



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

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TESTIMONY

Association of State Floodplain Managers, Inc.

Before the
Senate Committee on Banking, Housing, and Urban Affairs

Proposals to Reform the National Flood Insurance Program

Presented by:
Pamela Mayer Pogue, CFM, Chair
State of Rhode Island

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Mr. Chairman, Ranking Member Sarbanes and Committee Members:

The Association of State Floodplain Managers is pleased to be part of this important discussion about ways to reform the National Flood Insurance Program (NFIP). We want to express our appreciation to you for this thoughtful examination of the program and ways to improve it. The past season of natural disasters has highlighted problems that needed to be addressed within the existing framework and has called attention to the need for creative solutions for the long- term solvency of the program.

Who We Are

The Association of State Floodplain Managers, Inc. (ASFPM), and its 22 Chapters represent over 9,000 state and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance. Many of our members work with communities impacted by hurricanes Katrina and Rita or work with organizations that are assisting those communities in rebuilding efforts. All ASFPM members 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 flood mitigation 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 (NFIP) and many others are involved in the administration of and participation in FEMA's mitigation programs. For more information on the Association, please visit <http://www.floods.org>.

The Challenge

Since the tragedies on the Gulf Coast, the nation has been immersed in a discussion of how to deal with truly catastrophic events such as what happened in 2005. Clearly our policies developed and implemented through laws such as the National Flood Insurance Act and the Stafford Act, are better designed to respond to "average" loss years or to those events that may be considered large but not catastrophic. The four successive hurricanes that impacted Florida in 2004 provide an example of a difficult disaster season that could be

handled within the existing program with limited Treasury borrowing, fully within the capability of the NFIP to repay. Although devastating, these storms were an entirely different order of magnitude than the combined power of Katrina, Rita and Wilma.

It was made clear during last week's testimony before this Committee that from a policy standpoint it will be difficult to change policies so that events as catastrophic as Katrina will not challenge the financial solvency of the NFIP. However, the lengths to which policy choices are made must be balanced by what shapes our perception of reality. For example, prior to 2004 Hurricane Andrew was seen as the outlier storm – one of such magnitude that it wouldn't happen again for some time. But, Andrew was soon replaced by the four Florida Hurricanes in 2004, only to be replaced by Katrina, Rita, and Wilma in 2005. Now, reality is that Andrew wasn't necessarily an outlier event; rather, it was one storm that we now see as more normal as we head into a cycle of increased number and magnitude of storms. The point is that while smaller policy changes can and should be taken, larger, more meaningful policy changes should be taken as well which will require bold action by this Congress.

Thank you for inviting us to offer our views on the solvency of the NFIP. The following testimony addresses:

A. A Reflection on the relevance of the early history of the NFIP to changes needed now

B. Reforms to the National Flood Insurance Program

- Subsidy reduction and program changes
- Program expansion
- Mitigation improvements

C. Broader Changes

- Catastrophic provisions
- Coordination with and improvement of the Stafford Act
- Development of a comprehensive and cohesive national levee policy and inventory

- FEMA and the Department of Homeland Security

A. A Reflection on the Relevance of the Early History of the NFIP to Changes Needed Now

When ASFPM provided testimony to this Committee last fall (our previous testimony can be found at www.floods.org), we included a lengthy discussion on the history of the NFIP. We indicated that the program was established as a “quid-pro-quo” program. Through it, relief from the impacts of flood damages in the form of federally-backed flood insurance became available to citizens in participating communities contingent on flood loss reduction measures embodied in state and local floodplain management regulations. Occupants of existing structures in flood prone areas would benefit from subsidized flood insurance premiums, but occupants of new structures would have to pay actuarially based premiums. This was based on the concept that those already living in the floodplain did not understand, or know of the flood risk, but future occupants would through information provided by the NFIP – via flood studies and maps. The original program would be voluntary in terms of community participation and the purchase of flood insurance. Congress tasked the FIA to carry out studies to determine local flood hazard areas within which flood insurance provisions and appropriate land use regulations would be applied. The FIA adopted the 1% annual chance as a minimum national standard for floodplain management, based upon a recommendation of a special review committee of national experts that met at the University of Chicago in December 1968.

What has history taught us since Katrina? First, we found out how much risk was NOT reflected on FEMA’s flood maps. This validated the importance of FEMA’s Flood Map Modernization Initiative to update and modernize maps which now are often 15 – 30 years old. Advisory maps being produced now for the storm affected areas show the true 100 year floodplain as much larger than the original maps showed due to development and other factors. Beyond the 100 year floodplain, areas of coastal surge that occurred miles inland were not shown on the FEMA flood maps (which are the most common tool used by Americans to determine flood risk) as coastal flood hazard areas. We also have learned that not as many people carry flood insurance as need to. Perhaps our geographical areas of mandatory purchase are not large

enough, or within these, there are too many exceptions. Nationwide, about 25% of flood insurance claims come from areas outside of the 100 year floodplain. We also know, from a meteorological standpoint, that from the 1950s through the 1980s we experienced a relatively calm storm period when it comes to the frequency and magnitude of hurricanes and we are now in a cycle of increased storminess.

In 1968, Congress took bold action. By creating the NFIP, they knew that property owners were impacted by floods, but did not know necessarily how many structures or how much land area was going to be included in the 1% chance floodplain since very few floodplains were even identified at that time. What they did know is that a mechanism such as flood insurance was a help, not a hindrance, that would help people recover more wholly than if flood insurance wasn't available or required. Even though we must now focus on the \$23 billion cost that will now have to be paid by the U.S. Taxpayer – one might say a “tax” on those who choose not to live in hazard areas – the NFIP has been successful. It has covered over \$15 billion in losses pre-Katrina. It now results in over \$1.5 billion in annual avoided losses due to compliance with building and development standards. Along with FEMA's hazard mitigation programs which have invested over \$4 billion, some \$16 billion in avoided losses have resulted that would have otherwise been absorbed largely by the U.S taxpayer. A recent independent study requested by the Congress and done by the National Institute of Building Sciences, has found that four dollars of benefits result from every dollar invested in disaster mitigation.

B. Reforms to the National Flood Insurance Program

There are many reforms that can be taken now to shore up the NFIP. Last week, FEMA Mitigation Director David Maurstad identified several reforms and ASFPM is supportive of a number of them.

1. Subsidy Reduction and Program Improvements

- **Providing authority to eliminate subsidies over time for Pre-FIRM properties, particularly for other than primary residences.** ASFPM understands the breadth of discussion and options available when it comes to the issue of subsidy (or

discount) reduction. In keeping with the original intent of the NFIP to keep rates affordable, focusing subsidy reduction on structures other than primary residences would avoid impacting those with limited incomes.

- **Strengthen the mandatory insurance purchase requirement for Federally-regulated lending institutions to require insurance to value as opposed to the outstanding balance of the loan, and for the life of the loan, to require more frequent portfolio reviews by lending regulators, and to increase the penalties for institutions that do not comply with mandatory purchase responsibilities.**

The strengthening of the mandatory purchase requirement has historically provided positive results. In 1973, when the mandatory purchase requirement was added (since it was not included in the original 1968 Act), the number of flood insurance policies jumped. In 1994, when lender penalties were created for non-compliance with the mandatory purchase requirement and forced placement of policies and escrow provisions were made, policies and policy retention again jumped.

Other reforms that the ASFPM believes should be implemented include:

- **Increasing coverage limits**

ASFPM believes it is reasonable to increase coverage limits under the NFIP. With the increase in property values, it would be appropriate to increase residential coverage to \$335,000 and commercial coverage to \$670,000. These are the coverage levels provided in H.R. 4320, reported out of the House Financial Services Committee.

- **Additional funding and time for FEMA's Map Modernization program**

As we have testified in the past, ASFPM is fully supportive of the Map Modernization Initiative. Because of our interest in assuring that the effort and investment produce the quality undated maps we all need and Members of Congress expect, we strongly recommend that the program be extended beyond its current 5 year life at the same level of \$200 million/year.

In order to meet the program metrics requiring that a certain percent of the population have “new” maps within a certain timeframe, we are concerned that the necessary, yet time-consuming restudies of hydrology and hydraulics are not being done. Once the program was launched and needs were surveyed, it became apparent that the mapping needs are more extensive than can be addressed in a five year period.

➤ **Waiting period between purchase and policy effective date should remain 30 days**

The waiting period was previously 15 days and was changed to avoid policy purchase with knowledge of weather forecasts and policy dropping after the danger has passed. There are proposals to reduce the waiting period, but ASFPM is concerned that this would open the program to more claims without the continuity of premium payment.

2. Program Expansion

➤ **Mapping “residual risk” and the 500 year floodplain**

ASFPM understands the need to better understand the additional areas subject to flood risk. A number of Senators expressed this concern during last week’s hearing on flood insurance reform. While many of the FEMA flood maps show such areas, many do not. Areas that are flood hazards but are either sporadically found or not found at all on Flood Insurance Rate Maps (FIRMs) include: 500 year floodplain (2% annual risk of flooding) , coastal storm surge zones including those from significant hurricanes, residual risk flood zones that include areas protected by levees or floodwalls but would be flooded in the event of failure or overtopping and dam failure zones.

ASFPM strongly recommends that the nation embark as soon as possible on a program to identify these risk areas. We support Senator Reed’s bill, S. 2005, calling for mapping 500 yr. floodplain and incorporating US Army Corps of Engineers coastal inundation maps, and NOAA storm surge and coastal erosion data, in addition to USGS streamgaging data onto FEMA Flood Insurance Rate Maps (FIRMs).

Senator Reed's bill would also reactivate the Technical Mapping Advisory Council originally established in the Flood Insurance Reform Act of 1994 with a five year life. Its recommendations led to the development of the Map Modernization Initiative. This is a proven, effective mechanism for involving partners and stakeholders to ensure the quality and utility of the map product. The provisions of Senator Reed's bill would provide citizens, community planners and members of Congress with better information for individual, community and policy decisions. It is also important to remember that the utility of the 1% chance event was mandated by statute and therefore mapping these other flood risk areas is not incongruent with the intent of the NFIP.

Last week, Senator Dole voiced concern about the State of North Carolina possibly being the first to be required to expand the mandatory purchase requirement because of its national leadership in updating its flood maps. Certainly an equitable system of implementing any expansion of required flood insurance would be important.

➤ **Expansion of mandatory purchase requirements to those "residual risk" areas mapped as protected by levees or below dams**

While these areas have a low probability of flooding, the hurricanes of 2005 have shown us that the losses in the event of flooding are likely to be catastrophic. Such policyholders would pay a low, preferred risk, premium rate reflecting the low probability of flooding.

➤ **Expansion of the mandatory purchase requirement to the 500 year floodplain**

ASFPM believes that is good policy to provide those in the 500 year floodplain with flood insurance coverage so that they would be better protected in the event of other catastrophic or even major events. One of the lessons learned post-Katrina was that there were many flooded properties that did not have flood insurance and whose property did not fall into a 1% chance floodplain based on FEMA's Flood Insurance Rate Maps (FIRMs). Such areas that are flood hazards but are either sporadically found or not found at all on FIRMs include: .2% or 500-year flood hazard areas, coastal storm surge zones including those from significant hurricanes, residual risk flood zones such as areas that

are protected by levees or floodwalls but would be flooded in the event of failure or overtopping, and dam failure zones. All of these areas contain risk from flooding, and many of those areas could be catastrophically impacted. ASFPM maintains that extension of required coverage areas should be viewed as affording citizens important new protection.

Concern was expressed at last week's hearing over the cost of such policies since so many additional property owners would be affected. It is our belief that the rates of flood insurance policies in these areas would be reflective of the lower probability that a flood would occur and would be in line with FEMA's current preferred risk policy or those policies for existing .2% chance flood zones. Those policies range from \$112 to \$317/year.

It is important to explain that extending the mandatory purchase of flood insurance requirement doesn't necessarily mean that the land use regulations that are part of NFIP in 1% chance floodplains have to be extended to these other areas. In fact, we would not recommend this at this time due to the lower probability of flooding in these areas. Recognizing the catastrophic nature of flooding there should it occur, however, means that flood insurance policy holders would be much better protected and costs to the taxpayer would be significantly less.

➤ **Expansion of mandatory purchase within the 100 year floodplain**

The other area where the mandatory purchase requirement may be ripe for adjusting is who it affects in the 1% chance floodplain. Currently, it only affects those with a federally backed mortgage or mortgages from federally regulated lenders. This leaves out mortgages from non-Federally regulated institutions and those structures without mortgages. Previous studies have indicated that perhaps as many as 40% of mortgages come from non-Federally regulated sources.

3. **Risk Reduction Improvements**

➤ **Enforced use of advisory flood maps**

FEMA has worked to make available new advisory flood maps for the hurricane damaged areas. These maps reflect changes since the old paper maps were produced and newly calculated Base Flood Elevations (BFEs).

Advisory BFEs are being used somewhat successfully in the Gulf Coast as we transition into the recovery and rebuilding phase. According to testimony presented by Mr. Maurstad last week, approximately 30% of communities have adopted these elevations which were developed in the aftermath of the storm event, but have not gone through the official appeal and comment period, as required by rule, that accompanies the creation and adoption of updated FIRMs. Still, that leaves 70% of the communities in this area that have not adopted these elevations and who are rebuilding at a much higher risk of future flood damage. We have recommended before that the Committee urge FEMA to make the necessary rule changes to require these elevations be used. At the same time, we commend FEMA for tying the use of these advisory elevations to the availability of hazard mitigation funds to assist with rebuilding and urge the Committee to be supportive of FEMA's position in the face of increased pressures to relax this standard as rebuilding gets underway in earnest.

➤ **Urge other federal agencies to require use of advisory flood maps**

Executive Order 11988 requires federal agency coordination of disaster mitigation policies and practices. In general, there has been insufficient coordination among federal agencies with the result that one may inadvertently undercut another's programs or one may be unnecessarily duplicative of another's. A mechanism to ensure adherence to E.O. 11988 should be developed.

➤ **Provide for additional Increased Cost of Compliance (ICC) coverage – money for NFIP policyholders to bring their structures up to existing flood-related building codes, in addition to available building limits**

ASFPM has long supported the concept of ICC, but has been disappointed in its implementation. An ICC surcharge of up to \$75 is associated with flood insurance premiums and, historically, large amounts have been collected while very little has been paid out. To our knowledge, this has resulted in surplus ICC funds being used to balance the large flood insurance fund. Why? Because the current interpretation of coverage under ICC is too stringent. For example, the average ICC claim, when used in conjunction with a FEMA mitigation project such as acquisition/demolition, is well below the ICC limits because it has been interpreted that ICC will only pay for some of the demolition costs. Yet, when completed, the total acquisition/demolition project will result in the removal of an at-risk structure that is often non-compliant with local floodplain management codes. This will be a significant issue during the rebuilding of the Gulf Coast, where in Mississippi and Louisiana it is estimated that there will be about \$4 billion in mitigation funds available under the Stafford Act. If ICC funds can be more flexibly utilized, they will be a significant source of non-federal matching funds and can facilitate use of the Stafford Act funds.

ASFPM wholeheartedly supports increasing the current ICC cap from \$30,000 to \$50,000, but we would need more information about current uses of ICC funds and a FEMA commitment to utilize ICC funds only for their intended purpose before we could support raising the surcharge cap of \$75 as was proposed by FEMA last week in testimony. We also point out that the authority for ICC provides for use of ICC funds at the discretion of the FEMA Director.

We would suggest that the Committee either address the encumbrances to use of ICC legislatively or urge the FEMA Director to use the available discretionary authority to more effectively and appropriately utilize the ICC program that policy holders have paid for.

➤ **Implement the Repetitive Flood Loss programs created in FIRA '04**

The Congress has spoken decisively twice about the need to stem an annual loss to the Flood Insurance Fund of \$200 million by investing in mitigation of repetitive flood loss

properties.

This Committee and its counterpart House Committee developed legislation (in the Flood Insurance Reform Act of 2004) which created two new pilot programs and expanded the existing Flood Mitigation Assistance (FMA) program. FIRA '04 provided for the transfer of \$90 million from the Fund to the FMA program. The President's FY '06 budget requested only \$28 million for this purpose, yet the Congress appropriated the full \$90 million, clearly signaling that the program should be fully implemented.

Apparently, FEMA has determined that it can only make \$28 million available, because that is all that can be raised from the administrative fee income of the Flood Insurance Fund.

The report accompanying H.R. 2360, H. Rept. 109-79, specifically provides for transfer from the Flood Insurance Fund and in one instance, specifically refers to premium income. ***ASFPM urges the Committee to clarify that both fee and premium income of the Fund may be utilized to fund these mitigation programs since they are so clearly cost-effective to the Fund. The full \$40 million for the existing FMA program should be transferred for use during this fiscal year. The need is dramatic. FEMA should be strongly encouraged to finalize regulations implementing the two new pilots as soon as possible given the urgent need for these programs.***

The existing FMA program includes per state caps on how much FMA money can be spent on repetitive flood losses. Naturally, those states with the most repetitive losses are at or near those caps. *Since FIRA '04 doubled regular FMA from \$20 million to \$40 million, ASFPM strongly recommends that the per state caps either be doubled or removed.*

C. Broader Changes

The changes below are those that ASFPM suggests should be considered by the Congress but may need more study. Not all are directly within the jurisdiction of this committee, but all have a direct bearing on the effectiveness of the National Flood Insurance Program.

➤ **Catastrophic Provisions**

While the NFIP has functioned well for the average loss year, the past season and predictions for the future raise the question of how to meet the claims needs of catastrophic losses. There have been a number of suggestions ranging from simple forgiveness of Treasury borrowing in such cases to creation of a catastrophic loss fund to providing for federal reinsurance of some kind. ASFPM would support a congressionally mandated study of these economic challenges and possible provisions for accommodating them. We believe that the NFIP, with modifications and improvements, can continue, in average loss years, to provide important protection for those at risk of flooding while fostering floodplain management to reduce losses. Creative thinking beyond our expertise is needed to address the challenges of catastrophic losses.

➤ **Coordination With and Improvement of the Stafford Act**

The programs of the Robert T. Stafford Relief and Recovery Act are an important element of recovery from and mitigation against the devastation of flood events. Its assistance programs help communities replace infrastructure and mitigate against future damages, and its hazard mitigation programs help individuals and communities protect buildings from future flood damages. However, some changes need to be made to address truly catastrophic situations which lead to the inability to pay straight salaries for local officials. Local permit officials are an especially important part of the rebuilding process. Properly rebuilt and reconstructed structures will be far more resistant to future flood damages. When local communities must lay off these officials or are unable to hire additional officials, the Stafford Act's provisions allowing only payment of overtime for such officials and not their base pay, adversely affects the long term recovery and mitigation against future disasters

So too, is the inability to use Stafford Act assistance for the express purpose of conducting substantial damage determinations which are required under the NFIP. Also, the availability of non-federal matching sources of funding is extremely important because the Hazard Mitigation Grant Program (HMGP) is a formula program with a local

match requirement. As mentioned earlier, ICC can be a form of non-federal matching funds for Stafford Act mitigation programs.

➤ **Development of a comprehensive and cohesive national levee policy and inventory**

The development of a comprehensive and cohesive national levee policy is also important to the success of flood mitigation programs. It is evident that the level of structural protection agreed to for the City of New Orleans, for example, will impact building guidance in areas protected by those structures. Economic factors drive these decisions, often influenced by a community understanding that a FEMA flood map can be changed to show an area behind a levee to be designated as an area of “minimal flood risk” if a levee is constructed to a 1% chance standard (plus freeboard). Cost drives the design of levees, yet this approach can be shortsighted and result in a race to the lowest common denominator in terms of standard of protection. An important change would be requiring purchase of flood insurance in areas behind levees and requiring their being mapped as areas with flood risk. Currently, the State of California is considering such a measure due to liability faced by the state as a result of recent lawsuits against it. In addition, though, we must find out where these areas are. At this time there does not exist an accurate inventory of levees in this nation. Only a few states have even attempted such an inventory. Worse, there has been no comprehensive evaluation of the composition of existing levees to determine if they are engineered structures or piles of materials from a bygone era. We should know where levees are and what they are made of to make accurate estimates of risk potential of the land which they ostensibly protect from flooding. Luckily, we have a framework for such a levee program in the National Dam Safety Program. A similarly designed program for levees and floodwalls would begin to address this problem.

➤ **FEMA itself – and the Department of Homeland Security**

As Congress performs its oversight functions, much effort is being made to determine how effective FEMA was in its role in responding to recent hurricanes. ASFPM has testified many times over the past few years that the primary reason FEMA’s ability to

respond to disaster events has diminished is its inclusion into the Department of Homeland Security.

Prior to this reorganization, FEMA did quite well dealing with both natural disasters and man-made events. Since that time, events like Isabel and Katrina have shown FEMA's reduced capability. Furthermore, FEMA oversaw a system of comprehensive emergency management in this country – one that linked and incorporated preparedness, response, recovery, and mitigation into an overall approach to how we, as a nation, address hazards and disasters. With its incorporation into the very large new Department of Homeland Security, FEMA lost the nimbleness and direct access to the President that it had as an independent agency.

Because the central mission of the new department is, quite rightly, homeland security, FEMA and natural disaster programs were paid very little attention until the previous hurricane season. Efforts to build the new department have been challenging, certainly, but they have resulted in some of FEMA's programs being buried in other offices within DHS. A number of grants are administered from the DHS Office of State and Local Programs while their programs themselves are still within FEMA. Last year, Secretary Chertoff began further reorganization of FEMA and, as we understand, plans to continue with major changes expected shortly which could directly affect the NFIP and the relationship between its mitigation and insurance components. These reorganizations will continue to dilute the effectiveness of FEMA, our nation's emergency management system and the NFIP.

We urge the Committee to examine the effects on the NFIP and flood loss reduction of FEMA's inclusion in DHS. We hope this Committee and the Congress will take action and make FEMA an agency that once again can respond to all hazards, can have a direct relationship between the FEMA Director and the President, can again foster effective federal, state and local partnerships and will put all of the pieces of emergency management together again. Currently, there are several bills that have been introduced that would more or less accomplish this.

CONCLUSION

As the nation recovers from the impacts of the last two years, it is evident change is needed. It has been often said that since 9/11 we are a nation changed. It appears that after Hurricane Katrina, we are again a nation changed. This Congress faces challenges similar to those faced by the Congress in 1968. How do we make necessary changes to our framework of national policies and programs necessary to fulfill multiple missions: protect the American public, protect taxpayers from excessive post-disaster costs, assist communities to recover from catastrophic events, and balance all of these costs? Luckily, we have a framework, through the NFIP, that we didn't have in 1968. We too, have hazard mitigation programs that compliment the risk reduction measures of the NFIP. Although significant decisions need to be made, at least we have a basic program and policy to begin with.

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 reducing flood losses.

For more information, please contact:

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