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TESTIMONY

Implementation of the National Flood Insurance Program Reform Act (Biggert-Waters)

Before the

House Financial Services Committee

Housing and Insurance Subcommittee

By

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Association of State Floodplain Managers

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Introduction

Mr. Chairman, Ranking Member Carson and Members of the Subcommittee,

Thank you for inviting the Association of State Floodplain Managers (ASFPM) here today to discuss our observations and suggestions related to implementation of the Biggert-Waters Flood Insurance Reform Act signed into law on July 6, 2012.

ASFPM Members are well positioned to comment on implementation at the state and local levels because our members are the state and local officials who are FEMA's partners in implementation of the National Flood Insurance Program (NFIP). We have also conducted workshops for state and local officials in a number of states and have produced webinars to assist in the important training and education components of implementation.

ASFPM has 15,000 members nationwide and 35 state chapters, two of which include three states each. Most of our chapters are very active and have their own conferences and training activities. The Association conducts the training and certification program for Certified Floodplain Managers. The common mission of all of our members is to reduce losses of life and property due to flooding, our nation's most frequent and costly kind of natural hazard.

Summary of Recommendations

ASFPM has developed twenty recommendations for the Committee to consider as it contemplates additional changes to the NFIP to address flood insurance affordability and floodplain mapping issues.

1. **Phase in movement of most Pre-FIRM structures to actuarial rates more slowly, between 5%-10% annually (versus immediate, 20%, or 25%).**
2. **Eliminate triggers for movement to immediate full risk rates for new flood insurance policies, lapsed policies or upon sale of a home. Preserve triggers for full risk rates for those refusing offers of mitigation or for substantially improved/substantially damaged properties.**
3. **For any new, lapsed policy, or existing policy that is being phased in to full risk rates (not including those that trigger immediate movement to full risk rates), the basis for movement to actuarial rates would remain July 6, 2012, provided items #1 and #2 above are implemented and in place.**
4. **Take immediate action on new and innovative affordability concepts. Authorize pilots to test concepts such as:**
    a. **A group or community based flood insurance**
    b. **Means tested vouchers to assist with premium costs**
    c. **Low interest loans for mitigation to result in lower premiums**
5. **Provide (again) for a study of community or group based options (HR 1035 was passed by the House but not by the Senate) and should be included in any new legislation.**
6. **Mandate that every flood insurance policy sold under the NFIP clearly show the estimated full risk rate and state that flood risk changes over time and today's flood insurance rates may increase or decrease as future flood risk is known.**
7. **Forgive the current debt of $24 billion.**
8. **Consider additional reforms to ICC so it can be more effectively used to address flood insurance affordability issue.**

9. **Urge FEMA to immediately and fully implement the 2004 Changes to ICC triggering it upon any FEMA offer of mitigation. Also, urge FEMA to explore innovative ways to utilize the trigger that has been built into ICC since 1994 – when properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with land use and control measures.**
10. **Provide for a flood insurance advocate within FEMA.**
11. **Allow for higher deductibles for residential policies, up to $10,000.**
12. **Request that FEMA release any draft reports or documents related to its "Rethinking the NFIP" initiative.**
13. **Direct FEMA to aggressively continue development of refinements to rating policies within the SFHA to provide credit to partial mitigation as well as recognize differing risks within the SFHA.**
14. **Require FEMA to conduct a study to evaluate the resources necessary to administer the Community Rating System so that communities can expeditiously join and ongoing evaluations are conducted in a timely and efficient manner.**
15. **Conduct a study to determine the extent to which raising premiums leads to greater mitigation—for example, by encouraging policyholders to elevate their properties or move to less risky locations (suggested by CBO in 2009).**
16. **Conduct a study to determine to what extent raising premiums would increase or decrease federal costs for disaster assistance (suggested by CBO in 2009).**
17. **Authorize options for FEMA to increase the flood mapping budget through means other than appropriated funds. Such options may include increasing the Federal Policy Fee or a transaction fee on mortgages.**
18. **Congress should clarify the desired outcomes for the National Flood Mapping Program so that appropriate metrics can be developed.**
19. **Increase the authorization for the Flood Mitigation Assistance Program to reflect high demand, partially driven by Biggert-Waters reforms.**
20. **In committee report language, express strong support for FEMA's Pre-Disaster Mitigation Program and its role in helping transition the NFIP into a more actuarially sound program.**

The Purpose of the NFIP and its Transformation under Biggert-Waters

With as much attention as is being focused on the NFIP and what it should or should not do, it is useful to begin this testimony by examining the purpose of the NFIP. The 1968 National Flood Insurance Act was initially passed because there was a general unavailability of flood insurance in the nation since the nation's insurers were unwilling to underwrite the very high risk associated with flood hazard areas. Also, it was seen as a way for occupants of flood prone areas to share the burden of the costs associated with these areas (by way of insurance versus disaster assistance which is paid by the nation's taxpayers).

As members of this Committee are well aware, the process of developing the legislation that became known as Biggert-Waters took place over several years. The overriding concern was the huge debt owed by the National Flood Insurance Program (NFIP) to the U.S. Treasury after the major hurricanes of 2004 and 2005. Previously, designers of the program knew there would be years when claims would exceed the available funds and so allowed the NFIP to borrow from the Treasury up to a specified amount, which would be repaid with interest. Until 2004 and 2005, this system had mostly worked. Some amount of debt was forgiven by Congressional action in the early 1980s. Since 1986, the program had been entirely self-supporting – always repaying Treasury borrowing with interest. Then, after Superstorm Sandy in 2012, the debt grew again and now sits at $24 billion.

It is easy to see why Members of Congress focused on steps to help restore the program to fiscal soundness. A major focus was on subsidies within the NFIP. Initially, a substantial subsidy (often called discounts, as they are cross-subsidies within the program) was built into the NFIP – for what were originally seen as reasons of fairness and equity. The idea was that a property owner should receive a discount on their flood insurance premiums if their property was built before the builder or current owner could have known of their flood risk. The NFIP was established in 1968 and floodplain maps were not generally available until about 1974, so properties built prior to that time were considered pre-Flood Insurance Rate Map or pre-FIRM and qualified for a discount. Because there are provisions in local flood ordinances that require new development and reconstruction of existing development to local flood codes, it was assumed that, over time, there would be fewer and fewer structures built in floodplains or structures not sufficiently elevated to reduce flood risk. More of those older structures have remained "on the books" than had been expected, so that today about 20 percent of the 5.5 million NFIP policies are Pre-FIRM and receive the Pre-FIRM discount.

The other discount that has grown significantly in the last 15 years (at the same time we were undertaking a massive Map Modernization effort) was that of administrative grandfathering. The concept of administrative grandfathering is that once a structure was built based on a specific map and a specific code in effect at the time, that the property owner could enjoy a discounted rate on their flood insurance into the future even if the flood risk on that site increased over time, as long as they obtained and maintained a flood insurance policy. A significant number of properties were administratively grandfathered in the program in the 2000s as many new flood maps were produced and FEMA broadened this policy.

<u>The Elimination of Subsidies or Discounts</u>

Both of these discounts were substantially reformed in Biggert-Waters and Congress chose to take a very aggressive approach to phase out both discounts while trying to shield primary residences. Generally, ASFPM was supportive of moving in this direction because:

- The existing (prior to Biggert-Waters) program and rate structure did not reduce flood losses; they have been steadily increasing over the past four decades and taxpayer costs for flood disasters have grown too,
- The discounts had actually been shielding property owners from knowing their own risk and the full risk rate of the property. Flood risk changes (and often increases) over time yet the nation's flood insurance program ran as if those risk changes did not occur,
- Awareness of full risk rates and payment of those rates drives better decision making for building and mitigation which leads to more resilient communities,
- The debt to the NFIP was large at the time of passage and has only grown with Superstorm Sandy. ASFPM is gravely concerned about the future impact of the debt to the program and the very survivability of the NFIP if something is not done, and
- As long as flood insurance affordability was addressed simultaneously with the rate increases, there would be a viable mechanism to assist those that cannot afford the increases transition to safer structures and lower premiums.

It is important to note that as it relates to the premium discounts, the NFIP, prior to Biggert-Waters, was unlike any private hazards insurance that a homeowner would buy (we are not comparing this to state run hazard insurance programs as nearly all of those are shown to be fiscally unsustainable). If the risk changes due to increased thunderstorms, tornadoes, hailstorms, wildfire risk, etc., premiums go up. If a home, built to the appropriate code in the past (i.e., knob and tube or aluminum wiring for electricity in homes) but later those codes changed because earlier approaches were discovered to be hazardous – the insurance rates go up unless the risk is mitigated. Until Biggert-Waters, this has not been the case with the NFIP. *ASFPM strongly believes in the nationwide value of the NFIP and its role in managing flood risk, but believes that the program needed reformed to result in better risk reduction decisions and ensure long term program viability. The fundamental questions about the scope of reform as it applies to the insurance rates becomes how much and how fast?*

Flood Map Accuracy and Completing Mapping for the Nation

The Biggert-Waters legislation was also responsive to the calls for new flood mapping, more accurate flood maps and addressing emerging mapping issues. At the time of passage, only a third of the nation's stream miles had any flood mapping at all. In its 2012 Risk MAP report to Congress, FEMA indicated that The Map Modernization Program republished flood maps for 65 percent of the land area of the United States, covering 92 percent of the Nation's population. However, one should not get the impression from those statistics that the job was even close to being complete since most of these maps simply digitized old data because money was not available for new flood map engineering studies. An additional concern was the way that levees were mapped - and the treatment of insurance zones behind levees. The age and accuracy of coastal mapping studies was another major concern. Also it was recognized that the absence of complete, updated, and accurate flood maps was a source of actuarial weakness in the program. As a result, Biggert-Waters authorized, for the first time, a full and robust mapping program to become the nation's default flood hazard identification and risk assessment data set, correctly establishing a program scope that was commensurate with the nation's overall needs and demands for flood mapping.

Implementation Thus Far – Problems and Successes

Outreach Needs and FEMA Participation

Outreach and education for policy holders, realtors, lenders, insurance agents and other stakeholders has been a challenge. FEMA has worked to provide information and interpretive materials, but has been hampered by restrictions on the ability of FEMA personnel to get "out in the field." This has resulted in varied interpretations of the new law and uncertainty in the housing market. One example is confusion over the need for elevation certificates to properly rate structures without appropriate outreach to surveyors, lenders or insurance agents.

ASFPM members have been the leaders nationwide in implementing and providing outreach and information on Biggert-Waters. In fact, if not for the capacity that has been built over the years in our floodplain management capability at the state, local and private sector levels, there would be even more confusion and issues with the implementation of this complex and wide ranging set of reforms. The nation's floodplain managers are actively educating property owners and other stakeholder groups – including realtors and insurance agents – on the provisions of the law. At the same time community officials are examining how to keep flood insurance premiums affordable, by advising property owners on mitigation measures they can take. Floodplain managers are also advising elected officials on measures a community may wish to take to reduce flood losses and reduce premiums for their residents, such as participating in the Community Rating System. State and local floodplain managers have been conducting workshops and ASFPM's webinars have been oversubscribed, requiring scheduling more such opportunities.

From the standpoint of outreach and education, ASFPM is disappointed in FEMA's inability to mobilize in the field and assist in this effort. While we are aware of the constraints caused by the sequester and government shutdown (especially since the larger rate increases went into effect October 1, 2013), nationwide outreach has been insufficient. FEMA has developed some outstanding materials and webinars which, while appreciated, can only do so much. Numerous times this fall, FEMA Region personnel have canceled attending ASFPM Chapter meetings at the last minute. ASFPM Chapter meetings draw local floodplain managers who are in the front line of explaining floodplain and flood insurance issues to residents and businesses. FEMA's attendance was requested to explain Biggert-Waters changes and the cancellation led to instances where there wasn't a knowledgeable federal presence at the meeting to explain the changes. There must be a prioritization by the agency to conduct extensive outreach to all partners and stakeholders, including getting out into the field and working with their partners.

Affordability

The biggest missing element from the BW-12 legislation – authorization to do something about flood insurance affordability - has been made painfully clear over the past several months:

- The projected significant amounts of some premium increases have caused alarm. In many cases, the increases far exceed the ability of the property owner to pay.
- There are concerns about adverse effects on home values and on property sales.
- Reports of real estate transactions not being completed due to the requirement that a full risk rate flood insurance policy for a Pre-FIRM structure was needed to complete the deal, and the buyer couldn't afford the policy or no longer qualified for the mortgage loan due to the increase in debt to income ratio.
- Situations where properties were supposed to move to actuarial rates immediately consistent with 42USC§4014(g) based on the date of passage of BW-12 due to home sales or lapsed policies when there was no information on this aspect of the law nor rates, so people completed real estate transactions or purchased flood insurance policies with no knowledge of the law's effects on future premiums – only to be hit with those higher premiums after the fact.

Early Successes

ASFPM has seen some early Biggert-Waters successes. In fact, Superstorm Sandy has proven to be a study in the potential of some of the basic principles of Biggert-Waters insurance reforms – that once people are aware of and accurately price risk they will take mitigation action. They can compare the true risk premium costs to the cost of mitigation to determine the return on investment in mitigation. ASFPM has had reports of significantly increased interest in mitigation up and down the Sandy affected coastline, not necessarily due to the storm itself, but rather, due to the potential for future flood insurance rate increases. From the perspective of a large, national flood event, we are seeing more mitigation occurring after Sandy than after any other large storm event in recent memory. Also communities in the Sandy affected areas are considering higher building standards such as an enhanced freeboard (some communities as much as three feet) which results in new construction with lower flood insurance rates and most importantly more resilience to future floods. Such decisions also help to maintain property values. Other successes include:

- ASFPM is hearing of increased interest in FEMA's Community Rating System. This is a voluntary program where a community goes beyond FEMA minimum standards to reduce flood risk and in exchange, premium discounts up to 45 percent are provided, which greatly assists affordability.

- Lenders are being much more careful in reviewing the flood risk on properties for which they are considering loans. Prior to Biggert-Waters, while no study was conclusive, it was estimated that up to 40 percent of properties that were subject to the mandatory purchase of flood insurance did not have flood insurance policies. ASFPM believes that the combination of increased lender penalties and concern about flood insurance premiums on the ability of the borrower to pay have resulted in this increased scrutiny.
- Establishment of Scientific Resolution Panels to arbitrate flood mapping disputes for new maps. A community, tribe or political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction can request FEMA use the SRP when conflicting data are presented. The SRP process is managed by the National Institute of Building Sciences, a non-profit organization independent from FEMA. ASFPM has heard positive reviews of this process.
- The number of communities participating in the NFIP has exceeded 22,000 for the first time.

Addressing the Problems

For the balance of the testimony, ASFPM will provide suggestions for further reforms. Primarily these suggestions are intended to address fiscal solvency, flood insurance affordability, and flood mapping issues. Current issues, commentary on proposed legislation, and specific ASFPM recommendations are presented and grouped based on the four primary facets of the NFIP: Flood Insurance, Floodplain Mapping, Flood Mitigation, and Floodplain Management Regulations.

Flood Insurance -- Addressing Flood Insurance Affordability and Maintaining Program Solvency

Biggert-Waters has begun to set the NFIP on a path to long-term fiscal solvency through several major reforms addressing actuarial weaknesses. However, Biggert-Waters takes a much too aggressive timeframe for implementing flood insurance premium reforms and does too little to address affordability concerns. Even the affordability study, while valuable in exploring the options such as means tested voucher, included no mechanism for implementation. Currently, the biggest area of concern being heard by floodplain managers is the triggering of full risk rates due to the purchase of a new flood insurance policy or as a result of a home sale. The full risk rate triggers run counter to the stated concern and intent of Congress to protect primary households from excessive rate increases. Unfortunately, current suggested legislative remedies for flood insurance increases do little or nothing to address underlying issues of addressing flood risk and increasing the program's solvency.

Since 2011 ASFPM has cautioned numerous times in testimony that the cumulative impact of all of the needed flood insurance reforms would result in significant affordability issues and that affordability must be a component of any NFIP reform. Policyholders need to have an accurate assessment of their risk, but we also <u>need stronger programs to help them mitigate flood risk</u> and to <u>assist those who truly cannot afford risk based premiums</u>. We must also be mindful that at the direction of Congress, for 45 years the program operated under a certain set of assumptions and subsidies. Policy holders were never informed of the amount of discount they were receiving. The increases resulting from the shift to full risk rates have been a shock. It is becoming apparent that the abrupt impact of causing real pain for policy holders individually but also for real estate transactions as well as possibly for the recovering housing market in general. <u>Congress should not be lulled into thinking that actions such as delaying premium rate increases or longer phase-in of rates alone will address overall affordability issues.</u> Even the routine annual rate increases, approved by Biggert Waters to address issues of establishing a reserve fund and calculating extreme loss years as part of the average risk are resulting in rapidly increasing policy rates. In the current premium year, flood insurance rates have increased 10% across the board, with an average of 17% increase in A and V Zones. This is not addressed in the current Congressional proposals. More constructive ways to deal with affordability while decreasing flood risk are needed

There are steps that can be taken to address affordability through existing mechanisms that could be used to reduce risk and flood insurance premiums, while decreasing the liability of the flood insurance fund. Built into NFIP insurance policies is an underutilized mechanism that can assist with flood insurance affordability through mitigating the at-risk structure. It is called Increased Cost of Compliance. ICC, which is funded through an added premium on the basic NFIP policy (the added premium is capped at $75/policy; however, the per-policy average is approximately $14 when divided over the entire policy base). Since 1997, ICC has paid more than $515 million in claims to mitigate nearly 25,000 structures. These claims would have been focused on Pre-FIRM structures in A or V Zones – the same ones that are being most affected by the Pre-FIRM subsidy removal. Over time, ASFPM has worked with Congress to tweak and reform the ICC program so that in 2004 an additional trigger was added – to trigger an ICC claim upon a FEMA offer of mitigation. Subsequent to that change, FEMA had conducted a pilot with the Severe Repetitive Loss Program. Presently, that effort has not been expanded beyond the pilot. The point is that ICC is mechanism that already exists in law, that is underutilized, and that could be one solution to help address flood insurance affordability – either as-is or with some modifications. Unfortunately as now administered, the average ICC claim amount is typically less than the cost of mitigation that is being done, and is less than the maximum ICC claim cap of $30,000. For example, the average cost to elevate a building is usually more than $30,000 but the average ICC claim is $25,100 due to exclusions in what elements are covered. Similarly, the cost to acquire and demolish a building is significantly more than $30,000 but the average ICC claim for this type of mitigation is $13,600 because FEMA has interpreted that the compliance in this case is simply the demolition of the building.

One measure that FEMA and ASFPM are promoting to help with flood insurance affordability is for communities to join the Community Rating System (CRS). The CRS is a voluntary program where communities join, undertake additional activities to reduce flood risk and are evaluated based on the completion of those activities. The completed activities are translated to points which are used to attain tiers of flood insurance premium discounts (5 percent discount per tier). Communities can be rated from a class 10 (zero discount) to a class 1 (45 percent discount). We anticipate significant interest in the CRS due to communities trying to find ways to keep flood insurance rates low. However, ASFPM is concerned that the CRS program is currently constrained in the resources it has for program administration it often can take one year or more for a community to complete the application process.

<u>*The NFIP Debt*</u>

The largest ongoing threat to the financial solvency of the NFIP is the accumulated debt of the program, now sitting at $24 billion. Since 2005, NFIP has paid $2.65 billion in interest payments, and $1.82 billion in principle payments. Luckily, FEMA has taken advantage of record low interest rates and the debt is financed at just below .5 percent in short term loans (two to three year terms). If interest rates return to a more average 3 percent annual rate (and rates can only go up from here), interest payments alone would exceed $720 million/year. That is more than the sum of fully funding the NFIP and the Flood Mitigation Assistance Program. For a program that is currently taking in a little more than $3 billion annually in premiums, which covers claims, payments to insurance companies, agents, flood mapping and floodplain management, and overall program administration, it is simply not feasible for the program to repay the debt, nor is it consistent with the Federal government's overall disaster policy.

As previously designed and until Biggert-Waters reforms have had time to work, the NFIP will continue to need federal support for catastrophic loss years (note that all $24 billion of the current debt occurred before any significant Biggert-Waters reforms were in place). Prior to Biggert-Waters, this was due to the rates being set at levels calculated to generate enough funds to enable the program to pay claims in an "average historical loss year," but not enough for a catastrophic year. The legislated limits on rate setting did not allowed NFIP to charge high-enough premiums to build a reserve for the inevitable years in which catastrophic flooding occurs. This meant that there was a need for federal support to fulfill NFIP's contractual obligations to pay claims in some years. Before Hurricane Katrina, NFIP actuaries estimated this average annual premium shortfall was $800 million per year. Congress has reacted quickly by increasing the borrowing authority of NFIP after Katrina and Sandy, yet has been slow to recognize that catastrophic loss years cannot be repaid by reliance on the insurance mechanism alone. Lack of understanding of this issue and dealing with the debt will continue to put pressure on the NFIP and could put the whole program at risk.

Commentary on Proposed Legislation

The action most commonly suggested in several proposed bills is to either exempt certain classes of structures from increased rates or delay rate increases for some period of time. Both approaches are problematic. The delay triggers programmed into HR 3370 will likely be dragged out indefinitely, due especially to the requirement for mapping all areas of the nation before the delay can be lifted. ASFPM believes that a much better approach that addresses fairness, equity, affordability as well as beginning to fix underlying problems of program solvency is to decrease the per-year premium increases for Pre-FIRM properties transitioning to full risk rates resulting in a longer phase-in of full risk rates and to eliminate most of the full risk rate triggers altogether except for structures that are substantially damaged or improved (which has always been a trigger for full risk rates) or those that refuse offers of mitigation. The longer phase-in could be extended further to reduce the effects on primary households. This gives FEMA time to complete the affordability study, communities time to take actions like joining the CRS and/or establishing other mitigation mechanisms, and property owners time to evaluate mitigation options, obtain financing, and take action to reduce both rates and risk. ASFPM's suggested approach will still achieve the ultimate goal of Biggert-Waters in reforming the underlying actuarial weaknesses in the program as it does not affect the reserve fund, the new considerations that FEMA must use to calculate annual flood insurance rates (such as including catastrophic events), or the increased annual cap of 20%. ASFPM's approach will also lead to the faster transition of most properties to actuarial rates than what was occurring under the NFIP previously – but more slowly than required under Biggert-Waters.

The provision in HR 3370 that addresses floodproofed basements appears to stipulate that the lowest floodproofed opening in a home to be used for determining flood insurance rates. ASFPM's concern is that any attempt to dictate how flood insurance rates should be calculated for individual structures can result in a new subsidy within the NFIP. Instead concrete loss experience (data) should be used to determine rates, even if the basement exception is preserved for communities that have them. It is important that even if there are exceptions for land use and development standards, such as the basement exception, that they may lead to more risky development and that development should be actuarially rated on the risk itself, not an arbitrary level.

ASFPM Recommendations for Committee Consideration. ASFPM suggests that further legislation is necessary to address the affordability issues that have become increasingly clear since passage of Biggert-Waters. We caution that legislation delaying implementation will not address the underlying issues, will retain the current uncertainty for financial planning and will likely lose the incentives in BW12 to mitigate for future loss reduction. We suggest that the Committee consider the following**:**

- ✓ **Phase in movement of most Pre-FIRM structures to actuarial rates more slowly, between 5%-10% annually (versus immediate, 20%, or 25%).** The lower end could be a consideration for primary households or if Congress chooses not to provide other options to address affordability.
- ✓ **Eliminate triggers for movement to immediate full risk rates for new flood insurance policies, lapsed policies or upon sale of a home. Preserve triggers for full risk rates for those refusing offers of mitigation or for substantially improved/substantially damaged properties.**
- ✓ **For any new, lapsed policy, or existing policy that is being phased in to full risk rates (not including those that trigger immediate movement to full risk rates), <u>the basis</u> for movement to actuarial rates would remain July 6, 2012, provided the two recommendations above are implemented and in place.** This ensures that <u>all</u> Pre-FIRM policies continue moving toward full risk rates but in combination with a longer phase-in, gives property owners time to mitigate before selling or before reaching full risk premiums.
- ✓ **Take immediate action on new and innovative affordability concepts. Authorize pilot programs to test concepts such as:**
    - **A group or community based flood insurance**
    - **Means tested vouchers to assist with premium costs**
    - **Low interest loans for mitigation to result in lower premiums**
- ✓ **Provide (again) for a study of community or group based options (HR 1035 was passed by the House but not by the Senate) and should be included in any new legislation.**
- ✓ **Mandate that every flood insurance policy sold under the NFIP clearly show the estimated full risk rate and state that flood risk changes over time and today's flood insurance rates may increase or decrease as future flood risk is known.**
- ✓ **Forgive the current debt of $24 billion.** Biggert-Waters reforms have put the program on a much more solid footing going forward, however, it will take a few years to build up the reserve fund to help protect against large losses, and to fully implement all of the other reforms under Biggert-Waters.
- ✓ **Consider additional reforms to ICC so it can be more effectively used to address flood insurance affordability issue.** Such reforms would include expanding eligible elements for the mitigation options allowed under ICC, increasing the maximum ICC claim cap from $30,000 to $50,000, and changing the way flood insurance policies are assessed the ICC surcharge (since the average surcharge is well under the $75 cap) so more funds can be utilized for mitigating at risk structures.
- ✓ **Urge FEMA to immediately and fully implement the 2004 Changes to ICC triggering it upon <u>any</u> FEMA offer of mitigation. Also, urge FEMA to explore innovative ways to utilize the trigger that has been built into ICC since 1994 – when properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with land use and control measures.**
- ✓ **Provide for a flood insurance advocate within FEMA.**
- ✓ **Allow for higher deductibles for residential policies, up to $10,000.** Even though non-residential policies have options for deductibles for up to $50,000, the maximum deductible for residential policies is

$5,000. While this may not help low income individuals with affordability, it may help those with more resources with premiums. It could also help those who are convinced they will not flood, even if they are in a mapped Special Flood Hazard Area.

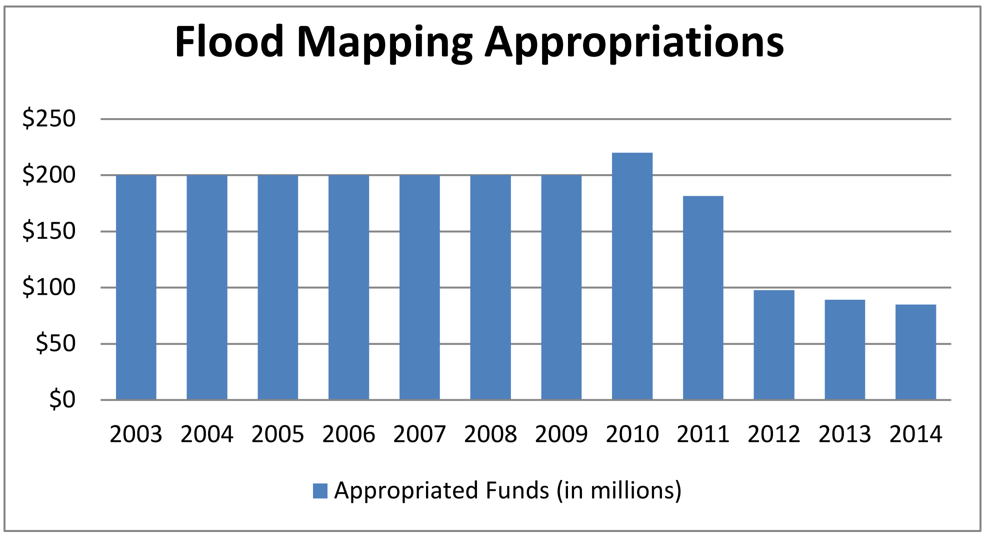
- ✓ **Request that FEMA release any draft reports or documents related to its "Rethinking the NFIP" initiative.** ASFPM believes that this report contains important research and information that has already been undertaken by FEMA in relationship to flood insurance affordability and could inform the flood insurance affordability study that is just getting underway.
- ✓ **Direct FEMA to aggressively continue development of refinements to rating policies within the SFHA to provide credit to partial mitigation as well as recognize differing risks within the SFHA.**
- ✓ **Require FEMA to conduct a study to evaluate the resources necessary to administer the Community Rating System so that communities can expeditiously join and ongoing evaluations are conducted in a timely and efficient manner.** This is critically important in light of anticipated interest in the program due to Biggert-Waters.
- ✓ **Conduct a study to determine the extent to which raising premiums leads to greater mitigation—for example, by encouraging policyholders to elevate their properties or move to less risky locations (suggested by CBO in 2009).**
- ✓ **Conduct a study to determine to what extent raising premiums would increase or decrease federal costs for disaster assistance (suggested by CBO in 2009).**

Floodplain Mapping – Addressing Adequacy and Accuracy

Another of the important reforms in Biggert-Waters was the establishment of the National Flood Mapping Program (NFMP). One aspect of the NFMP is that all populated areas and areas of future population growth have flood maps. Our nation's current flood mapping inventory is 1.1 million miles of stream with mapped floodplains, while we have 3.5 million miles of streams nationwide. Today, innumerable locations exist with small populations and no flood maps or floodplains identified; this is especially true in western states. Mapping these areas before the development occurs is important. Also, some of these areas can be mapped using automated methods quickly and cheaply. In other areas, due to the Map Modernization program, there may be a newer floodplain map. However, the underlying flood studies may still be 30 years old or older, and mapping methods at that time were much different than today. The result of incomplete and inaccurate maps is that many people do not purchase flood insurance when they need it, and others pay too much because their risk is not accurately shown.

Earlier this year, largely in response to continual questions from Congress as to the overall scope and magnitude needed for the flood mapping effort, ASFPM developed a cost model and released a report called *Flood Mapping for the Nation.* The model resulted in cost estimates to provide floodplain mapping for all communities in the nation based on the parameters specified under the NFMP. The nation has invested $4.3 billion in flood mapping to date, and has enjoyed multiple benefits from that investment, including providing the basis for guiding development that saves over $1 billion/year in flood damages. <u>ASFPM's report estimated the cost to complete flood mapping for the nation ranges from $4.5 billion to $7.5 billion. The steady-state cost to then maintain the data that is the basis for the nation's flood mapping inventory ranges from $116 million to $275 million annually.</u> This national investment in a comprehensive, updated flood map inventory for every community in the nation will drive down costs and suffering of flooding on our nation and its citizens, provides the best tool for managing flood risk and building sustainable communities, and even help address the fiscal solvency of the NFIP by remedying a known actuarial weakness in the program (Congressional Budget Office 2009 report). Ultimately, our report found that Congress' authorization for the NFMP was established at an appropriate level. If we were to, for example, fully fund a flood mapping program for 10-15 years, we would achieve flood mapping for every community in the nation and get the job completed.

FEMA has many flood mapping activities occurring today, despite reduced resources. RiskMAP is continuing to be deployed and it includes a significant outreach component. There are pilots going on related to mapping of levees consistent with FEMA's newly updated levee mapping approach. Declining map funding is resulting in fewer flood studies being initiated. This will result in delays in future flood maps and replicating the problem we have right now. The Cooperating Technical Partner program continues to leverage federal flood mapping funds with state and local resources. The Technical Mapping Advisory Committee (TMAC) is in process of being activated – ASFPM is pleased to see this.



ASFPM has two primary concerns related to the flood mapping program. The first is ongoing low appropriations. With the over 50% reduction in the amount of appropriations that have been provided over the past three years, flood mapping activities have slowed significantly. While Congress has authorized an appropriate amount of flood mapping funds, and ASFPM has helped to define how much total funding is needed, the administration continues to reduce its budget requests for flood mapping. Although the Congress, in recognition of the importance of flood mapping, has consistently provided more than the budget requests, appropriations for mapping have, nevertheless, been significantly reduced.

Depending on the priority of flood mapping by the Administration and Congress, some consideration may need to be given to other methods to supplement the needed flood mapping budget. One approach, such as increasing the Federal Policy Fee would result in only those who have flood insurance policies paying for new flood maps. Perhaps a fairer approach is a transaction fee attached to either flood zone determinations or mortgage transactions. Such a fee would be spread to all users of flood maps since even those not in a floodplain utilize flood mapping data to verify their status.

The second concern is related to program direction and metrics. ASFPM is concerned that RiskMAP has begun to focus too significantly on communities taking mitigation actions as a measurement of overall program success and that has, in turn, driven program priorities. While ASFPM believes that such a metric is appropriate for the NFIP overall and even FEMA's Unified Hazard Mitigation Assistance Program, it is not appropriate for the nation's flood mapping program as people taking mitigation actions is clearly out of the span of influence of the program itself. Rather, the program should focus on developing and providing quality flood mapping and flood risk data and ensuring that there is a robust and successful outreach effort.

Finally, the NFMP establishes, and ASFPM supports, the notion that developing and providing flood risk data (including mapping) coupled with robust public outreach is the primary focus of the program. One of the lessons learned during the Map Modernization program is that outreach is an essential component of producing new flood maps. ASFPM is seeing a much more robust outreach effort under FEMA's RiskMAP program. However, one concern that ASFPM has expressed to FEMA is that it is critical that the outreach as part of mapping projects must be led and/or significantly include mapping contractors and not be done primarily by independent outreach contractors that are not integrated into the map development or update process. Such an approach will erode credibility in the flood maps and mapping process by the public. ASFPM hopes that FEMA is mindful of this concern as it rebids its mapping production contracts.

Commentary on Proposed Legislation

Many complaints have emerged about accuracy of the flood risk maps. As a result, HR 3370 calls for a halt to premium rate increases until all of the Nation's flood maps are complete and accurate. FEMA has made significant progress toward improving flood maps beginning with the 5 year Map Modernization project that led to digitization of the maps. As noted earlier, this largely was not able to include the development of updated flood risk data. It is important to note that:

- Mapping is never complete because circumstances and development change the risks.
- Maps are only as accurate as the data that goes into producing them.
- Accuracy is not the same as level of uncertainty. Less uncertainty can be purchased through investment in more granular data.
- Investment in data costs money. Appropriated funds for flood mapping have dramatically decreased since 2010.

HR 3370 also proposes to allow FEMA to utilize National Flood Insurance Funds to reimburse policyholders who successfully appeal a map determination. ASFPM's position is that after flood mapping is updated, costs for map appeals driven for flood insurance reasons, new development in the community and other man-made changes in the floodplain should not be borne by the Federal government. Many times, map adjustments are sought to "refine" the map or to simply delay the map. It doesn't mean that the map is inherently wrong because the map was prepared with a certain precision based on costs. Rather, it is usually about fine tuning the mapping boundaries with more granular data. There simply aren't enough resources in the NFIP and the mapping program to pay for all of these refinements. Such costs must be borne by those disputing the maps.

ASFPM Recommendations for Committee Consideration:

- ✓ **Authorize options for FEMA to increase the flood mapping budget through means other than appropriated funds. Such options may include increasing the Federal Policy Fee or a transaction fee on mortgages.**
- ✓ **Congress should clarify the desired outcomes for the National Flood Mapping Program so that appropriate metrics can be developed.**

Flood Mitigation – Other Options for Addressing Flood Insurance Affordability for Existing At-Risk Structures

ASFPM has long said that flood insurance rating reforms must also be accompanied by measures that allow individuals to mitigate their risk and at least give options to contain or reduce the increases in flood insurance premiums. ASFPM fundamentally believes that a mitigation approach to affordability can significantly ease the painful transition of the NFIP to a more actuarially sound program.

Biggert-Waters took an important first step in this direction by making the flood mitigation grant programs available under the NFIP more efficient by combining three programs into the Flood Mitigation Assistance (FMA) program as well as retaining the $90 million authorization which was a combination of the three legacy programs. The new, combined FMA program allows for a wide array of non-structural mitigation options and allows for flood mitigation planning. ASFPM applauds FEMA for already producing new guidance that is being used for the current FMA grant funding cycle. Incidentally, demand for flood mitigation under FMA grant program remains strong. In the most recent round of funding, project applications exceeded $300 million.

While not under the purview of the NFIP, FEMA administers two other all hazard mitigation grant program that can be used to reduce risk to floodprone structures and directly address flood insurance affordability. The Hazard Mitigation Grant Program (HMGP) is made available after a federal disaster declaration. The Pre-Disaster Mitigation (PDM) grant program is available on an annual basis and is especially important in states that are infrequently affected by large disasters. ASFPM continues to be concerned that FEMA has proposed to eliminate the PDM program the past two years. Finally, a program made available through HUD, the Community Development Block Grant - Disaster Recovery is a flexible source of funds that can be used to provide mitigation grants for multiple purposes after a federal disaster declaration.

But these programs, at current funding levels are not enough to address the flood insurance affordability issues. In our recently re-released *Flood Insurance Affordability* paper, ASFPM makes several suggestions to use mitigation to help with flood insurance affordability including:

- Creation of a means-tested voucher program that exists outside of the framework of the NFIP for those that cannot afford the flood insurance increases. Such an approach is more focused than a discount based on the age of a structure. However, this would only provide premium relief and does nothing to mitigate the risk itself.
- Creation of a means tested voucher program linked with a mitigation loan. This concept has been developed by the Wharton School at the University of Pennsylvania and can result in a triple win – lower premiums for the property owner, mitigated risk to the structure, and lower costs to taxpayers.
- Authorization of flood mitigation activities under existing federal loan programs. Some states, under the Community Development Block Grant program have developed state revolving loan programs to undertake home repairs, weatherization improvements and promote affordability, where the loan is paid back when the home is later sold. Such programs could be adapted to include flood mitigation as eligible activities. Under the Small Business Administration, a pilot pre-disaster mitigation loan program in the mid 2000s was unsuccessful in attracting interest; however, such a program may be quite popular if it were authorized today. Finally, the Federal Housing Administration’s 203k loan program is for repairing and rehabilitating homes that are deemed to not meet habitation standards and a mortgage through this program allows for the cost of the home improvement to be rolled into the primary mortgage. The advantage of the 203k program is that it is already accessible nationwide with loan officers already

familiar with writing such loans. These loans have been used after Sandy where property owners with damaged homes used the program to repair and mitigate the damaged home.

- Create tax code changes to encourage mitigation. Current tax code provisions provide tax breaks for uninsured losses, and there are considerations to provide credits for flood insurance premium increases. Both of these send precisely the wrong message and take away the motivation for individuals to take responsibility for their actions. A much better use of the tax code would be to provide tax credits or other incentives for actually mitigating at risk structures. Such a program could be modeled after those used for energy efficiency and/or special provisions made to write off the cost of mitigation measures for disaster affected property owners.

While many of these ideas are beyond the purview if this committee; it shows the importance and interrelationship of other programs and how they can reduce impacts caused by the NFIP transitioning to a more actuarially sound basis.

ASFPM Recommendations for Committee Consideration:

- ✓ **Increase the authorization for the Flood Mitigation Assistance Program to reflect high demand, partially driven by Biggert-Waters reforms.**
- ✓ **In committee report language, express strong support for FEMA's Pre-Disaster Mitigation Program and its role in helping transition the NFIP into a more actuarially sound program.**

Floodplain Management Regulations

As directed by the 1968 Act, future flood losses were to be mitigated through two avenues: guiding new development away from the flood hazard areas and ensuring that any new development that did take place in the floodplain was constructed in such a way as to minimize damage to each structure. The NFIP was designed so that these two missions would be carried out at the state and local levels, where land use authority resides. In this way, over the years, the potential for flood damage was to be gradually diminished. It was anticipated that state and local governments would develop a commitment to and expertise in managing flood hazards within their jurisdictions that would yield ongoing wise use of the nation's floodplains into the future. To receive the advantages of the NFIP, and help accomplish these two objectives, participating communities enact and enforce floodplain management provisions on new development in the mapped floodplains.

Local management of floodplains and building construction goes hand-in-hand under the NFIP to achieve the program's goals. Buildings that comply with community floodplain management regulations not only face lower risk of flooding but also pay premiums based on flood insurance rates that are in most cases significantly lower than the rates charged to the older, pre-FIRM buildings. However, buildings constructed in violation of the community's floodplain management ordinance face much higher premiums, which can be up to thousands of dollars a year.

While it is estimated that nationwide, buildings constructed in compliance with NFIP minimum standards avoid over $1.5 billion in damages every year, the program has been far less successful in steering development away from flood hazard areas. In its Final Report as part of its comprehensive evaluation of the NFIP, the American Institutes of Research (2006) concluded "*Most floodprone areas are still subject to being developed, in part because the NFIP has no strong provisions to guide development away from floodplains, even those with extreme flood hazards or valuable natural resources.*" The report goes on to say that *"Most natural and beneficial* *floodplain functions in the United States are still subject to degradation by development, in part because the NFIP has not emphasized the protection of those functions and has few tools to help restore them, once impaired."*

ASFPM believes that the NFIP should be enhanced to include common sense, proven higher standards that can not only reduce flood losses but also steer development out of flood hazard areas. We hope that FEMA prioritizes rulemaking to re-examine the aging minimum standards of the program.

Commentary on Proposed Legislation

The land use provisions of the NFIP have proven, over decades, to work in communities throughout the country. Land use authority is primarily at the state and local level and the NFIP is set up to define minimum standards (FEMA develops these by rule) that are carried out by states and communities. Floodplain regulations adopted by communities based on NFIP minimum standards have variance provisions to accommodate unique or unusual situations although there should be no need to issue variances frequently. This is in keeping with other land use codes (subdivision regulations, zoning, etc.).

ASFPM is puzzled by HR 3315 that would seem to establish, at the Federal level, variance criteria for agricultural structures, usurping state and local control, especially when the NFIP under 42USC 4022(a) already provides relief, at the discretion of the appropriate state or local authority, from building restrictions for agricultural structures that have been damaged or are repetitive losses. For new agricultural structures, FEMA has a Technical Bulletin (TB-7) that describes how some agricultural structures can be wet floodproofed and not elevated. Also, it appears that HR 3315 would seek to allow structures that would get these variances, and are therefore at much higher risk of flooding to actually get subsidized flood insurance rates as if the flood zone did not exist on the property at all.

ASFPM believes the proposed legislation is overly broad as it could apply to any facility supporting the agricultural industry (and therefore include Confined Animal Feeding Operations, or agribusinesses with very large and expensive inventories of equipment), it usurps state and local land use authority, and establishes a new type of flood insurance subsidy just when the program is striving to be more financially stable. Also, Biggert-Waters included a study, currently being performed by GAO, that examines the impact of Federal Floodplain regulations and insurance mandates on agricultural areas and rural communities. This study should be completed sometime in 2014. Finally, we must remember the lessons of Hurricane Floyd and the massive agricultural losses. Specifically livestock losses were nearly unimaginable – over 30,000 hogs, 700,000 turkeys and 2.4 million chickens. These facilities which were flooded, nearly resulted in a public health catastrophe.

Conclusion

There will continue to be a need for federal support because the NFIP was designed to be an inclusive government program that would help reduce both costs and consequences of flooding, shift the costs of flooding "from the taxpayer to those who bear the risk," and prevent future losses. The NFIP benefits the nation in more ways than simply providing insurance. Mapping of flood hazard areas, promoting wise floodplain use and management, and operating programs to mitigate specific flood problems have significant benefits to all levels of government, businesses, and the public at large, not just the NFIP's policyholders.

The NFIP was established recognizing equity, partnership, and joint responsibility of managing the nation's floodplains. Equity or fairness between those that live in floodplains versus those that do not in bearing costs and impacts of at-risk development, joint responsibilities and partnerships of all levels of government – that states and communities also have a duty to undertake activities that reduce flood damages and losses, and partnership with the private sector in providing insurance. Managing flood risk is not just about FEMA and the Federal Government, yet we still have far too many policies and programs, such as disaster assistance, that reinforce the notion that it is somehow a Federal responsibility.

The NFIP has matured in 45 years and has resulted in many successes – one of the world's largest inventories of flood maps, 22,000 participating communities, and many new structures that are safer than would otherwise be if no standards for development existed. As we work to guarantee the future of the NFIP it is critical that crucial reforms of Biggert-Waters remain in place, even if they need to be modified to address affordability and fairness issues. We must consider the full costs of flood disasters to the nation and communities. The NFIP can not and should not be looked at in isolation.

To review ASFPM's *Flood Mapping for the Nation Report* or ASFPM's Recommendations on Flood Insurance Affordability paper, go to ASFPM's website at www.floods.org and click the quick link titled "Information Page for Biggert-Waters 2012 NFIP Reform Act Implementation." For any further questions on this testimony contact Chad Berginnis, ASFPM Executive Director at cberginnis@floods.org (608) 828-6338 or Meredith Inderfurth, ASFPM Washington Liaison at (703) 448-0245