Statement
Hearing on the National Flood Insurance Repetitive Losses
Senate Committee on Banking, Housing, and Urban Affairs
Subcommittee on Economic Policy
March 25, 2004
Congressman Doug Bereuter

Good morning. Thank you very much Chairman Bunning for holding this Subcommittee hearing on the subject of National Flood Insurance Program (NFIP) repetitive losses. As you undoubtedly know, on November 20, 2003, the House passed the Flood Insurance Reform Act of 2003 (H.R. 253) by a vote of 352 to 67. This bill both authorizes the NFIP through September 30, 2008, and makes essential changes to the program as it relates to the mitigation of repetitive loss properties. The authorization of the NFIP is set to expire on June 30, 2004. This legislation represents a continuation of my long-term interest and my past efforts in the House to reduce the extraordinary costs of repetitive losses from the NFIP as administered by Federal Emergency Management Agency (FEMA).

First, this Member would like to thank Chairman Mike Oxley (R-OH) of the House Financial Services Committee, and Ranking Member Barney Frank (D-MA) for their support of this legislation. I would also like to thank Representative Earl Blumenauer (D-OR), who is both an original cosponsor of this legislation and a tireless advocate for reform of the NFIP. Representative Richard Baker (R-LA) also deserves credit for his significant contributions to and support of this legislation. I would also note that FEMA has been involved in both the drafting and revising of this legislation.

Today, I would like to briefly speak about the following points:

1. background on repetitive loss properties;
2. contents of H.R. 253 including the existing Flood Mitigation Assistance (FMA) program and the new pilot program; and
3. the diverse groups who are supporting H.R. 253.

1. Background on repetitive loss properties

Repetitive loss properties cost the NFIP about $200 million annually. These properties while comprising approximately one percent of the currently insured properties, are expected to account for 25% to 30% of claims paid. For example, I'll cite one of many egregious examples among a great many such examples of costly abuse which could be discussed. One home, valued at $114,480, has received $806,591 in flood insurance payments over 18 years.

Furthermore, twenty five percent of all current NFIP policies do not pay actuarial rate for their coverage and thus are subsidized by the 75% of other policy-holders. Today, the vast majority of repetitive-loss properties are eligible for subsidized flood insurance far below the actuarial risk rate they should be paying. This bill, H.R. 253, would at last move the NFIP towards a more free-market insurance model by requiring people living in flood prone areas to reduce their risk of flooding.

2. Contents of H.R. 253.

This legislation, H.R. 253, authorizes funds for the existing FMA program and then authorizes a new pilot program to address severe repetitive loss properties. At the outset, it is important to note that no property owner under this bill is ever denied Federal flood insurance except for fraudulent claims.

FMA Program

This bill uses FEMA's existing FMA program to mitigate repetitive loss properties. This bill authorizes up to an additional $40 million a year to be transferred from the National Flood Insurance Fund into the FMA fund through FY2008.

Pilot Program

The pilot program authorizes up to $40 million a year to be transferred from the National Flood Insurance Fund for mitigation assistance to reduce the problem of severe repetitive loss properties. This trial pilot program, which would expire on September 30, 2008, addresses these properties in a simple, straightforward manner; the owner of a severe repetitive loss property will be charged a rate closer to the actuarial, risk-based rates for their national flood insurance policy if two conditions prevail.

The first condition is that it is indeed by definition a "severe repetitive loss property." Under this legislation, a severe repetitive loss property must at least meet one of the following three definitions:

(A) this is real property on which four or more separate flood insurance claims payments have been made prior to the date of the enactment of this Act, with the amount of each such claims exceeding $5,000 and with the cumulative amount of such claims payments exceeding $20,000; or

(B) this is real property on which four or more separate claims payments have been made after the date of enactment of this Act, with the amount of each such claims exceeding $3,000 and with the cumulative amount of such claims payments exceeding $15,000; or

(C) this is real property on which 2 or more separate NFIP claims payments have been made which cumulatively exceed the value of the insured property.

The second condition which would cause the applicability of closer to actuarial rates to be applied is that the owner of the real property must have refused a mitigation measure from a state or locality, such as the elevation of the structure or a buy-out of the property. (It is important to note that this bill preserves state and local decisionmaking.)

If both of these conditions have been met, rates for severe repetitive loss properties will be increased by 50%. Properties will be subject to additional 50%

increases for each subsequent flood event where claims payments exceed $1500; however, flood insurance rates applied cannot be higher than the actuarial based NFIP rates.

Mr. Chairman, members of the subcommittee, it is also important to note that this pilot program to be authorized in H.R. 253 would also reduce the non-Federal cost share for mitigation offers in certain states which qualify in order to help those states that have a high number of severe repetitive loss properties. Under current law, FEMA pays for 75% of the cost of mitigation. There is a 25% non-Federal match which is composed of state, local, and homeowner contributions. However, a provision in the pilot program would allow the Director of FEMA to reduce the non-Federal cost share under the pilot program from 25% to as low as 10% for any State, and for the communities located in that State, with respect to that year, if the following two criteria are met:

A. 5% or more of the total number of severe loss properties in the U.S. are located in that state (For 2002, the following states would have qualified: Louisiana, Texas, New Jersey, Florida, North Carolina, and New York); and

B. the State submits a plan to FEMA as to how they would address the problem by reducing the number and severity of severe repetitive loss properties.

The pilot program also creates an appeal process. Under H.R. 253, any owner of a severe repetitive loss property may appeal an increase to an actuarial rate of insurance to an independent third party. One of the grounds for appeal is that the owner of the property would not be able to purchase a replacement primary residence of comparable value which is functionally equivalent to their current residence. Thus this provision helps to assure that the legislation is homeownership-friendly and humanely judicious.

With respect to the legislation as a whole, a section by section of H.R. 253 has been circulated to the desks of each of the senators on the subcommittee. A summary of all of the important provisions of the bill are found in this section by section.

3. Groups which support the Flood Insurance Reform Act of 2003

Lastly, Mr. Chairman and members of this subcommittee, it is important to note the unusually broad coalition of diverse groups which supported our legislation when it passed the House: the National Association of Realtors; the American Banker's Association; America's Community Bankers; American Planning Association; the National Association of Professional Insurance Agents; the Independent Insurance Agents and Brokers of America; the Mortgage Banker's Association; the Association of Floodplain Managers; the National Wildlife Federation; the National Association of Homebuilders; Taxpayer's for Common Sense; U.S. Public Interest Research Group; the National Taxpayer's Union; Citizens Against Government Waste; Heritage Foundation; Coast Alliance; Friends of the Earth; American Rivers; and the Ocean Conservancy.

I believe that it is important that one final public policy point be made. Under the NFIP, a very large regional cross-shifting of the cost of flood insurance is occurring among states and within states; the policyholders in non-repetitive loss areas of the country by their higher than appropriate premiums are subsidizing the policyholders in repetitive loss areas of the country. This bill will give FEMA the needed tools to gradually reduce the number of repetitive loss properties and to substantially reduce the dramatic cases of this cost-shifting to other NFIP policy-holders.

In conclusion, I would posit that Congress finally needs to act to stop the very expensive treading through the water of repetitive loss after repetitive loss. I would encourage the Senate to pass H.R. 253, the Flood Insurance Reform Act, as it is the right thing to do at the right time. Congress has delayed far too long in making the obvious reforms needed in the NFIP.

Thank you for your consideration of my remarks and this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION AS IT PASSED THE HOUSE

Section 1. Short Title

This section establishes the short title of the bill, the "Flood Insurance Reform Act of 2003."

Section 2. Congressional Findings

Section 3. Extension of Program and Consolidation of Authorizations.

This section amends the National Flood Insurance Act of 1968 by extending the National Flood Insurance Program (NFIP) from June 30, 2004 through September 30, 2008

Section 4. Establishment of Pilot Program for Mitigation of Severe Repetitive Loss Properties

This section amends the National Flood Insurance Act of 1968 by adding a new Section 1362 which would establish a Pilot Program for the mitigation of severe repetitive loss properties. Under this section, the Director of FEMA may provide financial assistance to States and communities for the mitigation of severe repetitive loss properties.

Severe repetitive loss properties are defined as:

(A) For which four or more separate NFIP flood insurance claims payments have been made prior to the date of the enactment of this Act, with the amount of each such claim exceeding $5,000 with the cumulative amount of such claims payments exceeding $20,000;

(B) For which four or more separate NFIP claims payments have been made after the date of enactment of this Act, with the amount of each such claim exceeding $3,000 with the cumulative amount of such claims payments exceeding $15,000; or

(C) For which 2 or more separate NFIP claims payments cumulatively exceed the value of the insured property.

The Director of FEMA shall provide mitigation offers for properties under the Pilot Program in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time. Mitigation activities include elevation, relocation, demolition, floodproofing of structures, minor physical localized flood control projects, and buyouts.

If an offer for mitigation under the pilot program is refused and any appeal is unsuccessful, rates for severe repetitive loss properties will be increased by 50%. Properties will be subject to additional 50% increases for each subsequent flood event where claims payments exceed $1500. Flood insurance rates cannot be higher than the actuarial based NFIP rates. The Director is authorized to offer the policyholder a higher deductible for the flood insurance policy which would result in a lower premium payment if mitigation is refused.

Any owner of a severe repetitive loss property may appeal an increase to an actuarial rate of insurance to an independent third party. One of the grounds for appeal is that the owner of the property will not be able to purchase a replacement primary residence of comparable value that is functionally equivalent to their current residence.

Up to an additional $40 million for fiscal years 2004, 2005, 2006, 2007, and 2008 can be transferred from the National Flood Insurance Fund to the National Flood Mitigation Fund for severe repetitive loss properties and shall remain available until expended. The policyholders shall not be subject to higher premium rates for flood insurance coverage because of this transfer from the insurance fund into the mitigation fund. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 5. Flood Mitigation Assistance (FMA) Program

This section amends Section 1366 of the National Flood Insurance Act of 1968 by directing FEMA to offer mitigation assistance under the existing FMA program in a manner consistent with the best interests of the NFIP.

<u>Funding for the FMA Program</u> - Up to an additional $40 million shall be transferred from the insurance fund into the FMA fund for fiscal years 2004, 2005, 2006, 2007, and 2008.

Section 6. FEMA Authority to Fund Mitigation Activities for Individual Repetitive Claims Properties

This section creates a new Section 1323 of the National Flood Insurance Act of 1968 by authorizing the Director to provide funding for mitigation actions for individual properties for which one or more claims payments for losses have been made if such activities are in the best interest of the National Flood Insurance Fund and such activities cannot be funded under the Flood Mitigation Assistance Program because of either of the following:

(1) the requirements of the Flood Mitigation Assistance Program are not being met by the State or community in which the property is located; or
(2) the State or community does not have the capacity to manage such activities.

Up to an additional $10 million shall be transferred from the National Flood Insurance Fund into the National Mitigation Fund for any fiscal year for these individual repetitive claims properties. The policyholders shall not be subject to offsetting collections through premium rates for flood insurance coverage. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 7. Actuarial Rate Properties

This section amends Section 1308 of the National Flood Insurance Act of 1968 by charging actuarial based NFIP rates immediately for Federally leased properties located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall, or other coastal flood control structure. These actuarial rates are not conditioned upon any other factor.

Section 8. Electronic Database of Repetitive Claims Properties

This section adds a new subsection to Section 1364 of the National Flood Insurance Act of 1968. Under this section, the Director may, if the Director determines feasible, establish and maintain a database identifying by location and address all repetitive loss properties and severe repetitive loss properties. If established, the Director shall make the database available to the public in a format that may be searched electronically.

Section 9. Replacement of Mobile Homes on Original Sites

This section adds a new Section 1315 to the National Flood Insurance Act of 1968 which states that the replacement of mobile homes on any sites shall not affect the eligibility of any community to participate in the flood insurance program if the following occurs: such mobile home was previously located on such site; such mobile home was relocated from such site because of flooding that threatened or affected such site; and such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

Section 10. Reiteration of FEMA Responsibility to Map Mudslides

This section states that, as directed in section 1360(b) of the National Flood Insurance Act, the Director of FEMA is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas in order to make known the degree of hazard within each such zone at the earliest possible date.