

TESTIMONY

Association of State Floodplain Managers, Inc.

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

on

Repetitive Loss Strategy for the NFIP H.R. 1428 and H.R. 1551

presented by
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INTRODUCTION

The Association of State Floodplain Managers, Inc., and its 14 Chapters represent over 4,500 state and local officials, including other professionals who are engaged in all aspects of floodplain management and hazard mitigation. 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.

In 1988, ASFPM began encouraging Congress to incorporate a mitigation program into the NFIP. The National Flood Insurance Reform Act of 1994 addressed many needs, including the program set forth in Sec. 1366, the Flood Mitigation Assistance Program (FMA). It was deliberately authorized to help focus on actions that are in the best interest of the NFIP. In large measure these actions were defined as the repetitive loss problem. We are pleased to be invited to offer our views on the proposals set forth in H.R. 1428 and H.R. 1551. Our comments on other issues identified by the Subcommittee on Housing and Community Opportunity are located at the end.

PUTTING REPETITIVE LOSSES IN CONTEXT

It is important to put the repetitive loss problem in context. While the exact number is not known, it is estimated that 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. Over 4 million buildings both in and out of the floodplain are insured today (up from only 2 million 8 years ago). Of those, about 60,000 are on FEMA's list of repetitively flooded properties. About 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 about 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 "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 that are excluded from coverage.

GENERAL COMMENTS ON REPETITIVE LOSS STRATEGIES

Any strategy to address the repetitive loss problem should consider the following:

1. The strategy should be viewed as a cost containment initiative for the NFIP that will benefit every current and future policy holder. It makes sense for the policy holders as a whole 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 \$50 a year. If that trend can be changed, then every policy holder 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.

2. The strategy should address cost effective projects that are in the best interest of the National Flood Insurance Program, to the extent that it is funded by the NFIP policy holders. This focus will guide implementation by FEMA and states, resulting in prioritizing projects that deal with properties that have sustained high value claims. It is important to realize that even properties that flood nearly every other year are unlikely to be cost effective to mitigate if the dollar values of those claims are low. In such cases, the best protection for property owner is to continue federal flood insurance to provide financial protection, thus keeping the losses off of the general taxpayer.
3. Another long-term benefit of a repetitive loss strategy is that, without a doubt, it will reduce federal disaster assistance, although it may take a number of years to see the effects. When the pressure to raise the rates is reduced, more people will see that flood insurance is a "good buy" if the cost comes more in line with their perceived risk. Having everyone buy flood insurance is the single most effective 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). Because it will ultimately save tax dollars, ASFPM believes it is appropriate for a repetitive loss strategy to authorize new general funds to support a repetitive loss initiative.
4. Existing insurance-based mechanisms need to be used effectively. NFIP flood insurance coverage includes what is known as "increased cost of compliance (ICC)." Authorized in 1994, this additional claim payment is made when severe or repetitive flood damage meets certain qualifying criteria and if the local floodplain management ordinance requires the owner to repair the building to become compliant with the code. Currently, ICC pays a maximum of \$20,000, less than half what it costs to elevate the average house. In addition to increasing the payment amount, ASFPM believes that now is the time for FEMA to exercise the authority granted in Section 1304(c) to allow the Director to focus this funding for the best interests of the National Flood Insurance Program and Fund. Offering funding through this insurance mechanism after the next flood damage to the top 4-6,000 repetitive loss buildings would surely fulfill that test. It is important, however, that owners not be penalized if it is determined that there are no feasible and cost-effective mitigation measures for specific buildings. On the other hand, an owner's refusal to accept funding for a feasible and cost-effective measure should result in imposing actuarial rates.
5. While 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, many of the nation's repetitive loss areas are occupied by low income homeowners and renters. 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, as many of them don't have the money to begin with. 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. Experience shows this networking is vital to making mitigation work in low-income communities. We suggest that the Subcommittee ask FEMA to report on and demonstrate how offers will be made in a manner that encourages participation.

6. Canceling flood insurance on certain repetitive loss properties is a short-sighted solution. ASFPM has serious concerns with the proposal in the Administration's Budget Blueprint to terminate flood insurance after one more claim for certain repetitive claimants. Experience indicates it is more productive to have a one-time cost-shared mitigation offer to foster mitigation, with the consequence for declining an offer being increasing premiums to actuarial rates. The primary reason we support the proactive approach is that, contrary to a popular view that repetitive claims are largely from coastal areas, many of the repetitive loss properties are in lower income areas, often in older neighborhoods in communities built along rivers. To expose policyholders in these areas, who have been paying premiums, to loss of their insurance seems unwise because those buildings will remain exposed to flooding. It appears doubtful that removing repetitive loss properties from the pool of insured buildings will save taxpayer dollars in the long term, because after the next flood, it will be difficult for Congress to withhold taxpayer-funded disaster assistance.

SPECIFIC COMMENTS ON H.R. 1428

While the Association of State Floodplain Managers applauds the objectives of both H.R. 1428 and H.R. 1551, we find that H.R. 1428 offers a more practical starting point.

1. Sec. 2. Flood Loss Reduction for Repetitive Flood Insurance Claim Properties

H.R. 1428 could so tightly focus the Flood Mitigation Assistance program on very specific and individual repetitive loss properties that it may have the unintended consequence of inhibiting sound planning and good, comprehensive projects. Certainly communities should address repetitive loss areas in their mitigation plans, but they should also look comprehensively at all of their flood-prone areas.

As the additional funding authorized by H.R. 1428 becomes available, ASFPM understands the need to allow the Director to waive the dollar and time limitations that are in the current FMA authorization. This would provide FEMA the authority to attack the repetitive loss problem in an expeditious manner to yield the greatest benefit in the shortest time. The \$20 million/year currently allocated to this program provides minimal support for planning and project implementation in all states. ASFPM recommends that this baseline program be

continued without change so that communities in all states have the opportunity to partner in flood mitigation projects.

2. Sec. 3. National Flood Mitigation Fund

ASFPM endorses the focus on repetitive loss problems. However, we would 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. We request that the Subcommittee retain the current FMA program and allow it to continue without changing how it is administered. Every State now receives some funding for planning, technical assistance, and project grants. The list of eligible activities is broader than only repetitive losses, yet all funded projects must still be in the best interest of the NFIP.

It is very important that the amount of funding available to support mitigation planning be increased along with the increase in funds for projects. FMA requires a community to have a plan as a condition of receiving a grant. Often, it is during the planning process that a community examines options that help define the project, such as whether to acquire the land and develop public open space, or elevate-in-place and accept the continued costs associated with evacuation, utility service, and damaged roads. ASFPM recommends that H.R. 1428 specifically authorize a portion of the added funds for planning, in the amount of at least \$5 million annually.

ASFPM supports the additional funding that would be focused on repetitive losses, and believes that current and future policy holders will benefit as the pressure to raise the rates is reduced. We would be concerned about the immediate reaction of many policy holders if the amounts authorized for this program are added to the policy service fee. ASFPM believes the long-term benefits that will accrue to the federal taxpayers (see first section) justify the infusion of general funds to support a focused repetitive loss initiative.

3. Sec. 5. Chargeable Premium Rates

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. Those are important caveats. An owner should not be penalized if the only measure that will protect the home is extremely costly 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 – and we believe this is important protection to keep more people from burdening the federal treasury through disaster assistance, low-interest disaster loans, and losses in tax income when the casualty loss deduction is taken by uninsured taxpayers who have experienced flood damage. If, however, flood insurance coverage is dropped due to the increase to actuarial rates after refusal of a reasonable mitigation offer, there should be no eligibility for disaster assistance.

ASFPM endorses charging full actuarial rates for privately owned or leased buildings on federal lands. Several of our State members report that large numbers of repetitive loss properties are located on federal lands. However, to be effective, the provision in H.R. 1428 must apply to all floodplains on federal lands, not simply those on the water side of flood control works such as a levee.

Private buildings on federal land sometimes are built, replaced, repaired, and improved without regard to the heart of the NFIP: the *quid pro quo* that communities regulate development in floodplains in return for federal flood insurance. State and local building codes and land use ordinances do not apply to federal lands, although some federal landowner agencies do try to apply the same construction criteria. In addition, it is highly questionable whether a community could apply grant funds to mitigate a building on federal lands. This prompts the suggestion that FEMA be allowed to work with the owning federal agencies to implement mitigation measures. However, as long as there are no regulations governing these buildings, ASFPM believes that it is inappropriate for the rest of the policy holders and taxpayers to continue to financially subsidize them. In addition to charging actuarial rates on private buildings on federal lands, we urge the Subcommittee to request that all federal agencies that lease lands for private occupancy report on whether flood hazards are addressed in the leases and whether they have rules that control what can be built and how it is built. The report may best be achieved through Executive Order 11988 regarding federal investment and activities in flood hazard areas.

4. Sec. 7. Mitigation Grants for Repetitive Claim Properties

ASFPM has always endorsed community-based mitigation plans and projects. However, we recognize that not every community will have the interest or ability to implement projects. The success of a program that is intended primarily for cost containment should not be hampered due to lack of a viable partnership with some communities. Therefore, in concept we support giving FEMA the authority to deal with property owners after determining that the community is unable to participate. We caution that doing so may discourage community planning and participation if communities believe that FEMA will address the problem without their support. Experience with a FEMA acquisition program previously authorized under Section 1362, was burdened by several 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 most viable alternative, and urges reconsideration of any provision in H.R. 1428 or H.R. 1551 that would involve federal ownership of land, no matter how briefly. We suggest that a change to Sec. 1366(k), which defines recipients of FMA grants, would be effective. A beneficial modification would allow non-profit, non-governmental organizations to receive and manage grants provided they have compatible missions, such as community development and housing organizations or land trusts and environmental/recreational organizations.

5. Sec. 9. Definition of Repetitive Claim Property

Operationally, FEMA has at least two definitions for repetitive loss properties. This has led

to confusion in the past. It is unclear why another definition is required as long as the purpose of the additional funding is to focus on properties that have flooded on multiple occasions and for which mitigation measures are reasonable, feasible and in the best interest of the NFIP.

COMMENTS ON H.R. 1551

H.R. 1551 offers a more limited framework within which to mitigate flood losses. In particular, it does not allow consideration of options based on a community's circumstances, the nature of the floodplain, or the specific conditions of the building and/or property owner. While acquisition is, in many areas, an excellent solution, it is not the only measure that reduces future flood damage. Elevation-in-place can be used effectively, and non-residential building can be modified to become floodproofed.

1. Fair Market Value: H.R. 1551 directs that FEMA may offer up to 125% of fair market value for acquisition. ASFPM has two comments on this proposal: (a) while we understand the need to help low-moderate income families to buy safe housing outside of the floodplain, we do not believe that an arbitrary mandated increase in the purchase price is appropriate. Communities can choose to use CDBG funds to provide replacement housing payments when they document a differential in housing costs. These funds also help pay for moving expenses, and a structure for their use is already in place; and (b) Communities involved with flood mitigation acquisition projects already report that speculators sometimes move in quickly after a severe flood when they hear a buyout is proposed. They buy homes below value from desperate owners who may not fully understand that a buyout will provide them pre-flood fair market value, or owners who have no other housing available to them and cannot wait for a mitigation project. The provision in H.R. 1551 will induce inappropriate actions by speculators, and add to the administrative burden of FEMA, States, and communities that have to try to weed out this problem.
2. A new grant program will overly burden state and local mitigation efforts. The NFIP Reform Act of 1994 authorized the Flood Mitigation Assistance Program, including a small grant program. It is unnecessary to create yet another grant program when the current program is already used to focus on repetitive losses. It is notable that only 10% of the proposed funding would support the proposed new grant program, while 90% would be used for direct federal acquisition of property.

ADDITIONAL COMMENTS REQUESTED BY THE SUBCOMMITTEE:

1. Effectiveness of the National Flood Insurance Program. The members of the Association of State Floodplain Managers, Inc., work every day with communities and property owners to regulate floodplains consistent with the provisions of the NFIP. While the effectiveness is largely a function of the maps (see below) and compliance by builders, we firmly believe the NFIP has saved the nation untold dollars and anguish as new homes

and businesses are not subject to the same risk as they would have been without the program. In addition, in many states and communities, floodplains are managed in a comprehensive manner that also recognizes their natural and beneficial functions. FEMA has initiated a comprehensive evaluation of the NFIP, the first in the program's 30-year history.

2. The Flood Mitigation Assistance Program (FMA) is an effective program, although somewhat hampered by the limited funding that is distributed to all states, sometimes in quantities that are nearly impracticable to focus effectively on any particular repetitive loss problem. FMA funds clearly are to be used for projects that are cost effective and “in the best interest of the National Flood Insurance Fund.” A very important element of FMA is the funding for planning and technical assistance, which fosters local planning.
3. Can mitigation of repetitive loss properties be accomplished under existing authorities if some modifications are made? We believe that the provisions in H.R. 1428, especially the addition of new funds, combined with improved effective use of Increased Cost of Compliance would effectively deal with the drain on the National Flood Insurance Fund caused by repetitive loss claims. Suggestions for other modifications are contained in previous comments.
4. Flood hazard maps are a critical component of effective mitigation. The best mitigation is to “build it right the first time.” To achieve this, communities need flood hazard maps that reflect current conditions. Good maps also are important in developing mitigation projects, in particular elevation-in-place, which depends on knowing the elevation of the base flood. Therefore, the Association believes it is critical that the maps are updated to reflect good data, and modernized to use current technology. A significant percentage of the maps of record that must be used by communities to regulate development are 15-30 years old. FEMA's map modernization program will address this serious problem. Funding at a level of \$100 million/year for 7 years would be required according to FEMA's estimates. Currently, most funding is derived from the policy service fee assessed on every flood insurance policy. However, due to the many uses and beneficiaries of good maps and good floodplain management, we urge support for increased funding and the addition of general funds.

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