

Testimony of Congressman Ken Bentsen

Before the Subcommittee on Housing and Community Opportunity Committee on Financial Services U.S. House of Representatives, Washington D.C.

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Good Morning. I want to thank Chairwoman Roukema and Ranking Member Frank for holding this hearing on the National Flood Insurance Program (NFIP) and repetitive loss properties. As in April 1999, this April I reintroduced the "Repetitive Flood Loss Reduction Act" (H.R. 1551), legislation I believe will greatly reduce repetitive NFIP claims. I am pleased that my colleagues, Rep. Bereuter and Rep. Blumenauer, have reintroduced their legislation. I look forward to working together to reach a consensus approach on how to approach repetitive loss property owners and effectively bring relief to the NFIP and the taxpayer.

I would like to thank and commend also Rep. Baker and all our panelists from FEMA, GAO, the National Emergency Management Association, the Association of State Floodplain Managers, National Wildlife Federation, National Association of Realtors, the Homebuilders Association, and the Independent Insurance Agents of America, all of whom have dedicated much to the improvement of flood disaster policy in this area.

I was very encouraged by the amount of cooperation, creativity, and compromise exhibited by my colleagues and our staff in addressing these issues in the last Congress. Our work in 2000 succeeded in producing several draft versions of a Bentsen-Bereuter-Blumenauer bill, and I am optimistic we can resolve differences between the bills and produce legislation this Subcommittee and the Financial Services full committee will enthusiastically endorse. I want to say up front that the most significant difference is which definition of repetitive loss to use.

Perhaps most important is for the Committee to understand that the National Flood Insurance Program is not a boondoggle, but a necessary safeguard for millions of American homeowners who are neither wealthy nor living in beachfront mansions. Many tens of thousands of my constituents and fellow Houstonians have paid dearly for the peace of mind flood insurance brings, most of whom rarely, if ever, file a claim. After the deluge of Tropical Storm Allison, which flooded the Greater Houston area from June 5 to June 11, many of these folks are now glad they have insurance.

One of these constituents of mine is a local elected leader, Mayor Wayne Riddle of Deer Park, Texas. An insurance man by trade, Mayor Riddle is a model NFIP policyholder. His home flooded only once (before Allison) in the last 20+ years, and his home is not located in the floodplain. He admitted to me that he considered dropping coverage since it was not required, but he did the right thing. A home out of the floodplain with two floods in over 20 years sounds like an ideal candidate for NFIP insurance, but not necessarily a candidate for a buyout. The cost-benefit ratio for buyouts of two claim houses may not be as advantageous as for costly properties. When we produce a consensus proposal, I hope that we will keep the situation of homeowners like Mayor Wayne Riddle in mind.

Considered by many a 500-year rainfall event, Tropical Storm Allison was incredibly devastating to Southeast Texas, causing an estimated \$4.8 billion in damage in Harris County, the most developed affected county. Allison dumped 30 to 40 inches of rain in parts of Harris County--as much as 15

inches in a 6-hour period in some locations. This incredible event that prompted the Harris County Flood Control District to uncover a meteorological theory developed by the National Oceanic and Atmospheric Administration (NOAA) termed "total maximum precipitation." In geographically limited, but highly developed and sensitive areas, the sky delivered the highest amount of moisture allowed by the laws of physics to the ground beneath. This was from a tropical storm that did not make the traditional journey from the West coast of Africa, but formed spontaneously the Gulf of Mexico, greatly reducing the warning time. This delay had tragic and expensive consequences.

FEMA reports that approximately 25,000 NFIP claims will be filed by Allison affected homeowners in Texas and Louisiana totaling \$350 million, or an average \$14,000 per Allison claim (the average claim for Hurricane Andrew in Florida was \$17,000). From June 5th to 18th roughly 20,000 claims were filed, 13,526 in Texas. In reaction to these claims back in June, Howard Leikin, deputy administrator of FEMA's Federal Insurance Administration stated, "unexpected events like Tropical Storm Allison underscore the need for flood insurance." I could not agree with him more. I believe we need to keep affordable flood insurance available for homeowners in coastal and riparian areas. However, we urgently need to address the 1,267 costly repetitive loss properties in Texas and the thousands in other states. FEMA estimates that 1,000 repetitive loss claims as a result of Allison.

We all know repetitive loss claims in the NFIP are excessive, with many questionable claim histories that were never intended with the creation of the NFIP. The most costly 10,000 or so structures are costing, on average, \$8000 per structure, per year--\$80 million. As a Representative from a district that has over 30,000 households in the NFIP, I know that, the NFIP is now less effective at achieving the goals of limiting federal disaster outlays and promoting proper building standards as a result of many complex and varied factors. A short list of these would include extensive development growth in many coastal and riparian watersheds, a significant increase in violent tropical storms affecting our nation's Atlantic and Gulf coasts, a long learning process on flood control projects, subsidence from groundwater pumping, deficient stormwater facility maintenance and the unmet need for valuable topographic data for floodplains.

I believe that NFIP was a fundamentally positive step in improving emergency management. The NFIP was intended to limit federal flood recovery liability in the 100-year floodplain and shift most of the responsibility of flood damage recovery to homeowners in the floodplain through premiums. As GAO noted in the 1999 hearing, the NFIP was not designed to be actuarially sound because of the high number of grandfathered, pre-FIRM structures included. It was understood that many of these homeowners are middle class families who moved or built before floodplain management and planning became standard practices. It was also understood that moving or raising millions of structures in the floodplain was a economically and politically impossible undertaking. This point is important, because, at least in Harris County, buyout funds have often run short of demand. In addition to limiting federal disaster liability, NFIP is a valuable incentive for the federal government to voluntarily but vigorously promote national floodplain building standards by setting eligibility criteria for policyholders. As I will note again later, post-FIRM properties in the floodplain are not often repetitive loss properties.

There may be many culprits in the repetitive loss story--city planners, developers, Congress and the federal government, but it is also important to understand that floodplains change, usually expanding, as a result of upstream development. Remapping of the watersheds in my district from 1996-1999 brought 9,637 housing units into the Special Flood Hazard Area (SFHA), or floodplain, and ultimately into the NFIP. I do not believe it is right to hold all 4 million NFIP policyholders responsible for development decisions made primarily on the local level before topographic

information was available the way it is today. The NFIP was created for these homeowners, and I believe they will feel cheated if they have paid several thousand in premiums and lose their coverage after a couple of \$1000 claims.

I would like to reemphasize my focus on the repetitive loss homeowner caught in this destructive, expensive, and often hopeless cycle. People who come familiar with the issue of repetitive loss, through an article or network news story will ask: why do these people live there? Most people believe they would have the common sense to not locate their family in this kind of terrible situation. I would remind all interested that only 4% of repetitive loss properties are post-FIRM, meaning built after 1974 or when rate maps were done for a particular community.

This means that 96% of repetitive loss properties were constructed either when they were not in the floodplain, when the floodplain was not understood, and in a era before the federal government was actively working to encourage national floodplain building standards. In my view, it is wrong to determine that all of these homeowners and families are “abusing” the system. I support removing these structures from the floodplain, but I believe that the vast majority these homeowners have committed no abuse that they had any control of and deserve compassion in a repetitive loss reform effort.

I would like to strongly state my concern for lower-income homeowners that these proposals would affect. Many may believe that the NFIP mainly subsidizes wealthy seaside developments in popular vacation spots, but I know that in my district many of these homeowners are not able to make the financial decisions that many of us here feel that we would make in the same situation. I believe that Rep. Baker also has the same constituent concerns in his district in Louisiana.

My legislation, H.R. 1551, seeks to improve the NFIP while always focusing on the homeowners who will be at the center of the repetitive loss reduction process. After discussing H.R. 1551, I want to touch on the affect that Tropical Storm Allison had on my hometown of Houston, Texas.

- I. **Buyouts:** As in Reps. Bereuter and Blumenauer’s bill, my legislation gives primary focus to buying out repetitive loss homes in the floodplain because it is a proven, cost effective, and equitable solution to the vicious flooding and financial cycle that traps many owners of repetitive loss properties. This emphasis on removing repetitive loss properties is the fundamental agreement between our two proposals. In the Subcommittee hearing held on this issue in 1999, former FEMA Director James Lee Witt cited a ratio of \$2 in reduced federal disaster assistance for every \$1 spent on buying out repetitive loss properties.

For the \$100 million in authorized funding provided in H.R. 1551, \$90 million is directed towards buyouts and \$10 million towards mitigation activities like elevation. I believe this number may need to be larger. Former Director Witt stated during his tenure that with \$300 million he could stabilize the NFIP. I also believe increasing FEMA’s line of credit with the Treasury may be necessary. If FEMA borrows funds from Treasury to finance repetitive loss buyouts, net benefits could be achieved while reducing demand for scarce discretionary funds.

- II. **State/Local:** I drafted H.R. 1551 with the intent of deeply involving state and local governments in the process because this issue is essentially a land use issue where local governments obviously have unique knowledge and authority. H.R. 1551 would require

a database of repetitive loss properties constructed by local floodplain managers and FEMA. FEMA has already made a huge step in this direction with the creation of the Special Direct Facility (SDF), a central processing office for the 10,000 targeted repetitive loss properties. My legislation also allows state and local governments to coordinate and execute the repetitive loss buyouts and requires that the acquired property be owned and maintained by the local government or state, not the federal government.

During the drafting of H.R. 1551 I consulted with Harris County, the third largest county government in the United States, and specifically the Harris County Public Infrastructure Department (HCPID) which includes Harris County Flood Control District (HCFCD). HCFCD is a leader among local government in using buyouts as non-structural flood damage reduction projects. For example, in the Cypress Creek watershed, HCFCD used \$4.5 million in flood control funds from the Corps to help fund 35 buyouts rather than construct a more expensive channel project. However, after a 1994 flooding event, HCFCD could not obtain enough funds to buyout all the homes along Sims Bayou in my district that would have been cost-effective. I am confident that many of these homes may have flooded again during T.S. Allison, due to lack of funds in 1994.

- III. **Mitigation:** H.R. 1551 provides \$10 million in flexible grants to state and local governments for elevation, relocation, demolition, flood proofing, and minor mitigation

efforts for structures in the Special Flood Hazard Areas (SFHA). These funds are to be used for feasible, cost-effective projects likely to provide protection and substantially reduce damage claims by NFIP properties. Rep. Bereuter's proposal provides for the extension of current mitigation grants to non-compliant communities which have been excluded.

- IV. **The Definition:** Finally, and most importantly, in order to provide the most benefits quickly for our limited buyout dollars, my legislation has a more targeted definition of "repetitive loss" than the Bereuter-Blumenauer approach. Instead of 2 loss without regard to amount of claims as in H.R. 1428, I use a definition of 3 or more losses with cumulative damages equal to 125% of the market value of the structure. In our last hearing on this issue, GAO agreed with me that a focused definition of repetitive loss ensures the more costly repetitive loss properties are addressed first. Certainly, this area has been the subject of much back and forth. I believe we should target scarce buyout funds and not give the federal government undue broad authority to clear the floodplain after two claims, even de minimis ones, which would be far below premiums paid.

Essentially, the definition of repetitive loss is a definition defines homeowners who will be penalized. We all know that houses last a long time and weather is unpredictable. An insurance policy where your premiums go from several hundred to several thousand after two minor claims, regardless of time, location of the floodplain, or ownership, does not sound like much of an insurance policy. I would urge all present to imagine how the value of NFIP homes would be affected should the unconditional two claims proposal become law. Additionally, a critical point which my bill does not define, as Mr. Bereuter and Mr. Blumenauer do, is the question whether the policy runs to the policy holder or the property. Having the policy run directly to the property could have the effect of decreasing its value and raise disclosure issues under Real Estate Settlement and Procedures Act.

- V. **Consequences for refusal:** I also drafted my legislation to include a significant financial incentive to participate in repetitive loss buyouts or mitigation. H.R. 1551 raises premiums by 50% and increasing the deductible by \$5,000 for those that refuse an offer of purchase or mitigation. Another difference from the Bereuter legislation is H.R. 1551 directs the revenue from increased premiums into repetitive loss mitigation and buyouts. I respect Reps. Bereuter and Blumenauer's desire to raise folks to actuarial rates, but I hope they will consider raising premiums in steps rather than one quick shock

In summary, I think that Reps. Bereuter, Blumenauer, and I are much in agreement on this issue. However, H.R. 1551 differs from H.R. 1428 on the critical definition of repetitive loss and a few secondary issues. I believe my approach is more targeted and careful because I am very familiar with many of my constituents who are trapped in the repetitive loss cycle since coming to Congress. Furthermore, I believe the engagement of the affected homeowners and their elected representatives at all levels will be critical to reaching a consensus. The most recent devastating flooding event in my district, Tropical Storm Allison, has reinforced my desire to remove repetitive loss structures and their residents from harm's way. When we accomplish this, federal disaster recovery efforts can focus on those properties and families that experience extraordinary calamities, instead of routine cycles of flooding and rebuilding.

That is why I am committed to a focused, cost-effective definition of repetitive loss, the fairness of the eventual buyout offer price, and the availability of mitigation for repetitive loss properties. A targeted definition leads to a policy that is more cost-effective, minimizes the adverse impact on homeowners, especially low and moderate income homeowners, and recognizes the limitations of the federal government.