



# ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

2809 Fish Hatchery Road, Suite 204, Madison, Wisconsin 53713 [www.floods.org](http://www.floods.org)  
Phone: 608-274-0123 Fax: 608-274-0696 Email: [asfpm@floods.org](mailto:asfpm@floods.org)

## TESTIMONY

### **Association of State Floodplain Managers, Inc.**

before the  
Subcommittee on Housing and Community Opportunities  
House Committee on Financial Services

### **NFIP Oversight and Repetitive Loss Strategy H.R. 253 and H.R. 670**

presented by  
Chad Berginnis, CFM, ASFPM Vice Chair  
State of Ohio

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## **INTRODUCTION**

The Association of State Floodplain Managers, Inc., and its 16 State Chapters represent over 5,000 state and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance. All are concerned with working to reduce our nation's flood-related losses. Our State and local officials are the federal government's partners in implementing programs and working to achieve effectiveness in meeting our shared objectives. Many of our members are designated by their governors to coordinate the National Flood Insurance Program. For more information on the Association, please visit <http://www.floods.org>.

The ASFPM is enthusiastic that the Committee has put consideration of NFIP reforms high on its agenda for the 108<sup>th</sup> Congress. We are particularly appreciative of the time and attention that Representatives Bereuter and Blumenauer, and Representative Baker, have collectively paid to the issue of repetitive claims against the National Flood Insurance Program and how measures to reduce those claims can be effected.

Thank you for inviting us to offer our views on a number of general matters related to the NFIP, and on the proposals set forth in H.R. 253 and H.R. 670. The following testimony addresses:

1. The NFIP's Repetitive Losses & Changes Needed
2. Existing Mitigation Insurance Mechanism Requires Reform
3. Matters Related to Reauthorization of the NFIP
4. The NFIP and the Department of Homeland Security
5. The Importance of Continued Federal-State Partnerships
6. The Role of the States in FEMA's Map Modernization Initiative
7. Existing Mitigation Program are Being Jeopardized
8. The Effectiveness and Value of the National Flood Insurance Program and FEMA's Flood Mitigation Programs

### **1. ADDRESSING THE NFIP'S REPETITIVE LOSSES & CHANGES NEEDED**

It is important to put the repetitive loss problem in context. While the exact number is not known, it is estimated that over 9 to 11 million buildings are in the areas we call special flood hazard areas that are shown on FEMA's Flood Insurance Rate Maps. About 4 million buildings both in and out of the floodplain are insured today (up from only 2 million just 9 years ago). Of those, about 40,000 are on FEMA's list of repetitively flooded properties. Nearly 10,000 have experienced four or more losses, or two or more losses which combine to exceed the building's value as reported on the flood insurance policy. This means that initially we are focusing attention on one-quarter of one percent of the insured buildings. But the impact is huge, since that small fraction accounts for on the order of 40% of the NFIP's losses since 1978.

We have all seen or heard of the homes that have been characterized in a way that implies the owners are ASFPM on NFIP & Repetitive Loss Initiatives (March 28, 2002)

abusing federal flood insurance. While there may be a number of egregious offenders, for the most part the repetitive loss business owners and homeowners can hardly be thought of as taking advantage of the program. If your family or someone you know has been flooded, even if only 6" above the carpet, then you understand the personal and economic impact that results. Plus, flood insurance does not cover all costs, given the deductible and list of items not covered.

#### **GENERAL COMMENTS ON REPETITIVE LOSS STRATEGIES**

It must be clear that the initiative is to fund only mitigation measures for specific properties that achieve results that are **cost effective and in the best interests of the NFIP**. This will preclude imposing a "solution" that will insufficiently avoid damages over the anticipated life of the mitigation measure. For mitigation projects, benefits are defined as "damages avoided if the project is implemented." Under this requirement, a building that has sustained several low-dollar value claims will rarely have a cost-effective solution. If there is a cost effective mitigation measure, such as elevation-in-place, a property owner should be encouraged to participate. If the owner declines an offer, the rest of the policyholders should not have to bear the continued claims against the Fund.

It must be clear that the initiative is to fund only projects that are **technically feasible**. There will be properties for which the typical approaches (acquisition or elevation) will not be possible. For example there are many situations where low-cost measures can have significant benefits, such as relocating utilities out of a basement. For non-residential structures, of which there are many near the top of FEMA's list of repetitive loss properties, a range of retrofit floodproofing options may yield significant benefits. It is important that we reduce damages and recognize that some mitigation that achieves that goal is better than doing nothing simply because a complete solution isn't feasible.

FEMA's other mitigation programs and tool can be brought to bear to support mitigation of repetitive losses (please see section 7 for brief comments on how the grant programs have been affected by recent actions). A new initiative should be designed to work in concert with existing programs to maximize effectiveness. These existing programs and tools include:

- Mitigation insurance (Increased Cost of Compliance) which is described below and is ripe for revisions;
- The Flood Mitigation Assistance Program authorized by this Committee as part of the NFIP Reform Act of 1994 as Section 1366;
- The Nationwide Pre-Disaster Competitive Mitigation Program, authorized in 2000 and funded in FY2003 to create a nation-wide competitive grant program; and
- The post-disaster Hazard Mitigation Grant Program authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

#### **OBJECTIVES OF A REPETITIVE LOSS STRATEGY**

A Repetitive Loss strategy should be viewed as a **cost containment** initiative for the NFIP that will benefit every current and future policyholder. It makes sense for the policy holders to invest in cost effective measures that will, in short order, reduce the pressure to raise the rates. In recent years, the cost of insurance has gone up close to 10% each year. For the average policy, that's on the order of \$40 a year. If that trend can be changed, then every policyholder will benefit. We can think of it this way: a program to mitigate less than 1 percent of the insured properties could save 4 million people over \$160 million

dollars in premiums each year.

Another long-term benefit of a repetitive loss strategy is that, without a doubt, it will **reduce federal disaster assistance**, although it may take longer to see the effects. When the pressure to raise the rates is reduced, more people will see that flood insurance is a “good buy” as the cost comes more in line with their perceived risk. This is the single most significant way to reduce that part of the federal disaster dollar that supports uninsured individuals, families, and businesses after the President declares a flood disaster. For flood-related disasters declared between 1989 and 1998, FEMA paid over \$3 billion for Individual and Family Grants (does not include SBA and other agencies, or the effects of the casualty loss deduction on tax income). For this reason, ASFPM believes it is appropriate for a repetitive loss strategy to increase funding for the Flood Mitigation Assistance Program and to modify the insurance mechanism called Increased Cost of Compliance. ASFPM’s proposal has been submitted to the Subcommittee.

**Low-income homeowners and renters** occupy many of the houses in the nation’s repetitive loss areas. Often the low-income occupant simply does not have the financial ability to move elsewhere or to pay for mitigation measures. It is far too simplistic to assume that every owner is able to make a rational choice based on cost alone. In those instances where grants or offers are made to low-income homeowners and renters, we are concerned that it be done in a carefully crafted manner that networks with existing housing programs. It is vital that there be recognition that if a specific property cannot be mitigated in a manner that is both technically feasible and cost effective to the NFIP, then the best mitigation is continued subsidized insurance, as anticipated by Congress when the NFIP was created in 1968. While the NFIP policy base as a whole would continue to subsidize the risk (which is the fundamental premise of insurance), at least the owner continues to purchase flood insurance and contributes to his or her own recovery, thus not burdening the U.S. taxpayer. The cross subsidy for these particular structures is comparatively small.

FEMA has determined that **non-residential buildings** make up a significant portion of the small group that has had multiple losses that appear to exceed the value of the building. Buyout of such properties is unlikely for many reasons. Non-residential buildings encompass a wide variety of structure types, thus a range of retrofit floodproofing options must be examined. ASFPM recommends that FEMA examine how handling these properties will differ from normal procedures used for residential property.

#### **SPECIFIC COMMENTS ON H.R. 253 AND H.R. 670**

ASFPM offers the following general comments and highlighted areas of concern regarding the two bills introduced to address the repetitive loss issue:

1. We understand the desire to define how many losses of a certain value should constitute a “repetitive loss.” We believe the definition is for convenience only, to put some boundary on the set of buildings that will be examined. There is nothing that would require FEMA to make a mitigation offer to each and every building that falls under that definition. Indeed, if it is clear that the initiative is intended to focus on those properties for which there are cost-effective measures that are in the best interests of the NFIP, then it becomes less important exactly how the term is defined.
2. Cost-effective and in the best interests of the NFIP are not simply terms of art. We have become experienced at evaluating cost effectiveness. Based on years of working with these terms under other programs, ASFPM is convinced that properties that have received multiple, low-dollar value claims are highly unlikely to have cost-effective solutions. On the other hand, owners of such

properties may very well be interested in effective solutions.

3. Mitigation measures that may be considered for any specific property are likely to be those with which we have become familiar: elevation-in-place, retrofit floodproofing, physical relocation, demolish/rebuild, and acquisition (if there is an appropriate recipient of the restricted deed).
4. We urge the Committee to direct FEMA to work with state and local partners to develop procedures for assessing feasible mitigation measures and approaching and working with property owners to encourage participation. Because so much will depend on how property owners are approached and the array of options, we suggest that FEMA be required to report and demonstrate its methods to the Committee prior to implementation.
5. It must be clear that there will be properties for which retention of insurance will be the best “mitigation.” While low-level property damage may continue and small claims will continue to be paid, by purchasing flood insurance the owner is contributing to the cost of recovery and does not become a burden on the U.S. taxpayer.
6. ASFPM does not support explicit exemptions for properties in certain categories. We believe that many of those owners may welcome financial assistance. Therefore, rather than exempt properties, we urge that FEMA be required to bring additional assistance to the table. For example, under current grant programs, if the buyout offer is insufficient to purchase comparable housing in the same area, as much as \$22,500 in supplemental housing assistance may be added to the offer. Many historic properties may be retrofit in ways that preserve their historic designation. Rather than consign such properties to continued flooding, ASFPM urges consideration of flexibility to mitigate to the extent practicable (which may involve elevation of utilities, use of flood-resistant materials).
7. Exempting properties for which flooding is associated with a third-party is problematic. On the one hand, we are pleased to see Congressional recognition that flood levels are not static, and that increasing flood levels are often associated with increased development. That is much of the reason for the continued increase in flood damages in the nation. On the other hand, applying such an exemption would not reduce flooding and could prevent assistance to property owners who are seeking help. We think the issue is better addressed by the other options in these bills.
8. ASFPM believes that including an appeals mechanism will be an important part to assure due process for property owners. However, we are concerned that the focus on exemptions and unwilling property owners may result in overlooking one of the objectives – helping people who flood frequently. We believe that most people will accept a reasonable offer for feasible measures. We do recognize that a few may refuse. Therefore, we urge that the Committee require FEMA to reconsider preliminary rules and comments that were received on this matter.
9. ASFPM endorses giving FEMA the ability to work directly with a property owner, but only if the state and community are unwilling or unable to participate. However, we are concerned about FEMA’s capacity to handle this time-consuming effort. To address this, we urge consideration defining grant recipients to include non-profit, non-governmental organizations that have compatible missions, such as community development and housing organizations or other non-profits to receive and manage grants.
10. ASFPM strongly opposes the concept that the federal government become the landowner, regardless of any qualifying circumstances. Many buyout properties are lots interspersed in

established neighborhoods – it is entirely out of the question that FEMA would be able to maintain such lots in a manner that prevents them from becoming eyesores or health risks due to trash and vermin. Prior to the Reform Act of 1994, FEMA implemented a program to acquire properties, called Section 1362. It was found to be burdened by a multitude of problems, not the least of which was that FEMA took title to lands which were then transferred fee simple to communities. ASFPM does not feel that this is a viable alternative, and urges reconsideration of any provision that would involve federal ownership of land, no matter how briefly.

11. Both bills lack sufficient detail regarding how the mitigation assistance will be provided. ASFPM believes that the first and best approach is through the local jurisdiction. However, other mitigation grant programs require a 25% non-federal match (even the Flood Mitigation Assistance Program that is funded by NFIP policyholder funds, not general funds). It is unclear if the Committee expects the owner to contribute funds, for example if the proposed mitigation measure is elevation-in-place or retrofit floodproofing.
12. The two bills propose different mechanisms to fund the activities. Regardless of the mechanism, every single person who obtains a flood insurance policy will be contributing to the funding. This is acceptable because of the anticipated benefit in terms of reduced pressures to raise rates. However, we urge the Committee to more fully examine the impact on the policyholder. Whether rates are increased to pay back funds borrowed from the Treasury or whether the federal policy fee is increased, the impact on policyholders should be clear. We suggest that the Committee establish a specific sunset so that a decision can be made as to whether it is necessary to continue the additional increase.
13. ASFPM urges that the Committee phase in funding, but we recommend that it is best to reverse the order proposed in H.R. 670, i.e., provide a smaller amount in the initial years while policies and procedures are being established. FEMA has taken a long time to get some programs up and running and this one needs to be very carefully crafted and coordinated with state partners before rolling out. Rather than rush forward, we must be assured that the procedures will foster policyholder participation.
14. With regard to consequences for property owners who refuse a mitigation offer, ASFPM suggests that rather than deny insurance it is better to authorize the NFIP to rate the policy using actuarial rates. The logic of also denying disaster assistance may seem sound, but it can be difficult to administer, especially in the immediate aftermath of a large flood when delivery of Individual Assistance is expedited.
15. ASFPM supports charging actuarial rates if a mitigation offer is refused, as long as the property owner is fully informed and fully understands the consequences of refusing an offer, and as long as the offer is for a reasonable, feasible, and cost effective measure. But those are important caveats. An owner should not be penalized if the only measure that will protect the home is not cost effective and if the owner (especially the low income owner) is required to bear a large share of the costs. ASFPM believes there are some people for whom the best mitigation is the financial protection provided by flood insurance.
16. H.R. 253 has a provision regarding property leased from a federal entity. In most of those circumstances, the land is leased, but the building is owned by the occupant. ASFPM does not object to those pre-FIRM properties continuing to have subsidized rates, but only if the federal landowner plays by the same rules as communities. This will preserve the *quid pro quo* of the

NFIP. This can be accomplished by requiring the federal landowner to apply the NFIP's minimum floodplain management standards or by requiring the federal landowner to require building owners to obtain permits from the local jurisdiction.

17. ASFPM request that the new funding be used for projects that primarily address repetitive loss properties, rather than exclusively for those properties. Community projects, especially acquisitions (buyouts) that lead to compatible reuse and utilization of vacated land, rarely involve only insured properties. A similar qualification was made for the Flood Mitigation Assistance Program (see Report 103-652).
18. It is very important that the amount of funding currently available to states to provide technical assistance under the Flood Mitigation Assistance Program be increased in order to provide the support that communities and property owners will require. ASFPM recommends that the Committee specifically authorize a portion of the added funds be made available to states for technical assistance, in order that the program is effective.

## **2. EXISTING MITIGATION INSURANCE MECHANISM REQUIRES REFORM**

The 1994 Reform Act authorized mitigation coverage as part of the standard flood insurance policy (Sec. 1304(b)). Called ICC or "Increased Cost of Compliance," it was touted by FEMA – and expected by others – to be one of the best tools to effect post-flood mitigation, in part because it is funded by a surcharge on flood insurance policies (up to \$75 annually). Unfortunately, those expectations have not come about. Why? ASFPM believes it is because FEMA has tightly interpreted the statute. While we appreciate that initially the agency had no experience on which to base its interpretations, much has been learned in the last five years.

The time has come to make changes so that this self-funded mitigation mechanism can fulfill original Congressional intent. ASFPM has drafted amendments to Sec. 1304(b) to achieve the intended objectives and provided that material for the Committee's consideration and will submit the materials for your consideration (below). The following is a brief overview of ICC, implementation issues, and recommendations for improvement:

1. Every flood insurance policy on property within a mapped floodplain – even post-FIRM policies, pays something for ICC. The cost ranges from \$3 to \$75 per year. The upper limit is paid on pre-FIRM buildings and V Zone buildings (where open coast where wave energies and erosion are greatest). It is notable that post-FIRM buildings (built in compliance with the rules) pay for this coverage even though the chances of ever qualifying are slim. Why? Because if ICC was working, then every policyholder would enjoy the benefit of reduced pressure to raise the rates.
2. ICC is a claim, paid only if damage is triggered by a flood event and only if the damage is sufficient to meet one of two triggers. Every community in the NFIP administers what is commonly referred to as "the 50% rule" or substantial damage. If the cost to repair a damaged building to its pre-damage condition exceeds 50% of its market value, then the community's rules require the owner to bring it into compliance. Most commonly, this means the existing building is lifted off its foundation and raised on a new, higher foundation. This substantial damage rule has been in place since early in the program; until ICC was authorized, the owner had to bear the entire cost.
3. Although FEMA has announced an increase of the benefit under ICC to \$30,000 (effective May

1, 2003), in actuality, as currently administered this increase does very little to increase funding of eligible mitigation activities. The average ICC payment to support an acquisition project is on the order of \$7,000. A small number of ICC payments have been made to support elevations, in part because FEMA has only recently ironed out administrative wrinkles and has begun to require the insurance adjusters to follow specific procedures to help policyholders through the process.

4. ICC can be triggered by “cumulative repetitive loss,” which the statute defines as two or more claims in a 10-year period, each of which is at least 25% of the market value of the building. However, because the statute specifically states that compliance is required, FEMA’s implementation requires the community to have an ordinance that mirrors that trigger. Very few communities have adopted that ordinance language. The result is that ICC as it is currently authorized is an ineffective tool to address repetitive losses.
5. Sec. 1304(b)(3) is an excellent tool for FEMA to focus on the top tier of repetitive loss properties, especially in communities where there is little interest in seeking a mitigation grant. The provision explicitly authorizes the FEMA Director to pursue mitigation offers for properties for which it is determined that it is cost-effective and in the best interests of the NFIP to achieve compliance. It is our understanding that FEMA has not implemented this, in part because of the statutory constraint that “compliance” is required. FEMA does not impose compliance - that is the purview of the local regulatory authority. ASFPM has recommended an amendment that would eliminate this obstacle and allow FEMA to become proactive.

### **3. MATTERS RELATED TO REAUTHORIZATION OF THE NFIP**

The Association does not consider the NFIP’s periodic sunset provision to be an explicit expression of Congressional intent that the program may actually be terminated. It is a convenient mechanism to require periodic attention to the needs of the program. The consequences of short-term lapses have been outlined by others, in particular, the insurance and lending industries that are especially sensitive to this issue. We submit that it is reasonable to reauthorize the NFIP on a 3-year basis, which will preserve the opportunity for oversight on a regular basis.

ASFPM’s primary concern is that the wrong message may be conveyed, i.e., that the program’s importance does not warrant Congressional commitment, which may have the unintended consequence of weakening state programs. Too many states and communities continue to view the NFIP as a purely federal program, with little or no commitment on their parts. Also, lapses in the NFIP cause an increased workload for state and local floodplain officials as they have to spend a large amount of time and resources answering questions from concerned homeowners, insurance agents, lenders, legislators and reporters.

### **4. THE NFIP AND THE DEPARTMENT OF HOMELAND SECURITY**

The NFIP is only one of many FEMA’s responsibilities that are now transferred into the Department of Homeland Security. The Association of State Floodplain Managers, Inc., is very concerned that the NFIP’s mission will get overwhelmed by the forces driving DHS. Millions of homes and businesses are located within the Nation’s floodplains and development pressures continue. These people are located in areas that, with reasonable scientific certainty, we can say are exposed to a 1% change of flooding in any given year. Every year, areas in nearly every state are flooded, often damaging critical local infrastructure and forcing thousands of people out of their homes. This is a risk that we cannot allow to fall victim just because FEMA is in a new agency.



We appreciate Secretary Tom Ridge's statement made before the House Appropriations Homeland Security Subcommittee last week that FEMA's mission "will not be jeopardized in any way, shape or form." We are particularly encouraged that he specifically mentioned the importance of mitigation in that mission. A major part of FEMA's mission is disaster loss prevention or mitigation. Millions of people, buildings, and public infrastructure facilities are at risk due to natural hazards. Development of mitigation policies and programs is absolutely essential to controlling the huge costs of natural disasters and will contribute to saving lives and property. Such policies are an important corollary to FEMA's response and recovery capabilities. In fact, mitigation often is accomplished in the immediate aftermath and rebuilding phase following a natural disaster when people's awareness of their risks is high and local and state commitments leverage federal dollars.

States and local jurisdictions know FEMA not only for its disaster response, but for its role in establishing long-term policies that influence new development and redevelopment in high risk areas. FEMA has development regulations, provides federal flood insurance, and coordinates technical assistance through the states to help communities and land owners build in ways that minimize flood damage. FEMA works with building code organizations to incorporate reasonable and cost effective mitigation measures into building codes, and to encourage states and local jurisdictions to adopt those codes in order to remain economically and socially viable by reducing flood losses.

It is important for us to agree that a federal flood insurance program is a vital component in the economic well-being of the Nation. Without the NFIP, trying to bear the rising costs of flood disasters would have catastrophic financial implications for millions of families and businesses and about 19,600 counties, cities, towns and villages across the country. Once we agree on the NFIP's importance, then we can pursue what is needed to strengthen the program in a variety of ways.

We urge the Committee to maintain regular contact with DHS to ensure that the short-term and long-term benefits of the NFIP are realized in the coming years. To that end, we urge that you monitor FEMA's budget to ensure that adequate funds are requested to accomplish the goals set forth in authorizing legislation.

## **5. THE IMPORTANCE OF CONTINUED FEDERAL-STATE PARTNERSHIPS**

During deliberations surrounding creation of the Department of Homeland Security, the Administration singled out FEMA's ability to develop state partnerships. The Association has long worked productively with FEMA to accomplish the goals of the NFIP and the development and implementation of mitigation initiatives. Our state members must continue to be recognized as equal partners.

The NFIP currently has over 19,600 participating counties, towns, parishes, cities, boroughs and villages. FEMA has insufficient staff to meet the current demand for technical assistance, training, visits and monitoring of these thousands of communities, much less a new initiative. Not only do states work to provided assistance in these activities, in many ways they are much better equipped to help communities integrate the NFIP and mitigation into many other local programs with related goals. Early in the program, federal funding was provided for states to building state capacity. About 15 years ago, the focus of funding provided to states was appropriately shifted to serving community needs. That program, called the Community Assistance Program, currently funds at least part of one position in each state, referred to as the NFIP State Coordinator. Despite the benefits of this program – and there are many – it has not kept pace with the demands. The demands come from FEMA and communities and citizens. FEMA wants the

NFIP State Coordinator to do more and more (see map modernization initiative, below). Communities, under growing development pressure and an increasing number of damaging floods, often are unable to obtain critical technical assistance due to insufficient state staffing associated with the NFIP.

We urge the Committee to examine the long-term merits of building on this particular federal-state partnership. The Community Assistance Program is funded by NFIP policyholder income, and has been level funded for over a decade despite increases in the number of policies. The Association appreciates FEMA's recent request for additional funds. Our state members cannot meet the demands of the NFIP and the needs of nearly 20,000 communities without the increase.

## **6. THE ROLE OF THE STATES IN FEMA'S MAP MODERNIZATION INITIATIVE**

The importance of modernizing and updating flood hazard maps is now widely understood and, based on the FY03 budget and the Administration's proposed FY04 budget, funding is being provided. The initiative will span 8 to 9 years, but the end products will be converted to modern technology that will facilitate administering programs to reduce flood losses in nearly 20,000 communities and lower long-term costs to maintain the maps.

Each State's NFIP State Coordinating Office will experience a significant increase in workload associated with the map modernization initiative. Besides working with them to get accurate updated maps, many communities will need technical assistance in order to appropriately revise their floodplain management ordinances once the map is completed. There will be a continuing need to monitor priorities. Importantly, as FEMA is directed to encourage partnerships in the allocation of map funds, the NFIP State Coordinator will play an expanded role in coordinating with other state agencies that may have resources to contribute and leverage federal dollars.

## **7. THE EFFECTIVENESS AND VALUE OF THE NATIONAL FLOOD INSURANCE PROGRAM AND FEMA'S FLOOD MITIGATION PROGRAMS**

The National Flood Insurance Program is the nation's oldest flood mitigation program. Its unique arrangement: the federal government establishes regulatory standards, issues Flood Insurance Rate Maps, and provides the insurance; the private insurance sector sells insurance and the engineering community performs engineering and planning studies; the states coordinate the program and provide technical assistance to communities; and local jurisdictions that must adopt, administer, and enforce floodplain regulations. This arrangement contributes to the program's effectiveness. FEMA has estimated that over \$1 billion in damages are avoided each year due to the presence of state and local regulatory requirements. These savings accrue in part to the U.S. taxpayer because compliant construction is much less likely to sustain damage and because insured property owners are unlikely to qualify for disaster assistance.

FEMA's other flood mitigation programs require communities to plan in a systematic way to reduce flood risk, increasing overall disaster resistance and sustainability. In addition to the obvious benefits to owners of structures that are mitigated, there are multiple benefits to the community. Although often more difficult to quantify in strict benefit:cost models, these multiple benefits are critical to individual quality of life and a community's economic vitality.

## **7. EXISTING MITIGATION PROGRAMS ARE BEING JEOPARDIZED**

**Flood Mitigation Assistance Program:** This program was authorized in 1994 by this Committee ASFPM on NFIP & Repetitive Loss Initiatives (March 28, 2002)

specifically to focus on repetitive losses and substantially damaged property, including property threatened by imminent collapse due to erosion. It is funded entirely by the flood insurance policyholders. The Association is gravely concerned because the FY2004 budget proposes combining these funds with those appropriated for the new Nationwide Pre-Disaster Competitive Mitigation Program (see below). While some accounting efficiencies may result, it creates the potential for significant administrative complications. Importantly, because the FMA funds derive from policyholders they must be used solely for the purposes authorized, and, we submit, they should continue to be administered under current procedures. We urge the Committee to express its intent that FMA not be combined with the proposed new program.

**Nationwide Pre-Disaster Competitive Mitigation Program:** Association has prepared extensive comments regarding administrative complications and other problems with this new competitive program, funded by the FY2003 budget. The ASFPM has long supported mitigation, both in pre- and post-disaster settings; however, we feel there are problems with the approach approved in 2003, in part because it is at the expense of the existing post-disaster Hazard Mitigation Grant Program (see below) which has been cut in half. With regard to the competitive program, we are concerned that it will be driven solely by numbers and that small communities will be at an unfair advantage. We also believe that non-structural flood mitigation projects (acquisition, elevation, floodproofing) will not fare well against projects that deal with other hazards, such as seismic retrofitting.

**Hazard Mitigation Grant Program:** It is notable that through the FY2003 budget process, the amount of mitigation funding made available in the post-disaster period was halved, and is proposed for termination in FY2004. This program is formula-based, resulting in funds for mitigation as a function of the total federal cost of disaster assistance. It provides funding at the most opportune time, after a federally declared disaster. While we endorse pre-disaster efforts, we believe this limitation will severely hamper mitigation when people are most aware of the benefits and when they are most aware of their risk and are willing to participate and leverage other funds.

## CONCLUSION

We appreciate that Congress has provided an array of flood mitigation tools which, when appropriately used, will greatly increase the prospects that communities, states, and businesses and families can be truly resistant to future flood disasters. Refocusing the Repetitive Loss Initiative (see below) and amending the Increased Cost of Compliance provision are important next steps.

Thank you for the opportunity to provide our thoughts on these important issues. The ASFPM and its members look forward to working with you as we move towards a common goal of improving state and local capabilities to reduce flood losses.

For more information, contact Larry Larson, Executive Director, (608) 274-0123, ([larry@floods.org](mailto:larry@floods.org)) or Rebecca Quinn, Legislative Officer (410) 267-6968 ([rcquinn@earthlink.net](mailto:rcquinn@earthlink.net)).



## SUGGESTIONS FOR MODIFICATIONS TO THE INCREASED COST OF COMPLIANCE PROVISION FLOOD INSURANCE

The insurance coverage authorized in Sec. 1304(b), referred to as Increased Cost of Compliance (ICC), is intended to pay for mitigation of those insured properties that have sustained repetitive losses and severe losses that have been identified as drains on the National Flood Insurance Fund. Since 1997, policyholders have been charged from \$3 to \$75 per year, contributing nearly \$80 million a year in premium income. As of early 2003, just over 1,000 claims had been paid. When used to support a community buyout project, the average claim amount is about \$7,000.

**The Repetitive Loss Problem:** FEMA has characterized the repetitive loss problem in considerable detail. Only about 10,000 buildings of the more than 4 million insured properties have experienced two or more flood losses that combine to exceed the building value that is reported by policy holders (not necessarily the “market value”). Thus, one-quarter of one percent of all NFIP-insured buildings are the primary target for the focus of a repetitive loss initiative.

**The Substantial Damage Problem:** Substantial damage has long been a provision in community ordinances. Communities must require that owners bring into compliance any building that is substantially damaged by any cause. Substantial damage means damage whereby the cost of restoration to the before-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred. For community officials, this is one of the most difficult provisions of the NFIP. It is difficult to administer, many communities are insufficiently aware of the requirement, and after damage often is when community and political sentiment does not foster effective enforcement. One of the major anticipated benefits of ICC is that owners who have for many years been required to bring their buildings into compliance, would, in addition to receiving the standard claim payment to cover damage, now be eligible for up to \$30,000 that they previously did not receive when they filed a flood insurance claim

The Association of State Floodplain Managers has prepared recommended amendments to the authority for ICC (below) to make it more effective in six ways:

1. **Clarify that the additional insurance coverage is to cover the cost of implementing mitigation measures.** FIA made the administrative interpretation that the phrase “cost of compliance” means that a local ordinance should trigger compliance, i.e., to qualify under Sec. 1304(b)(1), a community must adopt a cumulative repetitive loss ordinance. Very few communities have done so, and those that have, run into administrative problems, especially when a property changes hands between floods. More importantly, if it is *in the best interest of the NFIP* to pay for mitigation for repetitive losses that qualify under the statutory definition, then the program should not be constrained by the choice of a community to adopt a more restrictive ordinance.

2. **Change the definition of “repetitive loss structure” to blunt FIA’s administrative interpretation that BOTH qualifying repetitive loss claims have to be filed after the date ICC coverage was added to the policy.** If the last 30+ years of NFIP claims records show that a structure has sustained multiple losses, then it is NOT in the program’s best interest to wait for two more claims in order to make the ICC payment. This is particularly problematic for homeowners who know they’re paying \$75/year, sustain a 25% loss, but can not avail themselves of the coverage for which they’re paying until they suffer another loss. [NOTE: FIA made this interpretation early on, when they anticipated large numbers of claims and they wanted to be able to cover outlays with the income from the \$75 surcharge. This situation has not come about, and the income is significant relative to the small number of claims that have been submitted and paid.]
3. **Authorize ICC payments based on community requirements.** The NFIP consistently encourages communities to adopt more stringent standards, and many have done so in part by defining substantial damage with a lower percent of value. To ensure that the NFIP claim payment for ICC is consistent with the community’s ordinance, payment should be triggered by substantial damage, whether defined by FEMA/NFIP or if the community has a tighter definition (e.g., NFIP minimum is 50% of market value, some communities have adopted a 40% or 30% trigger).
4. **Clarify that under 1304(b)(3), the Director can provide the maximum available claim amount under ICC (\$30,000 as of May 1, 2003) and proactively encourage or require the owner to implement cost effective and feasible measures.** This authority should not depend on whether the community’s ordinance requires compliance — *if it is cost-effective and in the best interest of the NFIP to pay for mitigation, then the NFIP should do so!* Rather than view this solely as a benefit the individual, it must be viewed as a broad benefit that helps the other 4 million policyholders (and all property owners not yet covered by insurance), because it will reduce the pressure to raise the rates. This will allow FEMA to target the properties that have received 4-5 or more claims that cumulatively account for large outlays, but which do not qualify under the repetitive loss structure definition. Report language should direct FEMA to develop, by regulation, a reasonable consequence if an owner refuses funding under this section. Congress should recognize that such measures are likely to include annual premium increases and/or increased deductibles until the coverage is provided at actuarial rates. ASFPM urges Congress to clearly direct that if a cost-effective and feasible physical modification is not available, *then insurance becomes the most cost-effective mitigation measure*, and the owner should not be penalized.
5. **Authorize FEMA to increase payments to support community-based floodplain buyout projects.** FEMA has interpreted that ICC can only pay the cost of compliance, which is exactly what was intended if the compliance entails elevating a home or floodproofing a non-residential building. However, for many years FEMA has aggressively promoted the idea that communities should buyout flood damaged property. Unfortunately, if a homeowner who has paid \$75 per year for ICC decides to sell so the community can turn the land to open space, FEMA has decided that ICC can pay only for code-compliant elements of an acquisition project. Thus, ICC can only pay to demolish the building, clear the debris, grade the building footprint, and cap utilities. Although the owner has paid for \$30,000 in coverage, the typical ICC claim is about \$7,000 as part of a buyout project. ICC must be modified so that the full amount is available to support acquisition projects that satisfy multiple objectives articulated in a community mitigation plan.

6. **Authorize FEMA to make full payment if a building is so damaged as to be unsafe and elevation-in-place is not feasible and the community is not willing to take ownership of the lot.** Buildings that have been flooded repetitively often are in poor condition, especially where flooding is long-duration and wood becomes saturated and prone to rotting or toxic black mold invades, creating unsafe environments. Elevation-in-place is an effective and feasible measure in many instances. In others instances, it is not feasible nor cost-effective to elevate – in which case the “demolish and rebuild” option must be available. Elevation of an old building results in an elevated old building – in many ways it is more effective to demolish and rebuild fully compliant with all the codes (flood, wind, fire, seismic). In these instances, the owner should have the standard flood claim payment and the full ICC payment to help pay for a new home, with any remaining costs the responsibility of the owner. This is one way to help communities deal with flood-prone neighborhoods where the quality of homes deteriorates with every event, depressing property values and consigning many owners to living in unhealthy and unsafe housing.

### **SUGGESTED AMENDMENTS**

Sec. 1304 (b) ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES. -- The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of ~~compliance~~ implementing measures that result in consistency with land use and control measures established by the community under section 1361 for --

- (1) properties that are repetitive loss structures;
- (2) properties that ~~have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event~~ are substantially damaged structures; and
- (3) 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~~ implementation of such measures.

*Add to definitions in Sec. 1370(a):*

(7) the term “repetitive loss structure” means a structure covered by a contract for flood insurance ~~under this title that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made~~, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event. For the purposes of Sec. 1304(b), the qualifying claim must be covered by a contract for flood insurance that includes the coverage authorized by Sec. 1304(b);

(new) the term “substantially damaged structure” means a structure covered by a contract for flood insurance that has incurred flood damage for which the cost of repair exceeds an amount specified in regulation or by the community, which ever is lower.