders the coverages they want and need.

And finally, we will all be better off in the future discussions relating to the National Flood Insurance Program when the program has a sound financial framework.

We need to price the risk and make it plain. Whether this is done by increasing premiums, reducing risk through mitigation grants, or by discounts directed by Congress, the fiscal solvency of the program depends on it.

I appreciate the time to be with you this morning, and I look forward to the conversation, Mr. Chairman.

[The prepared statement of Mr. Wright can be found on page 52 of the appendix.]

Chairman DUFFY. Thank you, Mr. Wright.

The Chair now recognizes himself for 5 minutes to ask questions. Mr. Wright, my staff reached out to yours in regard to data on compliance rates for mandatory purchase properties. We have heard a lot of conversation, as I have talked to a lot of stakeholders, that there is a low take-up rate.

You have indicated to me that you don't have data on that front. We have actually reached out to the OCC, who also said that they don't have data on that front.

However, earlier this week our staff was provided a copy of the following slide—if we could put the slide up—from a FEMA-developed presentation entitled, “State of the NFIP,” which says there is a significant amount of noncompliance—53 percent of policies.

I would just note, being a guy from Wisconsin, we are one of the best of the worst States on that front. Duly noted. Do you stand by this data?

Mr. WRIGHT. So—

Chairman DUFFY. My question is, I keep hearing this, and I am wondering where this data is coming from? That is a real issue in regard to the program.

Mr. WRIGHT. There is a set of studies that have been out there. We have cited them. As you look nationally, I have heard a third. We can look at the half in terms of these concentrated States.

Under the National Flood Insurance Act, mandatory purchase is not a responsibility of the National Flood Insurance Program at FEMA. I can use the data that is there. What I will tell you is it is very difficult to fully understand a couple of pieces of the market.

I was shown some data 2 weeks ago that 39 percent of real estate transactions in 2016 were cash transactions. And so when we started looking at the way that would play, those folks would not be having a federally-backed mortgage.

That said, more people clearly need to be covered. There are structures at risk that do not have the insurance they need. And collectively, whether that is through us or through the lending regulators, we need to redouble our efforts to see that improve.

Chairman DUFFY. Just to be clear, this is a FEMA document, correct?

Mr. WRIGHT. Yes, sir.

Chairman DUFFY. FEMA in the bottom left corner. Do you stand by these numbers?

Mr. WRIGHT. They are the best—

Chairman DUFFY. Is it a surprise that this is a problem?

Mr. WRIGHT. I acknowledge it as a problem and it is the best numbers that I have available to me today, yes.

Chairman DUFFY. Okay. Let's move on to the NFIP debt and future costs. Under Grimm-Waters and Biggert-Waters, there is a requirement that FEMA put a plan together to pay back the billions of dollars the NFIP owes the American taxpayer. You are tasked in putting together a plan. Have you put together a plan to pay back the American taxpayer?

Mr. WRIGHT. We have developed the required plans related to when we borrow. To be very plain, given the discounts, later the subsidies and grandfathering that are in place today, there is not a practical way for us to repay this debt.

Chairman DUFFY. So we don't have a plan to pay it back?

Mr. WRIGHT. Based on the discounts and subsidies that I have been directed under the National Flood Insurance Act to implement, which are the constraints—I have to follow the laws—I don't have an ability to do so.

Chairman DUFFY. Is it possible for you to put together a plan that says okay, I am going to make a recommendation to Congress which states that if you want to pay this back, this is what you have to do on a policy front to actually allow me to be in a situation where this debt can be paid down or brought to zero?

Mr. WRIGHT. It would require an exponential move in the policy premiums or reserve allocations in order for us to be able to pay the normal year claims, deal with the mid and larger events that are prospectively coming, and deal with the \$24.6 billion. The \$24.5 billion that is there I can attribute to the grandfathering and discounts that we have been directed to implement.

Chairman DUFFY. Quickly, I want to move to reinsurance. Obviously, we now have purchased reinsurance through the NFIP.

Mr. WRIGHT. Yes.

Chairman DUFFY. Are there any plans to have further purchases of reinsurance to offload some of our risk?

Mr. WRIGHT. Absolutely, and I have collaborated with a number of people on the committee on this front. I think, rightfully, this committee pushed the program to begin to find other ways to transfer the debt. We did a pilot last fall and then did this first placement.

I view it as a cornerstone placement that we will building upon going forward. Reinsurance is an important tool, but I do not believe that reinsurance can wholly solve for the unmanaged liabilities that are in front of us.

Chairman DUFFY. I only have 15 seconds left, but I want to go back to the slide that I presented to you. You said that you stand by these numbers.

Do you have any recommendations on what you should be doing, or regulators of banks should be doing, or what Congress should be doing to make sure? If you stand by these numbers, the take-up rate isn't as low as it actually is. It is at 50 percent.

Mr. WRIGHT. We need to collectively be working with the insurance agents that are across the country who are the frontline salesforce that is there. We need to be working with the banking regulators, the lenders, OCC and others, who have those authorities in place. And collectively, we have to push farther down the road.

There were some increases in penalties that were put into the last bill that became law. Obviously, that has not forced us to see a bigger uptake.

Where I see the uptake happen is when people in the aftermath of events, when they have seen their neighbors and others across their State experience flooding, that is the point by which I usually begin to see an increase in policies.

Chairman DUFFY. Thank you.

The Chair now recognizes the ranking member of the subcommittee, the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

Mr. Wright, I want to go back to where the chairman was on the debt, the \$23 billion and coverage is about \$1 trillion, a trillion dollars? If we wanted to realistically try to eliminate the debt, what percentage of an increase do you think would be required on the policy premiums?

Mr. WRIGHT. Without fully being able to model out the exact expected—

Mr. CLEAVER. No, I understand. I am just—

Mr. WRIGHT. —losses that are there, but I finished 2016 having used up all of the reserve fund, which thankfully had been created. And we used up \$1.5 billion out of the reserve fund. I drained all the premiums that were there and still needed another \$1.6 billion.

That kind of event or year the models tell me I would expect in any 10-year period it would be reasonable to expect that. To pay off the debt seems impractical to me in that that debt is associated with discounts and subsidies that Congress asked me and my predecessors to implement, which we did.

The idea that we would then go to future policyholders and say they have to pay for that debt, I think becomes a difficult mountain to climb.

Mr. CLEAVER. Right. So we all acknowledge, I think, that we have a significant debt. And what would be at risk if we just forgave the debt, just write it off and with this new bill coming out, hopefully before September 30th, we can begin a process of preventing another rise of \$23 billion?

Mr. WRIGHT. I think things like reinsurance help us build a credibility so that we are less likely to experience those kind of losses going forward. Ultimately, only Congress can deal with that. It was under Congress' direction that we went and borrowed those dollars.

From a year-to-year perspective the piece that has the most direct impact on us is the servicing of that debt. And while today we have an advantageous rate with the Treasury, it is nearly \$400 million a year that we are paying to service that debt.

In this instance, the interest payments that I owe, just under \$200 million this month, we will be paying based off of money that we borrowed from the Treasury.

Mr. CLEAVER. But if we had WYOs, if more than—how many? We have 70-something?

Mr. WRIGHT. We have 73 Write Your Owns today.

Mr. CLEAVER. Okay. If that wasn't the program, that means that the insurance companies would service the debt, would service the policies?

Mr. WRIGHT. So if this was written entirely in the private market they would have to charge rates and submit to insurance regulators in their State. They would have to charge rates commensurate with that risk. And those rates in many instances would be substantially higher than we charge today.

Mr. CLEAVER. Okay. Now, does it make sense to have a bill that we make—I realize we are legislative and you are not, but privately, I am asking for advice.

Mr. WRIGHT. Yes.

Mr. CLEAVER. Would it not be helpful if we had a 10- or 12-year bill so that we could actually experiment with the WYO program, giving interested companies an opportunity to examine and look at this program perhaps better than they ever had or that we have had?

And that as the years move by we then reduce the Government participation until it reaches a level that won't bankrupt the Government?

Mr. WRIGHT. Right. Two points on that, Mr. Cleaver. I think in terms of the length of a reauthorization, I would leave that up to the committee. I think we need a multiyear and there are a lot of different ways to get there.

I do think that in terms of what does it mean over this next decade to see the private market grow, I am a strong proponent of seeing the private market grow. As I said in my testimony, I can imagine beginning to set aside portions, particularly new construction at a date on forward by which when we look at that it says that will solely be purchased on the private market.

I think it give us an opportunity to create dedicated space, let those markets take hold, take root, and flourish. Because at the end of the day, from a public policy perspective, yes, I direct the National Flood Insurance Program, and I am an advocate for the National Flood Insurance Program, but more important is to ensure that people are covered for these risks. Because I know after an event, when I am on the ground, those who are insured recover more quickly and more fully.

Mr. CLEAVER. Thank you.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the vice chairman of the subcommittee, the gentleman from Florida, Mr. Ross, for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman.

And if I might go back to the slide that was up with the questioning by the Chair? Quickly, Mr. Wright, this is taken from a policy and mandatory purchase requirement penetration report ending in July 2014. Is there a more recent report, and if so can you provide the committee with that report?

Mr. WRIGHT. FEMA does not have a report it has generated. There are a number of statements and reports that are out and we would be happy to—

Mr. ROSS. The most recent would be whatever resources that are out there that would reflect similar data.

Mr. WRIGHT. I would be happy to do so.

Mr. ROSS. Great. Quickly, in regard to reinsurance, how much reinsurance would you say you purchased on behalf of NFIP in percent of your liability, your exposure—5 percent?

Mr. WRIGHT. It depends on what the probable maximum loss is in those kind of pieces and you would never insure all the way to that full probable maximum loss. But a 1 percent annual chance event across the entire program has been modeled at about \$26 billion. We often view that as a probable maximum loss.

So I would look at the revenues in any given year, retained premiums and the like. The 1 percent that we bought, the \$1 billion, excuse me, that we bought—

Mr. ROSS. So it is not a function of capacity in the market, is it?

Mr. WRIGHT. At some point, this does turn into a capacity question.

Mr. ROSS. But there is significantly more capacity than 1 percent, I would assume?

Mr. WRIGHT. There is more capacity than we have used.

Mr. ROSS. Good. And I apologize because I am going to kind of go fast here in 5 minutes. Let's talk about risk assessment because I think that is what we really get at when we are talking about insurance, not relief but insurance where we have prefunding of risk and we manage that risk.

There is a 2014 NFIP report on the feasibility of releasing property specific policy and claims data which states that, "Full risk premiums—these are flood premiums—are not based on loss experience due to the large variability of flood losses.

"Rather, NFIP rate setting is based on several components that vary from property to property and involves complex calculations of expected frequency and severity of flood losses."

So you would agree with that, I assume? And I guess my question is, you don't use loss claims data to assess risk, is that correct?

Mr. WRIGHT. I think—

Mr. ROSS. But anybody else out there who is managing risk uses loss claims data.

Mr. WRIGHT. We do use loss claims data.

Mr. ROSS. To what extent?

Mr. WRIGHT. We use that along with other data. And so—

Mr. ROSS. And about that data, do you consider the data and the calculations that the NFIP uses to assess their risk to be proprietary?

Mr. WRIGHT. I do not.

Mr. ROSS. So it could be shared?

Mr. WRIGHT. So—

Mr. ROSS. You are the only game in town essentially?

Mr. WRIGHT. What I have done is, as part of reinsurance, we did a lot of modeling in order to get pricing from the reinsurers.

Mr. ROSS. Right. But—

Mr. WRIGHT. the result of that additional—

Mr. ROSS. —for pricing to the consumer.

Mr. WRIGHT. Correct. So to that point, I have recently released most of the data that I provided to the reinsurers. It is the fullest expression of loss that we have ever published.

Mr. ROSS. Okay. So you use some loss claim data for that, but looking ahead, you also really just rely on mapping and elevations?

Mr. WRIGHT. No, I use loss claim data as well as future expected losses.

Mr. ROSS. Okay.

Mr. WRIGHT. There are other elements, but if I look at my rate calculations, both of those elements come into that calculation.

Mr. ROSS. How granular do you get? Do you ever go to see if this—do you concern yourselves with whether the structure you are considering insuring, which we will have to insure, is concrete block, wood, or whatever?

Mr. WRIGHT. We do look at type of construction. We also look at elevation of that structure and the expected—

Mr. ROSS. Yes.

Mr. WRIGHT. In a coastal area, we look at velocity elements, whether there has been ponding. We do look at those elements as well.

Mr. ROSS. So when we talk about mitigation, what incentives are out there for an existing homeowner to mitigate under the NFIP?

Mr. WRIGHT. The first incentive is that by mitigating, they are going to be able to withstand that flooding event. Beyond that, I have used some ways to discount the flood insurance pricing if their community participates in the community rating system.

Mr. ROSS. Okay.

Mr. WRIGHT. And in some instances, we make grants available to do that elevation or acquire that property.

Mr. ROSS. And if I am a homeowner who believes they have mitigated their home to withstand, and I have science and engineering to support that, how do I go about convincing you that I am entitled to a discount or otherwise am not the risk that you have assessed me at?

Mr. WRIGHT. Chief among them is going to be the elevation of that, and we have ways for you to submit those data to us, and we will look at that specific property.

Mr. ROSS. And if I am successful, having spent thousands of dollars for my engineerings, I bear the cost of that, don't I? There is no recovery of costs for being able to be successful against the NFIP to have a reduction in premium?

Mr. WRIGHT. Correct.

Mr. ROSS. Is that correct? Okay.

I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentlelady from New York for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Wright, President Trump has stated multiple times that Mexico will pay for his proposed border wall. But now, according to media reports released on March 7th by the Washington Post and this morning by another outlet, it is looking like the White House is considering a surcharge on NFIP policyholders to pay for the President's border wall.

So Mr. Wright, what do you have to say to homeowners who are trying to purchase insurance through NFIP and find it more expensive because of this new surcharge? And what do you say to taxpayers in this country, because throughout the campaign trail Mr. Trump said that Mexico will pay for that wall?

Mr. WRIGHT. I am familiar with the report that you are referencing. To the best of my knowledge, final decisions related to the budget being developed by the White House have not been made, so I need to refer you to the Office of Management and Budget related to those pre-decisional elements related to it.

The assurance that I can give you, Congresswoman, is that when we do have a budget proposal in hand, I would be happy to sit down and discuss that with you.

Ms. VELAZQUEZ. Well, I can tell you this. Policyholders in my district in Red Hook, in lower Manhattan, who were devastated by Sandy, they truly, truly believe that this is an outrageous idea. And I hope that you can take that to the President.

Mr. Wright, in response to the systemic problems in the WYO program that surfaced after Sandy, I have introduced H.R. 1423, the National Flood Insurance Program Reauthorization and Improvement Act of 2017, to improve the efficiency and transparency of the processing of claims and to provide better oversight and management of FEMA and the Write Your Owns.

What lessons has FEMA learned in the aftermath of Sandy? And how have you incorporated those lessons into your claim practices?

Mr. WRIGHT. I appreciate the question. As we look at it, clearly Sandy was a pivot point. The program had lost the focus on the policyholder and on the customer that needed to be there.

There are many things that we have learned, some of which change how we sell policies going forward. Let me take particularly the element related to claims and oversight because I think that is where you are headed with this.

Ms. VELAZQUEZ. Yes.

Mr. WRIGHT. We have now issued instructions which ensure that after an event, we go down and provide additional training to adjusters before they go out. We have increased the amount of quality control of those adjusters.

To the point of engineering reports, I have issued instructions, so there is policy out to all of the Write Your Owns—whatever engineering report is the basis of the claim decision must be provided to the policyholder. They have a right to see what those elements are.

Ms. VELAZQUEZ. Okay. Thank you. A number of the Sandy claim disputes revolve around whether the flood caused the damage or the property had a pre-existing condition. Could you tell me what fraction of the properties in the NFIP currently have such a pre-existing condition that might lead to denial or reduction in a claim payment? And if not, what will FEMA need in order to estimate that figure?

Mr. WRIGHT. I think that the nature of structures, particularly residential structures, continues to evolve over time. And so I don't know if you can ever have a perfect insight into it. As we look at these elements, what I have tried to do is make plain—one of the things that we have given advice on to policyholders, and actually it is true for all kinds of insurance, is that you should be taking pictures and a video of your home every single year all the way around and walking all the way through. You will have physical documentation of what pre-existing looked like in these instances.

But we have to look at this. I sometimes use a car example related to insurance.

Ms. VELAZQUEZ. You are not of the opinion that you need to go and inspect a property before buying a flood insurance policy?

Mr. WRIGHT. Today, an agent works with them. There are data that are collected. I don't know about the feasibility of visiting all 5.1 million policyholders.

Ms. VELAZQUEZ. Okay.

Thank you, Mr. Chairman.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the gentleman from New Mexico for 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. Wright, continuing the discussion that Mr. Ross had about the release of your data, are you allowed by law to release that data?

Mr. WRIGHT. The legal constraint that I have says that I need to continue to comply with the Privacy Act when I do so. And I know that folks have wanted to—

Mr. PEARCE. I just need to get to an answer. We have a lot of questions here. You can do it or you can't do it without conditions? I know you may have conditions, but you can do it?

Mr. WRIGHT. I can release data presuming—

Mr. PEARCE. And so you said you only recently—

Mr. WRIGHT. —that I do not violate the Privacy Act.

Mr. PEARCE. —released data. Why did it take this long to release the data and what is it going to take to release the rest of the data? If you are going to get private lines into the market, they need something to work with. So why did it take this long?

Mr. WRIGHT. Sir, it is something that we have worked on for a number of years. It hasn't moved fast enough. Part of what I did is I had to package up and do modeling related to reinsurance last year and I have now released those data.

Mr. PEARCE. Why didn't it move faster? What were the hold-ups internally?

Mr. WRIGHT. There are some realities related to some systems that are in place and then how would we package up those data to make them available without violating the Privacy Act.

Mr. PEARCE. But when I translate that to West Texan, which we speak out in New Mexico, it sounds like "stall." I don't know. Maybe it is; maybe it is not.

And the problem is that you keep saying that we need to get the private sector involved. But when you don't facilitate that with the data, and I think Mr. Ross made it very clear that that is the basis, then it is just words, that we are going to get the private market involved.

It is what your testimony says, but we don't actually ever make it possible. We don't ever make the information available. So we go year after year after year without that.

And it gets very frustrating because now the taxpayer is on the hook for stuff that you said previously in answer to questions that we are not ever going to pay off. You don't see a way to pay that off. That is very frustrating for us from this side.

So when a community is—changing the focus—going to join in and participate with FEMA, is there a process you all have to get an agreement back and forth?

Mr. WRIGHT. Yes, sir.

Mr. PEARCE. Recently, one of the tribes in my district got FEMA maps published, and that was during the last year. They had never entered into an agreement with FEMA, so how did it occur that one of the tribes didn't have an agreement, FEMA admits it doesn't have a signed agreement, and you go in and map? How did that occur?

Mr. WRIGHT. We have direction and authorities to do mapping across the country. I would need to go back, sir, and look at the specifics in this instance. And in many contexts we are doing water—

Mr. PEARCE. But you don't need signatures from Indian tribes?

Mr. WRIGHT. We do watershed-based analysis.

Mr. PEARCE. I see. You don't get signatures from Native American tribes to get into the FEMA system so that the maps are drawn. Yes or no?

Mr. WRIGHT. I require them to give me a signature if they want to join the program when they are—

Mr. PEARCE. Okay. So they didn't sign, they didn't indicate that desire, you all admit that you didn't get the signature, but you went ahead and mapped anyway.

I have constituents of mine asking how a Government agency proceeded like that without their approval? And I am trying to get an answer from you in this hearing today. How did that happen?

Mr. WRIGHT. I can go back and get the specifics on this map and the information related to the tribe. Ultimately, it is the tribe's choice about whether or not to join the national—

Mr. PEARCE. Yes, but they made the choice not to join. I am telling you that they made the choice. You did it anyway, and I am asking how that moved forward? You said that you require so surely the agency had some ability. They have admitted they didn't have a signature.

Surely they have the ability, whomever went out and mapped it has some requirement or checklist, yes or no, agreement, I don't have it, so I probably shouldn't go out there and map that and they did.

And I am just saying that you need to get me an answer because I am being asked to give an answer. And that process needs to move rather quickly instead of rather slowly, like the whole release of data. I don't want it to take that long, if that makes some sense?

Mr. WRIGHT. We will get you an answer, sir.

Mr. PEARCE. Now, when I look at the \$4 billion, 83,000 participants that you paid out, that is \$48,000 per person. Roughly in my last 28 seconds, how is that money distributed or how is that money used? What was it distributed for?

Mr. WRIGHT. When we distribute money post-claim, it is to pay for the damages to that facility. So we will send out an adjuster. We will look at the damages. Once those are documented we will pay for the eligible damages up to the maximum value of the policy.

Mr. PEARCE. And the \$10,000 advance payment, what is that for?

Mr. WRIGHT. That \$10,000 is part of their claim payment. It is the first piece of that, ensuring that policyholders who were insured have money in their hand immediately following the event.

Mr. PEARCE. Okay. I will look forward to hearing from you on the Isleta tribe in my district. Thanks.

Mr. WRIGHT. We will get you that.

Mr. PEARCE. I yield back my time.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Massachusetts, for 5 minutes.

Mr. CAPUANO. Thank you, Mr. Chairman.

And thank you, Mr. Wright, you realize we are here again doing flood insurance because some people in this committee have a blind philosophical commitment to total privatization of the

flood insurance market. I am just curious. Do you think we could privatize it tomorrow?

Mr. WRIGHT. I think that there is a portion of the risk that—

Mr. CAPUANO. Do you think we can privatize the whole of it? Right now. We have always had some private entities in the market. Nobody, I think, objects to that. Do you think that we could privatize the entire flood insurance market now?

Mr. WRIGHT. There is a portion of the risk that I believe will likely always be with the National Flood Insurance Program.

Mr. CAPUANO. It is a very simple question. Can we do the whole market or can we not? Yes or no, very simple?

Mr. WRIGHT. I don't believe we could do that today.

Mr. CAPUANO. I thought that was what you would say. I just wanted you to say it instead of me. Let me ask you a question. When you work for FEMA, you don't just work for flood. You also work for any other emergencies that happen or any other catastrophic—

Mr. WRIGHT. I have responsibilities across—

Mr. CAPUANO. That is right.

Mr. WRIGHT. —a full range of natural hazards.

Mr. CAPUANO. Can you tell me if there is a difference if I lost my home to a flood or a tornado? Do I care about that as an individual? Have you ever met an individual who cares how they lost their home?

Mr. WRIGHT. At that point, they are focused on the fact that they lost their home.

Mr. CAPUANO. That is what I thought. Yes, we treat them differently because we don't have a tornado insurance trust fund. Is that correct? Did I miss something?

Mr. WRIGHT. Tornado is covered under the standard homeowners' policy loss—

Mr. CAPUANO. Right. Standard homeowner policy and/or FEMA, but if there is a massive tornado that comes in and rips up thousands of homes, we don't have a typical thing like flood insurance?

Mr. WRIGHT. Most of those residences would be covered in their homeowners'. FEMA's role oftentimes from a financial perspective deals with the community and their infrastructure post-disaster.

Mr. CAPUANO. So we come back in, and we still pay them lots of money. See, I personally think we should have a natural disaster insurance fund as opposed to simply flood insurance, because I don't think people care.

It also avoids the argument after the Sandy's and the Katrina's of, did your house go away by flood or did your house go away by wind? Who cares? Nobody cares except the insurers who don't want to pay, which I understand, but nonetheless, I would argue that is something we should be looking at.

I guess, as I was reading your testimony, you did talk about privatization for new construction. What do you think it would cost if it was just new construction?

If I had a home here and I built the—and it was flood insurance and typical, and I built a home right next door. It was brand new construction, but the exact same home as was next door, what do you think the cost differential would be? About?

Mr. WRIGHT. At that point, the private market actually priced their risk. What I would tell you is this: Given the maps that are in place, the building codes that are in place, new construction would be built higher and stronger. It is an insurable risk. At that point it is—

Mr. CAPUANO. What do you think it would cost? About the same?

Mr. WRIGHT. It would likely be commensurate to what we charge.

Mr. CAPUANO. Commensurate to what we charge now?

Mr. WRIGHT. Minus the surcharges and other assessments that we are required to put on.

Mr. CAPUANO. So it would cost more?

Mr. WRIGHT. It would likely cost more.

Mr. CAPUANO. Right. And what do you think that would do to small communities or small businesses that want to expand, because new construction is also expansion? Who want to expand or want to build a new restaurant or a new little grocery store to service people?

Mr. WRIGHT. Congressman, I think this is why we need to lay this out and give ourselves a few, 3 years or whatever the right number is so that these markets can build out. We will be better served—

Mr. CAPUANO. Can we do that if we simply kick this can down the road again like we did? If we just kick this can down the road another year or so because we won't be able to come up with an answer, do you think that will happen?

Mr. WRIGHT. It would require a more comprehensive action by this body for us to make this.

Mr. CAPUANO. So you think we need to do something that takes, what, 3 years minimum, 5 years minimum?

Mr. WRIGHT. I would assert to you that we should work with the markets. I would say something like 3 years or so, so that we can see it build out would be an appropriate piece. At that point, the private markets will be there and they should be able to respond to those elements.

Mr. CAPUANO. You think if we simply do what we have done already which is to say let's delay it a year, let's just keep what we have, because we can't come up with a conclusion, do you think that would be a missed opportunity?

Mr. WRIGHT. I will tell you that my first priority is to get a multiyear reauthorization done. And that can be done in a one-page bill or that can be done in a 300-page bill. The first priority is to make sure we don't have the disruption.

Mr. CAPUANO. I would agree with that wholeheartedly. By the way, just out of curiosity, do you realize how many second homes there are in, oh, I don't know, let's say Florida?

Mr. WRIGHT. I don't have that number, sir.

Mr. CAPUANO. I think the answer is a lot.

[laughter]

And how many of them are Mar-a-Lagos versus maybe a small condo a few hundred feet from the beach, or maybe even a trailer park? Do you have any idea—like a double-wide?

Mr. WRIGHT. Sir, I don't have a second home, and I don't have an answer on that.

Mr. CAPUANO. I can only tell you my in-laws had a double-wide, and it wasn't a multimillion dollar home, and it was in Florida and they were in a floodplain. And if it went totally private they would have had to sell their double-wide, gone away, and that town would have lost thousands of residents because of it. Thank you, Mr. Wright.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Florida for 5 minutes.

Mr. POSEY. Thank you very much, Mr. Chairman.

Mr. Wright, flood insurance policyholders pay for increased cost of compliance, ICCs, as part of the standard policy that offers \$30,000 to cover the cost of certain mitigation measures. So that is up to \$30,000 for a policyholder to elevate, flood-proof, relocate, et cetera, to come into compliance.

However, they can only access the money after their home floods, a claim is filed, and the community makes a determination of substantial damage. Usually when I hear the word "mitigation," I kind of visualize the word "prevention."

And I don't think it is really mitigation if we are only allowing the policyholder to take these measures after the fact, after the damage has already been done.

So the statute does authorize ICC for homeowners who receive an offer of pre-flood mitigation, and I'm just wondering if you have implemented any part of that statute?

Mr. WRIGHT. Given the breadth of my responsibilities, I will tell you, there is no bigger proponent of building higher and stronger from a mitigation perspective than myself. As I look at ICC, this increased cost of compliance sits inside an insurance program, but it really is a mini-grant.

And so we are told by Congress to set a price. There is a cap that is put on that price so that we can collect revenue for it. A decision to expand ICC to a higher number or to allow it to be applied in more instances would require us to collect more revenue related to that increased cost of compliance.

Mr. POSEY. Okay. So that is why it has not been implemented. You don't have the revenue.

Mr. WRIGHT. Yes, sir.

Mr. POSEY. Okay. Now, is it true that a few years ago FEMA considered providing ICC grants before a property floods, when it is more cost-effective?

Mr. WRIGHT. We have considered the pieces in the past. Up to this point we have implemented the pieces that are consistent with the revenue that we bring in.

Mr. POSEY. Okay. So what happened to the rulemaking when they were going to do the pre-catastrophe?

Mr. WRIGHT. Today, and we can go back to the specifics, I have a tolerance thing in the statute up to \$75 that I can collect in premiums towards that increased cost of compliance. Those dollars are already being occupied based on those who are in the post-event environment.

And so we have looked at this. Given your interest, sir, we will look into it more.

Mr. POSEY. Thank you. On another note, I want to ask about the flood insurance advocate office. The Homeowner Flood Insurance Availability Act created an Office of Consumer Flood Insurance Advocate to help homeowners navigate the flood insurance questions. Can you give us an update on how this office has been able to help consumers since 2014?

Mr. WRIGHT. Yes. I think it is one of the things as I look at HFIAA, as well as Biggert-Waters, that I can say truly has produced value and benefit for us.

This group has really a sort of independence allowed to them. They get the frustrated and confused policyholders. It is the last kind of relief valve that is available to them.

Their caseload has continued to rise as people become more aware of it. They work a specific case, but just as important to me is the fact that as they look at their caseload, they are making recommendations, back to myself and the FEMA administrator, about ways that we can improve the program and intervene in ways so that we can really be a learning organization so that—

Mr. POSEY. Okay.

Mr. WRIGHT. —we don't repeat those problems.

Mr. POSEY. All right. Now, what is the biggest complaint you hear from consumers and how can we help address those in a reauthorization?

Mr. WRIGHT. First, we get some concerns about the rates that they have to pay and they want to make sure that those have been looked at and any way to reduce their rate that they can have.

The second piece that they look at is on their understanding of the coverages that they have. In the most recent report from the advocate that was given to me and has been released publicly, he has also highlighted the concerns about processing of the ICC, the increased cost of compliance.

And then I have a whole smattering of things. Sometimes it is on a mapping issue. Sometimes it is on an underwriting issue on a—I get a report from him every 60 days looking at kind of the throughput of what they are hitting. He can make recommendations anytime during the year, and then once a year he releases a public report.

Mr. POSEY. Thank you for your frank answers.

I yield back, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Michigan for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman.

And thank you, Mr. Wright, for being here, and like my colleagues, I am quite concerned that we reauthorize this program in a timely fashion. And I think many of us on the committee and in this room know what happens when there is uncertainty in these markets.

It was not that long ago that we saw TRIA go through a similar situation where uncertainty and the uncertainty that this Congress would reauthorize that program led to a real impact in the marketplace.

And we would certainly hate to see the entire housing market impacted by our inability to move and agree with you to get a

longer-term reauthorization. That is really not the direction I would like to take.

I would like to follow up a little bit on the last set of questions. In your answer on consumer concerns, you mentioned a few areas. And you indicated one of those areas where I think your term was, “smattering of complaints or concerns” that had to do with mapping.

I wonder if you first might comment on what your level of confidence is or what your assessment is of the accuracy of the maps as they currently exist?

I know it is a dynamic process, but in general how would you characterize the accuracy of maps that are determining which properties fall into the category requiring insurance?

Mr. WRIGHT. I would characterize the maps today as credible. And the nature of the science continues to evolve. The nature of the built environment continues to evolve.

By statute, the mapping process is done in collaboration with the communities. And you can always buy more data. You can always buy more precision.

I have to work with the resources that I have, and that is why from a credibility perspective, when the maps are developed, they are then sent to the community for review and comment, ultimately going through a formal due process and appeal period for 90 days.

Mr. KILDEE. It would seem to me though, having worked in local government for a very long time and seeing just incredible changes in the ability of a community to deal with say, planning and zoning or other land use issues through the development of new technology with GIS and all the other tools that are available, that we ought to be able to be much more efficient in terms of updating maps.

And I raise that because at least in the area that I represent, and I am from Michigan, we run into significant problems with accuracy and also significant delays with the time-consuming nature of the appeal process for individual properties.

What can you say about what is lacking, if anything, in the availability of technology or new applications that might make more efficient the updating of these maps?

Mr. WRIGHT. The single thing that would push us in a leapfrog forward would be to have an elevation layer, ground elevation layer map across the Nation.

Today, when we go to build a map, we have to know where the ground is. We have to know how much water and we have to know how deep it is going to be and then how it is going to interact with the built environment in terms of the structures.

Today, we partner with other Federal agencies and State agencies to acquire usually LIDARs, the technology that is referenced, that light detection radar that is used, but we don't have enough of it today. And so there is a significant investment that needs to be made in that national elevation data layer.

Today, I buy it piecemeal. I buy it one watershed at a time, one piece. But what I do know, and we are running a couple of pilot projects with States, Minnesota is one of them, next-door to you, where they have a State-wide elevation, digital elevation data.

And we are using some of the innovations in technology that are speeding things up tremendously because the automation works very well when you have highly accurate ground elevations.

Mr. KILDEE. I would certainly encourage that and suggest that you include in any of your recommendations that the accuracy issue is really an important one. It affects individual customers but it also affects the entire program. And I would be really anxious to see some movement in that direction.

And also, if you could just briefly comment in the few remaining seconds, on anything that is being done to streamline the process for individuals to challenge maps? That can be very time-consuming and often becomes irrelevant because of the time involved.

Mr. WRIGHT. If you want to look at a map amendment on a single structure basis, when those data are submitted, on average, it is a 7-day turnaround time. Some of it can be done online within 24 hours. So if you are doing single structure data to submit to us, I think it goes pretty quickly.

If you are trying to do something that is more of a neighborhood scale—

Mr. KILDEE. Right.

Mr. WRIGHT. —that map revision process is longer. It requires us to verify data in a much greater level of precision. And we are required under the statute to go through due process. And so a draft has to be presented to the community. Ultimately, we have to go through the Federal Register for a 90-day appeal period.

I do think that this element is one that we could explore through reauthorization. In this particular element of it, and I know that other Members have asked me about this in the past, if there is no objection to the map and the data that was generated by the community, well, I don't think we can bypass the due process because there may be a homeowner who believes that they have an equity in this.

I do think we should be looking at ways to leapfrog elements and push faster.

Mr. KILDEE. I thank you. And I know my time is over.

I thank the chairman for his indulgence. Thank you very much.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Good morning, Mr. Wright.

Mr. WRIGHT. Good morning.

Mr. ROTHFUS. You mentioned in your testimony that at a national scale, estimates lead FEMA to believe as little as one-third of residential properties in the special flood hazard area have NFIP policies. What, if anything, does FEMA do to coordinate with banking regulators to determine whether homeowners with federally-linked mortgages are actually current NFIP policyholders?

Mr. WRIGHT. We cooperate with the regulators, as I understand it, and I am not a banking regulation expert. When they come in, they do a small sample of the book that may or may not even be in the special flood hazard area. If it is, they would check to make sure that the right kind of insurances are in place.

That cooperation, though, is simply how we deal with the enforcement. Where we have focused is, what does it mean to do the outreach at the point of a new map and working with the agents, as well as the State commissioners, to advocate that people do those purchases?

Mr. ROTHFUS. Is this a reactive or a proactive approach? If you say that you are cooperating with the banking regulators and they are coming in to take a look, that is a little different from you proactively going out and assessing.

Mr. WRIGHT. Right. To my understanding, I don't have the authority to go in and ask to see a bank's book of business and do that audit. The banking regulators have that authority. So I defer to the Office of the Comptroller of the Currency and the other regulators.

Mr. ROTHFUS. Yes, and the regulators—the OCC, the Fed, the FDIC, and the Farm Credit Administration, as well as the NCUA—issued a joint notice of proposed rulemaking last fall in November concerning the implementation of the private flood insurance provisions of Biggert-Waters.

In this release the regulators proposed a provision that would allow regulated lending institutions to accept at their discretion certain flood insurance policies issued by mutual aid societies, which are common in the Amish and Mennonite communities in Pennsylvania.

As you may be aware, due to their religious beliefs, members of these committees do not purchase traditional insurance products, and they have established a long tradition of insuring their own communities. How does FEMA view this proposal?

Mr. WRIGHT. FEMA has not taken a formal view on that rule-making. That said, I believe that what is proposed personally is right-headed, and the kind of provision that you are highlighting I think is an important one.

Mr. ROTHFUS. I have heard concerns about homeowners receiving widely divergent flood insurance quotes from different insurance agents. Much of this is likely due to the challenges associated with navigating the NFIP. How can we make it easier for insurance agents to provide consumers with consistent and accurate information?

Mr. WRIGHT. Congressman, I think you really have hit the heart of some of the transformation we are trying to do in the program today. It is too complex. And while I don't find it acceptable that they are getting different answers, I can understand how that can happen.

So I think we actually need to get to a point by which, given our understanding of the underwriting actuarial provisions of the program, we can get to the base information.

Today, the application and the questions we ask are far too many and there is far too much room for misunderstanding that can move one direction or another.

Mr. ROTHFUS. So what are you doing in that space right now? Do you have a plan?

Mr. WRIGHT. We sure do. First—

Mr. ROTHFUS. When can we expect to see something?

Mr. WRIGHT. Later this spring. For the last 8 months we have been working to rewrite the underwriting manual, which is where all of those instructions are at. Frankly, it was not in plain language.

Sometime in April, we will be releasing that in beta and testing it with the agents on the ground. It will go into full effect this summer. We are doing a similar kind of thing on the claim side.

Ultimately, we have to look at the coverages because this kind of push-pull that happens often gets, well, there are too many options that bring too many complexities. And usually they don't fully understand that until the day they file a claim. I have to bring that forward.

Ultimately, with this underwriting approach I would like to get us to a point by which we are using online and technology-based ways by which the same answer is being produced every single time.

Mr. ROTHFUS. Any idea what that would require or what it would take to make that happen?

Mr. WRIGHT. The first thing is we are going through a modernization of our IT efforts. We actually have gone through all the reviews with the Department of Homeland Security and we are beginning agile development this spring on elements of it.

Over the next 2 years, more of those pieces will be in place. We are also partnering with the Write Your Own companies who can implement these technologies themselves to make sure that there are data standards in place to better enable us to use technology.

Mr. ROTHFUS. I had to step out and take care of something outside, so you might have been asked this question already, but I just wanted to see what the answer is.

As I have studied the NFIP, I have noticed how difficult it is to get complete and usable data, I can only imagine how difficult it would be for firms in the private sector that want to get into the flood insurance business to get a better understanding of the NFIP's historical data. Is there a provision in the law or some other reason that FEMA cannot share this information with insurers?

Mr. WRIGHT. The chief concern is one related to the Privacy Act. What I have done, and again, I have been pushed rightfully on this because we did not make enough progress on it, we were able to do some new modeling last year related to reinsurance.

It was sufficient for the reinsurers to price the products for me. And I have recently released most of the data that we worked on with those reinsurers and they are now available to be downloaded from FEMA.gov.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the ranking member of the full Financial Services Committee, the gentlelady from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Duffy.

Let me just say to Mr. Wright, I appreciate you being here and sharing with us how FEMA works. You are in an untenable position. You were asked by Mr. Duffy, what is your plan for reduction of the debt?

I wish you could have told him there is no such thing as a plan for the reduction of the debt. We are paying \$4 billion a year on this debt. The Congress of the United States of America will have to make a decision about this.

And I don't know what my colleagues are thinking, but I use the word "forgiveness." I really do believe that we need to forgive this debt.

This agency needs a revolution, and it starts with forgiving the debt. There is no way that you could plan to forgive this debt by raising the premiums or doing some of the other things that you say that you do in order to come up with premium costs.

You talk about loss claims data, future expected losses. You can redo that a thousand times, but it is not going to reduce this debt. And so I am going to be working very hard to try and convince my colleagues that we need to really, really step up to the plate and deal with this issue and this issue of debt.

Having said that, when I talk about a revolution, in addition to forgiving the debt I think the Members of Congress really do need to understand all of the calculations that go into determining premiums.

You talk about loss claims data and there seems to be some misunderstanding about whether or not you are actually using this. I heard the questioning on this issue and it sounded as if you said that is part of it.

We don't know how much of that is taken into consideration. I heard you talk about future expected losses. How much of that? How is that calculated? Is this truly scientific, on and on and on?

I would like to say to the chairman of this committee, who is sitting here, that we need to have a special task force on flood insurance alone so that you would be able to take the agency apart, working with the members of the special task force to understand how you come up with your calculations. And I think that if we started out anew with these premium policies, we could correct a lot of things.

There have been problems with mapping historically. And my staff just brought me a copy of a press release that we did about a mapping area in Los Angeles that I got involved in, in 2010, where we worked with FEMA.

And FEMA changed because when they took a look at what the citizens were complaining about and the whole area, and the fact that it had never had a flood, on and on and on. When they gave consideration to all of these things, they changed their mind about the way that mapping had taken place.

The other thing that I discovered in working on this issue was I know that you send the notices or information to the cities. And the cities have an opportunity to raise questions, to talk with the community, but oftentimes they don't do anything.

You send that information to the cities and it just goes into a file somewhere and the citizens don't get an opportunity to really have the cities working with them to bring their concerns to you.

And so for all of these reasons, I think that we really do need to have this change, this big change, this revolution.

Now, on top of all of my concerns and even what we did, after we changed our minds about Biggert-Waters and we came up with the repeal, we didn't treat those small businesses right.

And everybody on this committee claims to be concerned about our small businesses, but yet when we take a look back at what we did and what their responsibility is in terms of premium cost, it really must be corrected.

Now on top of that—you had nothing to do with this—to fund the border wall, the Trump Administration weighs cuts to Coast Guard, airport security.

Your name is not in the headlines but the proposal drawn by the Office of Management and Budget would also slash the budget of the Federal Emergency Management Agency, which provides disaster relief after hurricanes, tornadoes, and other natural disasters.

The Coast Guard, \$9.1 billion in 2017 would be cut, 14 percent to about \$7.8 billion. The TSA and FEMA budgets would be reduced about 11 percent each to \$4.5 billion and \$3.6 billion. This is outrageous and unconscionable.

And so Mr. Chairman, I hope that you are listening and you are going to take this into consideration. You can pound all you want. Be—

[laughter]

Chairman DUFFY. You are over your time, Ranking Member Waters.

Ms. WATERS. The ranking member would respectfully request unanimous consent for 30 more seconds?

Chairman DUFFY. Without objection—

Ms. WATERS. Thank you so very much.

Chairman DUFFY. —because you are so compelling.

Ms. WATERS. I just wanted the 30 seconds to say that you now have a big responsibility, and you asked the question of Mr. Wright when he came in about what he was going to do to reduce the debt.

I hope that you have paid attention so that you know that all he can do is continue to pay that \$4.0 billion every year on this outrageous debt. And I hope that you are hearing some of us when we ask you to take consideration for eliminating this debt.

This is natural disasters and our taxpayers deserve better. And I don't intend to sit here and work on any increased premiums. Thank you so much, Mr. Chairman.

Chairman DUFFY. To the ranking member, thank you. It was only a minute and 38 seconds over your time.

Ms. WATERS. Thank you for that.

Chairman DUFFY. I have been trying to be generous to let Mr. Wright finish his questions if he is over, but to you the exception goes, Ranking Member Waters. With that, your time has definitely expired.

The Chair now recognizes the gentleman from Michigan for 5 minutes.

Mr. TROTT. Thank you, Mr. Chairman.

Just a point of clarification, Mr. Wright, and thank you for being here. The ranking member has mentioned a couple of times in her questioning and in the opening statement how unfair, and I believe she means \$400 million in interest a year, not \$4 billion, but how

unfair it is that we are collecting this interest and it is how it is costing the program and that is the reason for the inability to repay the \$24 billion, and it should be forgiven.

Just a point of clarification. It is really not costing the program \$400 million a year. It is costing the taxpayers \$25 billion at the moment. Isn't that a correction that needs to be made? It is the taxpayers, right? That is what I am talking about.

Mr. WRIGHT. The taxpayers have loaned us \$24.5 billion.

Mr. TROTT. Okay.

Mr. WRIGHT. The policyholders are paying \$400 million of their premium toward servicing that debt.

Mr. TROTT. So let's talk about your solution. In your opening statement you talked about the need to have the private sector play a greater role. And so I assume that you believe that the private sector would step in to fill this need if we remove some of the barriers and maybe figure out a way to better share the data. Is that a fair assumption?

Mr. WRIGHT. I think that is an element of it. I think time would have to show what the private sector would do. Over the last 49 years, the National Flood Insurance Program has been, I don't know that those markets have flourished.

I would note that there already are private markets selling the excess coverage, as well as in some States there are flood riders that are particularly used for areas outside the high-risk area.

Mr. TROTT. Right. And so I am concerned about as we move towards a long-term solution as part of any reauthorization, kind of the sticker shock issue. Allegedly, one of the unintended consequences of Biggert-Waters was the sticker shock that some of the homeowners experienced.

So do you believe there is a way, over a period of years, to implement a solution that greater involves the private sector that would allow for actuarial sound premiums to be put in place where homeowners wouldn't lose their homes?

Mr. WRIGHT. Congressman, Congress is going to need to make some choices for me about that, and I can implement them. In this instance, what I will tell you is there is no more effective risk communication tool than a pricing signal.

And I was in communities, actually sat next to Members doing town hall meetings in the intervening time between Biggert-Waters and the Homeowners Flood Insurance Affordability Act, where I heard the outcry in terms of the impact from an affordability.

So there is a push-pull—

Mr. TROTT. And could that been avoided? Is that something we could have avoided, in hindsight? If there is part of any solution we don't want to have that happen again, right?

Mr. WRIGHT. I would assert that all of us would be better off if we didn't have that happen again.

Mr. TROTT. None of us wants that. So is there a solution that you can envision? Is it possible to avoid that scenario?

Mr. WRIGHT. The first step that we are already taking under Section 28 of the Homeowners Affordability Act is to clearly communicate risk. And so this is the first year that we are pushing out a notification that says, here is your premium but this is what the

full risk rate would be, or at least the range of what your full risk rate would be.

We still are implementing escalations in the policies that move us there. I think the 2014 Act put a much longer time horizon on it whereas the 2012 bill did it quite quickly.

Mr. TROTT. Okay. So part of the problem, as I understand it, is approximately 1.6 percent of the 5.1 million policyholders account for 24 percent of the claims. At least that is the statistic that was shared with me yesterday.

So how does the solution in your mind address that problem? Because that seems to be the crux of the issue is we have 85,000 policyholders who are accounting for the vast—an inordinate number of claims.

Mr. WRIGHT. I think when you look at the insurance realm, it is not unusual to have a small segment that is occupying a good bit of the claims payments.

For me what is highlighted, and this is not always popular, but I think we have to look at those repetitive loss properties because under the statute today, I am required to continue to offer them coverage.

And there may be a point that we should draw that says if your total payouts of claims exceeds 200 percent of your policy limits, or some other number, I offer that hypothetically to you—

Mr. TROTT. Right.

Mr. WRIGHT. —we are in a position by which you need to get your insurance through another means. You need to have lost the ability to have those cheaper rates.

I think we have to look at that. I would point us back to some things learned from 2004's reauthorization, where there was an attempt at a "three strikes and you are out." I don't think that worked as effectively, but we could find a way to draw that line.

Mr. TROTT. Thank you. I agree with your comments, and while my time is running out, I come from Michigan, the Great Lakes State.

What is the status on sharing the data that is being collected by Sea Storm in terms of the flooding patterns for the lakes, because they are much different, obviously, than the coastal areas? And when can that be available to my constituents? And does the same privacy concern hold you up from doing that?

Mr. WRIGHT. The privacy concern only deals with address-specific claims data. The work that we are doing on the Great Lakes today is ongoing. We will work with your office to make sure that is made available to them.

We are partnering with the State of Michigan and the communities to share that data. As you know, the lakes have been on a downward trajectory, and I think you will see that reflected in the update of the maps.

Mr. TROTT. Thank you for your time.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Nevada for 5 minutes.

Mr. KIHUEN. Thank you, Mr. Chairman.

And thank you, Mr. Wright, for your presentation and for being here this morning. I have a couple of questions relating to climate

change. Climate change is a real threat. And I think we are going to start seeing folks get washed out more and more often.

I believe we will see more Superstorm Sandy's, which will cost the program billions and billions of dollars. Are you taking climate change into account while you are doing your mapping?

And secondly, if we see an acceleration in extreme weather events, wouldn't this add further debt to the NFIP? And is this something we should be concerned about as we work towards reauthorization?

Mr. WRIGHT. There are a number of future risks that we have to consider in the National Flood Insurance Program. Climate variability, climate change is one of those.

In 2012, Congress directed us to use our Technical Mapping Advisory Committee—it has been a very beneficial group for us—to specifically look at this. They have delivered a report to us related to future risk and future conditions and how we would map that.

I do think that we could benefit from showing that risk to communities in a more forward way, but let me draw two important distinctions. When we are charging insurance premiums, we should do it based on today's risk.

I should inform the built environment based on our understanding of the future, but I shouldn't be charging a premium based on a risk that has not yet arrived.

The second piece that I would highlight is, and we released a report in 2013 to this end, as you look at the changes that we anticipate between now and 2100, there are changes in climate. But a third of that change in risk is wholly attributable to changes in the built environment.

Essentially, where do the next 50 million people live? Where do we build their homes and their condos and their apartments? Where do those pieces sit, and how is that sited? Because frankly, every time we keep building, if we don't do it intelligibly on the way in, we exacerbate those flood risks.

Mr. KIHUEN. Thank you, Mr. Wright. My other question has to do with rural America, and my district is for the most part very rural. On the one hand, we saw in the aftermath of Hurricane Sandy that there were serious concerns about engineers not having the proper expertise to be handling flood claims.

But on the other hand, it can be difficult to find a sufficient number of qualified professionals in the area in the aftermath of a storm this size. That was in New York and New Jersey.

My district includes Las Vegas, but it also goes all the way up, almost to Reno. For my East Coast colleagues, that is the same distance between Washington, D.C., and Boston or Atlanta. I have a number of constituents who reside in rural counties.

And though we definitely don't have the flood issues some of my colleagues do, these counties do have thousands of NFIP policies that have paid out hundreds of thousands of dollars in claims.

What is FEMA doing to ensure that we have a sufficient number of qualified professionals handling claims in the aftermath of a storm, especially in rural counties?

Mr. WRIGHT. Let me take the rural county piece first, and then I will broaden out to the broader piece. As we look at rural coun-

ties, we see flooding go on most weeks of the year in some rural county across America.

The number of claims we would see in those instances are low enough by which I can get enough adjusters and the like on the ground pretty readily, which allows us to close out those claims and get them paid in a very timely way.

It is usually in an urban context, think more of your Las Vegas context, by which I start seeing tens and hundreds of thousands of claims. And that is the point that stresses the system.

So what have we been doing to address the stresses on the system? We have been working with the companies to ensure that we are building out more capacity for adjusters.

We are also looking at technology. Technology first of all to do the quality control to ensure that there is not sloppiness, there aren't inadvertent errors being made.

But also ways that I can imagine in the years to come for claims being able to be adjusted by people taking pictures on their smartphone. And when this is a smaller scale, this is a \$10,000 or \$20,000 claim, I can imagine them taking pictures, uploading those to us, and us adjusting this remotely, which saves a tremendous amount of time and we would be able to get those dollars paid far quicker.

Mr. KIHUEN. Thank you, Mr. Wright.

I yield back the remainder of my time, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the chairman of the full Financial Services Committee, the gentleman from Texas, Mr. Hensarling, for 5 minutes.

Chairman HENSARLING. Thank you, Mr. Chairman, and thank you on behalf of the full committee for holding this hearing.

Mr. Wright, I just want to follow up on a couple of items that you have already testified on, and particularly I want to follow up first on the question from the gentleman from Michigan, Mr. Trott, which has to do with the repetitive loss properties.

I don't quite recall the term of art, whether it was "severe repetitive loss" or simply "repetitive loss," but approximately 2 percent of the properties are accounting for roughly 24 percent of the losses historically.

You mentioned the 2004 effort, kind of a "three strikes and you are out." So could you give us a few other thoughts and approaches on how FEMA is thinking about these repetitive loss properties, and any different approaches you would bring to the committee's attention?

Mr. WRIGHT. Right. There are some nuances to the 2004 piece, but overplayed 3 claims of \$1,000 apiece would strike you out, and I don't think that was ever quite the intent we are looking at.

And so the first thing I think we need to do is actually move the threshold of what we consider the repetitive loss. Where is the big money going as opposed to some things that may just be some nuances that were applied?

As I have thought about it, and we have begun going through the data, and my team hasn't finished on this point yet, there is a point by which we have to draw a line that says if you exceed—is it 150 percent or 200 percent of your policy limits—at least we

need to take the subsidies and grandfathering away from you and you need to be paying at its face value, actuarial premium. Or we should tell you to get that on the private market.

There is the other side of that coin by which some of these are in places where the homeowners are of less means and wouldn't be able to actually take that on. And so I think we have to look at that dimension of it.

But the face of it is in any other kind of insurance piece that third, that fourth time to the well, we change the rules somehow. And I think it would be wise for us to do so.

Chairman HENSARLING. Mr. Wright, if I could suggest that your staff prioritize analyzing—

Mr. WRIGHT. We will do so.

Chairman HENSARLING. —this particular data? I share your goal of having a long-term reauthorization—

Mr. WRIGHT. Right.

Chairman HENSARLING. —and maybe September 30th is looming large, but this is an important part.

You also, I guess fairly early on in your testimony, spoke of mitigation, and one or two other Members also spoke of it. So I think the grant program is a relatively small portion—

Mr. WRIGHT. Yes.

Chairman HENSARLING. —of the FEMA budget today. But could you expound upon your thoughts, and again, other matters you would bring to the committee's attention in the mitigation space?

Mr. WRIGHT. The mitigation investments pay off over and over again. I have three different grant programs that I am accountable for. One of them is funded by the Stafford Act after events. That is where there is anywhere between \$700 million and \$1 billion a year spent in that space.

Congress then also created a Pre-Disaster Mitigation Fund, which averages about \$100 million a year. And then inside the National Flood Insurance Program, we have a Flood Mitigation Assistance Program. That is paid for by the premiums of policyholders. So \$175 million, which is not enough to actually mitigate risk.

And I kind of look at these upper limits of \$26 billion or \$45 billion worth of risk that I could assume in any given year and what do those pieces look like?

The limited pot I have today I prioritize on repetitive loss, severe repetitive loss properties all moved to the top because that benefits the fund.

I think we would do more to help communities if we started taking on projects that were a bit larger at a community scale. So rather than do three houses on that block, what does it mean to actually take that entire block out of harm's way?

The question is where do the resources come from? Where do the resources come from to pay those bills? I don't know how much more policyholders can bear, and I don't know what the appetite is for that to come out of general authorization.

Chairman HENSARLING. In the seconds I have remaining here, you have indicated a desire to open up greater space to the private market. The committee shares that particular goal. I know we have had a fulsome dialogue between your office and this committee. But

is there any barrier to entry, as you understand it, that has not been brought to our attention?

Mr. WRIGHT. I think there is a reality that when these markets stand up, they are going to be subject to State regulation, appropriately so, McCarran-Ferguson gives that responsibility there. And they need to be able to price a product.

But I think what is keeping us from actually seeing it broaden up is what does it mean to actually establish, they will guard against concentrations, which I don't today. They will have to make sure that their rates are affordable and that they don't push and pull out.

But I really see that we need to move to an appetite, because one of the things I have pushed the private markets on is today I am responsible for assessing a surcharge of \$250 on any second home. I look at properties outside the mandatory purchase, the preferred risk, and I am putting a \$250 tax on top of a \$350 premium.

And I have told the private markets that this is a perfect place where I have a competitive disadvantage. You should be coming in and filling this space. This is cheap, insurable risk.

Yet, I am not seeing that expansion happen yet. And so there needs to be some motivation that will keep pushing them down that road. And I think that will be as a step-wise process for us.

Chairman HENSARLING. Thank you.

Chairman DUFFY. The chairman's time has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you very much, Mr. Chairman. And if my friend, the Chair of the full committee, needs additional time I will be honored to yield to him, without any questions I might add.

Mr. Chairman, and Mr. Ranking Member, I thank you for this hearing. And Mr. Chairman, if I may say so, I want to congratulate you on being promoted to this subcommittee, but I will tell you that I enjoyed serving with you on O&I. We didn't always agree, but I always enjoyed the opportunity to serve with you.

Chairman DUFFY. You were always agreeable.

Mr. GREEN. Thank you so much.

Mr. Wright, thank you for your appearance today. There are some aspects of your job that are complicated by virtue of things that we can do here in Congress and that we haven't done. An example would be in Houston, Texas, wherein we have floods that total \$100 million and it is not unusual.

We had the Memorial Day flood in 2015 which was about \$100 million, and we had the tax day flood in 2016 which was about \$1.9 billion by some estimates. It depends on who is counting and how you count.

People have lost their lives: in 2015, 8 people; in 2016, 9 people. FEMA paid out \$57 million with reference to the Memorial Day flood in 2015.

Now, I mention these circumstances because there are projects that are on the docket of the Army Corps of Engineers that if completed would eliminate some of the flooding and mitigate a good deal of the flooding as well. These projects total about \$311 million. We are spending a lot of money after the fact.

We spend millions after the flooding, after the damage, but we could spend millions also before and mitigate and eliminate. Would you care to comment on what I have just said, sir?

Mr. WRIGHT. I think this investment before the disaster is imperative. And while I cannot speak to the specifics of the Corps' investments and budget, I can and I would highlight for you a report and some findings by the Government Accountability Office last year where they directed an interagency group that I chair to develop a national mitigation investment strategy so that we harmonize Federal investments, and we find ways to incentivize more private investments in this space.

I would assert there are not enough Federal dollars to eliminate all the risk across all the communities in this country. We have to find ways to engage the private sector in that, and I do think that we collectively could find a better way to harmonize those programs. I expect some work later this summer to be done to demonstrate the progress there.

Mr. GREEN. Thank you. With reference to our sharing risk, you are well aware that at one time the insurance companies had the entire market.

Mr. WRIGHT. Yes.

Mr. GREEN. And we are in the market now because it became too much for them to bear. Would you kindly explain to us the consequences of the Federal Government moving to becoming the insurer of last resort only and allowing the market to manage the other aspects of these disasters?

Mr. WRIGHT. Yes. In many ways, I would say we are the residual market today because there is a limited amount that is done through private flood.

And 49 years ago, there was a limited market, and where it was, the prices were quite exorbitant. I think as we look at these dimensions, we have to find the right balance.

Florida Citizens is often held up as an example for me to look at and they still retain a half million policies through their citizens program that the private market did not take up.

And so those policies would be there and so what would that equivalent be inside the National Flood Insurance Program? It is impossible to know precisely, but there could be 3 million or more policies that we are left with.

Yet, those are the ones that would be at greatest risk with greatest kind of concentrations of that risk, and where we would pay those bills becomes difficult.

In the Florida example, they have a whole series of ways by which all the taxpayers of Florida and all the rate payers in Florida would contribute to pay those bills. We don't have those mechanisms in the National Flood Insurance Program.

Mr. GREEN. Mr. Chairman, I know my time is up. May I introduce some things into the record, please?

I have a resolution from the Commissioner's Court in Harris County supporting our reauthorization. I would also like to introduce H.R. 121, which is the bill that would allow us to fund those projects that have been authorized by this Congress that would help us mitigate in Harris County. I ask unanimous consent to enter these documents into the record.

Chairman DUFFY. Without objection, the documents will be made a part of the record.

Mr. GREEN. Thank you, Mr. Chairman.

Chairman DUFFY. With that, the gentleman's time has expired. The Chair now recognizes the gentleman from New Jersey, Mr. MacArthur, for 5 minutes.

Mr. MACARTHUR. Thank you, Mr. Chairman.

We have talked about what I think should be our priorities in this reauthorization—affordability, certainly mitigation is critical. I want to focus for a few moments on accountability, which I think needs to be a priority as well. And all of my questions and comments come out of whom I represent.

I represent southern New Jersey, the epicenter of Superstorm Sandy. On October 29, 2012, my district was devastated: lives, homes, businesses, neighborhoods, and communities. And we have all probably seen photos of the iconic Jet Star rollercoaster sitting in the ocean. That is my district.

Mr. WRIGHT. Right.

Mr. MACARTHUR. We have seen photos of the house sitting on a little island in the middle of a newly created inlet that went right through an island. That is my district. Those are the people I represent.

And you mentioned earlier, Mr. Wright, 144,000 flood claims came out of that event. And of those 73,000, about half, were in the State of New Jersey, and of those, 36,000 were in my home county—50 percent of the claims in New Jersey were in my home county.

Do you know how many people—I don't expect you probably do—who are still out of their homes now, nearly 5 years later?

Mr. WRIGHT. I don't, sir.

Mr. MACARTHUR. Thousands. Thousands of them. And might you guess the leading cause for people to still be out of their homes 5 years later?

Mr. WRIGHT. No.

Mr. MACARTHUR. It is a gap. And it works like this. There are resources from a flood policy, maybe resources from a FEMA grant like a REM grant to lift a home. There are resources from an SBA loan. There are private savings that people have put away for retirement.

And they keep inching towards completion and they run out of money, 95 percent there but they can't get a certificate of occupancy.

Mr. WRIGHT. Right.

Mr. MACARTHUR. So getting paid fairly at every step of that chain is absolutely essential for my constituents. And that is where I want to focus for a few moments. What percentage of the underwriting risk does a Write Your Own carrier take?

Mr. WRIGHT. Zero.

Mr. MACARTHUR. Zero. Would an engineer or an adjuster have any financial incentive for depressing the amount of a claims payment?

Mr. WRIGHT. They should not.

Mr. MACARTHUR. They should not. I want to read to you testimony, not testimony, but commentary from your predecessor I be-

lieve, Brad Kieserman, who in February of 2015 said this on 60 Minutes, that he “had seen evidence of fraud in reports used to deny them, the policyholders, full insurance payouts.”

Again I am quoting: “I am not going to sit here and conceal the fact that it happened because in the last 3 weeks, I have seen evidence of it,” said Kieserman. He went on to say that they had seen evidence in late 2013, a year after the storm, but nothing had happened.

I am going to ask you, Mr. Wright, to look at the two photos that are up on the wall. Do they look like the same photograph to you, left and right? I assure you they are and they came out of your files.

Mr. WRIGHT. Okay.

Mr. MACARTHUR. I would ask you to read what is circled on the photo on the left.

Mr. WRIGHT. “Floodwaters damage heater and boiler.”

Mr. MACARTHUR. Okay. And that was dated November 12th. Then on the right side is the photograph that was sent to the insured on 11/26 when their claim was denied. Can I ask you to read what is in the circled box on the insured’s photograph?

Mr. WRIGHT. “Floodwaters do not damage water heater and boiler.”

Mr. MACARTHUR. I don’t have time, unfortunately, to put up a series of these very similar photographs, but I assure you and I trust that you will accept that it is accurate, that they all do the same thing.

You reopened thousands of claims under some pressure by me and others. Can I ask how much you have paid from all of those reopened and litigated claims in the latter part of the process?

Mr. WRIGHT. We have paid out an additional \$350 million so far.

Mr. MACARTHUR. I am going to stop you there because I have only 30 seconds left, and I have to end with commentary.

Chairman DUFFY. I would ask for unanimous consent to give the gentleman 1 more minute of time.

Mr. MACARTHUR. I’m very grateful for that.

Chairman DUFFY. Without objection, it is so ordered.

Mr. MACARTHUR. You were under pressure in FEMA, and I recognize you weren’t in the role then, but FEMA under pressure allowed my constituents to reopen claims—50 percent of the claims in my State, 25 percent of the claims in this entire episode, you reopened them and you paid out \$300 million you just testified—\$300 million that would not have come to my State had you not been under pressure to reopen these claims.

Sir, I beg you, and I am telling you that when we reauthorize, we will be watching to make sure that there is accountability in the process. The McKinsey study that was implemented by your company suggested that your adjusters ought to pay within ranges. Is that correct?

Mr. WRIGHT. So—

Mr. MACARTHUR. I don’t have time to actually let you answer. I know that is what it did because we have had plenty of testimony that it did. We had five whistleblowers that I have statements from, affidavits from. I will read you the quote from two of them.

"We received instructions not to conduct a comprehensive evaluation of claims. We were directed to tailor evaluations to fall within a range even if we identified additional covered damage." That was one of your employees who was a whistleblower.

Another said, "There was an elaborate process designed to justify minimum payments to policyholders irrespective of the actual merits of the claim." Mr. Wright, this is completely unacceptable—\$300 million of additional funds paid that would have been denied but for the pressure that was on your agency.

You are charged with helping the very people who have suffered the most, and my constituents got cheated. And so did others across New Jersey and across New York, and you have to fix that.

You have to fix that process so that people at least are getting paid what they are owed and it doesn't create a gap that keeps them out of their home for years after these events.

I yield back. Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the former Chair of this subcommittee, who is now the current Chair of the Financial Institutions Subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

And Mr. Wright, it's good to see you again.

Mr. WRIGHT. Yes, sir. Likewise.

Mr. LUETKEMEYER. I know that a number of the things that were discussed today were happening and were consequential prior to your taking over. I know that in working with you over the last couple of years here you have done a pretty good job under your leadership of improving the claims process.

As my colleague next to me here has pointed out, there were a lot of mistakes made.

Mr. WRIGHT. We are—

Mr. LUETKEMEYER. And I know that the last two storms we had this last summer, this past year, there were not that many mistakes made—as many mistakes. Put it that way. I know that as chairman, we wound up with a lot fewer complaints, and so I congratulate you on improving your process. There's always room for improvement, of course, but—

Mr. WRIGHT. Agreed.

Mr. LUETKEMEYER.—I think that you have also, improving the process, going to advance payments has been a big help. And so I think one of the things we have and one of the things that is in our bill, in fact, is taking some of those improvements and trying to put them into the statute. So we thank you for that.

And obviously, one of the things that is a big concern to my colleagues and myself is the reinsurance, trying to find a way to take the taxpayers off the hook. Can you tell me what the size of the two losses were last year? What was the size of the two events?

Mr. WRIGHT. The total loss last year was about \$4.2 billion.

Mr. LUETKEMEYER. Right.

Mr. WRIGHT. And the largest was that Louisiana one alone was \$2.4 billion.

Mr. LUETKEMEYER. \$2.4 billion and \$1.6 billion.

Mr. WRIGHT. Yes.

Mr. LUETKEMEYER. Okay. So if we would have had reinsurance and would have kicked in at the billion dollar level, we would have had \$2 billion worth of reinsurance and you wouldn't have had to increase the debt from \$23 billion to \$24.6 billion, right?

Mr. WRIGHT. So—

Mr. LUETKEMEYER. Yes. I can do the math, Mr. Wright.

Mr. WRIGHT. You can. So I learned quite a bit when I went to the markets at the end of last year on the price points. And the attachment that we bought at \$4 billion was the place where the optimization of the pricing began to kick in.

Pricing below—

Mr. LUETKEMEYER. Well—

Mr. WRIGHT. —at \$4 billion—

Mr. LUETKEMEYER. With all due respect, Mr. Wright, the pricing of this is obviously important. But at the end of the day, what you are talking about is the flood insurance program and having the taxpayers be the backstop. Right now, the taxpayers are the reinsurers of the NFIP program.

And the program is not structurally sound. It is not actuarially sound, because obviously we have a loss of \$24.6 billion sitting there.

And if we would have had reinsurance in place that would have kicked in at the billion dollar level this past year, we wouldn't have added another \$1.6 billion to our debt.

Mr. WRIGHT. That is true.

Mr. LUETKEMEYER. And so I think the reinsurance, to me, is the most important thing we can do because it takes the taxpayers off the hook and we can finally begin to go down the road of getting this program under control. And from there, we can start working on getting the actuarial rates more sound and work on things like that.

With regards to the data, I want to go quickly to that. I know that there were a couple of questions with regards to the data collection. What kind of information when you have a policy, what information, personal data, is collected on a policyholder when you do your application—name, address, birthdate, Social Security number?

Mr. WRIGHT. We do not take Social Security numbers any longer, but—

Mr. LUETKEMEYER. I see.

Mr. WRIGHT. —name, address, birthdate, value of structures, and ultimately we end up with loss history attached to that.

Mr. LUETKEMEYER. Okay. So when you gave the loss history to the reinsurance folks, all of this data—the name, address, personal data—was given over to them or not?

Mr. WRIGHT. I created a derivative product based on zip code that was sufficient for them to provide me pricing.

Mr. LUETKEMEYER. Okay. So you didn't give individual—

Mr. WRIGHT. They knew exactly how many—

Mr. LUETKEMEYER. —addresses?

Mr. WRIGHT. They knew exactly how many claims, the value of each of those claims, but they were generalized at the zip code level. They didn't get the street address. And that was—

Mr. LUETKEMEYER. They didn't get the street address, didn't get names—

Mr. WRIGHT. Correct.

Mr. LUETKEMEYER. —so the data of those people was protected?

Mr. WRIGHT. Correct.

Mr. LUETKEMEYER. Okay. With regards to—

Mr. WRIGHT. And those are the data, sir, that I have recently released on FEMA's website that are now downloadable.

Mr. LUETKEMEYER. Right. To me, the mapping is another very important part of this. My information shows that last year you had 25,000 letters of map amendment called LOMA letters at a cost of \$13 million. Is that accurate, or close to it?

Mr. WRIGHT. Those numbers seem correct to me.

Mr. LUETKEMEYER. Okay. So we have the maps that are off, 25,000 people around this country had to spend anywhere from \$300 to \$500 and \$700 to get themselves out of the program and show that they didn't need to have that coverage. And one of the things that I think is important is, can you get the maps corrected every year?

Mr. WRIGHT. I am constrained by the number of resources that I have to spend on those maps.

Mr. LUETKEMEYER. And the reason I ask the question is, how often do you get to being able to remap?

Mr. WRIGHT. I am required by statute to evaluate them at least every 5 years and then resource-dependent drives the amount of investment that I make.

Mr. LUETKEMEYER. Are we lucky to do it every 10 years?

Mr. WRIGHT. In most areas—

Mr. LUETKEMEYER. I see you are smiling, so I am not too far off.

Mr. WRIGHT. No, no. In the risky areas—

Mr. LUETKEMEYER. Okay. All right.

Mr. WRIGHT. —and I have to be careful given the rural nature of some parts of the country. The riskier the area, the more policies I have there. I am basically on a 5- to 6-year cycle. In other cases, it may be closer to 10 years before they have an update.

Mr. LUETKEMEYER. So my comment would be that one of the things we are looking at trying to do is go to at least every 3 years.

If you are not able to go back and redo this, allow the local folks, if they adhere to certain criteria, to be able to do their own maps and then have them approved. Is that acceptable to you?

Mr. WRIGHT. And it is acceptable under today's authorities as they exist today. I will take data from a community—

Mr. LUETKEMEYER. Great.

Mr. WRIGHT. —at any time from that provision.

Mr. LUETKEMEYER. I am being timed out. I appreciate the indulgence by the chairman.

Thank you very much, Mr. Wright.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Illinois, Mr. Hultgren, for 5 minutes.

Mr. HULTGREN. Thank you, Mr. Chairman.

And thanks for being here, Mr. Wright. My district is the suburbs of Chicago, and the Fox River cuts directly through the center of my district. It is bordered by towns and cities like Fox Lake,

Crystal Lake, Elgin, St. Charles, Oswego, Yorkville, and Plano, not to mention the lakes in the northern part of my district.

I believe we should maintain affordable access to flood insurance, but we also must be fiscally responsible. I think that has been a common theme today. First question, is it true that FEMA is no longer able to even make interest payments on its debt? Yes or no?

Mr. WRIGHT. In January, I borrowed the resources necessary to make the interest payment for March.

Mr. HULTGREN. When will FEMA technically default on its obligation or have they done so already?

Mr. WRIGHT. I would not use that word in relationship to this program. There are people who have purchased those Treasury bills and they have the full faith and credit of the United States behind them.

Mr. HULTGREN. I am still very concerned with the delays of payment and failure, well, we will see question marks on how that will continue to be paid.

Certainly, I think all of us are concerned with the amount of debt NFIP has accumulated. I can certainly understand some risk in providing insurance, but there is also an expectation that it should be properly managed, whether it is provided by the public sector or the private sector.

However, in the case of the public sector, as we say, taxpayers are left holding the bag. Your testimony states that a quick succession in severe storms is the primary cause for the NFIP being about \$25 billion in debt.

Your testimony also states that conservatively, Hurricane Katrina has a 2 percent chance of occurring in a given year; Hurricane Sandy has a 5 percent chance; and the August 2016 storm in Louisiana has a 4 percent chance. Combined, the chance of all three happening is extremely low, less than one-tenth of 1 percent.

Do you believe FEMA was doing a poor job of accounting for the risk? Or do you believe they were collecting insufficient premiums to account for this risk?

Mr. WRIGHT. We were collecting the premiums generally allowable under the statute. So nearly 80 percent of my book is actuarially sound. The other 20 percent of it has statutorily directed discounts and subsidies that I live within.

Mr. HULTGREN. What changes should FEMA make to avoid ever accruing this much debt again? Do any of these policies require action by Congress to make sure the debt never gets this big again?

Mr. WRIGHT. Absolutely, sir. When I talk about a sound financial framework and bringing transparency, we need Congress on that front. We can look at the amount of premium and may make adjustments in that.

We can look at kind of what is repayable debt, simple liquidity that I might need in any given year, the use of reinsurance, which we have a cornerstone and we will continue to build. But there are tipping points based on events by which only Congress will be able to help me solve those.

Mr. HULTGREN. Let me get into a specific circumstance in my district. I mentioned St. Charles. This is a city in my district that had a significant amount of trouble working with your agency last year to update the flood maps along the 7th Avenue Creek.

There has been significant flooding here in recent years so the City of St. Charles would like to undertake development projects to manage the flood risk in this area, which has a number of businesses and homes.

The problem is FEMA took an agonizingly long time to update the maps, which caused significant uncertainty for the community. It has now been resolved, finally, but I want to know what steps FEMA plans to take to prevent this from happening to other communities in Illinois and around the country, this unacceptable delay?

Mr. WRIGHT. First of all, I apologize for the delay. We need to be efficient—we take in the data that communities give us and process it to make sure it meets the standards. I think as we look at the breadth of the mapping programs, one of the improvements we are doing on the technical side is bringing far more visibility.

There are nearly 1,400 projects going on across the country. And ways by which we can see things that are falling behind. I want to particularly find ways to understand where is there an expectation from the community, particularly, which is I believe the instance you are highlighting, the community made the investment in the mapping update. Those need to go to the front of the line and get processed.

Mr. HULTGREN. Yes. That is what is so frustrating, that they feel like they have done everything they are supposed to do and their hands are tied waiting on bureaucracy.

Mr. WRIGHT. Right.

Mr. HULTGREN. Which is just unacceptable. But just wrapping up, I have less than a minute, as you noted in your testimony, FEMA removed the NFIP's financial assistance subsidy arrangement with the Write Your Own companies from regulation.

You might remember that Chairman Luetkemeyer, Ranking Member Cleaver, and I wrote you a letter last year expressing some concerns about this decreasing accountability to the public.

Your testimony also states, "This process was time-consuming and created a delay to make any administrative updates or changes in regulation. Now, the process is streamlined to improve the ability for FEMA and its industry partners to negotiate operational adjustments and corrections more quickly and efficiently."

I agree it is important that we remove red tape and provide some flexibility, but operationally, won't Write Your Own partners be subject to program changes with potentially little or no notice? And how do you plan to transparently communicate such changes to these companies that, again, are just trying to abide by the rules of the program?

Mr. WRIGHT. I do think that removing the red tape was essential. The contract with the companies had been codified into regulation and hadn't been changed in 17 years. The commitment we made going into this process is that any changes will be publicized at least 6 months in advance.

I anticipate later this month publishing the arrangement that will be in effect October 1st, so more than 6 months' notice if a company wanted to make a different business decision related to those pieces. And we are consulting.

And so we put out a series of principles. I have tried to be transparent with the public as well as the companies about where we are going while eliminating the red tape. But there is a firm commitment, and frankly, a standard in the regulation now. I cannot simply make the decision by fiat on my own.

Mr. HULTGREN. My time has expired. I yield back. Thank you, Mr. Chairman.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the Chair of the House Foreign Affairs Committee, and a long-term member of this committee, the gentleman from California, Mr. Royce, for 5 minutes.

Mr. ROYCE. Thank you very much, Mr. Chairman.

I wanted to ask Mr. Wright a question, sort of a follow-up on the chairman's question concerning repetitive loss properties.

Mr. WRIGHT. Right.

Mr. ROYCE. I actually have bipartisan legislation with Mr. Blumenauer from Oregon on this, and one of the things we seek to do here is empower communities to tackle this problem. We would like to work with you on that legislation.

But the precise numbers change from time to time. The bottom line seems to be that a small fraction of policies, and let's say it is roughly 1 percent of policies, seem to account for 20 to 30 percent of the claims and losses.

In 2009, the Department of Homeland Security's Inspector General said that an increase in new repetitive loss properties was outpacing what we were attempting to do in terms of mitigation by a factor of 10 to 1.

Now, that is a troubling number. Have our mitigation programs begin to catch up? Have the numbers turned lately or does it look like we are still growing the number of repeat loss properties arithmetically here? And can you provide the committee with the most up-to-date data on that?

Mr. WRIGHT. I can get back to the committee on the specifics on the data, and I look forward to the opportunity to collaborate with you all as you look at potential legislation. The number continues to rise.

Mr. ROYCE. Okay. And then the other point I would make is just taking FEMA's current guidance document on the community rating system as it relates to potential homeowners, and I think it is pretty cogent here, most prospective buyers do not take the time nor do they know how to investigate whether a property is subject to a hazard.

In many cases, a property may not be near a shoreline or a stream. Past flooding may have been minor or there may be no history of flooding since the area was developed. As a result, many people are caught by surprise when the properties are flooded.

One of the best times to advise someone of a flood hazard is when he or she is considering the purchase of that property.

Mr. WRIGHT. Agreed.

Mr. ROYCE. So as I understand it, FEMA gives credit to communities that are able to work with local REALTORS® and the community to push this sort of pre-closing flood disclosure.

Mr. WRIGHT. We do. And we would offer discounts on the premiums as a result of those activities.

Mr. ROYCE. And I think that is helpful, but my question is what more could FEMA do or what more could Congress do to ensure that the American people aren't in the dark when it comes to flood history?

And won't we improve take-up rates for flood insurance and strengthen individual and community mitigation if you better inform communities and people about flood risks when they are looking at potential properties or developing potential properties?

Mr. WRIGHT. This is a conversation that I have a couple of times a year with the REALTORS® who obviously have become that first, that forward-leaning part of this conversation. And we have had conversations with some of the private sector app developers that we all know well, that provide data on the values of homes and what is for sale.

I think greater disclosure about the risks on the front side are very helpful. Some States require this. Most States do not.

Mr. ROYCE. So there are steps that we could take that uniformly would assure that there was more knowledge?

Mr. WRIGHT. I think we would have to look at the implementation—

Mr. ROYCE. For more mitigation presumably?

Mr. WRIGHT. Yes. I would want them available. I think when we push that out, we have to look at the implementation side of that.

Mr. ROYCE. Right.

Mr. WRIGHT. I don't have a relationship with every REALTOR® in the United States, and so I couldn't be the enforcement mechanism for that.

Mr. ROYCE. No, no, I understand that. But as we look at what different States are doing—

Mr. WRIGHT. Agreed.

Mr. ROYCE. —we can get a feedback in terms of what seems efficient, what seems easy and what is effective in getting to this—

Mr. WRIGHT. And I think there are some things to be learned—

Mr. ROYCE. —solution?

Mr. WRIGHT. —from your State of California that does have some responsive requirements related to earthquake risk, related to dam safety risk and the like. There are things that we learn from there.

Mr. ROYCE. Yes. Well, thank you, and again, Mr. Wright, I look forward to working with you on the Earl Blumenauer-Ed Royce bill—

Mr. WRIGHT. Yes.

Mr. ROYCE. —that we are moving forward on.

Mr. WRIGHT. I look forward to collaborating with you.

Mr. ROYCE. I appreciate it.

Chairman DUFFY. The gentleman yields back.

The Chair would now ask for unanimous consent to allow the Chair and the ranking member to each ask one more round of questions for 5 minutes each? Without objection? And I would guess we may not take that full 5 minutes.

So with that, Mr. Wright, I have to get clarification from you because in regard to the mandatory purchase properties and the take-up rate, okay, we asked you this very question and your liaison responded to Congress and told us that you have no knowledge or data on this issue.

We asked the OCC and they said they don't have any data on this issue. Okay? So you clearly have said I can't advise you, Congress, we have no information. To which, the slide that I have now put up a second time.

The picture that comes at the top of this slide, and it is a very nice picture of you. Okay? Right there, great picture.

[laughter]

And here you are giving us different information. So I have a slide from FEMA, and I have letters from the NFIP and FEMA and they are conflicting. Can you clarify that for me? Do we have data on the take-up rate on mandatory purchase properties or do we not have data on it?

Mr. WRIGHT. First of all, to the degree that my staff or I have not given you the clearest information, you have my apologies. And what I can assert is I am going to get you the best data and information that I have.

I think that sometimes we get caught up on, is it data that FEMA collected or did FEMA access it? Frankly, that sets aside. You are after an outcome I would imagine, Mr. Chairman, and you want to understand why we are not seeing a higher degree of take-up.

I can collaborate with you on that. I know that the rates are different across the country.

Chairman DUFFY. Yes.

Mr. WRIGHT. And—

Chairman DUFFY. That is my concern. And I want to make sure we are very clear because in the response from your liaisons, January 30, 2017, to this very question, the response was, "FEMA does not have knowledge on the compliance rate for mandatory purchase properties as the managed purchase provisions of the law are not under FEMA's purview." Okay?

That was the response, and so I then asked the OCC and they gave me the same answer. But again, that was the email response, but again, the data that was provided in a FEMA document says you do have this information and the take-up rate is about 50 percent. And if you don't know the answer today, I understand that, but we need an answer.

Do you know or do you not know? You have to clarify that for us. And for everybody else who says we have a take-up rate of 50 percent? And we have a \$24 billion debt or we are \$1.5 billion short a year? Go for the people who are required to purchase that aren't.

Mr. WRIGHT. You are referencing the 2014 report—

Chairman DUFFY. I am.

Mr. WRIGHT. —that we did commission—

Chairman DUFFY. Right.

Mr. WRIGHT. —and asked for it to be collected. It is not data that we keep up-to-date. We don't have a tracking element for it. I will make sure you have the best information that I have, Mr. Chairman, and I, like you, am committed to ensure that we have everyone participating who needs to.

Chairman DUFFY. I would just argue that if you don't have up-to-date data, in your email response to me, you would say I do have 2014 data that I can give you, but it is not current.

Mr. WRIGHT. Sir, to the degree—

Chairman DUFFY. You say I don't collect that data, that is different than putting a—then we find this slide deck that actually shows that this is what you are putting out there. That is my rub on how you handled this.

Mr. WRIGHT. Sir, to the degree that we were not clear in our transmission of this and the provision of it I apologize, and we will make right by it.

Chairman DUFFY. All right. I would argue that you are not clear when you have a slide deck giving one data from 2014 and then an email that says we don't collect data. So I am pretty clear on what you told me, and I think we have to work through how we get on the same page.

I want to switch quickly again—\$24.6 billion in debt. On average we would say we bring in \$3.5 billion in revenue, but the cost of the program on average is \$5 billion, and we run a \$1.5 billion deficit a year in the NFIP.

And we are paying 31 percent in compensation for the Write Your Owns. Now, I am not passing judgment on that, but is it fair to say that is almost \$1 billion in compensation for the Write Your Owns?

Mr. WRIGHT. You are right on the amount of compensation. The Write Your Owns retain a portion of that. And so first of all I would tell you I want the price operating this program to go down. I want it to go down across-the-board, whether that is on my side of the books or what the companies are ultimately doing.

When you look inside that, half of that compensation goes to insurance agents, the independent agents who are small business owners across the country. And we can begin to walk through those elements.

Ultimately, we need to—

Chairman DUFFY. But it—

Mr. WRIGHT. —pay the actual expenses, put the right incentives in place, and we need to drive down the costs.

Chairman DUFFY. So just to be clear, this is roughly close to \$1 billion in compensation?

Mr. WRIGHT. Yes, sir.

Chairman DUFFY. And we roughly run a \$1.5 billion deficit a year. You would agree with that number, too, correct?

Mr. WRIGHT. I would describe the deficit numbers differently, but I appreciate how you came to those numbers.

Chairman DUFFY. And again, there is no risk taken on by the Write Your Owns?

Mr. WRIGHT. There is none.

Chairman DUFFY. And did you see any disparity in, because we have had this conversation and those who are involved in the program make the argument that it takes a lot of work to educate homebuyers on what the program is and work it up—I get that.

But oftentimes, you just have renewals year-over-year and there is really no work in that, is there? It's pretty simple stuff. And we don't have any distinction between the first year the policy is written where there might be a little extra work, but also the renewals that take place year-over-year-over-year and there is virtually no work.

Mr. WRIGHT. There are standards of practice in the insurance industry in terms of how the compensation works. That said, we need to drive down the cost. It is we are working—

Chairman DUFFY. That does not—

Mr. WRIGHT. Is it—

Chairman DUFFY. —answer my question. A renewal is pretty darn easy, right?

Mr. WRIGHT. A renewal is usually easier than writing a new policy. That is correct.

Chairman DUFFY. There are circumstances where it is not? Well, yes, they would give you one if the maps change and—

Mr. WRIGHT. Exactly.

Chairman DUFFY. Or—

Mr. WRIGHT. So when maps change or there has been a change in rates or surcharges, there can be conversations by which it would be more work.

Chairman DUFFY. And I know it is hard to compare apples-to-apples in this, but outside of the NFIP, when we look at commissions or compensation, I don't know that you are going to find the industry paying 30, 31 percent.

Mr. WRIGHT. I can speak to that. I think that today, and we have been directed and we are working on the study to move away from this, but today we would use the average of five lines, including fire, homeowners, allied, and that average comes together.

And then today we pay an additional one basis point because of the complexity of the Flood Insurance Program. So, homeowners sits at 27 percent, and fire sits at 28 percent, which shows me there is an opportunity to bring those prices down.

Chairman DUFFY. And I would just add, this is an important conversation we should have. It might be fair or it might be unfair, but this is a big part of the cost of the program.

And I think it is important that we engage in the conversation, and your 31 percent may be right. And it may be a little too high.

Mr. WRIGHT. So I think—

Chairman DUFFY. That is a—

Mr. WRIGHT. —my position is clear. I do think we can bring those costs down. We need to look at them in terms of the Write Your Owns. We need to look at it also in terms of the agents and also the fact that at least 2.4 percent basis points of that go to State taxes that just flow back through to the States.

Chairman DUFFY. Absolutely. And we know the agents do great work in our communities, making sure these programs and these policies get out.

With that, my time is well over, and I now recognize the ranking member of the subcommittee, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

Mr. Wright, I just returned. I missed votes all week. I have been in my district because we were hit by tornadoes—

Mr. WRIGHT. Right.

Mr. CLEAVER. —in small towns you have never heard of, Oak Grove, Richmond. We had a tornado hit Orrick, a great vacation spot if you are looking for a place to visit this summer. But the problem is that we have this threshold that you have to reach of \$8 million in damage in order to get help.

So we are, unintentionally but for sure, hurting small communities because Orrick has 800 homes in the whole town. And so if all of them had been destroyed, we still wouldn't have reached that threshold.

The same thing happened in Richmond, population 5,000, and Oak Grove, population 7,700. Do you think that is something that needs to be changed?

Mr. WRIGHT. Mr. Cleaver, those standards are set in terms of how FEMA implements the Stafford Act and there are per capita standards that are in place. I am not an expert on those various thresholds, but I would be happy to get the right folks talking with you about them.

Mr. CLEAVER. Okay. Because the people there think, we live in a small town. No matter what happens to us, we don't get help. But I would be happy to get that information because I am going back up there Sunday and many people are just interested in well, why is it that we can't get help?

I live in a small town, so, a small town never gets kicked. And you have to live in the urban area before you get help from your own government. So I would be very, very interested in information.

The other thing that I am a little concerned about, and it is tornado season so I hope there are no more tornadoes in the country. That is a hope, but I don't think I am going to be able to stop that with the hope.

And so we are going to end up before spring is over having some more tornadoes. Hopefully, they won't be devastating to the point where lives are lost, but they are going to happen.

With that in mind, and with the OMB slashing or proposing to slash the FEMA budget by 11 percent, if that should happen, does that mean that my people in my small towns have less of a chance to get help?

Mr. WRIGHT. Sir, I can't speak to the specifics of the budget that is still under formulation. What I will tell you is the disaster relief fund is where we pay these expenses to communities, and we can walk you through more of those details when we show you the elements related to the standards for review on declarations.

Mr. CLEAVER. Okay. All right. Thank you, Mr. Chairman.

Chairman DUFFY. The Chair recognizes that the gentleman from California has now arrived, and recognizes him for 5 minutes.

Mr. SHERMAN. Thank you. Yesterday, it was reported in the Washington Post that the Trump Administration may slash FEMA's budget in part to help find funds for other priorities. It was reported that homeowners may face a surcharge on their flood insurance policies, and I guess that would be to make up for the lost revenue.

What impact would these cuts have on your ability to properly administer the flood insurance program? Can you elaborate on the flood fee, and what kind of surcharge we are talking about?

Mr. WRIGHT. Sir, I am aware of the reporting that you are referencing. What I can tell you is that to the best of my knowledge, the final decisions related to the President's budget haven't been made. So it would be premature for me to speak about specifics. I would refer you to the Office of Management and Budget.

Once that proposal is available, I would be happy to discuss how it would be implemented in our programs with you.

Mr. SHERMAN. But obviously if the budget is cut, homeowners will be paying more, correct?

Mr. WRIGHT. The related elements that are here deal with when are there fees that are in place and surcharges and who bears the costs of those elements? Again, I don't know that I can speak to the specifics of that until I know what the proposal says.

Mr. SHERMAN. Last Congress, the House passed the Flood Insurance Market Parity and Modernization Act (FIMPMA) unanimously. Although it did not receive a vote in the Senate, the bill had bipartisan support.

As you will recall, the bill clarified the provision in the Biggert-Waters 2012 Act allowing for private flood policies to meet mandatory purchase requirements of the flood insurance program.

Because there is some confusion that remains for insurers and lenders causing the market to be slow in responding, the FIMPMA would clarify this provision. In addition to some suggestions for growing private insurance options, including the removal of the non-compete clause from the WYO arrangement and granting access to the NFIP's claim to loss data.

What is your opinion of this proposal? Do you agree with the 419 Members of the House who voted for it?

Mr. WRIGHT. I believe that the bill has important elements in it, particularly as we bring clarity onto what satisfies comparable coverage. And I think that we look forward to working with the committee and its members on what that provision would look like in this new Congress.

Mr. SHERMAN. What would the future of the NFIP look like if perhaps as many as 80 percent of the current policyholders, those with moderate or low risk, are recruited away by the private flood carriers? What effect would that have?

Mr. WRIGHT. Far less than 80 percent of our book of business is low or moderate. I do believe to the degree the private market comes in, that would be an obvious place for them to start.

So today of my 5.1 million policies, 1.6 million of those are preferred risk policies. Given the assertion you have made, that might be a place where they would begin.

I am convinced, and this goes to the chairman's earlier point about there are far more structures that need to be insured. And so I am convinced a mutual gain approach is the right way on here. And I think making space and encouraging the private markets is a helpful way to ensure that more people are covered for flood in this country.

Mr. SHERMAN. You noted that FEMA wants to see flood insurance private or public increasing as we move forward. Could you explain some more on what steps Congress can take so more people are insured?

Mr. WRIGHT. I think there are particularly some programmatic and technical issues that are barriers for us to giving folks the product that they want or need. It requires us to look at the coverage limits. It also requires us to look at things like basements and the like.

Today, the statute mandates that I put the terms and conditions of the policy into the Code of Federal Regulations, which is a very cumbersome process. My agency is very slow to do rulemaking, and so in making these changes, I think one of the elements I would assert to you is that it still should go through notice and comment.

I should still be very transparent about it, but the idea that I go through a full regulatory rulemaking to add a coverage for someone that they are willing to pay for at an actuarial rate, those are the kind of barriers that Congress could help us remove.

Mr. SHERMAN. I am hoping you will propose statutory language so that we understand what we can do to be helpful and are very specific about that.

I yield back.

Mr. WRIGHT. I would be happy to work with you on that.

Chairman DUFFY. The gentlemen yields back.

The Chair has spoken with the ranking member and asks unanimous consent to allow the gentleman from New Jersey 5 additional minutes.

Mr. CLEAVER. No objection.

Chairman DUFFY. Without objection, it is so ordered. The gentleman is recognized for 5 minutes.

Mr. MACARTHUR. Thank you, Mr. Chairman, and Mr. Ranking Member.

I want to just follow up a little bit on what we talked about before. Mr. Wright, you and I have some things in common. I think you know that I spent my business career in insurance, a business I love very much, which I think can do an awful lot of good for people.

I noticed in my business life that as things got bigger, you have to manage them differently. And so when I had a small company, it was one thing. When I had thousands of people, it was very different.

And often when you are trying to understand how things are going wrong, you only see the ripples at the top where the causation is really beneath the water line. And it is not easy to get to the bottom of things sometimes.

I am trying to understand something you talked about a bit earlier. The Write Your Owns had zero incentive to underpay claims. In fact, you might argue they had an incentive to pay them quickly because they don't make more money by creating a tortuous process. And yet, claims got delayed and there were some pretty egregious errors made, some of them apparently intentionally.

You testified that the engineers and the adjusters would have no financial incentive to change a report to say something was covered by flood and then a few weeks later send it to the insured with a denial and say it wasn't covered.

Are you aware of any action within either the NFIP or FEMA more broadly, any action either explicit or implicit, implied—are you aware of anything that came out of NFIP or FEMA, either verbally or in writing that would have suggested to various Write Your Own companies, various engineers and adjusters, that you wanted them to reduce claim payments?

Mr. WRIGHT. Sir, as you well know and we have discussed, it precedes me, but I have gone back and I have had the team looking

at this question. And I have seen no evidence of that instruction being provided.

Mr. MACARTHUR. Does it strike you as just incongruous that this could have happened this way without somebody directing it?

Mr. WRIGHT. The best I have been able to understand, is we have looked through this: 19,000 of these claims came back for reconsideration as we have moved through, and as you addressed. I was brought in to finish fixing this given the problems that were in place.

A few things have been made clear to me, and I have spent a lot of time with some of the files myself looking at them, including some of the ones with errors in them.

What I saw was a system that was overwhelmed without the right controls in place. I saw a lot of sloppiness. That is inexcusable, and we have to have the controls in place to be able to see that and correct it.

When you have a size event as large as this one, you are not going to play perfect ball. But we have to make sure that we do that and so some of the changes I made, we changed the appeals process because when people didn't think they got a fair shake on it, they couldn't win through that appeals process. That is changed.

The litigation oversight, the companies were fighting the wrong battles on this. But more fundamentally I have to get to the point by which we are not seeing changes made that are except to improve the quality of the reports.

Mr. MACARTHUR. That is what I will be looking for. And I don't doubt your motives and your good intentions about fixing it, but we have to see something different in the actual structure of NFIP the next time.

Actually, I only have a minute left, and I want to change gears—

Mr. WRIGHT. Okay.

Mr. MACARTHUR. —for a moment. ICC coverage, we have talked about a little bit today. And I just want to ask you, assuming actuarial adequacy, do you believe that increasing ICC limits and increasing the actual payment of ICC funds would result in avoidance of future losses?

Mr. WRIGHT. It would help mitigate future losses. For me, the key is finding out how to do it where—today it is \$30,000. Structures in your district largely are well in excess of a half million. I know it is a diverse place, but there are high property values. There are other parts of the country where the property values are only \$100,000.

We have to find the right way to tie that coverage or mini-grant program to the structure in a way that understands it, and then come to an understanding today we run a mini-grant program that has helped to defray the cost of that increased cost of compliance.

Are we trying to actually stand up something that provides you full coverage, at which point we should price it and we should mirror some things that go in other peril lines?

That is what I have been grappling with. It is not simple and we have to do something that works in various geographic contexts.

Mr. MACARTHUR. I appreciate it. My time has expired.

And I thank the chairman for his indulgence today.

Chairman DUFFY. The gentleman yields back.

Mr. Wright, I want to thank you again for your testimony today. We appreciate it. It is a way to inform our Members about the way you are thinking about these issues.

Just as a notice to members of the subcommittee, we can expect another NFIP hearing next week to get the community perspective on this program. Both sides of the aisle have been working together on that.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 12:28 p.m., the hearing was adjourned.]

A P P E N D I X

March 9, 2017

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STATEMENT

OF

ROY E. WRIGHT

DEPUTY ASSOCIATE ADMINISTRATOR
FEDERAL INSURANCE AND MITIGATION ADMINISTRATION
FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE

THE

HOUSING AND INSURANCE SUBCOMMITTEE
FINANCIAL SERVICES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

“Flood Insurance Reform: FEMA’s Perspective”

Submitted

By

Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20472

March 09, 2017

Introduction

Good morning Chairman Duffy, Ranking Member Cleaver, and Members of the Subcommittee. My name is Roy Wright and I am the Deputy Associate Administrator for Insurance and Mitigation – responsible for directing the Federal Emergency Management Agency’s (FEMA) risk management, mitigation, and flood insurance programs. Thank you for the opportunity to testify about the National Flood Insurance Program (NFIP), including FEMA’s efforts to transform the program in recent years and to request considerations for Congress’ reauthorization of the NFIP before it expires in September 2017.

NFIP Background

Flooding is the most frequent and expensive disaster in the United States; 90 percent of natural disasters in the United States involve a flood. Homeowners insurance does not typically include coverage in the event of flooding, and historically flood insurance was not widely available. If it was, it was very expensive. Congress established the NFIP in 1968, which FEMA’s Federal Insurance and Mitigation Administration (FIMA) administers.

There are four key elements of the NFIP:

Identifying and Mapping Flood Risk: Working closely with communities, FEMA identifies flood hazards through scientific and engineering methods. FEMA then maps those hazards on a Flood Insurance Rate Map (FIRM). The FIRM is used to help communicate flood risk to communities and the public, and is used for floodplain management and flood insurance requirements.

Floodplain Management: Floodplain management includes actions that communities can take to reduce flood damage to both new and existing buildings and infrastructure. The NFIP plays a role in encouraging communities to adopt and enforce floodplain management regulations including zoning codes, subdivision ordinances, building codes, or special purpose floodplain management ordinances. By law, FEMA can only provide flood insurance to those communities that adopt and enforce floodplain management regulations that meet or exceed minimum NFIP requirements.

NFIP floodplain management requirements are a cost-effective way to reduce the flood risk to new buildings and infrastructure. Internal FEMA studies have found structures built to NFIP standards experience 73 percent less damage than structures not built to these standards; as a result, the standards reduce flood losses by \$1.9 billion per year.

Flood Insurance: The NFIP makes flood insurance available for homeowners, renters, and business owners in for 5.1 million policyholders in 22,235 NFIP-participating communities in all 50 states and 6 territories. Seventy-three private insurance companies participate in the NFIP’s Write Your Own (WYO) Program, selling and servicing NFIP policies under their own names. FEMA also writes and services some policies outside the WYO Program through NFIP Direct, a vendor that FEMA contracts with and oversees. The NFIP underwrites, and bears the risk, on all NFIP policies, whether sold by private companies or NFIP Direct.

The NFIP functions like other insurance programs, in which policyholder premiums help cover insured losses. Flood insurance helps homeowners recover following a flood. For example, following the flooding in Louisiana in August 2016, insured survivors filed 29,557 claims and, to date, the NFIP has paid more than \$2.3 billion in claims. Conversely, FEMA's Individual Assistance grant program has paid more than \$758 million to more than 82,000 individuals and households. The average NFIP payment in Louisiana (for the August 2016 flooding) is approximately \$86,500 per policyholder while the average individual assistance payment is approximately \$9,150. FEMA's Individual Assistance program is not designed to compensate for all losses that a survivor may have experienced. The NFIP is a far more comprehensive program to help homeowners get back on their feet. Homeowners should not rely on potential grant programs to support them following a flood, as they only provide emergency assistance and are not designed to repair or rebuild damaged property.

Incentivizing Risk Reduction through Grants and Premium Discounts: FEMA manages the Flood Mitigation Assistance (FMA) grant program, authorized by the National Flood Insurance Act. This program, designed to reduce or eliminate claims, provides funding to state, local, tribal, and territorial communities for projects that reduce or eliminate long-term risk of flood damage to structures insured under the NFIP. Typical projects may include acquisition of repetitive loss properties, elevation of buildings, and neighborhood-scale flood defense investment. One hundred percent of the funding for this program is paid through premiums on NFIP policies.

The National Institute of Building Sciences' Multi-hazard Mitigation Council estimates that for every dollar FEMA invested in mitigation between 1993 and 2003 (which includes, but is not limited to, FMA programs), society as a whole saved four dollars due to reduced future losses. Mitigation programs save the American public an estimated \$3.4 billion dollars annually through a strategic approach to natural hazard risk management, including the value of more stringent building codes.

FEMA also created the NFIP Community Rating System (CRS) in 1990 as a voluntary program for recognizing and encouraging community floodplain management activities that exceed the minimum NFIP standards. Any community in full compliance with the minimum NFIP requirements may apply to join the CRS. More than 1,400 communities around the nation participate in the CRS, accounting for 3.8 million policyholders. Under the CRS, FEMA discounts NFIP policyholders' flood insurance premium rates to reward community actions that meet the three goals of the CRS, which are: (1) reduce flood damage to insurable property; (2) strengthen and support the insurance aspects of the NFIP; and (3) encourage a comprehensive approach to floodplain management. Lower flood insurance rates are just one of the benefits of joining the CRS; CRS floodplain management activities also provide enhanced public safety and reduced damage to property.

The Financial Impacts of Catastrophic Disasters on the NFIP

While Congress appropriates funds for flood mapping, FEMA covers the vast majority of NFIP costs – including operations, floodplain management, risk mapping, and grants – through premiums, fees, and surcharges from the 5.1 million policyholders participating in the program.

Due to the nature of flooding, impacts can vary significantly each year. After 15 years of lower than expected damages, Hurricanes Katrina, Rita, and Wilma hit the nation in 2005. These three catastrophic events resulted in an annual NFIP claims total eight times the size of any prior year in the program's history.

As a mandatory federal program, the NFIP met its commitment to policyholders and paid all claims as outlined in their insurance policies. However, to meet these requirements Congress directed the NFIP to pay for the catastrophic losses through funds borrowed from the U.S. Department of Treasury (Treasury). By the end of the claims process for these events, the NFIP had borrowed \$17.5 billion.

In 2012, Hurricane Sandy hit the East Coast and resulted in more than 144,000 NFIP claims. The program paid out an initial \$8.4 billion to policyholders. As a result, the NFIP borrowed an additional \$6.25 billion from the Treasury to ensure proper payment of all claims. The volume of claims in the aftermath of Hurricane Sandy was much larger than NFIP typically encounters, and policyholders had concerns that FEMA and WYO companies were not handling their claims fairly. FEMA subsequently set up a Sandy Claims Review process to contact all policyholders who had claims and offer them an additional examination of their claim. The NFIP has since paid out an additional \$350 million to policyholders, and based on this experience, FEMA took steps to reform key aspects of the program to be more customer-centric.

While there was no single “catastrophic” disaster in 2016, the multiple flooding events in Louisiana, Texas, and several states during Hurricane Matthew resulted in the *third largest* claims payout year in the NFIP's history. Though the NFIP is still processing claims, projected payouts from 2016 flood events total more than \$4 billion. In January 2017, the NFIP borrowed an additional \$1.6 billion from the Treasury to cover claims, pay interest on the debt, and ensure capacity to pay future claims. Liabilities to the Treasury now total \$24.6 billion and, moving forward, require annual interest-only payments of nearly \$400 million dollars.

It is important to note that the latest private sector catastrophe modeling demonstrates that none of these events is outside the expected range of NFIP losses. A single storm that results in a loss to the NFIP of the size that occurred in Hurricane Katrina (\$16.3 billion) has a 1 to 2 percent chance of occurring in any given year, while a single storm that results in a loss as large as the one that occurred in Hurricane Sandy has a 4 to 5 percent chance of occurring in any given year. NFIP losses experienced during an event such as the August 2016 storm that caused inland flooding in Louisiana has a 4 percent chance of occurring each year. Moving forward, FEMA anticipates having another loss year like those cited above within the next decade.

NFIP Transformation and Lessons Learned

Following Hurricane Sandy, FEMA has taken steps to transform the NFIP customer experience and improve oversight and engagement with WYO companies.

FEMA designed and implemented a new appeals process to improve customer service and transparency to policyholders. The Agency established an Appeals Branch in the Policyholder Services Division, which remains independent from the Product Delivery Division that oversees the claims process.

FEMA also improved its oversight when WYO companies respond to litigation to ensure that policyholders are treated fairly. FEMA established the Office of Chief Counsel WYO Oversight Team. This team works with FEMA's Industry Management Branch to enhance FEMA's oversight of the WYO program and WYO litigation to include oversight of expenses and implementation of a national legal strategy for flood insurance claim litigation with an emphasis on early alternate dispute resolution. Further, FEMA removed the NFIP's Financial Assistance/Subsidy Arrangement with WYO companies from regulation. It is no longer necessary to include a copy of the Arrangement in Title 44 of the Code of Federal Regulations. This process was time-consuming and created a delay to make any administrative updates or changes in regulation. Now, the process is streamlined to improve the ability of FEMA and its industry partners to negotiate operational adjustments and corrections more quickly and efficiently.

The NFIP has also implemented changes to take a more proactive role in disaster readiness and response. During recovery from the Louisiana floods and Hurricane Matthew, FEMA successfully executed components of the new Flood Response Playbook to support insured survivors, including:

- Issuing advance payments to policyholders of up to \$10,000 while the NFIP processes their full claims;
- Coordinating with state insurance commissioners and WYO companies to ensure the NFIP meets policyholder needs;
- Deploying FIMA staff to directly support field operations;
- Providing analytical support to assist FEMA operational leadership in making resource decisions; and
- Proactively communicating with WYO insurers and with policyholders through disaster-specific bulletins, webpages, and fact sheets.

In 2016, the NFIP made more than \$4 billion claim payments to 83,000 insured survivors. This major year of flood losses highlighted the success of recently-implemented NFIP reforms, as well as the importance of continuing to improve customers' experience with the program. By the end of 2016, FEMA closed 92 percent of the claims from the mid-summer severe storms in Louisiana. In the first 30 days of the incident, FEMA authorized and issued almost \$300 million in advance payments to the NFIP policyholders in Louisiana who sustained damages by the flood, providing expedited relief to disaster survivors.

FEMA continues to work on other initiatives to support policyholders, including:

- Simplifying the claims process through improved proof of loss and other forms;
- Modernizing the underwriting process; and
- Redesigning the risk rating system to help customers better understand their flood risk.

Successes from Recent Legislative Reforms

Recognizing the need for NFIP reforms in 2012, Congress acted by passing the Biggert-Waters Flood Insurance Reform Act of 2012 (BW12). This statute served as a key first step to strengthen the NFIP's fiscal soundness by addressing discounted premiums and giving FEMA new tools to manage risk exposure. In March 2014, Congress passed the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), repealing certain provisions of BW12 and modifying components of the NFIP including flood insurance, flood hazard mapping, grants, and floodplain management.

FEMA has completed implementation of several of key provisions of these laws, including:

- *Establishing the Technical Mapping Advisory Council:* BW12 directed the creation of the Technical Mapping Advisory Council (TMAC). The Council reviews FEMA's mapping program and develops recommendations for improving it. During its assessment, the TMAC found that the mapping program, when applied as designed, results in technically credible flood hazard data in areas where FIRMs are developed or updated, and also provided recommendations to enhance the program in the future. FEMA has established a consistent, integrated, and transparent process to assess and respond to all TMAC recommendations. FEMA has fully implemented 4 of the Council's 22 recommendations outlined in the 2015 report through current operations or ongoing initiatives, and has initiated implementation on an additional 17 recommendations. This year, we began implementation of a TMAC recommendation to develop a national five-year operations plan to help us bridge operations from our current status to where we are headed in the future.
- *Designating an Office of the Flood Insurance Advocate (OFIA):* HFIAA directed FEMA to establish the OFIA in 2015, and the office has experienced significant growth and increased capability since its inception. The OFIA provides assistance to policyholders who are unable to get the support they need after using other existing resources. The OFIA helps coordinate referrals, verify insurance rate information, educate on flood risks and rates, and communicate program changes. Through a new customer relationship management tool, OFIA is able to capture data and provide insights into issues faced by policyholders in order to inform program improvements.
- *Unifying the FMA Grants Programs:* Prior to the passage of BW12, there were three flood grant programs: FMA, Repetitive Flood Claims, and Severe Repetitive Loss. BW12 eliminated the Repetitive Flood Claims and Severe Repetitive Loss programs and added funding for the mitigation of repetitive loss and severe repetitive loss properties under the FMA program. Since unification of the programs, demand for FMA grants has exceeded available funds so FEMA awards grants to those projects that provide the most risk reduction benefit.

- *Establishing a Reserve Fund:* BW12 directed FEMA to set up a reserve fund for meeting the expected future obligations of the NFIP, including payment of claims, claim adjustment expenses, and the repayment of amounts outstanding under any note or other obligation issued by the Administrator. In 2016, the Reserve Fund paid out \$1.3 billion in claims to insured survivors. The NFIP has also paid for reinsurance through the Reserve Fund, consistent with its designated purpose for meeting expected future obligations.
- *Managing Risk through Reinsurance:* BW12 gave FEMA the authority to obtain reinsurance from the private reinsurance and capital markets. Reinsurance is an important financial risk management tool used by private insurance companies and public entities to protect themselves from large financial losses by diversifying risk across multiple markets. FEMA executed a one-year agreement, effective January 1, 2017, with a consortium of 25 reinsurers. Under the agreement, reinsurers agreed to indemnify FEMA for flood claims paid during 2017 on an occurrence basis. The layer is structured to cover 26 percent of losses between \$4 billion and \$8 billion. This agreement transferred a combined total of \$1.042 billion of the NFIP's flood risk to the private reinsurance market. This reinsurance placement stands as a first of its kind for a federal program.

FEMA's Core Principles for Reauthorization

Through internal analysis and lessons learned, FEMA offers the following principles that would improve NFIP effectiveness as Congress considers reauthorization.

First, the NFIP reauthorization should be enacted before the September 30, 2017 expiration of the program, and should extend the program for multiple years. The stability of the real estate and mortgage markets depend on an *on-time, multi-year reauthorization*. All federally-backed mortgage lenders are required to verify that properties in special flood hazard areas (SFHA) have flood insurance policies prior to approving a mortgage. During periods in the past when the NFIP's authorization lapsed, or was only extended for a short period, uncertainty about flood insurance availability impacted property owners' ability to buy and sell homes in high risk flooding areas.

Second, the reauthorization should recognize the need to *increase flood insurance coverage across the nation*. At a national scale, estimates lead us to believe as little as one third of residential properties in the SFHA have NFIP policies. Yet flooding can happen anywhere. Floods are not wholly contained within SFHAs. Over the past ten years, approximately 20 percent of all NFIP claims come from low to moderate-risk policyholders.

Flood insurance facilitates the ability of a property owner or renter to recover after a flood, whether the insurance is provided by the NFIP or private insurers. *FEMA recognizes that there is a growing interest by private insurers to offer flood insurance protection*. FEMA supports this because an insured survivor – regardless of where they purchase their coverage – will recover more quickly and more fully. Two related areas require attention. First, it will take time for the private market to adapt to a market currently primarily served by a public program.

Second, if the private market were to glean only the lower-risk policies, the NFIP would be left with all of the highest-risk policies. This could lower NFIP premium revenue while increasing potential claims payouts. Such actions would leave the program and taxpayers with even more financial risk.

As we look forward to the next several years, a number of opportunities should be explored that could provide for the growth of the private market for flood insurance. Improving the nation's overall flood resiliency will depend on finding an appropriate balance between reducing risk to the taxpayer through a greater private sector role while sustaining a robust and affordable federal program. Among the ideas to explore would be identifying a future point in time by which flood policies for all new construction would be provided by the private market. When coupled with ongoing floodplain management and building code enforcement, these new residential structures would be built to insurable levels of risk for the private market.

In some states, the private flood market already provides excess and surplus coverage as well as "flood riders" on some homeowner's policies. While the private markets are expanding, FEMA is exploring improving the suite of options available for NFIP policies, such as including increased policy limits deck and basement coverage, and various deductible levels. The NFIP would collect additional premiums commensurate with any extra coverage policyholders select. Moreover, by providing coverage options that customers need, the additions could attract new NFIP customers improving the program's financial stability expanding the number of Americans with flood insurance. FEMA also recognizes the unique challenges that farmers may experience when navigating the NFIP's current requirements with regards to agricultural structures. These agricultural needs can be addressed through this re-authorization.

Additionally, the statutory definitions of "repetitive loss" must be brought into alignment so that there is consistency across program elements. Properties that experience multiple losses have an increasingly adverse impact on the financial stability of the program. Congress has previously acknowledged this circumstance, and should explore caps on cumulative losses that well exceed policy limits and the value of the structure. As the program moves forward, NFIP premiums should reflect a property's true risk. We need to move from today's program, which delivers only a final premium which may be lower than a current estimate of the full risk rate, to a program which clearly communicates the full risk rate and any discounts (such as pre-firm subsidy, newly mapped subsidy, or grandfathered rates). Given concerns related to affordability, it may take some time, but the program needs to be on a course to eventually arrive at full risk rates for all policyholders. This includes addressing grandfathered and subsidized rates.

Ultimately, the premium paid for flood insurance must reflect the risk – whether this is done by increasing premiums, reducing risk through mitigation grants, or a combination thereof – the fiscal solvency of the program depends on it. This is central to a *sound financial framework* for the NFIP. The NFIP currently carries a debt of \$24.6 billion dollars which is serviced through increasingly large interest payments. It is important to note that nearly all of the flood programs mandated by law – programs to reduce risk, the administrative costs of WYO companies, and the payment of interest on the debt – are funded solely through the payment of premiums.

Conclusion

To reiterate, flooding continues to be the most common and costly natural disaster in the United States, with the greatest damage potential of all natural disasters worldwide. Over the past 50 years, the NFIP has helped communities, households, and businesses reduce flood risk, supported flood risk analysis and mapping projects, expanded sound floodplain management practices across the country, and reduced the financial burden to survivors when floods occur. We recognize that the nation faces broad public policy questions around flood insurance affordability, continued development in flood-prone areas, the soundness of the NFIP's financial framework, and greater private sector participation in flood insurance markets.

Through all of this, FEMA's priority is to increase flood insurance coverage so that disaster survivors can recover more quickly and fully after flood events. Through a timely, multi-year reauthorization, Congress would enable FEMA to continue supporting those who take steps to protect their homes and businesses.

Thank you again for affording me the opportunity to speak with you today about this program. I am happy to respond to any questions you may have.



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March 09, 2017

The Honorable Sean Duffy
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The Honorable Emanuel Cleaver
 Ranking Member
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Dear Chairman Duffy and Ranking Member Cleaver,

In September 2017, authorization for the National Flood Insurance Program (NFIP) will expire. Many stakeholders are evaluating the program and looking for ways to reform and improve the NFIP. They are also examining the ability and appetite of the private sector to take on additional flood risk. Today's hearing is a welcomed step toward informing the debate on reauthorizing the NFIP and developing the flood insurance market more broadly.

The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 320 insurers that write more than \$127 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance. Several AIA member companies provide flood insurance in partnership with the NFIP through the Write-Your-Own (WYO) program.

In 2016, the United States experienced 19 major flooding events, with total losses estimated at \$15 billion of which only \$4.3 billion was insured.¹ Our country's ability to manage risks from flooding depends on our willingness to undertake a thoughtful debate on how best to make our communities more resilient, protect lives and property, and reduce taxpayer exposure.

Flood insurance does and will continue to play a critical role in assisting homeowners, businesses, and communities recover from the damages that flooding causes. As such, it is critical that we explore ways to encourage those at risk to purchase flood insurance. To accomplish this goal, AIA supports the timely, long-term reauthorization of the NFIP and the removal of regulatory barriers to the expansion of private sector flood insurance offerings. To that end, it is also critical to avoid program lapses similar to those that have occurred in the past. The instability and uncertainty that lapses cause will have negative impacts on the NFIP and broader marketplace.

¹ <http://www.iii.org/fact-statistic/catastrophes-us>

With regard to the NFIP, a program that provides insurers and property-owners certainty in the marketplace, transparency in the process, and clarity regarding coverages will enhance the experience of all stakeholders. Achieving transparency, certainty and simplicity will allow insurers and property owners to make better choices regarding the risk they face and the best products to meet their needs.

If we are to incentivize a private market for flood insurance, several steps should be taken to remove federal barriers that limit property and casualty insurers' ability to offer private sector options. First and most importantly, rates must reflect risk. Simply put, suppressing rates for the private sector or permitting the NFIP to have artificially low rates will preserve the status quo, continue the risk to the Treasury, and prevent private insurers from being able to compete for the business on the scale necessary.

That noted, we are all mindful that rate shock and affordability concerns are issues for some consumers, and we look forward to working with Congress to address the issue. One possible way to address this problem would be for FEMA to modernize its underwriting and rate setting process. For example, the NFIP could use actual structure replacement values when calculating premiums. Currently, FEMA and the NFIP effectively use a fixed national averages for replacement costs when calculating customer premiums. Moving to actual replacement costs would likely result in lower premiums for those policyholders whose property value falls below these fixed national averages.

In addition, Congress should approve the Flood Insurance Market Parity and Modernization Act (FIPMA). Authored by Rep. Dennis Ross (FL), a version of the bill passed the House last year by a margin of 419-0. As you well know, the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) allows private flood policies to meet the mandatory purchase requirement of the National Flood Insurance Program (NFIP). Unfortunately, some confusion remains and the market has been slow to respond. FIPMA would clarify this important provision.

Other important actions that can be taken include the NFIP's continued use of reinsurance, elimination of the WYO arrangement's 'non-compete' clause, and granting access to the NFIP's claims and loss data. Taken together, these actions will help to improve the regulatory environment for the development of private sector flood insurance options. That said, flooding is a complicated peril and flood insurance is a complicated product. As such, the development of a robust private flood insurance market will take time.

Another important component to the discussion surrounding insurance is mitigation. It is generally accepted that each dollar (\$1) spent on mitigation saves society an average of four dollars (\$4). Encouraging mitigation, including the adoption and enforcement of strong state-wide building codes will help to ensure that those individuals and communities exposed to flooding are better able to withstand and recover from major flooding events. In addition to strong building codes and sound land use planning, AIA is supportive of efforts to incentivize pre-disaster preparedness.

In summary, we believe that flood insurance reform and reauthorization is of critical importance to the nation's economy in 2017. This issue has historically enjoyed bipartisan support in Congress, even when reauthorization deadlines were not met on time. The NFIP is a complex program, partly because the flood peril is a difficult one to underwrite, but also because other meaningful flood prevention tools lie within other federal departments and the states. Despite this, the flood program and overall marketplace can realize significant improvements from the suggestions presented above.

On behalf of our member companies, we commend the Committee for addressing this issue, and we urge members to work together, and with us, to help homeowners and communities insure their risk from damages caused by flooding. Please feel free to contact AIA if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Santos', with a long horizontal flourish extending to the right.

Thomas Santos
Vice President, Federal Affairs

Consumer Mortgage Coalition

**Consumer Mortgage Coalition
Testimony for the Hearing Record**

**House Committee on Financial Services
Subcommittee on Housing and Insurance**

“Flood Insurance Reform: FEMA’s Perspective”

March 9, 2017

The Consumer Mortgage Coalition (“CMC”), a mortgage industry trade association, appreciates the opportunity to submit testimony for the hearing record.

We support the following flood policy objectives:

- Property owners should have flood insurance options, including the option of purchasing private flood insurance, consistent with safety and soundness.
- Federal and local flood policies should be to prevent and mitigate neighborhood blight.
- Flood hazard areas should be mapped as expeditiously as possible, and maps should be updated as needed. As this letter describes, study of flood-prone areas has been federal policy for nearly a century, yet most of the country remains unmapped. This means people are unknowingly developing and occupying areas that are prone to flood, causing unnecessary and avoidable risk of death, injury, and property damage. Policymakers should consider having FEMA use newer mapping technologies that are available and are being used in the private sector.
- Mortgage investors, lenders, and servicers should be permitted to require flood insurance policies to be sufficient, including: coverage of appropriate perils; reasonable deductibles, exclusions, and conditions; including the lender or servicer as an additional loss payee; and the ability to reject insurers that lack sufficient claims-paying ability.
- Floodplain management practices should remain in place, whether flood insurance is federal or private.
- FEMA should have adequate funding to carry out its functions.

Flood insurance is only one aspect of flood policies in this country. Floodplain management and flood hazard mapping are also central to flood policies nationwide. By design, the different aspects of flood policies are intertwined. A Congressional finding in the National Flood Insurance Act of 1968 (“NFIA”)¹ is that:

“the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management[.]”²

Flood policies use subsidized flood insurance as an incentive to encourage communities to participate in the NFIP. That participation requires communities to adopt and enforce floodplain management and flood mitigation practices to reduce flood damages. In addition, some of the fees for SFIPs fund floodplain management and flood mitigation activities. Because these different policies are intertwined, we urge policymakers to consider flood policies broadly, and to consider that if private flood insurance were to become widespread, Congress would need to adopt an alternative incentive for communities to participate in the NFIP, and Congress would need to replace the funding

¹ Title XIII of the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 572.

² *Id.* § 1302(c), 82 Stat. at 573. This remains current law, 42 U.S.C. § 4001(c).

that SFIPs today provide for FEMA flood programs.

The NFIP will require Congressional reauthorization this year. This presents a timely opportunity to address the broader federal flood policies. This is also an opportunity to ensure that there are sufficient funds for robust flood hazard mapping. We urge Congress during the reauthorization debate to ensure that that sound flood policies, including flood insurance, floodplain management, and flood hazard mapping are in place so that blighted neighborhoods are avoided.

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I. HISTORY of FLOOD POLICIES in AMERICA

Floods can cause widespread devastation, taking lives and destroying properties over large areas simultaneously. Floods occur repeatedly, and yet with little notice of where or when they will hit. Floods can have multiple causes, including hurricanes, rainfall and melting snow, and infrastructure failures, making them difficult to predict.

The federal, state, and local governments in this country have always contended with floods. Congress over the years has created carefully aligned incentives that encourage activities that reduce flooding in populated areas, that prevent development in flood-prone areas, and that minimize future damage after a flood. This history will demonstrate how flood insurance is one, but only one, aspect of our nation's flood policies. Other aspects are intertwined with flood insurance, and need to be considered together.

Notably, Congress has addressed the need to study flood-prone areas repeatedly over many decades, yet today much of the country remains unmapped. This is unfortunate because it means development can unknowingly occur in areas that have flood risks. Building in flood-prone areas increases both the risk and the extent of flood damage.

A. Early Flood Laws

1. 1917 – First Act to Provide for Flood Control

The first major federal legislation by which Congress involved itself in flood mitigation was enacted in 1917.³ Congress authorized up to \$45 million for flood control along the Mississippi River, and for surveys to determine the cost of flood control.⁴ It also authorized funds for levee construction and repair on the Mississippi River, on the condition that all rights of way be provided free of cost to the federal government.⁵ The law also authorized up to \$5.6 million for flood control, debris removal, and “for the rectification and enlargement of river channels and the construction of weirs” on the Sacramento River.⁶ The funds could be used for levees on the condition that California bear half of the cost.⁷ Again, Congress required that the federal government would not pay for rights of way.⁸ The law also called for “a comprehensive study of the watershed

³ Act of March 1, 1917, ch. 144, 39 Stat. 948. Old Statutes at Large are available [here](#).

⁴ *Id.* and para. (a); 39 Stat. at 948.

⁵ *Id.* paras. (b) and (d); 39 Stat. at 948 – 49.

⁶ *Id.* § 2, 39 Stat. at 949.

⁷ *Id.* § 2(a), 39 Stat. at 949 – 50.

⁸ *Id.* § 2(b), 39 Stat. at 950.

or watersheds,” with a report to be published and submitted to Congress.⁹ These early approaches to flood mitigation, study of flood-prone areas and federal assistance, continue as central aspects of flood policy today.

2. 1928 – Flood Control on the Mississippi River

In 1928, Congress authorized \$325 million for surveys between Baton Rouge, Louisiana, and Cape Girardeau, Missouri, for floodways, spillways, diversion channels, and levee improvements, with the states responsible for maintaining the flood-control works.¹⁰ Where levees were impracticable on the Mississippi River, the law authorized the federal government to purchase land subject to flooding or floodage rights over the land.¹¹ The law authorized funding for mapping “in furtherance of this project.”¹² It called for surveys of the Mississippi River “as speedily as practicable,” with studies on how flood control could be attained by reservoirs, flood control in the Mississippi Valley through forestry,¹³ and the effects of overflow on the side of the river opposite levees.¹⁴ The policy was flood mitigation with federal funding, and, again, Congress called for mapping of flood-prone areas.

3. 1933 – Tennessee Valley Authority

In 1933, Congress created the Tennessee Valley Authority (“TVA”) and authorized it, among other things, to implement flood control measures “to control destructive flood waters in the in the Tennessee River and Mississippi River basins[.]”¹⁵ This was additional federal assistance for flood control.

4. 1934 – Reconstruction Finance Corporation Loans

In 1934, Congress authorized the Reconstruction Finance Corporation to finance up to \$5 million for “the acquisition of home or building sites in replacement of sites formerly occupied by buildings where such sites are declared by public authority to be unsafe by

⁹ *Id.* § 3, 39 Stat. at 950 – 51.

¹⁰ Act of May 15, 1928, ch. 569, 45 Stat. 534.

¹¹ *Id.* § 3, 45 Stat. at 536.

¹² *Id.* § 5, 45 Stat. at 536.

¹³ *Id.* § 10, 45 Stat. at 538.

¹⁴ *Id.* § 11, 45 Stat. at 538.

¹⁵ Tennessee Valley Authority Act of 1933, ch. 32, 48 Stat. 58.

reason of flood, danger of flood, or earthquake” and to finance drainage and flood control systems.”¹⁶

5. 1936 – Flood Control Act of 1938

Two years later, Congress declared the following policy:

“It is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected.”¹⁷

The Flood Control Act of 1936 authorized \$310 million¹⁸ for a long list of flood improvement projects,¹⁹ to be maintained by the states,²⁰ and another \$10 million for examinations and surveys.²¹ It tasked the Corps of Engineers with “Federal investigations and improvements of rivers and other waterways” and tasked the Agriculture Department with “Federal investigations of watersheds and measures for run-off and waterflow retardation and soil erosion prevention on watersheds[.]”²² This was a strong declaration of the need for flood mitigation and, again, for examinations and surveys of flood-prone areas. These policy objectives remain central to the nation’s flood policy today.

¹⁶ Act of April 13, 1934, ch. 121, 48 Stat. 589.

¹⁷ Flood Control Act of 1936, ch. 688, § 1, 49 Stat. 1570.

¹⁸ *Id.* § 9, 49 Stat. at 1596.

¹⁹ *Id.* § 5, 49 Stat. at 1572 – 92.

²⁰ *Id.* § 3(c), 49 Stat. at 1571.

²¹ *Id.* § 9, 49 Stat. at 1596 – 97.

²² *Id.* § 2, 49 Stat. at 1570.

6. 1950 – Federal Disaster Assistance

After World War II, Congress enacted a disaster relief law, stating:

“it is the intent of Congress to provide an orderly and continuing means of assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary.”²³

This law authorized \$5 million for its purposes.²⁴

7. 1954 – Watershed Protection and Flood Prevention Act

In 1954, Congress declared:

“That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and that it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages and of furthering the conservation, development, utilization, and disposal of water and thereby of preserving and protecting the Nation’s land and water resources.”²⁵

This law authorized works of improvement for flood prevention and agriculture in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres.²⁶ It tasked the Agriculture Department, upon state request, with conducting investigations and surveys, to determine the soundness and a cost-benefit analysis of plans for improvement, and to enter into agreements with local organizations, and to provide federal assistance.²⁷ This law authorized the agriculture Department, in cooperation with other Federal agencies and with States and local agencies, to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs.²⁸

²³ Act of September 30, 1950, ch. 1125, 64 Stat. 1109.

²⁴ *Id.* § 8, 64 Stat. at 1111.

²⁵ Watershed Protection and Flood Prevention Act, ch. 656, 68 Stat. 666 (1954).

²⁶ *Id.* § 2, 68 Stat. at 666 and § 4, 68 Stat. at 667.

²⁷ *Id.* § 3, 68 Stat. at 666.

²⁸ *Id.* § 6, 68 Stat. at 668.

8. 1955 – *Examinations and Surveys*

In reaction to hurricanes on the eastern seaboard, Congress acted again to require “an examination and survey to be made of the eastern and southern seaboard of the United States with respect to hurricanes, with particular reference to areas where severe damages have occurred.”²⁹ This survey was to include “data on the behavior and frequency of hurricanes, and the determination of methods of forecasting their paths and improving warning services, and of possible means of preventing loss of human lives and damages to property, with due consideration of the economics of proposed breakwaters, seawalls, dikes, dams, and other structures, warning services, or other measures which might be required.”³⁰ Congress wanted additional ability to predict where hazards were likely to occur.

9. 1956 – *Attempted Flood Insurance*

Finding flood insurance unavailable, Congress tried to create a federal flood insurance program in 1956.³¹ Congress never appropriated funds for this program, so it was not implemented.³² Nevertheless, it is instructive because it set a model for flood insurance policies today. As with flood insurance today, the 1956 program was designed to be an “adjunct” to complement, rather than to replace, preventive and protective measures:

“The Congress finds that in the case of recurring natural disasters, including recurring floods, insurance protection against individual and public loss is not always practically available through private or public sources. With specific reference to insurance against flood loss, the Congress finds that insurance against certain losses resulting from this peril is not so available. Since preventive and protective means and structures against the effects of these disasters can never wholly anticipate the geographic incidence and infinite variety of the destructive aspects of these forces, the Congress finds that the safeguards of insurance are a necessary adjunct of preventive and protective means and structures.”³³

One of the purposes of this program was “to encourage private insurance companies to write insurance covering the extent of the risks above [\$10,000 per policy for property insurance and \$250,000 per person] and to provide Federal reinsurance to the extent

²⁹ Act of June 15, 1955, ch. 140, 69 Stat. 132.

³⁰ *Id.* § 2.

³¹ Federal Flood Insurance Act of 1956, ch. 1025, 70 Stat. 1078.

³² “In 1956 Congress passed the Federal Flood Insurance Act, but failed to appropriate funds for the administration of the Act because there were not adequate mitigation measures to reduce the incidence of flood damage.” S. Rep. 93-583 (1973) (accompanying the Flood Disaster Protection Act of 1973).

³³ Federal Flood Insurance Act of 1956, § 2(a), 70 Stat. 1078.

desirable and necessary to carry out this purpose.”³⁴ As today, premiums would not be fully actuarial. An Administrator would set “estimated rates” for premiums that would be sufficient to pay claims “over a reasonable period of years” and the insurance cost would not be less than 60 percent of the “estimated rates[.]”³⁵ At the same time, Congress directed the Administrator to design costs to “achieve marketability[.]”³⁶ As the premiums would not necessarily cover the cost of claims, Congress authorized the Administrator to borrow \$500 million from the Treasury.³⁷

No insurance or federal loans were permitted for a property in violation of state or local flood zoning laws.³⁸ In addition, insurance or loans required the property’s locality to have adopted and kept in effect zoning restrictions that the Administrator deemed necessary “to reduce, within practicable limits, damages from flood in such location.”³⁹ Incentives to comply with flood laws are a critical aspect of flood policies today.

10. *Flood Control Act of 1960*

The Flood Control Act of 1960⁴⁰ provided, among other things, for identification of areas subject to floods:

“[I]n recognition of the increasing use and development of the flood plains of the rivers of the United States and of the need for information on flood hazards to serve as a guide to such development, and as a basis for avoiding future flood hazards by regulation of use by States and municipalities, the Secretary of the Army, through the Chief of Engineers, Department of the Army, is hereby authorized to compile and disseminate information on floods and flood damages, including identification of areas subject to inundation by floods of various magnitudes and frequencies, and general criteria for guidance in the use of flood plain areas; and to provide engineering advice to local interests for their use in planning to ameliorate the flood hazard[.]”⁴¹

It authorized \$1 million annually for this purpose.⁴²

B. *National Flood Insurance Act of 1968*

³⁴ *Id.* § 2(b)(2).

³⁵ *Id.* § 7(a), 70 Stat. at 1080.

³⁶ *Id.*

³⁷ *Id.* § 15(e), 70 Stat. at 1084.

³⁸ *Id.* § 12(b), 70 Stat. at 1082.

³⁹ *Id.* § 12(c).

⁴⁰ Title II of Pub. L. No. 86-645, 74 Stat. 480, 488, given a short title in § 212, 74 Stat. at 502.

⁴¹ *Id.* § 206(a), 74 Stat. at 500.

⁴² *Id.* § 206(b), 74 Stat. at 500.

The NFIA created the NFIP. The NFIA is based on Congressional findings and purposes that remain current law unamended:

“(a) The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation’s resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures[.]”⁴³

“(c) Congress further finds that . . . *the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management*[.]”⁴⁴

* * *

“It is the further purpose of this title to (1) *encourage* State and local governments to make *appropriate land use adjustments* to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government”⁴⁵

Since 1968, at the beginning of national flood insurance, federal policy has been that federal flood insurance is “*integrally related to a unified national program for flood plain management*[.]” One of the purposes of the NFIA is and has always been to “*encourage . . . appropriate land use adjustments*” to minimize flood damage. It is therefore important, when the Agencies impact federal flood insurance, to consider the integration of flood insurance with floodplain management policies, and to consider how expanding private insurance could reduce community incentives to maintain sound floodplain management practices and could increase neighborhood blight.

⁴³ NFIA § 1302(a), 82 Stat. at 572-73. This remains current law, 42 U.S.C. § 4001(a).

⁴⁴ *Id.* § 1302(c), 82 Stat. at 573 (emphasis added). This remains current law, 42 U.S.C. § 4001(c).

⁴⁵ *Id.* § 1302(e), 82 Stat. at 573 (emphasis added). This remains current law, 42 U.S.C. § 4001(e).

1. *Mapping as a Priority*

Identifying flood-prone areas was an NFIA priority. The NFIA required the Department of Housing and Urban Development (“HUD”), in consultation with several federal, state, and local agencies, to:

“(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act, and (2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, within fifteen years following such date.”⁴⁶

2. *Criteria for Land Management and Use*

Congress required HUD to study existing flood controls, including related laws, and to develop “comprehensive criteria” to improve long-range land management and use of flood-prone areas, as follows. Congress authorized HUD to investigate:

“the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention[.]”⁴⁷

These investigations were to include, but not be limited to:

“laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.”⁴⁸

Congress required HUD to:

“develop comprehensive criteria designed to encourage, where necessary, the adoption of permanent State and local measures which, to the maximum extent feasible, will—

- (1) constrict the development of land which is exposed to flood damage where appropriate,
- (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
- (3) assist in reducing damage caused by floods, and

⁴⁶ *Id.* § 1360, 82 Stat. at 587.

⁴⁷ *Id.* § 1361(a) 82 Stat. at 587.

⁴⁸ *Id.* § 1361(b) 82 Stat. at 587.

(4) otherwise improve the long-range land management and use of flood-prone areas, and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.”⁴⁹

3. *The NFIP Is Based on Incentives*

The NFIP does not require state and local governments to adopt or enforce flood prevention or mitigation measures even though they are critical. Nor does it require all property owners in flood-prone areas to purchase flood insurance. The NFIP is based on incentives.

Congress limited flood insurance availability to qualified communities that have:

“(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and
(2) given satisfactory assurance that by June 30, 1970, permanent land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 1361, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available.”⁵⁰

More specifically, a “positive interest” and “satisfactory assurance” were not enough. Within communities that were eligible for insurance under the NFIP, new NFIP flood insurance coverage was permissible after June 30, 1970 only in areas where an appropriate public body has adopted “permanent land use and control measures (with effective enforcement provisions) which the Secretary finds are consistent with the comprehensive criteria for land management and use under section 1361.”⁵¹ Congress prohibited new insurance in areas that are “in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.”⁵²

That is, Congress used federal flood insurance availability as an incentive for localities to undertake land use measures to prevent flood damages. The land use restrictions can be costly, but the NFIP incentives were designed to outweigh the costs of adopting sensible land use measures. By participating in the NFIP, communities could enable their

⁴⁹ *Id.* § 1361(c) 82 Stat. at 587.

⁵⁰ *Id.* § 1305(c), 82 Stat. at 574. Congress extended this June 30, 1970 deadline by 18 months in 1969.

⁵¹ *Id.* § 1315, 82 Stat. at 580. Congress extended this June 30, 1970 deadline by 18 months, and replaced the word “permanent” with “adequate” land use and control measures, in 1969, as described below.

⁵² *Id.* § 1316, 82 Stat. at 580.

residents to avail themselves of the NFIA's subsidized flood insurance. The subsidy, with the potential loss of federal disaster assistance for losses that could have been covered by the insurance, is an incentive for citizens to encourage their local authorities to participate in the NFIP.

These incentives remain a critical aspect of federal flood policies today. If private flood insurance were widely available, the incentives for communities to participate in the NFIP's floodplain management would need to be replaced with alternative incentives.

4. *How the NFIA Subsidizes Flood Insurance*

The NFIA flood insurance subsidy is explicit. The NFIA required HUD, first, to estimate "risk premium rates" on an actuarial basis, and, second, to estimate and set by regulation lower "chargeable" rates that encourage purchase of flood insurance.

First, HUD was to estimate actuarial "risk premium rates":

- "(a) [HUD] . . . shall from time to time estimate, on an area, subdivision, or other appropriate basis—
- (1) the risk premium rates for flood insurance which—
 - (A) based on consideration of the risk involved and accepted actuarial principles, and
 - (B) including—
 - (i) the applicable operating costs and allowances set forth in the schedules prescribed under section 1311 and reflected in such rates, and
 - (ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates,
- would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available"⁵³

Second, the NFIA required HUD to estimate:

"the rates, if less than the [risk premium] rates estimated under paragraph (1) [above], which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this title[.]"⁵⁴

These lower premiums are the "chargeable" premiums, as set by regulation:

"On the basis of estimates made under section 1307 and such other information as

⁵³ *Id.* § 1307(a)(1), 82 Stat. at 576, today at 42 U.S.C. § 4014(a).

⁵⁴ *Id.* § 1307(a)(2), 82 Stat. at 576, today at 42 U.S.C. § 4014(a)(2).

may be necessary, the Secretary shall . . . prescribe by regulation—
(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 1305 (at less than the estimated risk premium rates under section 1307(a)(1), where necessary)”⁵⁵

“(b) Such [chargeable] rates shall, insofar as practicable, be—

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, floodproofing, flood forecasting, and similar measures.

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this title, and

(3) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 1307(a)(1) and the estimated rates under section 1307(a)(2).”⁵⁶

Moreover, Congress did not require reserves to cover all losses. Rather, § 1308(b)(2) above was, and is today, explicit that the reserves were to cover “anticipated losses, or [] less than such amount” but not more than that amount. That is, Congress made insurance available at reasonable rates to encourage purchase, even though rates had to be subsidized.

As described below, the Biggert-Waters generally reduced NFIP subsidies, but Congress restored them less than two years later. Federal law today subsidizes federal flood insurance.

5. *Borrowing From Treasury*

Additionally making the subsidy explicit, the program was designed to rely on Congressional appropriations.⁵⁷ The NFIA repealed most of the 1956 flood insurance statute, but it did not repeal § 15(e),⁵⁸ which authorized the Administrator to borrow from Treasury. The NFIA transferred this authority to HUD.⁵⁹ Section 15(e) of the 1956 law had Treasury set the interest rate, and capped borrowing at \$500 million, although the President could increase the cap. The 1968 law amended this to require Treasury to set

⁵⁵ *Id.* § 1308(a), 82 Stat. at 576, today at 42 U.S.C. § 4015(a).

⁵⁶ *Id.* § 1308(b), 82 Stat. at 577, today at 42 U.S.C. § 4015(b).

⁵⁷ *Id.* § 1310(b)(3) 82 Stat. at 578 (Congressional appropriations to be deposited into a National Flood Insurance Fund at Treasury), today at 42 U.S.C. § 4017(b)(3); and § 1376(a) 82 Stat. at 589 (authorizing appropriations to carry out Title XIII), today at 42 U.S.C. § 4127(a).

⁵⁸ Federal Flood Insurance Act of 1956, § 15(e), 70 Stat. at 1084, today at 42 U.S.C. § 2414(e).

⁵⁹ NFIA § 1309(a), 82 Stat. at 577, today at 42 U.S.C. § 4016.

the rate at a market rate,⁶⁰ and capped the borrowing at \$250 million.⁶¹

This insurance subsidy was unavailable for properties built in special flood hazard areas – if construction or substantial improvement of a property began after the property was identified as in an SFHA, the chargeable rate had to be at least the estimated risk premium rate, rather than at the lower chargeable rate.⁶² This incentive was designed to promote sensible land use.

6. *NFIA Cost Controls*

The insurance subsidy was available for single-family homes for coverage up to \$17,500 (\$30,000 if the property had more than one dwelling unit).⁶³ In addition, Congress capped the total amount of flood insurance outstanding at \$2.5 billion.⁶⁴

C. *1969 NFIA Amendments to Promote and Expand Subsidized Insurance*

The NFIA incentives proved insufficient, and Congress quickly acted to make them more attractive.

1. *Emergency NFIP Implementation*

Congress enacted a provision “for the purpose of providing flood insurance coverage at the earliest possible time” and before the end of 1971.⁶⁵ Congress required HUD to establish flood insurance premiums “without regard to any estimated risk premium rates which would otherwise be determined under section 1307[.]”⁶⁶ That is, insurance would be available although HUD had not estimated actuarial risk premium rates as originally intended.

Congress also provided communities additional time to adopt local flood control measures.

⁶⁰ *Id.* § 1303(a)(1), 82 Stat. at 573.

⁶¹ *Id.* § 1309(a), 82 Stat. at 577.

⁶² *Id.* § 1308(c), 82 Stat. at 577.

⁶³ Insurance coverage on single-family residential properties in excess of \$17,500 per single family dwelling, or \$30,000 if it contained more than one dwelling unit, required the premiums to be no less than the estimated premium rates, *i.e.*, insurance coverage below these caps was subsidized. NFIA § 1306(b), 82 Stat. at 575.

⁶⁴ NFIA § 1319, 82 Stat. at 581.

⁶⁵ Housing and Urban Development Act of 1969, Pub. L. No. 91-152, sec. 408, 83 Stat. 379, 396 – 97, adding NFIA § 1336(a), today at 42 U.S.C. § 4056. Congress incorporated by reference into this provision the date that is in 42 U.S.C. § 4026. This is the date by which the NFIP will need reauthorization, currently September 30, 2017.

⁶⁶ *Id.* sec. 408, 83 Stat. at 397, adding NFIA § 1336(b).

- Congress provided an additional 18 months for communities to provide HUD with the NFIA § 1305(c)(2) “satisfactory assurance” that they would adopt permanent land management criteria, originally required by June 30, 1970.⁶⁷
- Congress similarly extended by 18 months the NFIA § 1315 prohibition on new insurance policies after June 30, 1970, in communities that had sufficient permanent land use and control measures.⁶⁸ Congress also replaced the section 1315 and section 1361(c) requirement that these measures be “permanent” with the requirement that they be “adequate”.⁶⁹

2. *Mudslides as a New Covered Peril*

In the same law, Congress also extended the NFIP’s covered perils to include mudslides:

The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this title for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.”⁷⁰

Congress did so by adding mudslides to the NFIA definition of flood:

“The term ‘flood’ shall also include inundation from mudslides which are caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such mudslides) the purposes of this title and the

⁶⁷ *Id.* sec. 410(a), 83 Stat. at 397, amending NFIA § 1305(c)(2).

⁶⁸ *Id.* sec. 410(b)(1), 83 Stat. at 397, amending NFIA § 1315.

⁶⁹ *Id.* sec. 410(b)(2) and (c), 83 Stat. at 397, amending NFIA § 1315 and § 1361(c).

⁷⁰ *Id.* sec. 409(a), 83 Stat. at 397, adding NFIA § 1302(f).

objectives of the program.”⁷¹

D. The Flood Disaster Protection Act of 1973 Expanded NFIA Policies

Congress again enacted major flood legislation in the Flood Disaster Protection Act of 1973 (“FDPA”).⁷² Congress set out finding and purposes as follows:

“(a) The Congress finds that—

- (1) annual losses throughout the nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;
- (2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;
- (3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;
- (4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;
- (5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and
- (6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage so that they will be indemnified for their losses in the event of future flood disasters.

(b) The purpose of this Act, therefore, is to—

- (1) substantially increase the limits of coverage authorized under the national flood insurance program;
- (2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;
- (3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plain ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and
- (4) require the purchase of flood insurance by property owners who are being

⁷¹ *Id.* sec. 409(b), 83 Stat. at 397, adding NFIA § 1370(b).

⁷² Pub. L. No. 93-234, 87 Stat. 975.

assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.”⁷³

1. *Purchase Mandate*

The FDPA introduced the Purchase Mandate, with two aspects:

- Federal agencies are prohibited from approving financial assistance for acquisition or construction of property in an SFHA if NFIP flood insurance is available unless the property is insured, for the economic or useful life of the project, to the lesser of the development cost (less land value) or the maximum NFIP coverage available.⁷⁴
- Certain federal agencies must direct institutions they regulate not to make, increase, extend, or renew a loan on real property or a mobile home in an SFHA if NFIP flood insurance is available unless the property is insured for the term of the loan by flood insurance up to the lesser of the loan amount or the maximum NFIP coverage available.⁷⁵

2. *Incentives for NFIP Participation*

The FDPA provided incentives for communities in SFHAs to participate in the NFIP. Participation enabled the community to access federal assistance, including mortgage loans from federally regulated lenders.

- Financial assistance for the acquisition or construction of property in an SFHA is prohibited unless the community participates in the NFIP.⁷⁶
- Certain federal agencies are required to prohibit financial institutions they regulate from “making increasing, extending, or renewing” loans on real estate or mobile homes in special flood hazard areas unless the community participates in the NFIP.⁷⁷

Congress required notice to affected communities. Congress required HUD to identify all flood plain areas that have special flood hazards within six months, rather than within five years as under the NFIA.⁷⁸ HUD was to notify each known flood-prone community

⁷³ *Id.* § 2, 87 Stat. at 975-76.

⁷⁴ *Id.* § 102(a), 87 Stat. at 978.

⁷⁵ *Id.* § 102(b), 87 Stat. at 978.

⁷⁶ *Id.* § 202(a), 87 Stat. at 982.

⁷⁷ *Id.* § 202(b), 87 Stat. at 982. Congress amended this in 1977, as described below.

⁷⁸ *Id.* sec. 201(a), 87 Stat. at 982, referencing NFIA § 1360(1).

that was not participating in the NFIP about its flood hazards.⁷⁹ A community with special flood hazards could either apply to participate in the NFIP or establish that it is not seriously flood-prone or that it has corrected its hazards through floodworks or other flood control methods.⁸⁰ This also applies to communities that later are identified as having special flood hazard areas.⁸¹

3. *New Construction at Estimated Premium Rates*

The FDPA amended NFIA § 1308(c), which required flood insurance at the more expensive estimated risk premium rates for new construction or substantial property improvements on properties in special flood hazard areas. Under the NFIA, this went into effect only after HUD had identified whether the property was in an SFHA,⁸² which was to have been within five years of the NFIA's enactment.⁸³ Congress enacted the FDPA just over five years after the NFIA. The FDPA amended this to apply the estimated risk premium rates to new construction on the later of December 31, 1974 [one year after the FDPA's enactment] or when the property is determined to be in an SFHA.⁸⁴

4. *Expedited Mapping*

The FDPA required HUD “to accelerate the identification of risk zones within flood-prone and mudslide-prone areas . . . in order to make known the degree of hazard within each such zone at the earliest possible date.”⁸⁵ Several agencies, and all “Federal agencies engaged in the identification or delineation of flood-risk zones shall, in consultation with the Secretary, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones in order to assist the Secretary to meet the deadline established by this section.”⁸⁶

5. *Increased Subsidized Coverage*

The FDPA increased the amount of subsidized flood insurance coverage. Under the NFIA, subsidized premiums were only available for single-family properties up to \$17,500 (\$30,000 if it contained more than one dwelling unit). The FDPA increased these to \$35,000 per single-family dwelling, or \$100,000 if it contained more than one

⁷⁹ *Id.* § 201(a), 87 Stat. at 982.

⁸⁰ *Id.* § 201(b), 87 Stat. at 982.

⁸¹ *Id.* § 201(c), 87 Stat. at 982.

⁸² NFIA § 1308(c), 82 Stat. at 577.

⁸³ NFIA § 1360(1), 82 Stat. at 587.

⁸⁴ FDPA sec. 103, 87 Stat. at 978-79, amending NFIA § 1308(c).

⁸⁵ *Id.* sec. 204(a), 87 Stat. at 983, adding NFIA § 1360(b).

⁸⁶ *Id.* sec. 204(a), 87 Stat. at 983, adding NFIA § 1360(c).

dwelling unit. In Alaska, Hawaii, the Virgin Islands, and Guam, the caps increased to \$50,000 per single-family dwelling, or \$150,000 if it contained more than one dwelling unit.⁸⁷

6. *Community Notice*

The law required HUD to consult with local officials regarding “notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies[.]”⁸⁸

The FDPA added to the NFIA a requirement that HUD publish flood elevation determinations in the *Federal Register* and send them to the affected community.⁸⁹ It provided property owners a right to appeal to the local government and for the community to appeal to HUD.⁹⁰ After a final HUD determination, the community has time to adopt local land use and control measures.⁹¹ It provided for appeal to a federal district court as well.⁹²

7. *Borrowing From Treasury*

The FDPA increased the cap on borrowing from the Treasury from \$250 million in the NFIA to \$500 million, and to \$1 billion with the President’s approval.⁹³ The FDPA also repealed an NFIA cap of \$2.5 billion on the total insurance outstanding.⁹⁴ In its place, the FDPA put a sunset date of June 30, 1977 on flood insurance.⁹⁵ Congress extended this date repeatedly,⁹⁶ most recently by Biggert-Waters, to extend the insurance through September 30, 2017.⁹⁷

8. *Erosion as a New Covered Peril*

Similar to the 1969 addition of mudslides to the NFIA’s protections, the FDPA added erosion damage:

⁸⁷ *Id.* sec. 101(a), 87 Stat. at 977, amending NFIA § 1306(b)(1)(A).

⁸⁸ *Id.* sec. 206, 87 Stat. at 983.

⁸⁹ *Id.* sec. 110, 87 Stat. at 980, adding NFIA § 1363(a).

⁹⁰ *Id.* sec. 110, 87 Stat. at 980 – 81, adding NFIA § 1363(b) and (c).

⁹¹ *Id.* sec. 110, 87 Stat. at 981, adding NFIA § 1363(e).

⁹² *Id.* sec. 110, 87 Stat. at 981, adding NFIA § 1363(f).

⁹³ *Id.* sec. 104, 87 Stat. at 979, amending NFIA § 1309(a).

⁹⁴ *Id.* sec. 105, 87 Stat. at 979, amending NFIA § 1319.

⁹⁵ *Id.* sec. 105, 87 Stat. at 979, amending NFIA § 1319.

⁹⁶ 42 U.S.C. § 4026, as amended repeatedly.

⁹⁷ Biggert-Waters § 100203(b), 126 Stat. at 916.

“The Congress also finds that (1) the damage and loss which may result from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems invoked in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this title for purposes of the flood insurance program protection against damage and loss resulting from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels.”⁹⁸

Again, Congress extended the reach of the NFIP by expanding the NFIA definition of flood:

“The term ‘flood’ shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program.”⁹⁹

9. *Agency FDPA Responsibilities*

The FDPA required that several agencies, today the Agencies, “shall, in cooperation with the Secretary, issue appropriate rules and regulations to govern the carrying out of the agency’s responsibilities under this Act.”¹⁰⁰

E. Congress Enacted Several Flood Laws After the FDPA and Before 1994

I. Housing and Community Development Act of 1974

⁹⁸ FDPA sec. 108(a), 87 Stat. at 979-80, adding NFIA § 1302(g).

⁹⁹ *Id.* sec. 108(b), 87 Stat. at 980, adding NFIA § 1370(c).

¹⁰⁰ *Id.* sec. 205(b), 87 Stat. at 983, today at 42 U.S.C. § 4128(b).

In 1974, Congress added a requirement that lenders subject to the Purchase Mandate notify borrowers and lessees of special flood hazards, as a condition of making, increasing, extending, or renewing loans on property in special flood hazard areas.¹⁰¹

This 1974 law also added the following to NFIA § 1307:

“[A]ny community that has made adequate progress, acceptable to the Secretary, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Secretary, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section [NFIA § 1307] if such flood protection system had been completed. The Secretary shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed.”¹⁰²

Estimated risk premium rates are based on “a consideration of the risks involved[.]”¹⁰³ This amendment permitted risk premium rates to be estimated as if the flood protection were complete in the specified circumstances.

2. *Housing and Community Development Act of 1977*

In 1977, Congress permitted federally regulated lenders to make mortgage loans in SFHAs in communities that do not participate in the NFIP, and required the lenders to notify the borrower whether, in the event of a flood, federal disaster assistance would be available.¹⁰⁴ Congress retained the requirement that loans in SFHAs have flood insurance if available.

The law also authorized appeals of mapping a property into a special flood hazard area.¹⁰⁵

¹⁰¹ Housing and Community Development Act of 1974, Pub. L. No. 93-383, sec. 816(a), 88 Stat. 633, 739, adding NFIA § 1364.

¹⁰² *Id.* sec. 816(b), 88 Stat. at 739, adding NFIA § 1307(e).

¹⁰³ NFIA § 1307(a)(1)(A), today at 42 U.S.C. § 4014(a)(1)(A)(i).

¹⁰⁴ Housing and Community Development Act of 1977, Pub. L. No. 95-128, sec. 703(a), 91 Stat. 1111, 1144, amending FDPA § 202(b).

¹⁰⁵ *Id.* sec. 704(d), 91 Stat. at 1146-47, adding FDPA § 201(e).

3. *Flood Functions Transferred to FEMA*

In 1979, by Executive Order President Jimmy Carter transferred HUD's flood policy functions to the newly-created FEMA.¹⁰⁶ In 1983, Congress amended the NFIA to transfer HUD responsibilities to FEMA.¹⁰⁷ This 1983 law also required FEMA to submit a plan to Congress by September 30, 1984 "a plan for bringing all communities containing flood risk zones into full program status by September 30, 1987."¹⁰⁸

4. *Housing and Community Development Act of 1987*

In 1987, Congress enacted a law that permitted insurance payments to demolish or relocate a flood-insured structure along the shore that is subject to imminent collapse or subsidence from erosion or undermining from waves exceeding anticipated cyclical levels.¹⁰⁹

5. *SFIP Fee for Fund Floodplain Management and Mapping*

In 1990, Congress required SFIP policyholders to pay FEMA a federal policy fee to pay for "administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)[.]"¹¹⁰ It required chargeable premium rates, with the new fee, to cover the same costs.¹¹¹

That is, SFIP fees pay for important floodplain management and FEMA's flood hazard mapping. Private policies do not. We believe the Agencies should take this into consideration as part of this rulemaking to avoid neighborhood blight.

F. *National Flood Insurance Reform Act of 1994*

In 1994, Congress enacted the National Flood Insurance Reform Act of 1994

¹⁰⁶ Executive Order 12127, 44 Fed. Reg. 19367 (April 3, 1979).

¹⁰⁷ Act of November 30, 1983, Pub. L. No. 98-181 sec. 451(d), 97 Stat. 1153, 1229, amending NFIA generally.

¹⁰⁸ *Id.* sec. 451(d)(7), 97 Stat. at 1229, adding NFIA § 1360(d).

¹⁰⁹ Housing and Community Development Act of 1987, Pub. L. No. 100-242, sec. 544(a), 101 Stat. 1815, 1940, adding NFIA § 1306(c).

¹¹⁰ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, sec. 2302(e)(1)(C) and (D), 104 Stat. 1388, 1388-24, adding NFIA § 1307(a)(1)(B)(iii) and amending § 1307(a)(2).

¹¹¹ *Id.* sec. 2302(e)(2)(A)(iii), 104 Stat. at 1388-24, redesignating and amending NFIA § 1308(b)(3).

(“NFIRA”),¹¹² making significant reforms regarding flood insurance, floodplain management, and flood risk mitigation.

1. *Redefined Agencies and New Rulewriting Authority*

The NFIRA amended the FDPA definition of “Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions[.]” The amendments replaced this unwieldy term with “Federal entity for lending regulation[.]”¹¹³ Originally, these agencies were the Federal Reserve, Federal Deposit Insurance Corporation (“FDIC”), Office of the Comptroller of the Currency (“OCC”), Federal Home Loan Bank Board (“FHLBB”), Federal Savings and Loan Insurance Corporation (“FSLIC”), and the National Credit Union Administration (“NCUA”).¹¹⁴ The NFIRA removed the FHLBB and FSLIC, and added the Office of Thrift Supervision (“OTS”) and the Farm Credit Administration.¹¹⁵ The law added the same (amended) definition to the NFIA, which previously had not defined either the old or the amended term.¹¹⁶ Today, both definitions omit the OTS.¹¹⁷

In addition, the NFIRA authorized FEMA and “any appropriate Federal agency” to issue any regulations necessary to carry out the NFIRA and the amendments it made.¹¹⁸

2. *Increased Flood Insurance Coverage*

Congress, finding insufficient flood insurance coverage in place, acted to increase borrowers’ flood insurance coverage. A significant change was to authorize mortgage servicers to force-place flood insurance, at any time during the life of a loan, if a borrower who was required to have it allowed coverage to lapse.¹¹⁹ The Purchase Mandate is triggered when lenders “make, increase, extend, or renew” loans, but it is not triggered at other times, such as when insurance lapses.¹²⁰ Before Congress enacted this

¹¹² National Flood Insurance Reform Act of 1994, enacted as Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat. 2160, 2255 – 2287.

¹¹³ *Id.* sec. 511(a)(1), 108 Stat. at 2255, amending FDPA § 3(a)(5).

¹¹⁴ FDPA § 3(a)(5), 87 Stat. at 977.

¹¹⁵ NFIRA sec. 511(a)(1), 108 Stat. at 2255, amending FDPA § 3(a)(5).

¹¹⁶ *Id.* sec. 512(a)(3), 108 Stat. at 2256, adding NFIA § 1370(a)(9).

¹¹⁷ 42 U.S.C. § 4003(a)(5) (FDPA); 42 U.S.C. § 4121(a)(9) (NFIA).

¹¹⁸ NFIRA § 583, 108 Stat. at 2287.

¹¹⁹ *Id.* sec. 524, 108 Stat. at 2259 – 60, adding FDPA § 102(e).

¹²⁰ “It is the view of the Committee that the making, increasing, extension or renewal of a loan serves as a ‘tripwire’ of sorts for compliance with the flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes the opportunity for compliance action by a lender increasingly likely, as borrowers obtain new loans on existing structures, for example, or refinance existing loans.” H. Rep. 103-414 (1994).

NFIRA provision, there had been uncertainty about whether mortgage servicers had authority to require flood insurance absent a Purchase Mandate trigger.¹²¹ Congress made clear that coverage is required even absent a trigger.

Congress also increased flood insurance in other ways:

- Congress expanded the Purchase Mandate to federal agency lenders and to the GSEs.¹²²
- Congress generally required servicers to escrow flood insurance premiums.¹²³
- Congress authorized lenders to assess a flood hazard determination fee, and preempted contrary state law.¹²⁴
- Congress required FEMA to develop a standard flood hazard determination form.¹²⁵
- Congress prohibited federal disaster relief assistance in a flood disaster area for repair, replacement, or restoration of a property if the owner had received flood disaster assistance that was conditional on having flood insurance but who did not have the required insurance.¹²⁶
- Congress extended the FDPA § 102(a) ban on financial assistance relating to properties in SFHAs, where federal flood insurance is available, unless the property has flood insurance, to require the insurance “during the life of the property” rather than the life of the project, even if ownership transfers.¹²⁷

3. *Incentives for Floodplain Management and Flood Risk Mitigation*

The NFIRA put a heavy emphasis on floodplain management and on flood risk mitigation using incentives.

The law required FEMA to carry out its pre-existing Community Rating System (“CRS”), a voluntary program to encourage community floodplain management activities exceeding NFIP standards; to encourage adoption of more effective measures that protect

¹²¹ “This requirement . . . clarifies existing servicers as one of several components in a renewed effort to ensure compliance with purchase and maintenance of federal flood insurance. The Committee has found that while some borrowers purchase flood insurance at the time of loan origination, this authority has been used sparingly because of concerns raised by lenders about its validity. Section 204 clarifies any ambiguities: the lender or servicer is now clearly authorized, and required, to purchase the insurance on behalf of the borrower who refuses to do so voluntarily, and to recover premiums and fees incurred as a result of that purchase.” H. Rep. 103-414 (1994).

¹²² NFIRA sec. 522(a), 108 Stat at 2257 – 58, amending FDPA § 102(b).

¹²³ *Id.* sec. 523, 108 Stat at 2258 – 59, adding FDPA § 102(d).

¹²⁴ *Id.* sec. 526, 108 Stat. at 2262 – 63, adding FDPA § 102(h).

¹²⁵ *Id.* sec. 528, 108 Stat. at 2264, adding NFIA § 1365.

¹²⁶ *Id.* sec. 582(a), 108 Stat. at 2286.

¹²⁷ *Id.* sec. 582(c), 108 Stat. at 2287, amending FDPA § 102(a).

natural and beneficial floodplain functions; to encourage floodplain and erosion management; and to promote the reduction of flood insurance losses.¹²⁸

Congress required discounted flood insurance premiums for communities participating in CRS, based on the estimated risk reduction from the voluntary measures.¹²⁹ These remain in place today.¹³⁰ We urge the Agencies to consider the effects of this rulemaking on these incentives, which can prevent neighborhood blight.

The NFIRA included flood risk mitigation incentives:

- The law repealed authority to purchase flood-damaged insured properties.¹³¹
- The law terminated a 1988 program of paying under flood insurance contracts to demolish or relocate properties at risk of damage from erosion or waves.¹³²

Instead, the law required FEMA to provide grants to states and communities for “planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this title.”¹³³ Congress included a prerequisite for these grants:

“To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the Director, a flood risk mitigation plan (in this section referred to as a ‘mitigation plan’), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the Director under section 1361, and provides protection against flood losses to structures for which contracts for flood insurance are available under this title. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing.”¹³⁴

Congress directed how the grants were to be used for mitigation assistance:

“Amounts provided under this section (other than [for planning]) may be used

¹²⁸ *Id.* sec. 541, 108 Stat. at 2268, adding NFIA § 1315(b)(1).

¹²⁹ *Id.* sec. 541, 108 Stat. at 2268, adding NFIA § 1315(b)(2) and (3).

¹³⁰ 42 U.S.C. § 4022(b)(2)

¹³¹ NFIRA. sec. 551(a), 108 Stat. at 2269, repealing NFIA § 1362.

¹³² *Id.* sec. 552, 108 Stat. at 2269, repealing NFIA § 1306(c); that provision was enacted in the Housing and Community Development Act of 1987, Pub. L. No. 100-242, sec. 544(a), 101 Stat. 1815, 1940 – 42 (enacted in 1988 despite the 1987 in its name).

¹³³ NFIRA sec. 553(a), 108 Stat. at 2270, adding NFIA § 1366(a).

¹³⁴ *Id.* sec. 553(a), 108 Stat. at 2270, adding NFIA § 1366(c).

only for mitigation activities specified in a mitigation plan approved by the Director[.]”¹³⁵

Congress directed that FEMA only approve mitigation plans for activities that “are technically feasible and cost-effective” and cost-beneficial.¹³⁶ Congress directed FEMA to prioritize “activities for repetitive loss structures and structures that have incurred substantial damage.”¹³⁷

Congress authorized FEMA to approve mitigation plans for several activities:

- To demolish or relocate coastal structures subject to imminent collapse or subsidence from erosion or flooding;
- To elevate, relocate, demolish, or floodproof structures in special flood hazard areas or in other areas of flood risk;
- For state and community acquisition of properties in special flood hazard areas or in other areas of flood risk, or properties substantially damaged by flood, consistent with sound land management and use;
- Minor physical mitigation efforts that do not duplicate flood prevention activities of other federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, but not major flood control projects unless FEMA determines they are the most cost-effective mitigation activities for the National Flood Mitigation Fund;
- Beach nourishment activities;
- Providing technical assistance by states to communities and individuals; and
- Other activities specified in a FEMA regulation or described in a state or community mitigation plan.¹³⁸

4. *SFIPs Cover Increased Cost of Compliance*

Significant to this rulemaking, Congress authorized NFIP insurance to cover the cost of compliance with land use and control measures for repetitive loss structures, properties where flood damage repair costs exceed half of the structure value at the time of flood, and for properties that have flooded more than once.¹³⁹ Congress added a surcharge up to \$75 on each insurance policy for this cost of compliance coverage.¹⁴⁰ This so-called ICC (increased cost of compliance) coverage provides policyholders in special flood hazard

¹³⁵ *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(1).

¹³⁶ *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(2).

¹³⁷ *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(4).

¹³⁸ *Id.* sec. 553(a), 108 Stat. at 2271-72, adding NFIA § 1366(e)(5). NFIRA sec 554, 108 Stat. at 2273-74, created the National Flood Mitigation Fund, separately from the National Flood Insurance Fund.

¹³⁹ NFIRA sec. 555(a), 108 Stat. at 2274, redesignating and amending NFIA § 1304(b).

¹⁴⁰ *Id.*

areas up to \$30,000¹⁴¹ to help pay the costs to bring their home or business into compliance with their community's floodplain ordinance after a flood.¹⁴²

This is significant to the present rulemaking because private policies, under the proposal, could apparently meet the Purchase Mandate even if they do not provide ICC coverage. Policymakers need to address the impact of reduced ICC coverage on communities after a flood because of the potential for neighborhood blight in the absence of ICC coverage.

5. *Improved Flood Hazard Mapping*

Just as it had been doing since the country's earliest federal flood policies, in the NFIRA Congress emphasized improved flood hazard mapping. The law created an interagency Flood Insurance Task Force,¹⁴³ a Task Force on Natural and Beneficial Functions of the Floodplain,¹⁴⁴ and a Technical Mapping Advisory Council.¹⁴⁵

The law required FEMA:

- To assess the need to revise and update all floodplain areas and flood risk zones at least every five years.
- To update them as necessary, or on request of any state or local government that submits sufficient technical data justifying the request and that agrees to fund an amount FEMA determines, but not more than half of the cost of the requested revision or update.
- To make flood insurance rate maps available free of charge to several federal regulators, to state agencies directly responsible for coordinating the NFIP and to appropriate representatives of NFIP communities, and at a reasonable cost to all others.
- To publish any changes to flood insurance maps, and to publish compendia of all changes every six months.¹⁴⁶

6. *Capped Flood Insurance Premiums*

The NFIRA made permanent a cap on premiums for federal flood insurance. Specifically, Congress had capped premium increases at ten percent per year several times for several periods. The NFIRA capped increases in chargeable premiums for

¹⁴¹ FEMA's *Increased Cost of Compliance Coverage* webpage.

¹⁴² *Id.*

¹⁴³ NFIRA sec. 561, 108 Stat. at 2275.

¹⁴⁴ *Id.* sec. 562, 108 Stat. at 2276.

¹⁴⁵ *Id.* sec. 576, 108 Stat. at 2280.

¹⁴⁶ *Id.* sec. 575, 108 Stat. at 2278-79, adding NFIA § 1360(e) through (j).

properties with a single risk classification at ten percent per year.¹⁴⁷

G. 2004 Expansion of Increased Cost of Compliance Coverage

In 2004, Congress expanded the increased cost of compliance coverage provisions.¹⁴⁸ The coverage had been available to pay for “compliance” with land use and control measures. This was broadened to cover implementing measures consistent with land use and control measures.¹⁴⁹ Coverage continued to be permitted for substantially damaged structures, but the requirement that the damage exceed half the property value was repealed.¹⁵⁰ Coverage was also permitted for properties for which an offer of mitigation assistance is made under the Flood Mitigation Assistance Program, the Repetitive Loss Priority Program and Individual Priority Property Program, the Hazard Mitigation Grant Program, and the Predisaster Hazard Mitigation Program.¹⁵¹

H. The Biggert-Waters Act

In 2012, Congress enacted the Biggert-Waters Act. This legislation introduced major flood reforms, not the least of which was to require more actuarial NFIP flood insurance premiums. Among other things, this law was intended:

“to increase the role of private markets in the management of flood insurance risk”¹⁵²

“to achieve reforms to improve the financial integrity and stability of the program,”¹⁵³ and

to “reduce the burden on taxpayers, and facilitate the creation of a private market that eliminates taxpayer risk over the long-term.”¹⁵⁴

Again, Congress called for significant new mapping efforts,¹⁵⁵ and mitigation efforts too numerous to detail here.

¹⁴⁷ *Id.* sec. 572(a)(2), 108 Stat. at 2277–78, adding NFIA § 1308(e).

¹⁴⁸ Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Pub. L. No. 108-264, 118 Stat. 712.

¹⁴⁹ *Id.* sec. 105(a)(1) and (3), 118 Stat. at 723, amending NFIA § 1304(b).

¹⁵⁰ *Id.* sec. 105(a)(2), 118 Stat. at 723, amending NFIA § 1304(b)(2).

¹⁵¹ *Id.* sec. 105(a)(4), 118 Stat. 712, 723, adding NFIA § 1304(b)(4).

¹⁵² H. Rep. No. 112-102 at 1 (2011).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 21.

¹⁵⁵ Biggert-Waters secs. 100215, 100216, 100218 – 100221, 126 Stat. at 924 – 934.

1. *Subsidy Reductions and Repeals*

Biggert-Waters was notable for reducing and repealing the subsidies for flood insurance premiums. It did so by making the premiums risk-based in several ways, including the following:

- In estimating risk premium rates, Biggert-Waters required FEMA to consider “all costs, as prescribed by principles and standards of practice in ratemaking adopted by the American Academy of Actuaries and the Casualty Actuarial Society[.]”¹⁵⁶ The law also required the estimated risk premium rates to be “adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the” NFIP insurance fund,¹⁵⁷ including catastrophic loss years, in accordance with generally accepted actuarial principles.¹⁵⁸
- Biggert-Waters phased out rates below the risk premium rate for severe repetitive loss properties; properties for which insurance claims had been paid in excess of the property value; commercial properties; and properties that, after enactment, incurred substantial damage or were substantially improved.¹⁵⁹
- The law prohibited rates below the risk premium rates for insurance: on properties not insured on the date Biggert-Waters was enacted; on properties purchased after that date; after the property owner allowed a policy to lapse; or for owners who declined mitigation assistance offers.¹⁶⁰
- Biggert-Waters doubled a cap on annual premium increases from ten percent to 20 percent.¹⁶¹

2. *“Shall Accept” and the Definition of Private Flood Insurance*

As to private insurance, Biggert-Waters did two things. First, it required that regulated lending institutions, federal agency lenders, and the GSEs “shall accept” private flood insurance to meet the Purchase Mandate.¹⁶² Second, it defined the private flood insurance that meets the Purchase Mandate as largely the same as an SFIP.¹⁶³

¹⁵⁶ *Id.* sec. 100205(b)(3), 126 Stat. at 918, adding NFIA § 1307(a)(1)(B)(iii).

¹⁵⁷ *Id.* sec. 100211(2)(E), 126 Stat. at 921, adding NFIA § 1308(b)(5).

¹⁵⁸ *Id.* sec. 100211(3), 126 Stat. at 921, adding NFIA § 1308(i).

¹⁵⁹ *Id.* sec. 100205(a)(1)(A), 126 Stat. at 917, amending NFIA § 1307(a)(2).

¹⁶⁰ *Id.* sec. 100205(a)(1)(B), 126 Stat. at 917, adding NFIA § 1307(g).

¹⁶¹ *Id.* sec. 100205(c)(2)(B), 126 Stat. at 918, amending NFIA § 1308(e).

¹⁶² *Id.* secs. 100239(a)(1)(C); (a)(2)(B); and (a)(3), 126 Stat. at 958 – 59, adding FDPA § 102(b)(1)(B); amending FDPA § 102(b)(2); and amending FDPA § 102(b)(3).

¹⁶³ Biggert-Waters sec. 100239(a)(4), 126 Stat. at 959 – 60, adding, among other provisions, FDPA § 102(b)(7).

For noncommercial loans, private policies meet the Biggert-Waters definition of private flood insurance when all of the following conditions are met:

- The insurer is licensed, admitted, or otherwise approved to sell insurance in the state where the insured property is.¹⁶⁴
- The policy provides coverage “at least as broad” as an SFIP, “including when considering deductibles, exclusions, and conditions offered by the insurer[.]”¹⁶⁵
- The policy requires the insurer to give 45 days notice of cancellation or non-renewal to the insured and the lender¹⁶⁶ and the policy includes information about SFIPs.¹⁶⁷
- The policy includes “a mortgage interest clause similar to the clause contained in” an SFIP.¹⁶⁸
- The policy contains “cancellation provisions that are as restrictive as” those in an SFIP.¹⁶⁹

Taken together, the “shall accept” language and private insurance definition require acceptance of private flood insurance as long as the private insurance is similar to SFIP policies. Lenders, federal agency lenders, and the GSEs do not need to accept private insurance that, for example, has an unreasonably high deductible, that excludes perils that SFIP covers, or that does not name the lender or servicer as an additional loss payee.

I. Homeowner Flood Insurance Affordability Act of 2014

As FEMA began to implement the Biggert-Waters premium increases in 2013, the outcry was vehement. Congress quickly enacted the Homeowner Flood Insurance Affordability Act of 2014¹⁷⁰ (“HFIAA”) to roll back the premiums increases generally.¹⁷¹ It did not, however, amend the Biggert-Waters “shall accept” language or its definition of private flood insurance.

The HFIAA imposed premium surcharges on all NFIP insurance policies, \$25 for policies on a primary residence and \$250 for other policies.¹⁷² The funds go to the National

¹⁶⁴ *Id.* sec. 100239(a)(4), 126 Stat. at 960, adding FDPA § 102(b)(7)(A)(i), 42 U.S.C. § 4012a(b)(7)(A)(i).

¹⁶⁵ *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(B), 42 U.S.C. § 4012a(b)(7)(B).

¹⁶⁶ *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(i), 42 U.S.C. § 4012a(b)(7)(C)(i).

¹⁶⁷ *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(ii), 42 U.S.C. § 4012a(b)(7)(C)(ii).

¹⁶⁸ *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(iii), 42 U.S.C. § 4012a(b)(7)(C)(iii).

¹⁶⁹ *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(D), 42 U.S.C. § 4012a(b)(7)(D).

¹⁷⁰ Pub. L. No. 113-89, 128 Stat. 1020.

¹⁷¹ HFIAA secs. 3 – 6, 12, 14, 128 Stat. at 1021 – 23 and 1025 – 26, among other things, amending the NFIA.

¹⁷² *Id.* sec. 8(a), 128 Stat. at 1023 – 24, adding NFIA § 1308A.

Flood Insurance Reserve Fund.¹⁷³ Private policies have no such surcharge. Policymakers should consider the impact of private flood policies, absent a surcharge being imposed, would have on FEMA's ability to make up for any lost surcharges.

II. THE FLOOD INSURANCE MARKET PARITY AND MODERNIZATION ACT (H.R. 2901 – 114th Congress)

In 2016, the House, but not the Senate, passed a bill, H.R. 2901 that would have amended the Biggert-Waters definition of private flood insurance policies by removing the requirement that private policies, under the definition, must be similar to SFIPs. It would not have repealed, however, the Biggert-Waters requirement that federal agency lenders and the GSEs "shall accept" private policies. (It would have repealed the requirement that mortgage lenders regulated by the Agencies accept private flood insurance.) In combination, these two amendments would have permitted homeowners to purchase inexpensive but insufficient insurance, and would have required agencies, including the GSEs, to accept that insurance coverage.

Mortgage servicers, acting on behalf of mortgage investors, including the GSEs, ensure that appropriate flood insurance policies remain in place, on properties in flood hazard areas where insurance is available, over the life of the mortgage loan. This is important because it ensures that in the event of a flood or other damage, the consumer's property is covered and repaired. Servicers have several procedures for making sure a property has, and benefits from, appropriate insurance:

- Throughout the life of the loan, servicers review insurance policies to make sure they cover appropriate perils and have reasonable deductibles. If not, servicers require additional protection.
- Servicers ensure that the insurance provider will be able to pay claims should they occur. If a borrower selects an insurer that lacks sufficient financial strength, servicers require the borrower to change insurers.
- If there is a claim, servicers, named as a loss payee on the insurance policy, require that the proceeds are used to repair the property. If the claim is a significant dollar amount, the servicer holds the proceeds and disburses them as repair work progresses.

H.R. 2901 would have interfered with each of these sensible protections. This was not the intent of the legislation, but it would have been the effect.

Promoting private flood insurance does not require permitting insufficient insurance. Private flood insurance and reasonable protections do, and should continue to, work hand-in-hand.

¹⁷³ *Id.* sec. 8(b), 128 Stat. at 1024, adding NFIA § 1310A(c)(4).

If enacted, H.R. 2901 would have amended the definition of private flood insurance for new loans, as well as for loans originated before enactment of the legislation. For new loans, even though the lender requires adequate flood insurance coverage at origination, when the policy renews, the consumer could have switched to a private policy that did not adequately insure the property. The GSEs would not have been able to reject the policy. For pre-existing GSE loans, consumers would have had a new statutory right to purchase private flood insurance coverage that would have been sufficient to protect the collateral backing the loan. In addition, the GSEs would not have been able to require that the mortgage servicer, operating on behalf of the GSEs, to be named as additional loss payees. This would have meant that consumers would have received the insurance proceeds directly and might have had an incentive to abandon the damaged property and keep the insurance proceeds.

Under this legislation, widespread private policies would have reduced the incentives for communities to participate in the NFIP, and retain and enforce sensible floodplain management practices. The bill did not address the effects of reducing this incentive, nor did it contain any alternative incentive.

III. COMMENTS on the FEDERAL REGULATORS 2016 PROPOSED REGULATION

A. *Difficulty of Determining Whether Private Insurance Meets the Biggert-Waters Definition*

Private insurers that want to sell, and mortgage investors, lenders, and servicers that want to accept, private flood insurance are faced with the difficulty of determining whether a private policy meets the Biggert-Waters definition. This is a significant hurdle because an SFIP takes 26 pages to detail what it does and does not cover. It has several features that make it very difficult to determine whether a private policy is sufficiently similar.

One significant difference between SFIPs and private policies is that SFIPs are not subject to state law. They provide:

“This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law.”¹⁷⁴

Private insurance is governed by state law. SFIPs also differ from private policies in that private insurers cannot avail themselves of sovereign immunity or preemption of state

¹⁷⁴ SFIP § IX.

law. Private insurance litigation may be conducted in state court but litigation against FEMA under an SFIP must be in Federal court.¹⁷⁵ It is difficult to determine that a private policy is as broad as SFIPs given these differences.

B. Federal Agencies Propose Compliance Aid

In their 2016 joint proposed rulemaking, the federal financial regulators proposed a compliance aid to help determine whether a private flood insurance policy meets the Biggert-Waters definition of private flood insurance. The proposed compliance aid has three required components:

- A private flood insurance policy must include or be accompanied by a written summary demonstrating how the policy meets the definition of private flood insurance by identifying the policy provisions that meet each criterion in the definition, and by confirming that the insurer is regulated in accordance with that definition.
- The lender or servicer must verify in writing that the policy includes the provisions the insurer identified in the summary.
- The policy states that it meets the statutory private flood insurance definition.

The CMC appreciated the Agencies' efforts to assist with the difficulties in comparing SFIPs with private policies. In the CMC comment letter, we requested confirmation that, even if a policy does meet the statutory definition, investors, lenders, and servicers may reject the policy if it is inadequate for any safety and soundness reason. It would not be reasonable to construe the Biggert-Waters Act as requiring any unsafe or unsound mortgage practice, and we do not believe the Agencies proposed to require any unsafe or sound practice.

C. Proposed Discretionary Acceptance of Private Policies

The Agencies proposed to permit lenders and servicers discretion to meet their Purchase Mandate with private flood insurance that meets the Biggert-Waters definition, or that did not meet the that definition as long as the private policies have certain protections. For consumer loans, the proposal would permit private policies that differ from the statutory definition in the following ways:

¹⁷⁵ *Id.* § VII.r.

Statutory Definition	Proposal
The policy must contain a mortgage interest clause similar to the clause contained in an SFIP. ¹⁷⁶	The policy must cover the mortgagor(s) and mortgagee(s) as loss payees.
The policy must contain cancellation provisions that are as restrictive as the provisions contained in an SFIP. ¹⁷⁷ The policy must require the insurer to give 45 days notice of cancellation or nonrenewal to the borrower and servicer, and notice to the borrower of the availability of NFIP insurance. ¹⁷⁸	The policy must provide for cancellation following reasonable notice to the borrower only for reasons permitted for SFIPs, in any case of nonpayment, and when mandated by state law.
The policy must provide coverage that is at least as broad as SFIP coverage, including when considering deductibles, exclusions, and conditions. ¹⁷⁹	The policy must either: <ul style="list-style-type: none"> • Define flood as in an SFIP, and contain coverage provisions as in an SFIP, including building coverage and personal property coverage if purchased; other coverages; and cover the increased cost of compliance; or • Provide coverage that is similar to SFIP coverage, including when considering deductibles, exclusions, and conditions. The lender or servicer would need to document a reasonable determination that the private policy provides “sufficient protection of the loan[.]”

The Agencies requested comment on (1) whether the phrase “sufficient protection of the loan” is adequately clear, (2) whether the proposed criteria for discretionary acceptance of private policies raise any safety and soundness risks for regulated lending institutions, and (3) whether the proposed criteria raise any consumer protection issues.

We believe the phrase “sufficient protection of the loan” is adequately clear for mortgage investors, lenders, and servicers, who have a strong interest in protecting their collateral. Discretionary acceptance necessarily means discretionary rejection, meaning that investors, lenders, and servicers are free to reject policies that provide insufficient

¹⁷⁶ 42 U.S.C. § 4012a(b)(7)(C)(iii).

¹⁷⁷ 42 U.S.C. § 4012a(b)(7)(D).

¹⁷⁸ 42 U.S.C. § 4012a(b)(7)(C)(i) and (ii).

¹⁷⁹ 42 U.S.C. § 4012a(b)(7)(B).

coverage for the loans. This ability to reject coverage that is insufficient is a safety and soundness protection. We do not believe the proposal raised any consumer protection issues because flood insurance that protects mortgaged property, for consumers whose homes are in SFHAs, is a consumer protection, and has been required for years.

However, the Agencies did not ask whether the proposal raised any broader flood policy concerns. We recommended that the Agencies address this possibility.

- It did not appear that the Agencies addressed the fact that if private insurance were widely available, communities would have less incentive to require and enforce floodplain management practices of the NFIP. If private insurance will reduce this incentive, an alternative incentive will be necessary.
- The Agencies' proposal would apparently permit meeting the Purchase Mandate through private policies that do not provide ICC coverage. This could mean that in the event of a flood, homeowners might not be able to restore their properties to meet the applicable standards.
- It does not appear that the Agencies weighed the fact that FEMA insurance fees support flood protections other than flood insurance, including mapping and floodplain management activities. These are critical to preventing flood damages. If private insurance would decrease FEMA's funding, Congress will need to provide alternate funding.

Congress requires the Agencies to consider flood policy concerns other than merely flood insurance. The FDPA requires that several agencies, including agencies that regulate financial institutions, "shall, in cooperation with the Administrator, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act."¹⁸⁰ That is, Congress directed the Agencies to consider all of their responsibilities under the FDPA.

In addition to their FDPA rulewriting responsibilities, the NFIRA authorized the Agencies to issue regulations to carry out the applicable provisions of, and amendments made by, the NFIRA.¹⁸¹ Some of those NFIRA amendments are to the NFIA, meaning the Agencies have responsibilities to carry out NFIA purposes as well as FDPA purposes. The NFIRA amendments to the NFIA included the creation of ICC coverage.¹⁸² We believe the Agencies should address ICC coverage beyond the context of flood insurance in isolation. The NFIRA amendments to the NFIA also include incentives, in the form of reduced flood insurance premiums, for communities to adopt and enforce measures that reduce the risk of flood and erosion damage, and in communities that have implemented

¹⁸⁰ FDPA § 205(b), 87 Stat. at 983, as amended, 42 U.S.C. § 4128(b).

¹⁸¹ NFIRA § 583, 108 Stat. at 2281, 43 U.S.C. § 4001 note.

¹⁸² *Id.* sec. 555(a)(2), 108 Stat. at 2274, adding NFIA § 1304(b), today at 42 U.S.C. § 4011(b).

measures that protect natural and beneficial floodplain functions.¹⁸³ These incentives are to promote measures that will reduce flood damages.

The CMC recommended that the federal financial regulators conduct a flood insurance rulemaking with thorough consideration of all NFIA, FDPA, NFIRA, and other flood policies, protections, and incentives. We urged the federal financial regulators to consider the effects of their rulemaking on all aspects of flood policies to help prevent unintended neighborhood blight.

IV. CONCLUSION

As Congress considers the reauthorization of the NFIP flood insurance this year, there is an opportunity for Congress to work with FEMA and the federal financial regulators to examine more broadly and improve upon our nation's flood policies.

Flood hazard mapping prevents development in areas that are only later discovered to be at risk of floods. Mapping can prevent floods from destroying buildings, and can prevent people from occupying flood-prone land. Prevention is certainly preferable to putting lives and property at risk. Unfortunately, the lack of mapping has been a chronic problem in flood policy in this country for the past century. We urge Congress to adopt measures that ensure adequate funding for mapping. In addition, we believe that the federal government should avail itself of the newer mapping technologies that are available and are being used in the private sector.

Reauthorization also provides an opportunity for the federal government to ensure that the incentives for NFIP participation remain, including its important floodplain management and mitigation practices. Sound flood practices are too critical to ignore.

We appreciate the opportunity to submit our remarks for the hearing record, and look forward to working with the Committee on these important issues as they are considered this year.

For further information, please contact:

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¹⁸³ *Id.* sec. 541(2), 108 Stat. at 2268 –69, adding NFIA § 1315(b), today at 42 U.S.C. § 4022(b).



March 9, 2017

The Honorable Sean Duffy
Chairman
Subcommittee on Housing and Insurance
House Financial Services Committee
2330 Rayburn House Office Building
Washington, DC 20515

The Honorable Emanuel Cleaver II
Ranking Member
Subcommittee on Housing and Insurance
House Financial Services Committee
2335 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Duffy and Ranking Member Cleaver:

The National Multifamily Housing Council (NMHC) and National Apartment Association (NAA) applaud the Subcommittee for calling a hearing entitled "Flood Insurance Reform: FEMA's Perspective." We appreciate the Subcommittee exploring the issues facing the NFIP early this year in advance of the program's needed reauthorization before September 30, 2017. We strongly support the efforts of Congress to ensure the NFIP is functioning properly and continuing to reduce taxpayer funded disaster assistance for flooding.

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 72,000 members representing more than 8.8 million apartment homes throughout the United States and Canada.

Like the broader real estate community NMHC/NAA understand that the future stability of the property insurance market and its ability to withstand the continued occurrence of catastrophic events must remain a top concern of our sector. With floods being the most common natural disaster in the United States, the NFIP ensures that affordable flood insurance is available at all times, in all market conditions for every at-risk rental property. These include more than just high-rise multifamily properties in urban centers and extend across every state to include rental homes of all sizes and types. Ensuring that all rental properties continue to have access to affordable, quality flood insurance through the NFIP is a top priority for our membership to not only protect their property investment but to help manage the increasing costs of providing housing that is affordable.

We acknowledge that the NFIP comes with its challenges and agree that further reforms are necessary to protect the long-term financial viability of the program. It took several catastrophic weather events to force the NFIP into negative fiscal standing and returning it to solid footing cannot happen overnight. We believe that many of the reforms included in both the Biggert-Waters Flood Insurance Reform Act and the Homeowner Flood Insurance Affordability Act of 2014 will help slowly return the program to solvency. To that end, outlined below are the multifamily industry's priorities as we move towards reform and reauthorization of the NFIP this year. We believe these proposals could offer significant improvements to the efficiency, affordability, and long-term health of the NFIP.

- **Long-Term Authorization** – Prior to the enactment of Biggert-Waters in 2012, the NFIP had been operating on a series of short-term extensions that began in 2008. The stop-gap measures continually created an environment of uncertainty

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for multifamily property owners and managers who rely on this program for coverage in the absence of a high level of private sector participation. More broadly, during a time of economic recovery, real estate transactions across both the residential and commercial sectors could not legally be secured without this critical protection in place. NMHC/NAA strongly urge Congress to prevent disruption in the marketplace and pass a long-term reauthorization of the NFIP that maintains the government's backstop before it is set to expire on September 30, 2017. We also urge Congress to protect the ability of all property owners to enter the NFIP market should they so choose or should there be no private market readily available for sufficient, affordable coverage.

- **Mapping** - It is common for apartment owners to have their properties misclassified as being in high-risk flood zones, or Special Flood Hazard Areas (SFHA). Yet, the process for property owners to challenge those designations and the maps on which they are based is overly complex and financially burdensome. The onus is wrongly placed on the property owner to prove the maps inaccurate, incur engineering and surveying expenses and vast amounts of time to appeal under the current system. Inaccurate maps not only have financial repercussions for existing property owners but also have a chilling effect on development in inaccurately zoned areas, which is problematic in a time of a rental housing shortage. NMHC/NAA encourage Congress to provide sufficient resources to coordinate and build upon efforts such as the U.S. Geological Service's 3D Elevation Program (3DEP) that could provide increased accuracy to existing tools currently used to determine risk and premium levels under the NFIP. Additionally, we recommend Congress require FEMA improve the efficiency of the overall mapping process to reduce cycle time and costs and improve the mapping appeals process to make it more affordable, transparent, and less time-consuming for both communities and property owners.
- **Flood Risk Mitigation** –FEMA currently administers several mitigation grant programs in an effort to reduce damage, claims, and overall risk in the event of a natural disaster such as flooding. NMHC/NAA strongly support pre-disaster mitigation programs to lessen fiscal pressure upon the NFIP and taxpayers more broadly. That said, while apartment communities are not explicitly excluded from eligibility for existing FEMA funds, the grant programs are overwhelmingly focused on primary, single-family homes. Even further, FEMA has only recently focused attention on the importance of mitigation efforts for properties that cannot benefit from traditional mitigation techniques like building elevation. Consistent with the requirements under the Homeowner Flood Insurance Affordability Act of 2014, FEMA issued advisory guidelines to property owners on alternative methods of mitigation. Unfortunately, many of the recommendations made are impractical for apartment communities and the majority would not afford any flood insurance premium reduction despite the large cost of implementation. NMHC/NAA urge Congress to require FEMA to undertake further actuarial work and issue alternative guidance specific to multifamily property owners that is both realistic, cost effective and would result in premium reductions under the NFIP. Additionally, NMHC/NAA would ask that Congress direct FEMA to expand the focus of existing mitigation programs to better include multifamily properties or

consider establishing a multifamily specific mitigation grant program to address the unique challenges faced by our property owners.

- **Business Interruption Coverage** –Property owners fortunate enough to be able to purchase flood insurance through the private sector also frequently purchase Business Interruption coverage to help restart operations and defray the financial impacts surrounding the relocation of business services, resident relocations, and other expenses. For those property owners who are unable to secure adequate or affordable private sector coverage, NMHC/NAA urge Congress to support the creation of Business Interruption Coverage as an additional policy option under the NFIP for multifamily and commercial policies. This coverage would allow property owners to resume normal operations more quickly and get residents back into their homes after a disaster in a timelier manner.
- **Streamline and Enhance the Efficiency of NFIP Policies**— Current mandatory purchase requirements require multifamily property owners secure coverage for each structure on their properties that lie in an at-risk flood zone. Often, this means that multifamily owners must secure a separate NFIP policy for multiple buildings throughout the same apartment community, all of which require separate deductibles and policy renewals. NMHC/NAA urge Congress to provide a property owner the option to secure just one “umbrella” NFIP policy with combined coverage for each of their at-risk structures on a given property or throughout their portfolio. This change would greatly streamline and enhance the business efficiency of using the NFIP.
- **Align NFIP Single Family & Multifamily Claim Reimbursement**— Currently commercial and multifamily property owners receive Actual Cost Value (ACV) for claim payments from FEMA while single-family homeowners receive Replacement Cost Value (RCV) for their losses. The discrepancy places commercial and multifamily property owners at a disadvantage because they often suffer the same, if not more, flood damage. NMHC/NAA encourage Congress to direct FEMA to move NFIP multifamily and commercial coverage from ACV to RCV claim reimbursement.
- **Foster a More Viable Private Flood Market**—NMHC/NAA believe that a more viable private flood insurance market would serve a benefit to both property owners through increased competition and enhanced market efficiencies while reducing financial demands on taxpayers. NMHC/NAA support passage of the Flood Insurance Market Parity and Modernization Act to bolster the private flood market. The bill would expand coverage options for at-risk property owners by clarifying that flood insurance offered by private carriers outside of the NFIP meets the mandatory purchase requirements in place today. Of particular note is the bill’s language that ensures both private and NFIP coverage satisfies the federal government’s requirement of “continuous coverage” and protects policyholders from seeing rate hikes should they wish to return to the NFIP coverage at a later date. NMHC/NAA encourage Congress to consider including the Flood Insurance Market Parity and Modernization Act in the overall flood insurance reauthorization package.

cc: Members of the House Financial Services Committee

- **Outline Multifamily & Commercial Specific Requirements**—The needs of multifamily and commercial property owners are substantially different than homeowners and condominium associations. Federal regulators should afford greater flexibility so that private flood policies can be tailored to the unique needs of each insured and allow for one policy for multiple properties and buildings, RCV claim coverage, Business Interruption coverage, and coverage for property outside of the building such as security fences, parking lots, and equipment. Until such time of enactment of the Flood Insurance Market Parity and Modernization Act, NMHC/NAA urge Congress to require Federal banking regulators to issue guidance to lenders that addresses the acceptability of private flood insurance coverage specific to multifamily and commercial properties and existing federal coverage requirements.

We thank you for the opportunity to present the views of the multifamily industry as you begin deliberations to reauthorize and reform the NFIP. The NFIP serves an important purpose and is a valued and necessary risk management tool for apartment owners and managers. We stand ready to support the efforts of Congress to make the necessary improvements to the program to ensure its long-term success.

Sincerely,



Douglas M. Bibby
President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association

cc: Members of the House Financial Services Committee



Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

**STATEMENT FOR THE RECORD
ON BEHALF OF THE
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA**

“FLOOD INSURANCE REFORM: FEMA’S PERSPECTIVE”

**THE HOUSE FINANCIAL SERVICES HOUSING AND INSURANCE SUBCOMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 9, 2017

Thank you, Mr. Chairman, Ranking Member and Members of the Subcommittee for the opportunity to provide a statement on “Flood Insurance Reform: FEMA’s Perspective”. The Property Casualty Insurers Association of America (PCI) is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any national trade association. Our members write more than \$202 billion in annual premium and 35 percent of the nation’s home, auto and business insurance, reflecting the diversity and strength of the U.S. and global insurance markets. PCI members include two-thirds of the “Write-Your-Own” (WYO) insurers that partner with the Federal Emergency Management Agency (FEMA) to administer the National Flood Insurance Program (NFIP).

PCI appreciates the subcommittee’s continued interest in the NFIP, and we are pleased that you are holding this hearing. While the program has undergone numerous changes over the past several years, PCI and our members stand ready to work with Congress on additional improvements to the program while providing new opportunities for the private sector to better serve consumers. This statement provides a broad overview of the evolution of the program, private sector involvement in providing flood insurance coverage and some views on flood insurance reform ahead of the program’s September 30, 2017.

PCI strongly supports reauthorization of the NFIP, and we adopted a number of important flood insurance reform principles that our Board and our members believe will improve the program, provide more choices for consumers and increase opportunities for private insurer involvement. Reauthorization and reforms to the program should include:

- A long enough extension to provide stability in the marketplace for both consumers and the companies entering, servicing, or competing with the program;
- Increased lender acceptance of private flood policies similar to bi-partisan, bi-cameral legislation that unanimously passed the House last year;
- Elimination of the WYO non-compete clause;
- Insurer access to NFIP underwriting data and publication of updated NFIP rate reviews;
- Language to encourage further reinsurance purchases; and
- Public service education on the necessity and benefits of flood insurance.

Evolution of Flood Insurance and the Private and Public Sector Roles

Flood insurance was provided in the United States by the private sector in the late 1800’s and early 1900’s. After catastrophic floods in 1927 and 1928, private flood insurance became less available. Flood losses were borne primarily by consumers and, over time, increasingly by the federal government in the form of disaster relief. President Truman in the 1950’s proposed a flood program based on private insurance with federal reinsurance, with mandatory purchasing required for homeowners with federally insured mortgages. The program was enacted but never funded or implemented. Critics at the time were concerned about adverse selection with most homeowners unwilling to voluntarily pay risk-based rates, a high concentration of risks, and inadequate land-use planning and mitigation efforts. In 1966, President Johnson raised with Congress four possibilities for providing flood insurance – purely private sector underwriting, private underwriting with government backing, a purely government program, or a government program run with private

assistance. The Administration ultimately recommended a public-private partnership for offering flood insurance, although requiring homeowners to bear their full risk costs.

In 1968, Congress created the NFIP that provided for a public-private partnership with communities agreeing to land-use restrictions in order to be eligible to purchase flood insurance from a risk pool (the National Flood Insurers Association) run by the private sector with oversight by the Federal Insurance Administration (FIA), then part of the Department of Housing and Urban Development (HUD). The federal government made loans to the private pool to pay claims, repaid with premiums over time, as well as providing reinsurance for catastrophic flood losses (lowering the premiums by eliminating the catastrophic risk costs). An explicit subsidy was provided for existing structures determined to be in a special flood hazard area with the expectation that those structures would disappear over time after severe weather events.

In 1977, disagreements between the private sector and the government over the authority and the financial control of the program led to the FIA exercising its authority under an existing section (Part B) of the 1968 legislation that allowed for an all-federal program in which the federal government bears all of the risk while making use of insurance industry resources. This also led to a period of tension between the industry and NFIP. In 1979, President Carter created the Federal Emergency Management Agency (FEMA) and the NFIP, along with several other disaster-related agencies were brought into that Agency.

From 1977 through 1983, property owners purchased flood insurance through an agent that in turn dealt directly with the federal government. However, during these early years, there was extremely limited participation in the NFIP, despite a congressionally imposed requirement in 1973 that all properties in a flood zone with federally backed or regulated mortgages purchase flood insurance. On its own, the federal government lacked adequate marketing and distribution channels as well as sufficient claims handling and payment capacity.

In 1983, the government turned again to the private sector to help market, service and settle claims for the program. The “Write-Your-Own” (WYO) program was created to use the existing private insurance infrastructure of insurance agents, companies and claims adjusters to help increase market participation and settle claims, while the risk of flood loss was retained by the government to keep premiums low. Participation in the flood program ultimately soared, climaxing at a post-Katrina high of 5.7 million NFIP policyholders.

How the NFIP and Write Your Own (WYO) Claims Process Works

There are now just 70 companies, of the more than 1300 active home, auto and business insurers in the U.S. that have partnered with the federal government to help administer the NFIP program as Write Your Own (WYO) insurers. WYO’s act as a fiduciary for the federal government and taxpayers to market flood insurance and settle NFIP claims. In return for their marketing, claims adjustment, legal fees and other administrative costs, NFIP pays WYO’s a servicing fee as well as additional fees based on the amounts and volume of settled claims. Also, FEMA writes approximately 12-14 percent of flood insurance policies through its Direct Program, although even

the direct program relies largely on outsourced claims adjusting and processing resources as well as private sector agents.

Decisions on federal flood insurance claims payments are made by claims adjusters. When policyholders experience a flood loss, they contact their insurance agent or WYO insurer. The insurer then assigns a flood claims adjuster, who may be an employee of the WYO, a contractor with a third-party vendor or an independent contractor. The flood claims adjuster determines the amount payable on a claim based on very specific guidelines and rules established by the NFIP. Flood claims adjusters and the independent contracting firms they represent are generally compensated in proportion to the amount of the loss paid. The compensation formulas are set by the NFIP and periodically updated.

WYO insurers can be penalized for either underpayments or overpayments, and WYOs are audited regularly by the federal government under the Improper Payments Elimination and Recovery Act (IPERA) to ensure that they follow federal requirements.

Federal compensation and settlement guidelines are periodically adjusted by Congress and the NFIP. For example, following Hurricane Katrina, the Government Accountability Office (GAO) raised concerns that the existing compensation structure could result in WYOs being overcompensated for claims settlement, particularly following a catastrophic event. As a result, the claims compensation formula was refined in 2009 by reducing the portion tied to the claim value and basing a portion of the payment on the WYO insurer's NFIP premium volume. There also are specific processes in place for dissatisfied policyholders to appeal claims decisions to the NFIP. The existing FEMA appeals process was put in place as a result of the enactment of the Flood Insurance Reform Act of 2004.

Recent Challenges in the WYO Program

Administering and marketing the NFIP is very complex and expensive, particularly with numerous recent statutory changes to the program (many retroactive). The number of private insurers participating in the WYO program has declined significantly in recent years, with several major insurers exiting the program. Most WYOs sell and administer a small number of NFIP policies, largely as an extra service to their policyholders. The last decade of turmoil in the program has further increased costs and reputational concerns, weighing heavily on insurers' ability to continue offering access to the NFIP as a service for their policyholders.

Unfortunately, as WYO private participation in the program has declined and many of the recent legislative changes have been implemented, the number of households and businesses in the program has also dropped significantly. After nine years (2006-2013) of having about 5.6 million policies in force, the NFIP's number of policies in force is now just over 5 million. It is more important than ever to educate consumers about the importance of having adequate flood insurance coverage to protect their property.

Needed NFIP Reforms

Program Stability

The last time a long-term NFIP reauthorization was set to expire was September 30, 2008. Subsequent to that, there were at least 17 short-term extensions and four lapses that created turmoil not just in the program, but with the housing market. A property in a flood-zone, with a federally-backed mortgage requiring the purchase of flood insurance, could not go to closing during a lapse. Due to the mounting debt owed to taxpayers, issues related to Hurricane Katrina and a desire to put the program on a more sound fiscal footing, the reauthorization process was not completed until July 6, 2012, when the President signed the Biggert-Waters Flood Insurance Reform Act.

Following the passage of Biggert-Waters, Congress passed the Homeowners Flood Insurance Affordability Act (HFIAA) in 2014, which scaled back some of the rate increases for certain previously subsidized properties.

Private insurers interested in writing flood insurance risk need to develop rates, obtain state approval of those rates, set up administrative systems, purchase reinsurance, train agents and educate consumers about the options to purchase flood insurance. Those are substantial investments of capital and resources. For the private sector to more actively apply capital to this risk on behalf of consumers, assurances are needed that the current federal program will continue to exist, and continue to move toward risk-based rates.

Accordingly, the insurance industry seeks a long enough extension to provide stability in the marketplace for both consumers and the companies entering, servicing, or competing with the program.

Lender Acceptance

Both recent flood reform bills, Biggert-Waters and HFIAA, included language designed to increase lender acceptance of private flood insurance. Federal lender-regulating entities have struggled to implement the provisions of these requirements. Federal regulators issued draft rules in 2013 and then again in 2016. The impact of these actions have not resulted in the intended effect, which was to increase private insurer risk-bearing and shift some of the potential losses from the NFIP and taxpayers to the private marketplace.

The Flood Insurance Market Parity and Modernization Act (H.R. 2901) was introduced and passed the House unanimously last year. That bill, recently reintroduced in this Congress (H.R. 1422), clarifies the roles of the various entities involved: the Federal lending regulators; state insurance regulators; insurers and consumers to accomplish the original goal of the provision in Biggert-Waters. We strongly support passage of this important legislation that will further encourage private insurers to enter the marketplace.

Elimination of the WYO Non-Compete Clause

Insurers that partner with the Federal government to sell NFIP flood insurance policies and help administer the program, sign an agreement called “the arrangement” annually that prohibits them from selling a product or products that compete directly with those offered through the NFIP.

Congress is interested in the private sector taking on more flood risk, the industry is interested in writing more flood risk, and consumers are interested in having more choices. The antiquated “non-competes” clause prevents many of the companies with the most experience with flood risk from writing it privately, unless they no longer participate in the WYO program. This either/or choice means that it will take significantly longer for a robust private marketplace to develop. Therefore, this provision should be eliminated immediately as part of any enacted legislation.

Data and Rate Reviews

One of the key components needed to develop and assure a stable and competitive public or private marketplace for insurance products is the availability of reliable data. Since the NFIP has been the risk-bearing insurer for almost 50 years, they have a significant amount of data that would be critical to developing reasonable and accurate rates for consumers for flood insurance.

PCI supports the NFIP sharing that data with insurers willing to underwrite flood risk. Insurers do not need any “personally identifiable information” with regard to the data, just the data on the properties in the program. This includes loss history, past premiums and elevation information.

The private sector rate development process is somewhat different than what is used by the NFIP. Nevertheless, insurers would like to have the last several years of rate reviews done by the NFIP’s actuaries. This information has not been made public for the past several years and would be instructive to insurers, just as such information is filed in many states by private insurers, in developing and charging consumers an appropriate, risk-based premium for flood insurance. Data also means that the market would more accurately price the product, leading to more stability in the marketplace for consumers.

Reinsurance

Language to encourage the purchase of reinsurance by the NFIP was included in both Biggert-Waters and HFIAA. FEMA made an initial small purchase in 2016 and has made a much larger purchase for 2017. Private market reinsurance is helpful in reducing the potential exposure to losses from the program and further protects taxpayers. PCI strongly supports a continued and expanded role with regard to purchasing private market reinsurance as it spreads the risk worldwide, provides valuable pricing standards regarding the risk and required FEMA to provide those reinsurers participating in the NFIP reinsurance placement with the key data mentioned earlier in this testimony.

Public Education

Since the last NFIP reauthorization, in July 2012, a number of significant flooding events have caused tragic human and physical losses, including Superstorm Sandy and the Louisiana floods last year. Unfortunately, many of those victims had not purchased flood insurance or their federal policies

did not provide the full types and amounts of coverage typically provided in the private insurance marketplace. Consumers need to understand their flood risk. PCI is advocating for a government-led education program to help educate consumers on their flood risk and the need for flood insurance. Additionally, Congress needs to enact flood insurance reform that includes a private insurance market so that consumers have more options and can find better protection for their property and financial security going forward.

Governmental Coordination

In the immediate aftermath of a natural catastrophe it is critical for local, state, and federal officials to coordinate their efforts to get basic services up and running as quickly as possible, to get people back in their homes, and to get businesses to begin remediation and rebuilding. Insurers need to be at the table during pre- and post-disaster emergency planning and coordination to ensure that smooth claims adjustment can be a part of the catastrophe response planning. It also is essential to the rebuilding process that local law enforcement and government officials allow insurers and insurance claims adjusters into damaged areas as soon it is safe – at least as soon as property owners are provided access.

Available Claims Adjusters

A problem following any major catastrophe when thousands of properties are damaged is the lack of locally licensed flood insurance adjusters. This delays the claims settlement and the rebuilding process. Most flood insurance adjusters are located in areas that frequently flood. Many states implement reciprocal recognition of claims adjusters from other states to help, and the state insurance department grants out-of-state adjusters access if the proper credentials are provided. However, it can often be difficult in the middle of a catastrophic event with an unusual number of claims to process the necessary paperwork in a timely manner. PCI supports federal legislation to require more reciprocal claims adjuster recognition.

Mitigation and Flood Maps

Preparation is a key factor in minimizing financial loss after a natural catastrophe. Strong, uniform statewide building codes that are regularly updated play a significant role in reducing the risk of injury or death to homeowners during a natural catastrophe. Structures built or retrofitted to comply with the most recent edition of the *International Building Code*, and other recognized building standards, incur less property damage during a significant weather event. Less property damage following an event reduces the need for federal disaster aid and can help expedite a community's recovery after a natural catastrophe. PCI promotes strong building codes and responsible land use policies, which are crucial for all stakeholders, to promote public safety and to be as prepared as possible for the next hurricane, tornado, or flood disaster. Updating flood maps immediately following such an event is critical to ensuring that homes and businesses being rebuilt meet the appropriate flood elevation criteria.

Ongoing Discussions of NFIP Reforms

PCI hosted the National Flood Insurance Conference in 2015, 2016 and will co-host it in 2017. The 2016 program, with over 800 attendees included all the stakeholders in this program. The 2017 conference agenda includes potential program improvements, other approaches to address the risk, technical issues and challenges to private sector participation and risk bearing. PCI will continue these discussions with stakeholders and would welcome further conversations on potential improvements to the NFIP with the subcommittee.

Conclusion

The flood insurance program protects millions of American businesses and families from catastrophic flood risk. PCI members and our WYO companies appreciate the opportunity to service the federal government and consumers. We are encouraged to see the subcommittee taking up this issue early in the year. First and foremost, it is important to secure a long-term reauthorization of the program, without any lapses. PCI members and our WYO companies welcome a discussion with the Subcommittee about how to improve the program, encourage private sector alternatives and shape the program for the future.



Resolution

WHEREAS, Harris County has been a participating community in the National Flood Insurance Program (NFIP) since 1973 and believes the program tenants of providing affordable flood insurance, flood plain management, and risk mapping are benefits to our community; and

WHEREAS, the reauthorization of the program is up for consideration in 2017, however the program is crippled with over twenty billion dollars of debt and may be subject to discontinuation; and

WHEREAS, this debt is a symptom of disincentivizing good and preferred risk from purchasing policies, and similarly not incentivizing bad risk out of the program; and

WHEREAS, preferred risk is burdened with surcharges, uncertainty, and high overhead costs that have shown to repel a large number of good risk customers from purchasing policies; and

WHEREAS, most homeowners that are legally required to maintain flood insurance due to receiving a Federally backed mortgage are also dropping their policies with no penalties for doing so; and

WHEREAS, NFIP policies do not cover the full cost of compliance and elevation after a structure is repetitively damaged due to flooding; and

WHEREAS, federally backed mortgages continue to be offered for repetitive loss structures and to structures that are multiple feet below the Base Flood Elevation; and

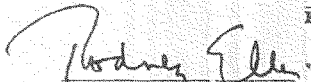
WHEREAS, these highly subsidized bad risk structures remain in the insurance pool and are asymmetrically burdening the entire program yet could be removed if the program assisted with bringing a structure into compliance; and

WHEREAS, Harris County is burdened with the aftermath of property acquisition and the development gaps for taxes, service, and maintenance it creates when the property could be utilized for redevelopment of a code compliant structure; and

NOW THEREFORE BE IT RESOLVED, that Harris County supports the reauthorization of the National Flood Insurance Program, and support reforms to the program that better balances the risk pool with preferred risk by creating a more affordable structure specific product, covers the full cost of compliance for repetitive and severe repetitive loss structures, and allows communities to redevelop with code compliant structures on properties purchased through the Property Acquisition Program.


It is hereby **ORDERED** that this Resolution be spread upon the minutes of Commissioners Court this 31st day of January, 2017.


ED EMMETT, County Judge


RODNEY ELLIS, Commissioner
Precinct One

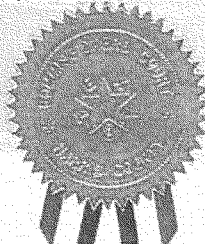

STEVE RADACK, Commissioner
Precinct Three


JACK MORMAN, Commissioner
Precinct Two


B. JACK CAGLE, Commissioner
Precinct Four

ATTEST

Stan Starnat, County Clerk
Harris County, TEXAS



Question#:	1
Topic:	NFIP Rating Modernization
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Randy Hultgren
Committee:	FINANCIAL SERVICES (HOUSE)

Question: It's been brought to the attention of my office that FEMA is taking steps to modernize the NFIP rating plan to bring it up to current industry standards.

What is your long term objective?

When will new rates be in place?

How will you factor in affordability and subsidies in the new rate plan?

Will you consult with the Write Your Own companies to ensure a smooth implementation?

Response: As you mentioned, the Federal Insurance and Mitigation Administration (FIMA) is beginning to update the National Flood Insurance Program's (NFIP) risk rating model. The NFIP's current approach to risk rating was modeled on insurance industry practices at the time the NFIP was established. Since that time, the insurance industry has developed more efficient and accurate approaches to risk rating. FIMA has an opportunity to modernize its risk rating approach to deliver accurate, cost-effective ratings of flood risk to property owners. While this transformation may take up to five years to design and fully implement, it will have lasting impacts across FIMA operations and result in long-term program stability, increased simplicity and ease of use of NFIP products and services, and an improved value proposition for customers. A new risk rating approach could influence not only the rating of insurance, but also flood hazard mapping and the implementation of floodplain management requirements.

FEMA is redesigning its approach to risk rating as one part of an overarching effort to improve the delivery of the NFIP. This effort will:

- a. Improve accuracy of the NFIP's risk classification system and Risk Rating model to inform policy, pricing decisions, and cost.
- b. Increase agility by adapting to new methods and data that are current with industry standards;
- c. Increase cost-effectiveness by using a purposeful, value-driven approach to collecting, analyzing, and communicating flood risk.
- d. Improve customer experience by improving policyholder understanding of their risk and the delivery of the pricing to the policyholders.
- e. Continue to support of sound floodplain management by more clearly communicating risk at both the community and individual level.

Question#:	1
Topic:	NFIP Rating Modernization
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Randy Hultgren
Committee:	FINANCIAL SERVICES (HOUSE)

To ensure FEMA follows industry best practices for rating natural catastrophe risk, we are conducting market research through a Request For Information (RFI) issued on January 24, 2017. The RFI can be found here: https://www.fbo.gov/index?s=opportunity&mode=form&id=557d24817170f7475b0f445f44f9c73d&tab=core&_cview=1

In addition to the RFI, FEMA conducted market research to determine the data tools and models that should be used for risk rating, including tools to determine replacement cost values. FEMA conducted market research focused on industry capabilities in the following areas:

- a. Assessment of the current state of catastrophic risk rating and classification programs;
- b. Design of alternate risk rating models;
- c. Testing of the alternate risk rating models; and
- d. Implementation of alternate models.

The new rating plan is intended to better align the flood risk of a property with the rate, including reflecting the replacement value of the home in the rate, so that low valued homes' rates reflect lower replacement costs. Statutory limits on rate increases will continue to ensure that policyholders can plan for rate increases.

Once developed, FEMA will begin a multi-year implementation of the new rating methodology, which will be carried out in tandem with a redesign of our IT systems and will be aligned with improvements to our insurance product.

With respect to factoring in affordability and subsidies in the new rate plan, FEMA sets its rates based on consideration of the risk involved, accepted actuarial principals, and the administrative expenses of the NFIP, unless the property falls within a limited exception authorizing FEMA to offer a less than full risk rate. 42 U.S.C. §§ 4014(a)(1) and (a)(2); 4015(a), (b). Moreover, even for those properties that may qualify for a less than full risk rate, FEMA is required by law to increase certain premiums, depending on the property use, between 5 to 25 percent a year until the rate reaches its full risk rate. 42 U.S.C. § 4015(e). The new rate plan will continue to provide subsidies where and to the extent required by law. FEMA has no plans to factor in subsidies beyond what is statutorily mandated.

Question#:	1
Topic:	NFIP Rating Modernization
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Randy Hultgren
Committee:	FINANCIAL SERVICES (HOUSE)

FEMA is engaging the Write Your Own companies (WYO companies) early in the process, prior to an implementation that could be several years away. WYOs will inform the initial thinking for risk rating redesign. FEMA will ensure WYOs help shape what the product will look like in the future.

Question#:	2
Topic:	Coverage Disputes
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Randy Hultgren
Committee:	FINANCIAL SERVICES (HOUSE)

Question: Many complaints about flood insurance arise from coverage disputes and the fact that the NFIP policy's coverage is not as robust as consumers expect. What steps are you taking to minimize coverage disputes and improve customer satisfaction?

Response: FEMA is committed to making our products and procedures easier-to-understand for the policyholder. Under the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (FIRA), Public Law 108-264, 118 Stat. 725, 42 U.S.C. 4001, Congress requires the NFIP to ensure that policyholders receive important information about their flood insurance coverage. In October 2005, in an attempt to help policyholders understand their coverage prior to a flood, FEMA began providing policyholders with: (a) the property's flood loss history information, as required by FIRA, Section 202 (a)(4); (b) the claims handbook, as required by FIRA, Section 204; (c) the acknowledgement, as required by FIRA Section 203; (d) a summary of coverage; (e) a copy of the flood insurance policy; and (f) a cover letter referencing these enclosures.

FEMA is also currently rewriting the NFIP Claims and Underwriting Manuals in plain language to provide consistent guidance for adjusters and insurance examiners as they interact with NFIP policyholders. Additionally during recent flooding events, FEMA prepared and distributed an "NFIP Claims Process Fact Sheet" that guides policyholders through the claims process and clearly explains the steps to take if they do not agree with the adjuster's estimate.

FEMA also improved our appeals process to better serve our customers – providing greater transparency, access, and accountability. FEMA has dedicated insurance examiners specializing in appeals. FEMA tracks each step of the appeals process to increase accountability, assure quality, and make the process more timely and efficient.

During the appeal review, FEMA ensures the adjuster and Write Your Own (WYO) company or NFIP Direct Servicing Agent applied FEMA's rules correctly. FEMA begins with the materials submitted by the customer, either by mail or using a new e-mail option (FEMA-NFIP-Appeals@fema.dhs.gov), in support of the appeal. FEMA identifies the information needed to resolve the appeal at the outset, and works with the WYO companies to ensure that information is received as quickly as possible. FEMA encourages carriers to resolve issues in favor of policyholders based on FEMA's input whenever possible. Regardless of whether FEMA upholds or overturns the original denial, FEMA explains every detail of the decision to the policyholder in writing at the

Question#:	2
Topic:	Coverage Disputes
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Randy Hultgren
Committee:	FINANCIAL SERVICES (HOUSE)

completion of the review. The decision sets forth the key facts, the relevant rules, and how those rules apply to the situation presented on appeal.

Question#:	3
Topic:	Draft Affordability Framework
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Dennis Ross
Committee:	FINANCIAL SERVICES (HOUSE)

Question: As a Floridian, I am committed to ensuring homeowners in my state have access to affordable flood insurance policies. Under the Homeowner Flood Insurance Affordability Act of 2014, Congress required FEMA to develop a Draft Affordability Framework "that proposes to address, via programmatic and regulatory changes, the issues of affordability of flood insurance sold under the National Flood Insurance Program, including issues identified in the affordability study..." When will FEMA complete this study?

Response: The Affordability Framework is due to Congress in September 2017. FEMA is working diligently to meet the deadline.

Question#:	4
Topic:	Premium Rate Increases
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Dennis Ross
Committee:	FINANCIAL SERVICES (HOUSE)

Question: Additionally, the Homeowner Flood Insurance Affordability Act of 2014 requires gradual rate increases to properties now receiving artificially low (or subsidized) rates instead of immediate increases to full-risk rates required in certain cases under BW-12. FEMA is required to increase premiums for most subsidized properties by no less than 5 percent annually until the class premium reaches its full-risk rate. With limited exceptions flood insurance premiums cannot increase more than 18 percent annually. What percentage do you anticipate premium rates increasing for these subsidized properties by over the coming years and what considerations will be taken into account to reach this decision?

Response: Under the current statute, certain pre-FIRM subsidized policies-including those for non-primary homes, Severe Repetitive Loss properties, businesses, and substantially damaged structures-are required by statute to increase 25% annually until they reach full actuarial rates (42 USC 4015 (e)(4));(42 USC 4014(a)(2)(A)-(E). All other pre-FIRM subsidized policyholders must increase at least 5% but no more than 15% as a class and 18% per policy (42 USC 4015 (e)(1) through (3)). The increase for any given year is a balance of many factors, primarily a balance between affordability to the property owner and program solvency of the insurance fund. Premium increases at the higher end of the range would tend to increase the overall amounts collected from policyholders, unless the increases induce policyholders to drop their coverage. Premium increases at the lower end of the range will barely exceed inflation, and could take years, even decades, to reach full risk for some, but will retain more policyholders. Each year, the Federal Insurance and Mitigation Administration sets the increase factor for the following year's rate changes. This year, FEMA increased premiums for pre-FIRM primary single family residences at the lower end of allowable range with average increases of 5.5 percent, beginning on April 1, 2017. On October 1, 2017, we will announce rate increases that will become effective on April 1, 2018.

Question#:	5
Topic:	Communicating Risk Determinations
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Joyce Beatty
Committee:	FINANCIAL SERVICES (HOUSE)

Question: Consumer education and financial literacy is an area of great interest to me and an issue I would like see elevated during this flood insurance reauthorization debate. Under Section 28 of the Homeowner Flood Insurance Affordability Act of 2014, FEMA is required to clearly communicate full flood risk determinations to individual property owners. Mr. Wright briefly described efforts FEMA has taken to fulfill this mandate through rulemaking during his testimony before the Committee.

Please elaborate on how FEMA has complied with this mandate and what exactly is disclosed to homeowners?

How does FEMA believe this information could be helpful to homeowners?

Response: Section 28 of HFIAA (42 U.S.C 4015(l)) requires FEMA to reevaluate and then clearly communicate flood risk to every one of its policyholders. This communication is especially important to the approximately 20 percent of policyholders that receive subsidized premium rates, since those policyholders may benefit from knowing that, in general, their exposure to flood risk is higher than their NFIP premiums indicate. HFIAA requires the agency to phase out such subsidies with 5 percent to 25 percent average annual premium increases until policyholders pay a premium based on their true flood risk. While most other policyholders receive premium rates that reflect their true risk of flood, they too will benefit from the improved explanation that we are providing of their flood risk and policy options. FEMA sent the first clear communication letters in January 2017 and will continue to send these letters each year at the time of policy's renewal. These letters are tailored to address each individual's specific situation, based on their policy and flood zone.

The letters encourage policyholders to learn more about their individual risk by obtaining an Elevation Certificate (EC) from a surveyor or engineer. An EC explains a building's specific features and provides information needed to determine the building's true risk of flood damage. Since subsidized rates are gradually increasing, there will be a point at which the next increase would produce a higher premium than the full-risk rates. The EC will allow FEMA to determine when that point is reached and thus ensure that the policyholder will not pay more than the actuarial rate.

FEMA also published a webpage to further explain information found in the letters: www.fema.gov/cost-of-flood. The page includes a more detailed explanation of each letter, as well as graphs that depict when having an elevation certificate could be financially beneficial to policyholders.

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Although HFIAA mandated this campaign, FEMA sees this effort as a broader opportunity to reform the way it communicates risk in order to be as transparent and straight-forward as possible. FEMA designed the letters and webpage to work together to explain the various scenarios of risk in plain, easy-to-read language. The letters make it more easy for policyholders to understand flood risk, how FEMA rates their policies, and to make good decisions about if or when they are going to get an elevation certificate. Our goal is to empower policyholders to understand their options so they make the best choices to protect their property and their financial security.

Question#:	6
Topic:	Additional Information for Homeowners
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Joyce Beatty
Committee:	FINANCIAL SERVICES (HOUSE)

Question: What additional information does FEMA believe would be helpful for homeowners to know about their property's flood history? For instance, how can a homeowner learn about the claims history of their property or a prospective property?

Response: FEMA believes it is important for owners and prospective owners to understand their flood risk to make informed decisions. A homeowner can learn about their specific flood claims history by asking FEMA. FEMA is not permitted to disclose address-specific claims history to prospective property buyers, but can share aggregated data (for example, data sets that aggregate policy or claims data at a zip code level). FEMA is exploring ways to responsibly release data, which includes currently available public data (<https://www.fema.gov/policy-claim-statistics-flood-insurance>) and the publication of the reinsurance information earlier this year.

State and local governments may also have property-specific flood damage information that they share with homeowners and prospective homebuyers. However, actual availability can vary widely from community to community.

States are primarily responsible for overseeing real estate transactions, including mandating certain disclosures at the time of sale. Though some states may require disclosure of flood claims history, FEMA is not aware of broad efforts to communicate prior flood losses to prospective homebuyers.

Question#:	7
Topic:	Federal Policy Fee
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Joyce Beatty
Committee:	FINANCIAL SERVICES (HOUSE)

Question: Under the National Flood Insurance Program (NFIP), policyholders pay a federal policy fee to the program on top of their premium to help defray administrative expenses incurred in carrying out the program such as mapping and mitigation. Last Congress, the Committee on Financial Services and the U.S. House of Representatives passed legislation to expand the flood insurance marketplace to the private sector. With the expectation that private insurers will take a greater market share of the flood insurance policies from the NFIP in the years to come, can you describe how this will affect the resources the program has for its mapping and mitigation efforts? Should Congress consider requiring some kind of equivalency fee for private insurers to charge policyholders to go towards these efforts because they too would share in the benefits of FEMA's mapping and mitigation efforts?

Response: The Flood Mitigation Assistance (FMA) program was created as part of the National Flood Insurance Reform Act (NFIRA) of 1994 (42 USC 4104c) with the goal of planning or carrying out activities designed to generally reduce the risk of flood damage to structures covered under flood insurance contracts and to reduce or eliminate the risk of repetitive flood damage to buildings and infrastructure covered under the NFIP. For the Flood Hazard Mapping Program, under the NFIRA, as amended, FEMA is required by Congress to identify floodprone areas and to subdivide them into flood risk zones to promote public awareness of the degree of hazard within such areas and to provide for the expeditious identification and dissemination of flood hazard information. (42 USC 4101). Many structures built prior to a community's adoption of floodplain management ordinance remain at risk to flood. Also, some structures built after the adoption of flood ordinances are at risk because of changing conditions in communities.

Funding for FMA and flood mapping is available through the National Flood Insurance Fund (NFIF), which is financed by policyholders. Since 2003, Congress has also appropriated funds for flood hazard mapping that complement the investment made by policyholders. In the FY 2018 Budget, the Administration proposed eliminating appropriated funding for flood hazard mapping and transferring the full costs of mapping to policyholders who benefit most from the program. If the legislative proposal for a new surcharge is adopted, the mapping program FY 18 budget is projected to be at approximately reduced by a 45% funding reduction in FY18 compared to FY17. With \$50 million in surcharge collections in FY18, the mapping program would be able to review and update mapping data for roughly 23,000 miles of inland flooding sources and could support the assessment of nearly 100,000 miles of maps to determine if they met current standards. This level of effort would lead to a slight decrease from 2017 flood hazard data levels, allow for some production of updated flood hazard data and provide

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for the continued implementation of statutory reforms and Technical Mapping Advisory Council recommendations.

Floodplain management activities are also funded through the National Flood Insurance Fund (NFIF), which is financed by policyholders. The NFIP requires State and local governments to adopt and enforce floodplain management regulations that reduce future flood damages to enable the sale of flood insurance. Floodplain management is broadly defined to include all actions that States and communities can take to reduce flood damage to both new and existing buildings and infrastructure. These requirements are the most cost-effective way to reduce the flood risk to new buildings and infrastructure. Structures built to NFIP standards experience 80 percent less damage than structures not built to these standards and have resulted in \$1.9 billion per year in reduced flood losses. FEMA staff provide extensive technical assistance and training through workshops, visits, and other contacts with community officials. In addition, FEMA staff offer technical assistance to property owners, builders and contractors, architects and engineers, surveyors, lenders, insurance agents, and other NFIP constituents on NFIP requirements and mitigation measures. Each State has designated an NFIP State Coordinating Agency as a point of contact for the NFIP. Many States have adopted floodplain management statutes and regulations, and have established and funded their own floodplain management programs. Through funding available through the NFIF, FEMA offers funding to States to provide technical assistance to communities on the NFIP requirements.

Question#:	8
Topic:	Private Sector Role
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Barry Loudermilk
Committee:	FINANCIAL SERVICES (HOUSE)

Question: I am a cosponsor of the Flood Insurance Market Parity and Modernization Act. This bill would clarify that private sector flood insurance plans may be used to meet mandatory purchase requirements and give state governments a role in determining which policies satisfy these requirements.

What are some other policy changes that Congress can address to increase the role of the private sector in flood insurance?

Response: In helping the nation prepare for, mitigate against, respond to, and recover from flood disasters, FEMA's priority is to extend opportunities for flood insurance coverage. Survivors of flood disasters can recover more quickly and more fully if they were insured against flood losses, whether they purchase that insurance from the National Flood Insurance Program (NFIP) or through private flood insurance markets. There is great opportunity to increase levels of flood insurance coverage around the nation given that a large percentage of homes in high and moderate risk areas remain uninsured. Private sector providers of flood insurance can play an important role in increasing coverage.

FEMA would be happy to work with Congress on legislative efforts to clarify that federally-regulated lenders and federal agencies can accept private flood insurance to meet the mandatory purchase requirements.

Further, FEMA would be happy to work with Congress on legislative efforts that after a certain date, prohibit the NFIP from selling a flood insurance policy on any structure newly constructed in a Special Flood Hazard Area (SFHA). Under the NFIP, participating communities already require all new construction to comply with flood resistant building standards, making new construction in those communities a risk the private market may be willing to insure.

FEMA's current policies and regulations allow for several avenues for growth of the private insurance market. FEMA does not restrict licensed insurance agents that sell NFIP policies from also selling private flood insurance policies. Independent agents can recommend whatever flood insurance product they deem best suits the needs of their customers. While the current arrangement with private insurers participating in the NFIP's Write Your Own (WYO) Program prohibits participants from selling competing standalone private flood policies, it provides two paths for a WYO company to sell both NFIP policies and private products. First, WYO companies can sell excess coverage beyond NFIP policy limits. Second, WYO companies can sell flood coverage as part of a

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multi-peril or all-peril policy, such as a standard homeowner's or renter's insurance policy. FEMA supports these efforts because our primary concern is to ensure all individuals have insurance protection commensurate with their flood risk.

Question#:	9
Topic:	State Role
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Barry Loudermilk
Committee:	FINANCIAL SERVICES (HOUSE)

Question: What are some other policy changes that Congress can address to increase the role of the states in flood insurance?

Response: To increase the role of states in flood insurance, Congress may want to consider the following.

- Encourage states to require disclosure of flood risk and claims history to prospective homebuyers.
- Encourage states to mandate training on flood risk and flood insurance for real estate professionals as part of initial licensure and continuing education.
- Encourage states to require real estate professionals to disclose all flood hazards (regardless of mandatory purchase requirements) and the availability and advisability of purchasing flood insurance at or before closing of a real estate transaction. Such a disclosure is similar to the Residential Lead-based Paint Hazard Reduction Act of 1992, as amended (Sec. 1018) available at: https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12360.pdf.

Question#:	10
Topic:	State Involvement in Flood Mapping
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Barry Loudermilk
Committee:	FINANCIAL SERVICES (HOUSE)

Question: FEMA's flood maps are sometimes outdated or incomplete, and this has discouraged the private sector from underwriting more flood insurance policies.

How can we get states more involved in mapping to improve the process?

Should we consider new pilot programs to test the usefulness of expanding the role of states in mapping?

Response: FEMA works closely with states across the nation to coordinate on priorities for mapping. A tribal nation, territory, state, local government, regional agency, universities, and/or certain non-profits can become more involved by becoming a partner through FEMA's Cooperating Technical Partners (CTP) program. Activities include serving as a program manager to assist in coordinating, managing or providing outreach in conjunction with a flood study or as a map producer to actually create the data used to improve their flood hazard information. In 2016, of the 80 total partners that were funded for activities with FEMA, 41 of those recipients were states across all ten FEMA regions.

FEMA initiated the CTP program in 1999 and encourages broad involvement in the program. This program is a 100% federally funded program; therefore, there is no funding match required to participate or partner with FEMA. However, in FY2016, there was over \$51 million in leveraged data or in kind services identified to be provided for initiated projects. FEMA strives to ensure that the partnerships provide value to the states being served as well as the Federal Government. Partners can choose their level of involvement from helping oversee program objectives and identifying areas that need to be updated, to assisting with meetings and outreach, all the way through working with FEMA to complete new and updated flood studies. Additionally FEMA currently has a pilot in which we allow some CTPs to assist FEMA with doing the reviews for Letters of Map Revision (LOMR) requests. This allows for a much more coordinated effort to ensure that locally made map changes get included onto the FEMA FIRMs. We have seen an increase in communication and awareness of the process to update FIRMs by the local communities and developers in these areas due to the local presence and support. FEMA is currently evaluating this pilot, its costs, and associated benefits.

A new partner can join the program at any time by reaching out to their Regional FEMA office. A list of contacts is on our website at <https://www.fema.gov/cooperating-technical-partners-program-key-contacts>. Potential partners must meet the minimum

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criteria to become a partner, which are: have a willingness to work with FEMA in partnership; the ability to manage federal funding; be a participating community in good standing with the National Flood Insurance Program (NFIP), or support one or more communities; have demonstrated capability to implement the cooperative agreement and monitor the technical work; and have systems in place to support the work to be done. If those criteria are met, after coordinating with the Regional FEMA staff, a potential partner can sign a Partnership Agreement with FEMA and become a CTP. The program currently has over 275 signed partners across the FEMA Regions.

Question#:	11
Topic:	Subsidy Notification
Hearing:	Flood Insurance Reform: FEMA's Perspective
Primary:	The Honorable Barry Loudermilk
Committee:	FINANCIAL SERVICES (HOUSE)

Question: I understand that FEMA has been going back and notifying current flood insurance policyholders of how much they are receiving in subsidies.

Should we require that homebuyers be notified of how much their flood insurance premiums are subsidized before they purchase a home in a Special Flood Hazard Area?

Would making prospective homebuyers aware of the subsidies before the home is sold help prevent people from buying homes in areas with high risk of flooding that they may not be able to afford?

If so, who is best suited to be responsible for notifying homebuyers of these subsidy levels? (I.e. write your own companies, mortgage lenders, financial regulatory agencies, etc.)

Response: FEMA believes it is important for owners and prospective owners to understand their flood risk to make informed decisions.

In accordance with section 28 of the Homeowner Flood Insurance Affordability Act, FEMA must clearly communicate full flood risk determinations to individual property owners whether or not their premium rates are full actuarial rates. FEMA cannot disclose this information to prospective homebuyers, however, without the written consent of the current property owner. FEMA is exploring ways to responsibly release data, which includes currently available public data (<https://www.fema.gov/policy-claim-statistics-flood-insurance>) and the publication of the reinsurance information earlier this year.

State and local governments may also have property-specific flood damage information that they share with homeowners and prospective homebuyers. However, actual availability can vary widely from community to community.

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