S. HRG. 115–16

REAUTHORIZATION OF THE NATIONAL FLOOD INSURANCE PROGRAM

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE REAUTHORIZATION OF THE NATIONAL FLOOD INSURANCE PROGRAM

MARCH 14 AND MAY 4, 2017

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

Available at: http://www.fdsys.gov/

U.S. GOVERNMENT PUBLISHING OFFICE

25–484 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MIKE CRAPO, Idaho, *Chairman*

RICHARD C. SHELBY, Alabama
BOB CORKER, Tennessee
PATRICK J. TOOMEY, Pennsylvania
DEAN HELLER, Nevada
TIM SCOTT, South Carolina
BEN SASSE, Nebraska
TOM COTTON, Arkansas
MIKE ROUNDS, South Dakota
DAVID PERDUE, Georgia
THOM TILLIS, North Carolina
JOHN KENNEDY, Louisiana

SHERROD BROWN, Ohio
JACK REED, Rhode Island
ROBERT MENENDEZ, New Jersey
JON TESTER, Montana
MARK R. WARNER, Virginia
ELIZABETH WARREN, Massachusetts
HEIDI HEITKAMP, North Dakota
JOE DONNELLY, Indiana
BRIAN SCHATZ, Hawaii
CHRIS VAN HOLLEN, Maryland
CATHERINE CORTEZ MASTO, Nevada

GREGG RICHARD, *Staff Director*
MARK POWDEN, *Democratic Staff Director*

ELAD ROISMAN, *Chief Counsel*
TRAVIS HILL, *Senior Counsel*
JARED SAWYER, *Senior Counsel*
BRANDON BEALL, *Professional Staff Member*

GRAHAM STEELE, *Democratic Chief Counsel*
LAURA SWANSON, *Democratic Deputy Staff Director*
BETH COOPER, *Democratic Professional Staff Member*
ERIN BARRY, *Democratic Professional Staff Member*
MEGAN CHENEY, *Democratic Legislative Assistant*

DAWN RATLIFF, *Chief Clerk*
CAMERON RICKER, *Hearing Clerk*
SHELVIN SIMMONS, *IT Director*
JIM CROWELL, *Editor*

C O N T E N T S

TUESDAY, MARCH 14, 2017

WITNESS

Additional Material Supplied for the Record

THURSDAY, MAY 4, 2017

WITNESSES

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

REAUTHORIZATION OF THE NATIONAL FLOOD INSURANCE PROGRAM—PART I

TUESDAY, MARCH 14, 2017

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:03 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order.

We are joined by Roy Wright, Deputy Associate Administrator of Insurance and Mitigation at the Federal Emergency Management Agency. Mr. Wright, thank you for being here with us today. He returns to the Committee following his testimony last September on recommendations from the Technical Mapping Advisory Council.

Today he will provide testimony on the operations and financial condition of the National Flood Insurance Program, steps FEMA has taken to implement legislative reforms, and to recommend potential legislative reforms.

Our Nation has seen some of the most devastating natural disasters in its history the last two decades. These catastrophes displace families, harm businesses, and disrupt lives.

The NFIP was created nearly five decades ago as the rising cost of providing post-disaster relief fell on taxpayers. The program's mission is to expand homeowners' access to flood insurance in exchange for local communities reducing their exposure to flood risk.

Currently, the NFIP administers approximately 5.1 million policies, totaling $1.25 trillion in coverage across 22,000 communities.

Unpredictable weather and changing topography leave businesses and households across thousands of communities vulnerable. Since 2005, Hurricanes Katrina, Irene, Superstorm Sandy, and others have overwhelmed gulf and coastal communities and drastically increased claims.

But flood disaster is not unique to the coasts and gulf as nearly one-fifth of all NFIP claims come from outside of high-risk areas. The frequency and scale of recent catastrophes have pushed the program to amass $24.6 billion in debt with the United States Treasury Department. The program's structural issues must continually be addressed so that it can better withstand strenuous conditions.

Throughout its history, Congress has acted to significantly reform the program to make it more efficient and effective. Since

2012, legislative action has improved communication of actual flood risk and spurred communities toward better floodplain management while also balancing affordability to promote widespread flood insurance adoption.

But there is still work to do. Today Mr. Wright will provide recommendations on how to improve the program, for example: how FEMA can use technology, such as LIDAR, to create maps that better reflect true flood risk; how to best promote the growth of the private insurance market so that policyholders have more options—and in some cases, more affordable options than offered through the NFIP—and risk is shared by both the Government and the private sector; and how long the program should be reauthorized to ensure that reforms can be implemented and the market has greater certainty.

Senator Brown and I have started working together on a bipartisan basis to hear the thoughts and concerns of various stakeholders and Members of the Committee, and we look forward to working with FEMA to understand the legislative changes that can help the NFIP achieve its goals.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman, for calling this hearing today on the reauthorization of the NFIP. Mr. Wright, thank you for joining us again. Your comments were helpful last time. We look forward to that again.

The most common and costly natural disaster facing our constituents is flooding, yet it is hard to insure against that. There was almost no private market before the advent of the NFIP almost 50 years ago.

With a growing population and with a changing climate, our entire Nation will continue to grapple with this issue in the years ahead. We will have a direct impact on Ohioans and on other Americans who experience flooding. We will also have an indirect impact on all taxpayers no matter where they live as the country seeks to help families and communities recover from these events.

NFIP is a critical component of our Nation's response to the threat of flooding. It seeks to combat the effects of flooding through four interrelated components: flood insurance to help property owners recover quickly after a flood and reduce the need for Federal emergency appropriations; second, floodplain management to minimize damage to people and property through the adoption of local ordinances and building codes; third, floodplain mapping to identify flood hazards and communicate that risk to homeowners and communities; and, fourth, mitigation to help remove property from harm's way through property-level and community investments that reduce the overall level of risk.

Today Mr. Wright will share FEMA's views about reauthorization of the path forward for NFIP. To help inform this process, I would like to get a sense of where FEMA is in implementing reforms Congress enacted in 2012 and 2014. I would also like to hear about FEMA's progress in implementing its administrative transformation efforts to improve the NFIP following Superstorm Sandy.

I look forward to working with Chairman Crapo and the Members of this Committee to strengthen NFIP and the country's comprehensive approach to mitigating flood risk through a timely reauthorization. Welcome back. Thank you.

Chairman CRAPO. Thank you, Senator Brown.

Mr. Wright, you may proceed.

STATEMENT OF ROY E. WRIGHT, DEPUTY ASSOCIATE ADMINISTRATOR FOR INSURANCE AND MITIGATION, FEDERAL EMERGENCY MANAGEMENT AGENCY

Mr. WRIGHT. Good morning, Chairman Crapo, Ranking Member Brown, and Members of the Committee. Thank you for the opportunity to testify today.

I want to discuss four core principles for reauthorization today: first of all, on-time, multiyear reauthorization; second, we need to increase the flood insurance coverage across the Nation through both an expansion of the private flood insurance markets as well as the National Flood Insurance Program; we need to address barriers to meeting the needs and demands of our customers; and, fourth, we need to bring transparency to the financial framework of the National Flood Program.

As both Mr. Crapo and Mr. Brown mentioned, flooding is the most frequent and expensive disaster; 98 percent of the Nation's population are in the 22,000-plus communities that rely on the National Flood Insurance Program. And we deliver for 5.1 million policyholders through 73 private insurance companies that participate with us.

Due to the nature of flooding, impacts can vary significantly each year. After 15 years of lower-than-expected damages, Hurricanes Katrina, Rita, and Wilma hit the Nation in 2005. These three catastrophic events resulted in NFIP claims totaling 8 times the size of any prior year in the history of the program.

Rather than directly providing the funds to meet these requirements, Congress directed the NFIP to pay for the catastrophic losses through funds borrowed from the Treasury. Paying the insured losses in 2005 required the NFIP to borrow $17.5 billion.

In 2012, Hurricane Sandy hit the east coast and resulted in more than 144,000 claims. The program paid out an initial $8.4 billion to policyholders. With the corrective actions FEMA took, the NFIP has since paid out an additional $350 million.

Since Hurricane Sandy, FEMA has been transforming the NFIP customer experience and improving oversight and engagement of our Write Your Own companies. FEMA, using its own authorities, has implemented a new appeals process, improved oversight of Write Your Own companies, with special attention to litigation. We have streamlined the process for making regular changes to FEMA's relationship with the private sector partners. And we have begun to modernize the product to better provide the coverages that policyholders want and expect.

The NFIP has also implemented changes to take a more proactive role in disaster readiness and response. 2016 is a case in point. We issued advance payments to policyholders of up to $10,000 while their full claims were processed. We increased the coordination with State insurance commissioners. We deployed our insurance staff directly down range as part of the field operations. And we had far more proactive communication with policyholders and Write Your Own insurers.

I would assert that FEMA's performance in 2016 demonstrates the corrective progress we have made. While there was no single catastrophic disaster in 2016, the multiple flooding events in Louisiana, Texas, and several other States during Hurricane Matthew resulted in the third largest payout in the NFIP's history. The incurred losses from 2016 events will total more than $4 billion.

The residual debt from Katrina plus Sandy and then this past year's loss leaves the program with liabilities to the Treasury now totaling $24.6 billion. Moving forward, the annual interest-only payments are nearing $400 million. So we are going to return to the core principles for reauthorization that I highlighted.

First, the NFIP needs an on-time, multiyear reauthorization. Simply, the stability of the real estate and mortgage markets depend on this.

Second, the reauthorization should recognize the need to increase flood insurance coverage across the Nation in both high- and moderate-risk areas.

FEMA recognizes that there is a growing interest by private insurers to offer flood insurance protection. FEMA supports this because an insured survivor—regardless of whether they purchase their coverage through the NFIP or on the private market—will recover more quickly and more fully. To these ends, we must realize it will take time for the private market to adapt to the market currently served by a public program.

If the private market were to glean only our lower-risk policies, the NFIP would be left with all of the highest-risk policies. This could lower NFIP premium revenue while increasing potential claims payouts. Such an action would leave the program with even more financial risk, with greater reliance on taxpayers and the Treasury each and every year.

As we look forward, a number of opportunities could be explored. Congress could identify a future point in time by which flood policies for all new construction would be provided solely by the private market. When coupled with ongoing floodplain management and building code enforcement, these new residential structures would be built to insurable levels for risk that the private market could assume.

Third, we need to remove barriers to providing policyholders the coverages they want and need, addressing higher coverage limits, single deductibles, and losses, including basements.

And, finally, we would be better off in the future regarding the National Flood Insurance Program if we truly had a sound financial framework. We need to price the risk, make it plain, whether this is done through increasing premiums, reducing risk through mitigation grants, or discounts directed by Congress. The solvency of the program depends on it.

Thank you, Mr. Chairman, for the opportunity to speak with you today, and I look forward to the conversation.

Chairman CRAPO. Thank you very much, Mr. Wright.

Before we begin the questions, I want to ask all of our Members to please stay very close to your 5 minutes. In the last hearing, which I started doing this, we all started taking a minute or two more, and ultimately some of our newer Members had to sit around for a long time before we got to them. So I will follow this rule. I started it last time. But I just ask you, if you get close to the end of your 5 minutes, to wrap it up.

Mr. Wright, between 2008 and 2012, the NFIP saw 17 short-term extensions and 4 expirations. What are the consequences for existing and prospective policyholders of letting the program expire?

Mr. WRIGHT. We absolutely need to do everything in our power to ensure that this is done on time and for a multiple set of years. When this program expires or lapses, we put ourselves in a position that we have a dampening effect or even an absolute limiting effect on the real estate and mortgage markets. Any structure, any residential home that is going to have a federally backed mortgage needs to have the availability of flood insurance. When the program lapses, we cannot write new policies.

Chairman CRAPO. All right. Thank you. Many States across the country have experienced the devastation of wildfires in recent years. In Idaho, recent wildfires have destroyed businesses, caused health problems, and scarred public lands. I am concerned that wildfires also make certain areas at a higher risk of flooding.

Mr. Wright, can you walk the Committee through the impact wildfires have on flood risk?

Mr. WRIGHT. Absolutely. So for those of you who are not from areas of the country where we deal with wildfires, after you have a fire there in that wildland area, you see those black scars. Those scars are ostensibly an asphalt slip-and-slide. When water hits it, nothing absorbs, everything conveys. And so for the 3 to 5 years immediately after a wildfire, the flooding risk in those adjacent areas at the bottom of that watershed increases.

One of the things that the Committee did in 2012 was ensure that we had authorities related to post-wildfire, and so when a wildfire has been on public lands, our normal 30-day wait period is waived and homeowners can move promptly to have the coverages they need. Really, it is that 3- to 5-year period of time until that can regenerate and grow, but it clearly exacerbates the flood risk, sir.

Chairman CRAPO. And is the authority that was already granted adequate?

Mr. WRIGHT. I do think that from a flood insurance perspective, those authorities have proven useful. I think what I am not yet seeing is enough of an uptick after the event, after that fire, to ensure that there is sufficient coverage. So the ability to sell, the ability to make it available immediately, the authorities are there. We think we need to continue to collaborate on ways to make sure that people understand that risk and that they should be buying insurance in the immediate period afterwards.

Chairman CRAPO. And if there were authorities that would help to mitigate the risk itself, that would be helpful as well.

Mr. WRIGHT. It is, and so through some of the other authorities that FEMA has that have since expired under the Stafford Act, we ran a pilot so that post-wildfires, when many States or communities get the Fire Mitigation Assistance Grants, we were making available fire mitigation immediately afterwards. We considered it an emergency protective measure, and there were a series of projects that could be done to stabilize that area to minimize that flood risk going forward. While outside of the Flood Insurance Act, the other part of my job related to the Stafford Act, I think that is the kind of authority that we could truly use again.

Chairman CRAPO. Thank you. And in October 2012, Pew Charitable Trust noted that historically repeatedly flooded properties have accounted for just 1 percent of the properties within the National Flood Insurance Program policies, but about 25 to 30 percent of the claims. To what extent are repetitive loss properties and severe repetitive loss properties responsible for the program's current financial problems?

Mr. WRIGHT. So I want to take this from two angles. At the top forward piece, these repetitive properties are a drag on the program. They constitute a disproportionate kind of payout, and we need more authorities, I would say, to address that. I would highlight, though, that today there are multiple definitions of "repetitive loss" in the National Flood Insurance Act. We would do well to harmonize those, first of all; make it clear where we should go from a mitigation perspective; and I would assert to you we need to look at are there points by which they have experienced enough damage that if they are not willing to take the offer of mitigation and have us acquire that property, we need to look at whether or not we should still be making flood insurance available to them at the discounted prices that many of them receive with grandfathering subsidies.

Chairman CRAPO. Thank you very much.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Mr. Wright, we have seen media reports that the Administration is considering cuts to the FEMA budget of 11 percent in order to fund the Mexican wall, the border wall. Regardless of your personal view of the wisdom of building the wall, tell us, if you would, what the effects of an 11-percent cut would be on FEMA's flood mapping efforts. And how would cuts to the mapping budget square with the effort to improve flood mapping in order to better identify and mitigate the risk of flooding?

Mr. WRIGHT. Senator Brown, I have seen the reports, and I think that at this point I am not aware that the final decisions have been made from the President's budget, and so I think it is premature for me to speak about those specifics. I would refer you to the Office of Management and Budget. Once we see those, I would be happy to talk through those specifics.

I think to your point, though, about mapping, we need to look at a couple of the elements. So this Committee helped insert an authorization level related to the mapping so that we would understand risk. That is at $400 million a year under the current act. We have never been appropriated equal to that level. For this past year, we had a combined mapping budget of about $311 million; $190 million of that was directly appropriated, and the balance of that was paid for by fees.

We will see where the budget proposal comes down the road on this, but, clearly, the investment in mapping is one that requires resources. And when we are looking broadly across a budget, that includes tradeoffs.

Senator BROWN. Considering the pressure on the budget with a defense spending increase of whatever the President has called for, $50 billion up, and a major capital expenditure like the wall, it is hard to believe there is not going to be some hit that you are going to need to figure out when you determine these questions.

One of the TMAC recommendations was developing a 5-year plan for map development. Talk to us about this plan and how it would further mapping improvements that we discussed at the hearing back 6 months ago.

Mr. WRIGHT. Absolutely. So since that point, we have actively begun implementing that recommendation. It is being advanced in two ways.

First of all, I am looking holistically at where does the program need to go. We are looking at technologies, what kind of investments. I would highlight particularly our attention to ensure that there is elevation data available across the Nation.

But the second piece I think really gets to the root of the element that the Technical Mapping Advisory Committee asked us to address. This spring we are engaging with States across the country to begin to lay out what the sequencing of maps would be, because as we had done in the past and given the budget uncertainty that had been suspended, we used to go through a process so they could see it coming and they knew when we would be coming to their community next. Regardless of what happens in the budget, we are moving with the States to implement that recommendation now.

Senator BROWN. In the September hearing, we discussed the tension between risk-based flood-insurance rates and affordable rates for low- and moderate-income homeowners. Congress 3 years ago directed FEMA to develop a draft affordability framework for the NFIP. What is the status of the affordability framework? And when do you expect to send it to us?

Mr. WRIGHT. So the affordability framework is due to the Committee in September of this year. We have worked with the Government Accountability Office as well as the National Academies of Science in terms of building this.

One of the things that we have been able to do since I saw you last fall was to begin a partnership with the Census Bureau by which we are going through and doing data matching of our policyholders against what we can know from census data. It is a controlled environment that is going to give us some better insights into it. We are already seeing very clear data that say that those who live in the high risk of flooding make tens of thousands dollars less than those who live outside on average.

At this point, though, we are just at the beginning of getting those data. That is then being brought together with a series of policy options. I look forward to wrapping up that initial work inside the agency here in the next couple of months, and then we will begin the process of collaborating with the Administration in order to be able to transmit a report to you this fall.

Senator BROWN. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Wright, do you know a company by the name of U.S. Forensic?

Mr. WRIGHT. I am aware of the company.

Senator KENNEDY. I believe they got in a little bit of trouble representing some of the companies after Hurricane Sandy. Is that correct?

Mr. WRIGHT. That is correct.

Senator KENNEDY. What was that trouble?

Mr. WRIGHT. And so they were involved in some of the cases where engineering reports were required after the event, and some of their work was sloppy at best or dead wrong at worst.

Senator KENNEDY. They altered some reports, didn't they?

Mr. WRIGHT. That is my understanding.

Senator KENNEDY. OK. And they were sanctioned by a Federal judge. Is that correct?

Mr. WRIGHT. So there were a couple of companies from the engineering space that were involved in this. Given some things that played out with this, there were some sanctions that were done.

What we have done is collaborate with the Attorneys General in both New York and New Jersey, as well as with the Department of Homeland Security's Inspector General. Those are the folks who have the authorities and powers to follow through on those questions.

I would highlight that one of the companies—not the one you are mentioning now—was convicted, given some work by the——

Senator KENNEDY. Well, you are familiar with the flooding we had in March and April last year in Louisiana.

Mr. WRIGHT. Very much so.

Senator KENNEDY. What is U.S. Forensic still doing engineering work now in Louisiana?

Mr. WRIGHT. So I cannot prohibit the use of the company unless we have gone through a complete debarment process. The convicted company has been debarred. Otherwise, that is the collaboration that we are doing with the Inspector General.

What I can do and have done is fundamentally change the quality control of all of the work that is done by engineers, so that as the various companies are involved in it, I can be assured of the outcomes.

Senator KENNEDY. Well, the Federal judge in New Jersey accused this particular firm—these are the judge's words, not mine—of "reprehensible gamesmanship." That is not enough to get you off the list?

Mr. WRIGHT. Based on that, we worked and are continuing to supply information to the State Attorneys General in New York and New Jersey who have the law enforcement capabilities to take actions against them.

Senator KENNEDY. OK. Are you familiar with an attorney by the name of Gerald Nielsen?

Mr. WRIGHT. I am.

Senator KENNEDY. I believe he had some difficulties in representing some clients after Hurricane Sandy, too, did he not?

Mr. WRIGHT. That is my understanding.

Senator KENNEDY. Could you tell me about that?

Mr. WRIGHT. So I have never met Mr. Nielsen. My understanding is that he is employed by some of the Write Your Own companies to represent them in litigation.

Senator KENNEDY. His firm that he was representing was sanctioned $1 million for violating discovery orders in litigation after Hurricane Sandy. Is that right?

Mr. WRIGHT. I am not aware of the specifics related to sanctions related to him.

Senator KENNEDY. OK. You are not familiar at all with that?

Mr. WRIGHT. You listed a dollar value. I am not aware—I understand that he was called in to account by a judge, and based on this, I will tell you that more holistically, not just that action, I have looked at and continue to collaborate with the Inspector General to look holistically at the actions of these lawyers.

Senator KENNEDY. Well, he is still representing the WYO companies, is he not?

Mr. WRIGHT. My understanding is there are Write Your Own companies who still use him, yes.

Senator KENNEDY. And why is that?

Mr. WRIGHT. So they have choices to use lawyers. As they do that process—again, this goes back to the engineering side—if a lawyer has been debarred or disbarred, then I can prohibit their use. What I can do and did roll out last summer was fundamental changes to how we oversee all of the litigation work that is done. And so while I do not get to choose the lawyers, I do get to influence and ultimately direct the litigation strategy about when we should pursue that in court and when we should step back and say the right thing to do is settle on this case.

Senator KENNEDY. Well, if I understand your testimony, you do not do anything unless somebody is disbarred if they are an attorney, or if they are an engineer unless they are what?

Mr. WRIGHT. I can change the quality standards. I can hold them to those from a control perspective. The ultimate selection of those is left to the Write Your Own companies unless they have been debarred.

Senator KENNEDY. And you do not have any influence whatsoever? You cannot pick up the phone and call these companies and go, "Hey, we have got some problems here"?

Mr. WRIGHT. Sir, I think the companies know my opinion of these various actors. The kind of open questions given their actions that brought on questions of the credibility of the program, I have spoken very plainly about that. But, again, sir, folks have rights to due process, and I do not have the ability single-handedly to remove any one player.

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman CRAPO. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

I am pleased that we are starting the process to reform and reauthorize the National Flood Insurance Program early so that we have enough time to fix this complex program once and for all. For 231,000 New Jerseyans, this is an incredibly important program, as we saw in Sandy. And in the aftermath of Sandy, I saw first-hand all the problems with the program and the work that needs to be done.

Sandy was a natural disaster, but the delays, the denials, the disputes they encountered throughout the flood insurance claims process, that was a man-made disaster—the arbitrary rules, inflexible deadlines, the gaping loopholes, the "gotcha" clauses, the chronic underpayments, the constant run-around.

So with this experience fresh in mind, I am eager to lay out the reforms that I hope the Committee will fight for in the days and weeks ahead. Certainly I will. My goal is to make the Flood Insurance Program simple, affordable, fair, efficient, and accountable to consumers and taxpayers. Americans deserve a program that is sustainable for taxpayers, affordable for homeowners, and accountable to everyone.

Now, I would like to follow up on Senator Kennedy's questions about the Nielsen firm. In the aftermath of Sandy, thousands of New Jerseyans faithfully paid their flood insurance premiums for years, often decades, without ever making a claim, and then had the rug pulled from underneath them when they were significantly underpaid by FEMA's private insurance contractors. And the appeals process, which was fundamentally broken at the time, many were forced to go through the frustrating, time-consuming, and expensive process of going to court to get what they were entitled to.

FEMA's private contractors account for more than 90 percent of the cases the Nielsen law firm did everything in its power to drag out the proceedings, draining time, resources, and money from Sandy victims who had little to spare of each. Rather than work in the interests of justice, the Nielsen law firm filed countless frivolous motions seeking to run up their legal fees, which Nielsen himself bragged would surpass $100 million.

To add insult to injury, these millions of dollars came partially from the very policyholders he was fighting in court. He dealt with Sandy victims like they were the perpetrators, enriching himself as their expense, bullying, scaring people out of court, hiding documents. And when they finally got caught and were excoriated by a Federal judge for a "shocking effort to curtail inquiry" and a level of admonishment rarely seen in Federal litigation, the judge said, "I find that counsel for Wright violated its obligations to comply with this Court's discovery orders . . . unreasonably prolonging this litigation, imposing unnecessary costs upon plaintiffs and further contributing to the unwarranted delays." There is not a morsel of regret by that firm.

So to my knowledge, this law firm is still representing Write Your Own's in lawsuits. Isn't that true, Mr. Wright?

Mr. WRIGHT. That is my understanding as well.

Senator MENENDEZ. So a firm with such a troubled and possibly illegal past can be given the opportunity to represent FEMA even though they have such a record?

Mr. WRIGHT. Yes, sir.

Senator MENENDEZ. Well, so are you telling me that FEMA does not have hiring and firing authority for these attorneys, even though FEMA is on the hook financially and has its reputation on the line?

Mr. WRIGHT. We do not. Instead, what we have is two things.

In the aftermath of Sandy—and you were involved with my predecessors to move much of this along the road—FEMA withdrew all of the cases so that we could personally manage those with our staff.

And, second, we changed the way by which litigation oversight takes place going forward.

Senator MENENDEZ. Would giving FEMA the authority to choose or at the very least approve a private attorney's representing them help you control legal expenses and speed up the resolution of lawsuits?

Mr. WRIGHT. I think it is one of the elements, sir, that we need to look at.

Senator MENENDEZ. Let me ask you in a different context, Write Your Own's, FEMA contracts with private insurance companies to sell and service its flood insurance policies. Despite taking on none of the risk, these Write Your Own's, as they are known, reap significant profits from the program. In fact, estimates show that the Write Your Own's pocketed more than 43 cents of every dollar in premiums in the year Sandy hit. That is an awful lot of money for an insurance company that does not bear any of the risk.

Is it appropriate for these private companies that have no skin in the game to receive more than a third of all premiums collected?

Mr. WRIGHT. Mr. Menendez, we need to pull down the costs; we need to make all of this far more efficient. I would want to highlight for you, though, as we look at compensation, you know, as we look at the standard compensation of 30.5 cents, the first 15 to 17 cents go to agents who are small business owners in your State. I want to make sure that we are fair to them. They are the sales force we need on the ground. We then look at the State taxes we also pay out of that. So I can look at the dimensions of it. You guys have directed us in the last cycle to change this. We are in the process of taking that on from rulemaking. We have collaborated with the Government Accountability Office whose report on this, I think in December, is one that I have learned quite a bit from.

But to simply say it, sir, we need to pull down the costs. We need to make this more efficient as we go forward.

Senator MENENDEZ. Well, Mr. Chairman, 43 cents on every dollar to a private insurance company that is not on the hook for anything does not seem to me to be a system that ultimately works in the interest of the taxpayer. I have a lot more questions. I will submit them for the record.

Chairman CRAPO. Thank you, Senator Menendez.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Let me provide a little bit of the other side of this. In my former life, I was a property and casualty agent, and the agency that we had actually participated in the Write Your Own Program, and we wrote flood insurance through a private carrier, and we did it as much as a service for those individuals that we wrote their other property and casualty for. It was a challenging part, and yet writing it through a carrier that you also did other business with made it easier to work through the processes.

I agree with you that the reauthorization is critical and that it should be timely and that it should be one that runs over a period of years. I also agree with you that there should be more insurance coverages being written, particularly those in areas in which you are actually collecting a fair premium for a fair risk, meaning those with less hazards.

Personally, I have flood insurance on my home, and in looking at how that was written, it is in a category which is the least expensive of the categories. But there is a limit on it of $250,000 for structure, and at one time I think that would probably cover a lot of the structures that are out there. But as homes have continued to increase, if you look at the insurance values, most insurance companies that write homeowners' coverages will tell you that they want to be able to insure to the value of a home, and the reason is because, in the case of a loss, you are always going to, as the carrier, pay for that part of the loss, unless you have a contract in place that says if you are not fully insured they are only going to pay a percentage of the loss involved.

I am wondering if the National Flood Insurance Program should perhaps take a look at either increasing the total amount of structure coverage, particularly in those areas where it would be perhaps more profitable to write and, thus, gain more premium dollars, and also it looks to me like since you have a larger risk in some of your homes, you avoid the adversity of insuring the first $250,000 of any loss that occurs.

Have you thought about that in terms of what your options might be?

Mr. WRIGHT. Yes, sir, and I appreciate the question and the nuance that you have offered inside of this. The $250,000 limit is set by statute. It was last adjusted in 1994. Very clearly, the value of homes has gone up over the last 20-some-odd years.

We would benefit from an increase in that. I think at the time that number was calibrated to the kind of Freddie/Fannie side of, you know, those conforming loans. That number sets up at $427,000 today. And there is a very real problem, in my estimation, related to underinsurance that you are highlighting there by which ostensibly a $250,000 full payout on that policy could very well just be a 50-percent loss.

And so this is an adjustment that I would be happy to work with you all on. It is one that should be addressed.

Senator ROUNDS. It most certainly would bring more what I would call "healthy" or "profitable" premium dollars into the program.

Mr. WRIGHT. Well, and I think this is an important point. To the degree that we allow that to go up, I would assert that it should only be on the actuarially sound rates only——

Senator ROUNDS. Yes.

Mr. WRIGHT. ——so that we are not increasing the risk on the grandfathered and pre-firm side of the equation, and it would increase the revenue into the program and help us remain more financially sound.

Senator ROUNDS. It would seem to me, though, also that you may be working at odds against yourself if all new construction you were looking at—if you simply allowed that to be written outside the program, it would appear to me that you are basically taking older homes then and you are not taking newer homes that may very well be in areas with appropriate flood protection. I think I would caution against a broad approach suggesting that the flood insurance not participate in those markets as well.

Mr. WRIGHT. So I appreciate that, sir. As I look at it, there has been a desire from many to see the private market expand. And from a public policy perspective, the more people who are covered, the better. I want people covered whether it is through private or through——

Senator ROUNDS. But if you are taking the risk on the rest of it, you have to spread the risk. If you take the healthiest, as I would call it, of the premium dollars, the most profitable, and allowing the outside market to have that, that hurts you in the long run with the National Flood Program.

Mr. WRIGHT. Over a 10-year horizon, it would. You are correct.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Tester.

Senator TESTER. Let us follow on with that conversation, and that is, if private insurers are allowed into the marketplace, then we have a bill to do that. And they take up the lowest-risk policies and leave you with the highest-risk policies. And I know you said that the more people insured, the better. Doesn't that put your NFIP in a greater risk situation?

Mr. WRIGHT. Whatever we do down this line needs to be measured in terms of what it sees to go forward. Ceding some space to the private markets, which has been—and I know that you have advocated for that in your bill—there are a lot of folks who do not have the coverages they need. And so I will approach the entry, or expansion because they already exist in the market today on the private sector side from a mutual gain theory, as long as we mutually gain.

What I have to see us guard against is a point by which they start culling through my book, which is why I looked at the new risk and said if we are going to give some space, let us give it on the new side. What I do not want them doing is arbitrarily culling through the book, taking the lowest risk, and leaving us—we are already the residual market. We would move to the insurer of last resort. And at that point, Mr. Tester, I am convinced we would be in a position by which we would require infusions of cash every single year.

Senator TESTER. So—and if you do not today, I would not expect you to have—do you have any recommendation on language that could prevent that kind of culling through the books?

Mr. WRIGHT. So I can follow up with you. I think one of the elements has to do with what we do with the "noncompete provision" that is in our current arrangement. Some people misunderstand this. Agents have no prohibitions. The only people who sell policies are agents, and they can sell whatever product they want to sell.

Senator TESTER. Yes.

Mr. WRIGHT. What we say to the Write Your Own's, frankly, the way any business would work, is you have all of our proprietary data; it is covered in our instance, because we are a Government program, under the Privacy Act. You cannot arbitrarily cull through that and say we want to take one-third of the policies and shift them off the book because you have an insight that no one else has.

Senator TESTER. Got you. OK.

You talk about an on-time, multiyear reauthorization. I assume you are talking 5 years, or are you talking a different number?

Mr. WRIGHT. Senator Tester, multiyear is what matters to me. You know, I look at the kind of complexity of this that sits in front of us. Multiple years.

Senator TESTER. OK. So the recommendation from NFIP is you do not really care if it is 3, 5, or 7, just so long as——

Mr. WRIGHT. As long as we have multiple years. We need to see consistency in the marketplace.

Senator TESTER. All right.

Mr. WRIGHT. The last time, Congress did some work in 2012, came back in 2014. I am less concerned about that than in showing there is stability in the marketplace.

Senator TESTER. OK. You also talked about pricing risk, and a lot of that risk pricing deals with maps. We have gotten a lot of feedback on the accuracy of the maps from the people who live there in different places, and maybe some of them are wrong, but some of them are probably right, too.

Do you guys have any idea on how accurate the maps are at this moment in time as far as your ability to price risk? Are they 10 percent accurate, 90 percent accurate, or 75 percent accurate?

Mr. WRIGHT. So I believe that the maps today are credible. In 2014, you all directed us to work with the Technical Mapping Advisory Committee to look at this, and last fall, the Administrator of FEMA certified the credibility of the product.

There is an open question related to precision, which I think is where you are going with this.

Senator TESTER. That is correct.

Mr. WRIGHT. And precision comes down to how much can we afford to buy. It is a resource question. Precision costs more money. So what we have tried to do is collaborate with communities, ensure that we are getting the data from them so that we are not duplicating any effort, and continuing to build on this. I am convinced that the technology can help us, but one of the predicates on that requires us to have digital elevation data in all of these all across the country.

Senator TESTER. Very quickly so I do not not obey the Chairman, but the map revision process for communities, are you happy with that? Is it timely?

Mr. WRIGHT. So the map revision process can and needs to go faster.

Senator TESTER. Yes.

Mr. WRIGHT. But let me nuance it down two lines. I am particularly looking—I think we should work with the Committee on this. When a community is submitting data and it is submitted and it goes through the early processes without objection, I would like to see us hit the accelerator on it.

Senator TESTER. OK.

Mr. WRIGHT. I want to be careful not to remove the due process, because a community may think this is a good idea, but an affected property owner wants to be able to appeal. We have got to hold that tension together. But when the community is bringing me the data, we do not see objection, we should hit the accelerator.

Senator TESTER. Thank you, and I apologize, Mr. Chairman.

Chairman CRAPO. That is all right this time.

Senator Scott.

Senator SCOTT. On behalf of Senator Tester, I will yield back 21 seconds before I am finished here. Do not worry.

[Laughter.]

Senator SCOTT. Mr. Wright, thank you for being here this morning, and my question really does piggyback on Senator Tester's and your conversation around technology, where we are and what kind of technology are we using today, what kind of technology are we going to, and how will that technology open the door for the private sector to become, the private insurers to become more involved in it. Because as I look at the State of South Carolina, we are in desperate need of remapping, and you are going through that process, which, of course, causes consternation and challenges as well.

Communities like Beaufort County, where Hilton Head is—most of us know where that is—has not been remapped in about 20 years, which is consistent, I think, throughout the State.

The 1,000-year flood that we had in 2015—and I will say that FEMA did a pretty darn good job, so thank you for your participation and your assistance during that challenging storm. The reality, however, is that most of us would assume that in South Carolina the coastal exposures received a lot of the pain and suffering, when, in fact, as you know, the inland communities—Florence and Columbia because of the dams that were broken and other situations—challenged folks who never heard the words "flood insurance" from their agent——

Mr. WRIGHT. Right.

Senator SCOTT. ——because there was never a thought that it would be needed. I think about the same situation in Louisiana and around the country where the flood impact is now in areas that are likely not mapped for it, perhaps impossible to do so, but if we are going to have more private insurers coming into the market hopefully to help reinforce the market, and we are going to have better predictions on where the possibility of the impact will be, the last few storms suggest that we have some ways to go, or perhaps it is just not possible at this point to get there.

Mr. WRIGHT. So there are maps under development, and so in the case of South Carolina, we pass 100 percent of those funds directly to the State through a Cooperating Technical Partnership, and they provide the leadership on the ground for this. So even in Beaufort County, those maps are in draft and working with the community, but they are not yet in effect.

Let me talk about the inland piece, and let me go to technology. From an inland perspective, you are absolutely right. It is interesting. I talk to the folks on the coast, and they go, "Well, we survived this." I am, like, "Whoa, whoa, whoa. What you survived is not what the communities in Florence and Columbia and others did."

From an insurance perspective, it did go well beyond the high-hazard area that was mapped, but I would tell you we had an insurance problem inside the high-risk area, way too little participation and penetration.

Senator SCOTT. Always do.

Mr. WRIGHT. And particularly in the neighborhoods that I was in. I know that you traveled through that area as well. A lot of these were renters, so they were landlord-owned. And so I look at the renter side of the equation. Only 1 percent of my book is sold to renters. And how do we help them understand that for $100 or $150 they could have an amazing amount of coverage so that they could rebuild their lives?

To the technology point, when you do a map, you have got to have a ground elevation; you have got to know how much water is going to come and how deep it is going to be. And then, finally, how does it interact with the built environment? We have to have good, solid ground elevation data. We do that with LIDAR technology. Frankly, we need that across the country, and right now we buy that in piecemeal. But if we had that combined with where the structure locations are—and we are making progress there, but not fast enough across the country. I think technology takes a much larger bump. At that point we could literally have people with their smartphones showing us pictures of where their base floor is. We could write it in a much simpler way. I do agree with Senator Menendez we need to have a simpler product than we have today. It is far too complex, and technology helps us get there. But technology even helps meet the point of the claim. High-end claims still need an adjuster on the ground, but if I am looking at a wet carpet style claim for $10,000 to $15,000, some pictures taken in an app on your phone is absolutely sufficient for us to be able to move.

Senator SCOTT. Having sold flood insurance for a while, I thank God that I no longer sell it. But it was an important part of what we did for a living, and trying to find a way to mitigate the concerns of the average person in the average place in the country, and specifically in South Carolina, is a troubling task for the private sector.

Mr. WRIGHT. Yes.

Senator SCOTT. Socioeconomic impact, a lot of folks think about Hilton Head, Kiawah, many of the coastal exposures, and think about the colossal palaces built on the coast. The reality of it is that there are a number of heirs property where you have small structures with folks who simply cannot afford—since Tester has left, I am going to reclaim my 21 seconds—any real increases in flood insurance.

Is there a method to measure and/or compensate for the socioeconomic areas or no?

Mr. WRIGHT. So today under the act, I do not have any authority to look at socioeconomic impacts. As we look at the affordability study that I was asked about a bit earlier, we are looking at these dimensions. We will be able to bring more information forward to you.

Senator SCOTT. Thank you.

Chairman CRAPO. Senator Schatz.

Senator SCHATZ. Thank you, Mr. Chairman.

As you know, by statute FEMA is required to reevaluate the flood insurance maps every 5 years. What is the percentage of maps that are actually redrawn every 5 years?

Mr. WRIGHT. So at the 5-year piece, we do an evaluation of them. In many cases we find that they are sound and can be maintained. At other points the investment needs to be made.

Senator SCHATZ. Are you reevaluating all of the maps every 5 years?

Mr. WRIGHT. We are doing that evaluation every 5 years. The flip side of this goes to the mapping side. Once I know that, I then have to have the resources to invest. Today about 59 percent of the stream miles meet standards. So once we get to that point, I have got a gap that I need to fill.

Senator SCHATZ. So 59 percent are meeting your standard, 41 percent need——

Mr. WRIGHT. Require additional investments and engineering and analysis, yes, sir.

Senator SCHATZ. OK. And you are saying that the map—the maps are credible but not precise. Is that correct?

Mr. WRIGHT. Yes, sir.

Senator SCHATZ. What does it mean to be credible but not precise?

Mr. WRIGHT. So we have a way, given what we know about the ground elevation, given what we know about the amount of water and where the structures are, we draw a map. We start looking at things structure by structure by structure, and there is a level of precision when they do that radar-based elevation. And we have some parts of the country where, you know, 6 inches means you are in or you are out, and many of these kinds of pieces start getting into I want you to know that my ground floor is actually 3 inches, 6 inches higher than what we were able to do in our watershed-based analysis.

Senator SCHATZ. And in the big picture, obviously, the more precise, the lower the risk, and the better the risk pricing is. Is that correct?

Mr. WRIGHT. The more precise is actually going to move people in and out, so when you get to——

Senator SCHATZ. Sure, there will be winners and losers for sure.

Mr. WRIGHT. Precision increases our ability to address the concern about exactly who belongs——

Senator SCHATZ. To price risk accurately.

Mr. WRIGHT. Yes, sir.

Senator SCHATZ. And what you are saying is it costs money to do the redrawing of the maps.

Mr. WRIGHT. Yes, sir.

Senator SCHATZ. And that is something that the Committee has to authorize and then has to be appropriated? How does that work?

Mr. WRIGHT. Correct. So in the current—based on the 2012 authorization, Congress authorized $400 million a year; that is paid in a combination of appropriated dollars and fee. Today, or at least in 2016, there were—$311 million was as much as we brought.

Senator SCHATZ. So your current funding allows you to do about a little less than two-thirds of what needs to be done.

Mr. WRIGHT. Yes, sir.

Senator SCHATZ. OK. And according to the American Action Forum, of the approximately 1.5 million structures in the special flood hazard areas that are required to have flood insurance, almost half are not in compliance with the law. First of all, do you agree with those numbers?

Mr. WRIGHT. So as we look at this element, there are a lot of data regarding how many structures are or are not under the mandatory——

Senator SCHATZ. Well, let me ask the question this way: What is your estimation of the rate of compliance?

Mr. WRIGHT. So I have seen reports from 35 percent to 55 percent in terms of the compliance. It varies different places across the country.

Senator SCHATZ. Is it your job to get that number up?

Mr. WRIGHT. Sir, I do not under the act have the responsibility or authorities related to mandatory purchase. Those belong to the lending regulators, including the Office of the Comptroller of the Currency.

Senator SCHATZ. OK. And I am sure you are aware the number of billion-dollar disasters has grown significantly in recent years, from an average of fewer than 3 per year in the 1980s to 15 last year. As you know, FEMA does not have the luxury to pretend climate change does not exist because it deals with consequences on a daily basis. Without getting you into a political conversation, how does the NFIP account for sea level rise and the increased severity of storms that are coming with climate change?

Mr. WRIGHT. Thank you for the question. We have responsibilities and authorities under both the Stafford Act as well as the National Flood Insurance Act to concern ourselves with future risk. Climate is one of those. I would also point out the continuing development in the built environment also is part of that risk. Those authorities are very plain, and they continue to be ones that we implement.

The Technical Mapping Advisory Committee brought me a series of recommendations related to future risk last year. Some of them require new science to frankly be developed, but we are beginning to make progress on that.

I would draw the distinction, though, on future risk, whether it is climate or through changes in the built environment. We only charge premiums based on today's risk. I do not charge someone a premium based on a risk they will not experience for 20 years. But the other side of the program has to do with land use, and the point by which future risk needs to be absolutely taken hold of says we are building today knowing that these risks continue to change, and we expect them to grow in some particular areas. We should be building higher and stronger every single time so that those who live there, those who own those homes going forward, will be able to withstand whatever comes their way.

Senator SCHATZ. Thank you, and I will just add that with respect to the built environment, point taken. With respect to climate change, it is both a current and a future risk at this point.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Heller.

Senator HELLER. Mr. Chairman, thank you. And, Mr. Wright, thank you for being here also.

A quick question. How familiar are you with the current flooding situation in Nevada?

Mr. WRIGHT. I am familiar with what has played out in recent weeks, both up in the Carson City area, particularly there in that whole western part around Reno.

Senator HELLER. Thank you. We have four counties right now that have submitted for Federal help and have received it from the Administration. We are certainly appreciative of it. We have had 200 percent precipitation after 5, 6 years of drought. It is kind of nice to see it. We would wish that, you know, it would not come all at once, but it did and we are not going to complain about it. But we have the obvious concerns that are going to occur.

Last week, I joined with my colleague Senator Masto, the Governor, and Congressman Amodei on a second request. Are you familiar with this second request?

Mr. WRIGHT. I understand that a second request is being reviewed at this point. No decision has been made.

Senator HELLER. And I am aware of that also. My biggest fear right now is going to be runoff this spring. We have got 200 percent snowpack up in the mountains, what that is going to bring, and if it is unusually warm this spring, you can imagine the concerns that we might have.

What I guess I need from you is a commitment that FEMA will be proactive in helping these Nevada communities as they prepare for flooding soon.

Mr. WRIGHT. In much the same way as we did for the events in the prior weeks, we will be there. We will partner with the Governor in terms of the requests that come this way. My brother lives in Carson City. I saw the pictures from this last piece, the water literally coming down the road. It is clearly a place by which we need to cooperate with those local emergency managers, but also for those who have flood insurance, I want to make sure that there is timely payment of any claims that come in for those——

Senator HELLER. That was my next question, the commitment for those timely payments to these local communities.

Mr. WRIGHT. Absolutely. And so the kind of changes we have made to push out advance payments early to them so they have early dollars on the ground, and the commitment you can have from me is as we see those pieces coming forward, we will stay in touch with you and make sure that all the needs are met.

Senator HELLER. And I appreciate those comments. We have in northern Nevada a combination of Reno, Sparks, Washoe County, and the U.S. Corps of Engineers, they have been working on a flood control program for the Truckee River as long as I have been here in Congress. And it is progressing, but obviously funding is the mechanism by which they can complete that particular project.

Obviously, the U.S. Corps of Engineers plays a major role, but how can FEMA provide more mitigation, financing resources for community-level flood control projects?

Mr. WRIGHT. So there are two separate lines on this. When we are looking at projects the Corps of Engineers is authorized to do, without violating the duplication of programs, I cannot commingle with them. Congress has to appropriate those dollars and move them forward. There are other projects in the affected area, and we do have grant programs that the States can avail themselves to specifically related to flood mitigation. But if it is that specific larger-scale project that the Corps of Engineers is doing, I can only work through their appropriation lines.

Senator HELLER. All right. Mr. Wright, thank you very much for your time. Thank you for being here today.

Mr. Chairman, I will turn it over.

Chairman CRAPO. Thank you, Senator.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. Thank you, Mr. Wright, for your testimony.

I want to talk a little bit about the Flood Insurance Program through the lens of a really bad flood not far from here in Ellicott City, Maryland—not a coastal area, an inland area. And the title of an article that came out after the flood last summer was, "Flood insurance woes push Ellicott City businesses under heavy water." And it documents a number of scenarios. One are the people who did not buy flood insurance; they thought it was too expensive. But I want to focus on some that did buy either flood insurance or thought they were covered by other insurance.

Some that bought flood insurance say that the companies were reneging on their promises, shirking claims, and offering limited coverage, leaving many small businesses unsure of how they will recover from uninsured losses that are in the thousands of dollars. These are small businesses on Main Street in Ellicott City.

One person in particular, Robin Holliday, who is the owner of HorseSpirit Gallery, which is a fine art gallery, said she had been duped by her flood insurance provider. She purchased a policy that covered $150,000 in damages, but the company only covered $2,500 for art damaged by the flood.

A couple questions. One, where is the recourse for one of these people who feels that they have been totally taken advantage of? Is it through the State insurer? Is it through you? Is it a combination? How do we make sure people get recourse without people pointing fingers at one another?

Mr. WRIGHT. Absolutely. So a very deep flood in the historic section of Ellicott City. We had about 70 insurance claims that were filed with the National Flood Insurance Program. We talked a bit earlier about the private markets, but I want to touch on this because many businesses buy their coverage on the private market, not from me. And so the first thing we have got to find out is: Was it through the National Flood Insurance Program? Or did they buy this through their broader commercial policy?

That said, we stood up an improved appeals process last year. To the degree that they are not satisfied with the adjudication of that claim, they have rights to come into our appeals process and have that absolutely reconsidered.

Senator VAN HOLLEN. Good. We are going to want to work with you on that.

Now let me ask you about business interruption insurance because, as I understand it, the current Flood Insurance Program does not cover that. Is that correct?

Mr. WRIGHT. That is correct, sir.

Senator VAN HOLLEN. And there are a lot of people who they may not have flood insurance, but they bought this business interruption insurance in the event that their business is hit by a catastrophic event. And just to quote somebody who had major losses as a result of that, the owner of the Southwest Connection and Fudge Shop, again, on Main Street, found out that that business interruption policy would have covered civil unrest, it would have covered fire, it would have covered an earthquake, but it did not cover flood.

So my question to you is: In order to avoid confusion, should we consider allowing you, through the Federal insurance program, to offer some kind of product with respect to business interruption insurance? And would that not, number one, protect people who thought that they were covered? Because there is a lot of confusion here. And could it also maybe help you increase your pool?

Mr. WRIGHT. So I absolutely think—and this goes—that we need to explore this. Today the act requires me to list all the terms and conditions of the policy, standard flood insurance policy, in the Code of Federal Regulations. My agency is not fast to do rulemaking. On average, it takes 7 years. And so one of the steps we could do through reauthorization is remove the requirement for me to have all the terms and conditions in regulation. It still should go through a public process and be transparent. But that would open up these opportunities, and we can look at any other kind of barriers so that we can offer the coverages people want.

I think as we look at this, when too many people are not covered—and we saw much of that in Ellicott City. But when people do have the coverage and they do pay for that, it is the kind of piece by which we should offer them on an actuarial basis the coverage they want.

Senator VAN HOLLEN. I look forward to working with you on this, Mr. Chairman, because as you can imagine, there are a lot of people who they have been paying their premiums, and then, you know, disaster strikes. They say to themselves, "Hey, you know what? This is why I have been paying these premiums day in and day out for my business interruption insurance," only to discover that that is not covered. And it would be very helpful and avoid a lot of the confusion if we could work with you so you could provide that kind of product.

Just a comment with respect to the intensity of weather events and costs driven by climate change. I would say that in my State of Maryland, Mr. Chairman, in Annapolis, we have the Naval Academy. We had a hearing there maybe a year and a half ago, and the superintendent of the Naval Academy, the Admiral, testified about much increased flooding in Annapolis that was causing more severe damage to his facility, which he attributed—this is the Admiral—to climate change and the intensity of weather events such that we have been seeing.

So I would point out and I think you know, Mr. Wright, that a lot of actuaries are now talking about the importance of costing in the impact of climate change, and it sounded to me from your answer like you are taking into account those costs and those risks. Is that the case?

Mr. WRIGHT. We do take into account the future expected losses. For me—and part of this was the nuance I was trying to drive—you highlight a place—and we see this play out in places like Annapolis where they are having sunny-day flooding that are playing out for them. Those kinds of pieces absolutely demonstrated in the maps, brought into the cost.

There are risks that have not yet been realized. Those are the kind that we try to do through land use, hoping to ensure that people are not there or they are built higher and stronger, rather than waiting until the day that we have to raise their premium.

Senator VAN HOLLEN. Thank you. Just to Senator Schatz's point then, those costs you are already seeing them obviously in places like Annapolis.

All right. Thank you, Mr. Chairman.

Chairman CRAPO. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair. I apologize for being late. We have a competing Senate Armed Services hearing that I am bouncing to and from.

Mr. Wright, thank you for being here. In North Carolina, we had the Matthew event not long ago and other water events that have really demonstrated the challenges that we have around trying to mitigate the future risk of flooding in the urban areas and rural areas across the State. Could you talk a little bit to me about what we should—what you would like for us to do or what the Department or what FEMA is going to do to possibly increase some of the work that would come under ICC, particularly in communities where we are trying to go into Fayetteville where we have got a clear indication of threats after Matthew, and in Mecklenburg County, what more we need to do there? I know when you were asked the question over in the House committee, you were saying, "It sounds like a great idea. I would need more revenue." But has there been any work done to project what the long-term savings may be if we were able to make that investment?

Mr. WRIGHT. So we have not fully studied the various increments of increase. So the increased cost of compliance is a mini-grant program inside an insurance program that we run. It is 30,000 today. It does not—and this is very clear to us. It does not cover the full cost of elevating a home to bring it into compliance. It is simply assisting with that.

For me, this goes down to should we continue to view it as a grant program or should we view it as an insurance provision the way that laws and ordinances coverage might look. Clearly, for the homeowner that lives there, that kind of investment would not only raise the value of their home but ensure that they could withstand the——

Senator TILLIS. What about an instance where maybe a local county is trying to acquire property that does not have a building on it to basically—to reduce the risk of any sort of flood damage when and if that particular property is flooded in the future?

Mr. WRIGHT. So I would not view that one through the increased cost of compliance, but I would look at in terms of the other grant programs we offer through flood mitigation and the like. We have partnered—I think Charlotte–Mecklenburg is actually held up as one of the best examples in the country in terms of what does it mean to acquire property. Essentially, how do you make room for the river as a way to mitigate those future losses?

Senator TILLIS. I would like to talk a little bit about your IT modernization projects within FEMA and then also talk about what you would consider to be the best way to get the topological data that we need going forward in terms of mapping. You are probably familiar with North Carolina. We are using different kinds of techniques to do mapping, LIDAR being one of them, versus the traditional send a surveyor out and capture data. So it is a two-part question. One, let us just talk about your general IT modernization. The other one is maybe increased collaboration with States and different techniques getting the information we need to have a better handle on the future risk.

Mr. WRIGHT. So on the IT modernization piece, let me go to my insurance operations dimension. We continue to use a mainframe, and so we have kicked off—and have done a lot of reviews over the last 2 years. There had been a couple of attempts at modernization that had not produced the successes that were necessary. We have changed our approach on this, and recently we were given approval last fall from the Department of Homeland Security and Office of Management and Budget to proceed. Rather than do the big Waterfall overflow, we are doing an Agile Development Process, and the first couple epochs will begin to come out this spring, starting with data analysis, but then we will move to the financial dimensions and the like.

On the technology related to mapping, the LIDAR-based technologies that are used in the State of North Carolina are the only technologies that meet our standards any longer, so there are no surveyors going out and doing metes and bounds. North Carolina has been a leader in this space. In fact, John Dorman chairs my Technical Mapping Advisory Committee, and many of those kinds of pieces have been adopted over the last decade, and he has advocated for those in the recommendations.

The related element I would highlight, though, is—and we saw this in the Matthew event—the best maps are important input, but we then need to translate that into insurance uptake, because as we saw, far too few have the insurance they need, even those that were in the identified areas for the highest risk.

Senator TILLIS. Thank you.

Thank you, Mr. Chair.

Chairman CRAPO. Senator Heitkamp.

Senator HEITKAMP. Mr. Chairman, I see my colleague Senator Reed is here. I know they have an important hearing. If he wants to go ahead of me, that is OK.

Senator REED. I thank the Senator very much. Am I preempting anybody else? Forgive me. Thank you. You are incredibly gracious. No, we are not.

Thank you, Mr. Wright, for your testimony. Thanks for coming up to Rhode Island last year. You did a superb job.

One issue that is very important is mitigation to avoid some of these costs. We have been thinking about a program that is similar to the Clean Drinking Water Act Revolving Fund where States would be able to have the ability to lend out to homeowners and to properties to mitigate under the supervision of FEMA. But just in general, can you talk about mitigation and how it plays a role in the Flood Program?

Mr. WRIGHT. Absolutely. So the mitigation investments are clearly the way that we buy down these risks across the country. You know, we have had studies in the past, a dollar invested has a $4 return.

FEMA uses three different programs. Today one of them is directly tied to the Stafford Act post-event. The second one is a predisaster one. And then I have one called "Flood Mitigation Assistance" that we do that is funded by policyholders. The hard part about mitigation is we all know that higher and stronger is better. I want to see more neighborhood-scale mitigation play out. Yes, we need to do the individual structures, but what does it mean to see a community and how do we define "green and gray infrastructure"?

And so this idea related to some kind of revolving fund, we would have to see the details of that. But I think it is those kinds of elements as we look at infrastructure investments across the country; we have got to find ways to ensure that those investments are made in a way that a community scale really buys down this risk.

Senator REED. And you said what is one of the magic words these days, "infrastructure." So you would see part of any infrastructure plan that we would agree with and move forward as including flood mitigation as an important infrastructure?

Mr. WRIGHT. It would be premature for me to speak to specifics related to an infrastructure plan. That said, I do think as this is being developed, it is an important element related to whatever investments we make related to infrastructure. We should do them expecting them to provide service and protection for the next 50 to 75 years, and we should take all that we know about the science related to future risk. I particularly pay attention to the flooding side as well as the seismic dimensions in those parts of the country.

Senator REED. Thank you.

You testified last week about support for flood risk disclosure. Could you give us an idea of what things should be disclosed?

Mr. WRIGHT. So today most States require disclosure at the point of sale, and I was asked in the House hearing a bit about this, and I demur a bit because I really do think this is something that States are best positioned to understand and govern. I do not have the ability to an enforcement element.

That said, when someone is purchasing their home, they should know what the risk of flooding is. They should know what their earthquake risks are. They should have the risks related to a dam or levee that may fail. I just think that we are best positioned to do that in a way that collaborates with the States and the communities who understand that best.

Senator REED. But the risk disclosure should be broad, not just narrow, not the 100-year but the 500-year——

Mr. WRIGHT. I would agree.

Senator REED. Yes, thank you. And just a final point. The National Flood Insurance Program does a lot more than just reimburse people for damage.

Mr. WRIGHT. Yes, they do.

Senator REED. They do floodplain mapping assistance; they do mitigation assistance, as you pointed out, because it is the premiums that are paying for what you are doing, oversight, et cetera. Sometimes there is discussion of just substituting the Federal plan with private insurers. How do we do that and still maintain the ability to do these other activities?

Mr. WRIGHT. Well, I think as we look at this—and I have seen a couple proposals. I do not have a specific one to make today. But I will tell you that I look at the investments that are made into mapping, into floodplain management, into the grant programs. And over the last 25 years, billions of dollars have been paid by policyholders. To the degree that other markets are taking that, I do believe we need to very carefully consider how they would benefit from what is now a public good and how those bills should be paid.

Senator REED. Thank you very much, and let me again thank Senator Heitkamp for her extraordinary generosity. Thank you.

Chairman CRAPO. Thank you.

Senator Cotton.

Senator COTTON. Thank you, Mr. Chairman. And, Mr. Wright, thank you for your appearance before us today to talk about how we can fix the Flood Insurance Program.

Like many other Federal programs, I think the Federal Flood Insurance Program was started with the very best of intentions. Farmers and other Americans of limited means who could not afford private insurance could use a helping hand. Today, though, this program also helps many of them stay out of bankruptcy when disaster strikes, and that is a good thing. But it is time to acknowledge some hard truths. It is $25 billion in debt. And while the program does help some Americans with moderate incomes, as well as farmers, it also takes money from working-class Americans to subsidize beach homes for the rich.

In one wealthy Massachusetts town, 150 properties received $60 million in payouts over time. That works out to about $400,000 each. A single $1 million home has been rebuilt 10 times, so we are not talking here about the poor or the downtrodden. If you can afford a $1 million beach estate in Nantucket, you do not need middle-class workers to foot the bill for your flood insurance. You should be buying your own insurance with your own money from a private insurance company.

In fact, if the Government was not offering such lavish support, there would be private plans to choose from. But because the Government program can run up billion-dollar deficits, it is difficult for any private insurance company to compete. No private insurer has access to the unlimited credit line known as the U.S. Government.

So, Mr. Chairman, I agree that we need to work to fix this program on behalf of fairness, on behalf of efficiency, and on behalf of hardworking taxpayers who pay into this program every year and do not get value for their dollars.

Mr. Wright, the program is spending $25 billion more than it is taking in. It is fair to say it is subsidizing homeowners. Is that correct?

Mr. WRIGHT. There are subsidies and grandfathering that are provided for under the statute.

Senator COTTON. And there is no cap on the value of a home that can get a Federal policy. Is that right?

Mr. WRIGHT. That is correct.

Senator COTTON. So you can get a plan no matter how much money you make?

Mr. WRIGHT. There are no income-based thresholds under the Flood Insurance Act.

Senator COTTON. You can get a home no matter how rich you are?

Mr. WRIGHT. There are no economic elements in the National Flood Insurance Act for me to discriminate.

Senator COTTON. You can get a policy no matter how expensive your home is.

Mr. WRIGHT. We are capped at the amount of coverage we would offer. We would only offer $250,000 worth of coverage.

Senator COTTON. But that is a cap on the value, not a cap related to the overall price of the home?

Mr. WRIGHT. Correct. But it caps how much I would pay back to them.

Senator COTTON. So if you are a rich billionaire who has a beach home, then you can get a coverage policy from the Flood Insurance Program for the first $250,000, and then surely you would buy private insurance for the remaining value of your home. Is that right?

Mr. WRIGHT. Presumably so.

Senator COTTON. Is there any reason that rich billionaire could not buy private insurance for the first $250,000?

Mr. WRIGHT. If they would like to avail themselves of the private market, they could do so.

Senator COTTON. It seems they would have the means to do so if they can afford the multimillion-dollar beach home and the private coverage over the $250,000 cap, wouldn't they?

Mr. WRIGHT. It seems reasonable.

Senator COTTON. You state in your testimony that private insurers are gaining increasing interest in offering such insurance. Is that right?

Mr. WRIGHT. Yes, sir.

Senator COTTON. Do you think that there is some tendency for private insurers to be crowded out of the market by the National Flood Insurance Program, which can run a $25 billion deficit?

Mr. WRIGHT. I do not know that we are crowding out. I think there are a lot of properties that need the insurance that do not have it. And so as I said earlier, I think a mutual gain approach on this is one by which we could all collectively benefit. We do need to make sure that we do not create an environment by which we cull off the cheapest risk in my book so that I would require an infusion of cash every single year because I am left simply as the insurer of last resort.

Senator COTTON. I think we can all agree that we would not like to see an infusion of taxpayer cash repeatedly into the program, that we would like the program to focus on those Americans who need it most or who are most financially vulnerable and who live in places that may not be as pretty and scenic as America's beautiful beaches, but not subsidize rich billionaires and their beach homes to the extent that we are doing now.

Thank you, Mr. Wright. Thank you, Mr. Chairman.

Mr. WRIGHT. Thank you.

Chairman CRAPO. Thank you.

Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman. A couple quick questions.

Obviously, we are concerned about flooding in the northeast corner of my State. Drayton continues to struggle with the order from FEMA to take down the levee. They have sent you a request. Have you acted on that?

Mr. WRIGHT. I understand that the request has arrived at FEMA. We have not taken action yet on it.

Senator HEITKAMP. And when can I expect that action?

Mr. WRIGHT. So right now I am looking—we need to read through that. We have another month in terms of the period of time that is in front of us. And as I discussed with you earlier, I also need a sense of what the solution is that is going to follow, and we will continue to collaborate with you and the rest of the delegation on that.

Senator HEITKAMP. Well, there is a famous saying: Winter is coming, but in North Dakota, spring is coming.

Mr. WRIGHT. Absolutely.

Senator HEITKAMP. And if you could expedite the review, I do not think that we can solve all the problems with that levee in this review, but, you know, getting an approval or an extension so that we can assure the people of Drayton that they are going to have flood protection during what looks like increasingly will be necessary given their flood situation.

Mr. WRIGHT. And the very clear commitment that I will make to you, Senator Heitkamp, is we will not be taking any adverse action while there is any flood fight that is going on.

Senator HEITKAMP. But it would be nice to know that in writing, and so please expedite your review.

The second issue is basement exemptions.

Mr. WRIGHT. Yes.

Senator HEITKAMP. Obviously, we have a number of communities in North Dakota—of the 53 nationwide, 14 are in North Dakota—where these homeowners have taken extra precautions to qualify for the basement exemption. We have a very high water table in a lot of our flood areas.

What is your personal position on continuing the basement exemption?

Mr. WRIGHT. I think the basement exemption makes sense. I think that the examples there in North Dakota are a case in point, and when the maps were updated in those communities, over the last year, I reissued that exemption.

Senator HEITKAMP. Yes. I think we would like to see a continuing commitment to do that, especially because what we end up doing is waterproofing those basements and reducing your risk. And so——

Mr. WRIGHT. I think the current practice makes good sense in this context. I think there is a narrow set of communities where this applies. These that you are highlighting are included there, and I have no interest in changing that policy.

Senator HEITKAMP. Terrific. Thank you so much.

Let us get back to private flood insurance because I think that one of the concerns that I have as we go forward is what we have been talking about here, which is cherry-picking. But we do see a desperation from people to try and figure out how they can lower costs. Whether we can spread the risk beyond the taxpayers, as Senator Cotton explained, we are, in fact, subsidizing this program. I think the 500-pound gorilla that we have not talked about yet in this Committee hearing is: Is there a political will to continue to subsidize the same way we subsidize crop insurance for farmers? Will we ever get to—I mean, if we could ever get to a risk pool that would, in fact, be broad enough that private insurance could, in fact, enter the market, make money, and provide the coverage, we do not need this program. Is that correct?

Mr. WRIGHT. If we were in a position by which flood cover was included in a homeowner's policy the way that they are in some other countries, you are correct.

Senator HEITKAMP. Have you ever looked at a process whereby we could cover catastrophic loss, you know, what that would be, and then leave the kind of day-to-day kind of operations of flood insurance, you know, up to $250,000 to the private insurance market?

Mr. WRIGHT. So this is a piece from a historical perspective that was experimented with. There is an authority that still exists under the National Flood Insurance Act that was used up until 1986 by which they did that. The companies do not appear interested in that, to my knowledge, in terms of categorically taking over all the first $250,000.

I think that whatever steps we take in this reauthorization need to put us on a vector, and if that is the choice of where Congress wants us to go, we can develop it in that way.

Senator HEITKAMP. Well, I think that was the choice they made in Biggert–Waters, but now you see we are all here screaming that did not work, because when we take the participation of the Federal taxpayer out of this, what we see is maps that include more property, and that is probably a product of what is actually happening day to day, more and more flooding. But we also see increased premiums. And so at some point, we have to make a decision in Congress what exactly this Flood Insurance Program should look like. And I think that your job would be to present a range of options so that we can best evaluate which one fits and we can know what the risk is to the American taxpayer.

I am out of time. Thank you so much, and thank you for your commitment to Drayton.

Mr. WRIGHT. Thank you.

Senator BROWN [presiding]. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

After Hurricane Katrina and Superstorm Sandy, Congress recognized that it needed to modernize the National Flood Insurance Program, NFIP, to make it more financially sound. And now we are about to reauthorize this program, and I think it is critical for us to remember that NFIP is not just an insurance program. It is a comprehensive flood risk reduction program that is comprised of insurance, flood mapping, floodplain management, and flood mitigation. Each of these four missions plays an important role in reducing flood risk, and each is at least partially funded by user fees and surcharges.

Now, by contrast, we have been talking about private flood insurance; it does not pay any of these user fees and surcharges, which means that as this market expands, there will be fewer contributions that will help pay for the flood mapping, the floodplain management, and flood mitigation.

I support private sector insurance, but only if the playing field is level for Government insurance and private insurance.

Mr. Wright, do you believe that private primary policies should include NFIP equivalency fees and surcharges to ensure that the private sector is sharing in the national costs of flood mapping and floodplain management?

Mr. WRIGHT. Thank you, Senator Warren. I absolutely think that requires consideration in this reauthorization.

Senator WARREN. I did not ask if it required consideration. I asked if you think that is what we ought to do.

Mr. WRIGHT. I think it has to look at what the implementation would look like. It would require us to work across 50 insurance commissioners. So the implementation side I would need to work on, but, yes, these are public goods that should be paid for.

Senator WARREN. Good. That is what I want to know, because I think that is exactly right.

Now, if the private market significant expands, how will that affect NFIP's ability to carry out some of its core missions?

Mr. WRIGHT. So to the degree that the private market expansion comes by a mutual gain—because there are millions of structures at risk that do not carry the insurance today. As long as we have mutual gain, I actually think all of us are better off. If that gain in the private market comes by simply culling and reducing my policy base, that is a point by which the income and revenue goes down, and the concerns you highlight become realized.

Senator WARREN. All right, because I think this is a very important part of this, that we have got to make sure that we are still maintaining these other functions, that we have enough resources to be able to do them. Someone has to pay for fund mapping and for plain management, and over time letting private plans crowd out Federal plans and at the same time skip out on the bill could destroy this funding. And I think that is a bad idea.

There have also been recent media reports that President Trump is thinking of charging flood insurance policyholders to build his dumb wall between the U.S. and Mexico. Mr. Wright, this Trump tax on flood insurance would increase the cost of flood insurance for all policyholders, rich or poor, and do nothing to minimize flood risk. Is that right?

Mr. WRIGHT. So I am aware of the reporting that you are referencing. I have not seen the final decisions made related to the budget, and so I cannot speak to those specifics. I have got to refer that to the Office of Management and Budget. Once we have the budget in hand, I would be happy to discuss the specifics with you.

Senator WARREN. Well, OK. I understand that we do not have the specifics yet, but we changed the law in 2014 because hundreds of thousands of families said they could not afford higher payments. And now it appears that at least one of the options that Donald Trump is considering for paying for the wall between the United States and Mexico that he wants to advance would be to do that by raising millions of dollars from people who are currently paying for flood insurance. So we would be building this wall at the expense of families who are already struggling to pay for flood insurance. Isn't that right?

Mr. WRIGHT. Clearly, I am concerned about the affordability piece of this, and anything that increases the rates, whether it is because the actuarial tables tell me to do so or that these are surcharge have an impact on their ability to retain the coverage they need.

Senator WARREN. All right. You know, this is not the only dumb idea we have seen for funding this wall. Apparently, the Administration is also considering slashing funding for airport security, for port security, and for the Coast Guard. I understand that the President may be embarrassed that his ridiculous wall plan is outrageously expensive. And I understand that he might be embarrassed that Mexico is obviously not going to pay for it. But Congress should not cut funding for vital security or raise premiums on homeowners just to help bail him out on his very bad idea.

Thank you, Mr. Chairman.

Senator BROWN. Thank you, Senator Warren.

Senator Cortez Masto.

Senator CORTEZ MASTO. Mr. Wright, good morning.

Mr. WRIGHT. Good morning.

Senator CORTEZ MASTO. Nice to meet you. An hour and a half. The questions are almost done.

I want to follow up, though. The senior Senator from Nevada asked you questions about the flooding. Obviously, that is a concern of mine as well, and I kind of want to put it in perspective. And I know it is something you are reviewing, but on March 9th of this year, Governor Sandoval requested that a major disaster declaration be made for the State of Nevada as a result of severe winter storms, straight-line winds, flooding, and mudslides beginning on February 5th and continuing.

The Governor specifically requested individual assistance for the counties of Elko and Washoe; public assistance, including direct Federal assistance, for the counties of Douglas, including the Washoe Tribe of Nevada and California; Elko, including the South Fork Band of Te-Moak Tribe of Western Shoshone; Humboldt and Washoe and the independent city of Carson City; and, three, hazard mitigation statewide.

FEMA indicates that about 40 claims under the National Flood Insurance Program have been filed so far by Nevada homeowners. I know you have promised to cooperate with the Governor, and you stated to my colleague that you would ensure there is timely payment for claims. But does FEMA yet have a sense of how many homeowners impacted by the recent flooding in northern Nevada were National Flood Insurance Program policyholders?

Mr. WRIGHT. So there are ongoing preliminary damage assessments that were done cooperatively obviously that will influence the declaration decision. On the insurance side of the equation, you have laid out the numbers in terms of what we have seen so far.

We usually hear from people once they are back in their homes, so I began to see initial claims filed somewhere around day 3 to 5, and the majority of those claims are in during that first month. Clearly, anytime during the first 60 days after an event, they can file a claim. As we see those numbers change, I will make sure you that you are aware of that.

Senator CORTEZ MASTO. OK. I appreciate that. And as part of your analysis, will you also be determining how many homeowners were not mapped into mandatory purchase areas and, therefore, may not be insured by the program?

Mr. WRIGHT. So as we look at this in—I keep going between the two sides of our authorities, the National Flood Insurance Act and the Stafford Act. So on the Stafford Act side, as we look in those reviewed in terms of the declaration request, the uninsured side does come into play on that dimension, and I know that my colleagues have been working with the State to pay attention to that.

Senator CORTEZ MASTO. OK. And so for that reason, and just what you said, can I have a commitment—obviously, at times it is hard when policyholders are filing claims and it takes time for them to go through that process—that you would consider extending the date, as you have done in other——

Mr. WRIGHT. So let look at the progress up to this point, and if there appears to still be a stream of them coming in, we will take the appropriate action with the extensions.

Senator CORTEZ MASTO. OK. Thank you.

If FEMA faces cuts under President Trump's upcoming budget, as we have heard, how might that impact your ability to fulfill policyholder claims?

Mr. WRIGHT. So it is premature for me to speak related to the budget. What I can tell you is the claims are paid specifically out of premiums, and so I have never seen a budget proposal that has tried to take those premium dollars. Those are dedicated under the National Flood Insurance Act to pay claims.

Senator CORTEZ MASTO. All right. So it is safe to say that my homeowners may not be impacted at all based on the claims that they made in the flooding that has happened to them. Is that correct?

Mr. WRIGHT. We signed a contract with the folks who have flood insurance. It has the full faith and credit of the United States behind it. We will meet our commitments.

Senator CORTEZ MASTO. Great. Thank you. And then in 2014, Congress created the Office of the Flood Insurance Advocate to advocate for fair treatment of policyholders and property owners. Can you tell me how you work with the Flood Insurance Advocate to address some of the issues they identified in the recent reports?

Mr. WRIGHT. Yes. So I appointed David Stearrett as the Flood Insurance Advocate. He has a whole office behind him. He has an element of independence that is kept, and so he submits he reports both to me as well as to the FEMA Administrator. I get reports and input from him every 60 days in terms of the throughput of issues that are coming in from a case management perspective. And then once a year, he has a broader report that is directed to me and then made public.

You have obviously and your team has looked at those elements. They particularly highlight ensuring that people get the refunds that they need. They look to make sure people are getting the right underwriting costs on the way through.

I will tell you that I find this to be one of the most important parts of the recent legislation. I think people having a final place where they can go, where they are frustrated and confusing dealing with our program, can go get a fair shake. It is a relief valve that is there. I have found it very beneficial, not just for the hundreds of folks who have come through it, but maybe even more important to me, as I look at my responsibilities across the program, it turns us into a learning organization. When I get those reports, when I get those highlighted issues, we go to solve them so that future policyholders will not have that frustration.

Senator CORTEZ MASTO. Thank you. And I have to run to a competing committee meeting. Mr. Chair, I have one more question, with your indulgence.

Senator BROWN. Of course.

Senator CORTEZ MASTO. This involves our rural and tribal communities, because I know in 2012 there was a study by the Government Accountability Office that noted that FEMA has not placed a high priority on mapping rural areas, including many tribal areas, for flood risk; and most tribal lands remain unmapped. Can you comment on any progress FEMA has made in this area since the 2012 study?

Mr. WRIGHT. Yes. So it is true that the unmodernized products are in a rural context, the places where we have not got those updates maps. So 96 percent of the Nation's population have modernized products, but that remaining 4 percent is on one-third of the land mass across the country. And so this is a place that requires resources. We should finish modernizing those products. We absolutely should, and that may be something we should look at in reauthorization.

As we work with tribes, we try to do this with a true appreciation and understanding of the sovereignty that they have. And so I try to do this in a way where, when they are in the watershed that is there, we consult with them. We have authorities to map. We also have authorities about whether or not they come into the program. And I want to do that in a collaborative way with the tribal leadership so that they can avail themselves of all of the kind of support that FEMA may be able to do—some of this under the National Flood Insurance Act, some of it under Disaster Relief Fund and the Stafford Act.

Senator CORTEZ MASTO. So you have a plan to do just that?

Mr. WRIGHT. Yes, ma'am.

Senator CORTEZ MASTO. Thank you.

Senator BROWN. Thank you, Senator Cortez Masto.

Senator Menendez.

Senator MENENDEZ. Thank you. Let me thank the Chairman for indulging and keeping the hearing open, and thank you as the Ranking Member for staying. I know you have other issues to deal with. But for over a quarter of a million New Jerseyans, this is an incredibly important program, so I just have a couple other questions.

Currently, FEMA can deny funds to repair the foundation of a structure if it determines the foundation was damaged due to what is called "earth movement" rather than by flood waters. This is the case even though the flood waters likely caused the earth movement that damaged or destroyed the foundation. We had a lot of arbitrary decisions that all of a sudden there was a denial for policyholders because there was earth movement. But the earth never moved until the flood came. And so countless claims were denied, and it led to disparate results since the determination of whether the damage was caused by flood or earth movement is unclear and difficult to assess.

Wouldn't you agree, Mr. Wright, that this is an area that needs a better definition, as technical as it is, because it seems to have been used arbitrarily and capriciously a fair number of times?

Mr. WRIGHT. It is a point that would benefit from far more clarity. Frankly, for me the distinction here is whether or not it was a preexisting condition to the structure, and so I acknowledge this "earth movement" term causes a lot of confusion.

When you look at the specifics of how we are directed to implement this, from an indemnification perspective I only pay for a claim that was caused. And so if the flood waters caused any kind of structural movement, we should pay. And if this is a 70-year-old home that has settled over the preceding 70 years and has cracks in the foundation that precede the flood event, well, then I should not pay for that. That is not a coverage that was included under the standard flood insurance policy.

Senator MENENDEZ. All right. I appreciate that distinction, but making it clear is going to be critically important because there are many people who did not have cracks in their foundations before, but suddenly they were denied based upon this. So it is something I would like to work on with you all as we have reauthorization.

Mr. WRIGHT. You have my commitment.

Senator MENENDEZ. I appreciate that.

Now, I am glad to hear that you embrace the independent advocate. It is something that I helped created.

Mr. WRIGHT. You did.

Senator MENENDEZ. Would it be fair to say that the reforms that FEMA undertook, both with your predecessor and you as a result of the appeals process, is something that you would embrace incorporating into a new reauthorization?

Mr. WRIGHT. So the appeals process that is there is something that I would embrace codifying. I think that clearly it was authorities that even go back to 2004 that created this. The way it was implemented, as I have spoken to you in the past, was insufficient and did not have sufficient credibility from where I sat. We made those changes. I think they are proving beneficial, but codifying that so that any future person who is leading this program would not be able to change that basis.

Senator MENENDEZ. I appreciate that, because as a result of our work in the aftermath of Sandy and the denial of many claimants, I think we came to a better process and a fairer process. And it is something that I would like to see incorporated in the final new legislation.

Let me ask you one last question. The NFIP has borrowed nearly $25 billion to pay claims for large disasters, $17 billion from Katrina. And I think one of the things we never mentioned here is the fact that about $10 billion of that debt was incurred by a cause of the Army Corps' levee failure during Katrina. So I do not understand why current policyholders should pay for that mistake. It is the mistake of another Federal agency that has a tremendous burden on this program. So it is something to be considered here, because you are now paying, as I understand it—and correct me if I am wrong—about $400 million in interest on the debt last year alone, which is 10 percent of the premiums that you receive on an annual basis, that $400 million paid by policyholders, real people who are struggling to afford their flood insurance.

Do you not believe that we should be looking at how that debt is dealt with, especially in the fact that so much of it is caused by the errors of another Federal entity? How much would premiums have to increase, for example, in order to pay down the debt?

Mr. WRIGHT. So there is no practical way for us to pay the nearly $25 billion in debt. Full stop. If I was to do that with premium holders, I would have to make an exponential shift in premiums in order to make that happen. And you are correct. You know, as we look back, nearly $10 billion of that loss in Katrina we can attribute to those levee failures. And you are also correct about the interest, because ultimately I am not positioned to make principal payments, but I am required to service that debt.

So I have a generally favorable interest rate with the Treasury that, combined, about 1.6 percent is what my interest rate is today. But as interest rates go up, that continues to be a burden. And it is not just $400 million a year. Over the last dozen years, we are approaching $4 billion that we have paid simply servicing the debt. Those are dollars I simply take out of my premium revenues and transfer. That burden alone is to the point by which my recent borrowing in January included borrowing so that I could make my interest payment this month.

Senator MENENDEZ. So, in essence, Mr. Chairman, what we are doing is we are paying ourselves interest on a debt that we have largely created in great part by the levee failures, $10 billion right there alone. And so instead of having this type of money either be invested in the program or ultimately reducing the debt, we are paying interest to ourselves because it is the Federal Government, FEMA, paying the Treasury at the end of the day.

So it is pretty amazing to me that when I borrow—if I lend myself money and then I ultimately pay myself interest, that normally does not happen. We are robbing from Peter to pay Paul, but, unfortunately, it is the policyholders that get affected here at the end of the day. So I appreciate your insight to that.

Thank you, Mr. Chairman.

Senator BROWN. Thank you, Senator Menendez.

Mr. Wright, thank you for your testimony and your public service.

All Members of the Committee will have 1 week to send you letters and questions and more comments, and we would appreciate it if you would answer those requests and questions as quickly as possible. And thank you again.

Mr. WRIGHT. Thank you.

Senator BROWN. The Committee is adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF ROY E. WRIGHT

DEPUTY ASSOCIATE ADMINISTRATOR FOR INSURANCE AND MITIGATION, FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION

MARCH 14, 2017

Introduction

Good morning Chairman Crapo, Ranking Member Brown, and Members of the Committee. My name is Roy Wright and I am the Deputy Associate Administrator for Insurance and Mitigation—responsible for directing the Federal Emergency Management Agency's (FEMA) risk management, mitigation, and flood insurance programs. Thank you for the opportunity to testify about the National Flood Insurance Program (NFIP), including FEMA's efforts to transform the program in recent years and to request considerations for Congress' reauthorization of the NFIP before it expires in September 2017.

NFIP Background

Flooding is the most frequent and expensive disaster in the United States; 90 percent of natural disasters in the United States involve a flood. Homeowners insurance does not typically include coverage in the event of flooding, and historically flood insurance was not widely available. If it was, it was very expensive. Congress established the NFIP in 1968, which FEMA's Federal Insurance and Mitigation Administration (FIMA) administers.

There are four key elements of the NFIP:

Identifying and Mapping Flood Risk: Working closely with communities, FEMA identifies flood hazards through scientific and engineering methods. FEMA then maps those hazards on a Flood Insurance Rate Map (FIRM). The FIRM is used to help communicate flood risk to communities and the public, and is used for floodplain management and flood insurance requirements.

Floodplain Management: Floodplain management includes actions that communities can take to reduce flood damage to both new and existing buildings and infrastructure. The NFIP plays a role in encouraging communities to adopt and enforce floodplain management regulations including zoning codes, subdivision ordinances, building codes, or special purpose floodplain management ordinances. By law, FEMA can only provide flood insurance to those communities that adopt and enforce floodplain management regulations that meet or exceed minimum NFIP requirements.

NFIP floodplain management requirements are a cost-effective way to reduce the flood risk to new buildings and infrastructure. Internal FEMA studies have found structures built to NFIP standards experience 73 percent less damage than structures not built to these standards; as a result, the standards reduce flood losses by $1.9 billion per year.

Flood Insurance: The NFIP makes flood insurance available for homeowners, renters, and business owners in for 5.1 million policyholders in 22,235 NFIP-participating communities in all 50 States and 6 territories. Seventy-three private insurance companies participate in the NFIP's Write Your Own (WYO) Program, selling and servicing NFIP policies under their own names. FEMA also writes and services some policies outside the WYO Program through NFIP Direct, a vendor that FEMA contracts with and oversees. The NFIP underwrites, and bears the risk, on all NFIP policies, whether sold by private companies or NFIP Direct.

The NFIP functions like other insurance programs, in which policyholder premiums help cover insured losses. Flood insurance helps homeowners recover following a flood. For example, following the flooding in Louisiana in August 2016, insured survivors filed 29,557 claims and, to date, the NFIP has paid more than $2.3 billion in claims. Conversely, FEMA's Individual Assistance grant program has paid more than $758 million to more than 82,000 individuals and households. The average NFIP payment in Louisiana (for the August 2016 flooding) is approximately $86,500 per policyholder while the average individual assistance payment is approximately $9,150. FEMA's Individual Assistance program is not designed to compensate for all losses that a survivor may have experienced. The NFIP is a far more comprehensive program to help homeowners get back on their feet. Homeowners should not rely on potential grant programs to support them following a flood, as they only provide emergency assistance and are not designed to repair or rebuild damaged property.

Incentivizing Risk Reduction Through Grants and Premium Discounts: FEMA manages the Flood Mitigation Assistance (FMA) grant program, authorized by the National Flood Insurance Act. This program, designed to reduce or eliminate claims, provides funding to State, local, tribal, and territorial communities for projects that reduce or eliminate long-term risk of flood damage to structures insured under the NFIP. Typical projects may include acquisition of repetitive loss properties, elevation of buildings, and neighborhood-scale flood defense investment. One hundred percent of the funding for this program is paid through premiums on NFIP policies.

The National Institute of Building Sciences' Multi-Hazard Mitigation Council estimates that for every dollar FEMA invested in mitigation between 1993 and 2003 (which includes, but is not limited to, FMA programs), society as a whole saved four dollars due to reduced future losses. Mitigation programs save the American public an estimated $3.4 billion dollars annually through a strategic approach to natural hazard risk management, including the value of more stringent building codes.

FEMA also created the NFIP Community Rating System (CRS) in 1990 as a voluntary program for recognizing and encouraging community floodplain management activities that exceed the minimum NFIP standards. Any community in full compliance with the minimum NFIP requirements may apply to join the CRS. More than 1,400 communities around the Nation participate in the CRS, accounting for 3.8 million policyholders. Under the CRS, FEMA discounts NFIP policyholders' flood insurance premium rates to reward community actions that meet the three goals of the CRS, which are: (1) reduce flood damage to insurable property; (2) strengthen and support the insurance aspects of the NFIP; and (3) encourage a comprehensive approach to floodplain management. Lower flood-insurance rates are just one of the benefits of joining the CRS; CRS floodplain management activities also provide enhanced public safety and reduced damage to property.

The Financial Impacts of Catastrophic Disasters on the NFIP

While Congress appropriates funds for flood mapping, FEMA covers the vast majority of NFIP costs—including operations, floodplain management, risk mapping, and grants—through premiums, fees, and surcharges from the 5.1 million policyholders participating in the program.

Due to the nature of flooding, impacts can vary significantly each year. After 15 years of lower than expected damages, Hurricanes Katrina, Rita, and Wilma hit the Nation in 2005. These three catastrophic events resulted in an annual NFIP claims total eight times the size of any prior year in the program's history.

As a mandatory Federal program, the NFIP met its commitment to policyholders and paid all claims as outlined in their insurance policies. However, to meet these requirements Congress directed the NFIP to pay for the catastrophic losses through funds borrowed from the U.S. Department of Treasury (Treasury). By the end of the claims process for these events, the NFIP had borrowed $17.5 billion.

In 2012, Hurricane Sandy hit the East Coast and resulted in more than 144,000 NFIP claims. The program paid out an initial $8.4 billion to policyholders. As a result, the NFIP borrowed an additional $6.25 billion from the Treasury to ensure proper payment of all claims. The volume of claims in the aftermath of Hurricane Sandy was much larger than NFIP typically encounters, and policyholders had concerns that FEMA and WYO companies were not handling their claims fairly. FEMA subsequently set up a Sandy Claims Review process to contact all policyholders who had claims and offer them an additional examination of their claim. The NFIP has since paid out an additional $350 million to policyholders, and based on this experience, FEMA took steps to reform key aspects of the program to be more customer-centric.

While there was no single "catastrophic" disaster in 2016, the multiple flooding events in Louisiana, Texas, and several States during Hurricane Matthew resulted in the third largest claims payout year in the NFIP's history. Though the NFIP is still processing claims, projected payouts from 2016 flood events total more than $4 billion. In January 2017, the NFIP borrowed an additional $1.6 billion from the Treasury to cover claims, pay interest on the debt, and ensure capacity to pay future claims. Liabilities to the Treasury now total $24.6 billion and, moving forward, require annual interest-only payments of nearly $400 million dollars.

It is important to note that the latest private sector catastrophe modeling demonstrates that none of these events is outside the expected range of NFIP losses. A single storm that results in a loss to the NFIP of the size that occurred in Hurricane Katrina ($16.3 billion) has a 1 to 2 percent chance of occurring in any given year, while a single storm that results in a loss as large as the one that occurred in Hurricane Sandy has a 4 to 5 percent chance of occurring in any given year. NFIP losses experienced during an event such as the August 2016 storm that caused inland flooding in Louisiana has a 4 percent chance of occurring each year. Moving forward, FEMA anticipates having another loss year like those cited above within the next decade.

NFIP Transformation and Lessons Learned

Following Hurricane Sandy, FEMA has taken steps to transform the NFIP customer experience and improve oversight and engagement with WYO companies.

FEMA designed and implemented a new appeals process to improve customer service and transparency to policyholders. The Agency established an Appeals Branch in the Policyholder Services Division, which remains independent from the Product Delivery Division that oversees the claims process.

FEMA also improved its oversight when WYO companies respond to litigation to ensure that policyholders are treated fairly. FEMA established the Office of Chief Counsel WYO Oversight Team. This team works with FEMA's Industry Management Branch to enhance FEMA's oversight of the WYO program and WYO litigation to include oversight of expenses and implementation of a national legal strategy for flood insurance claim litigation with an emphasis on early alternate dispute resolution. Further, FEMA removed the NFIP's Financial Assistance/Subsidy Arrangement with WYO companies from regulation. It is no longer necessary to include a copy of the Arrangement in Title 44 of the Code of Federal Regulations. This process was time-consuming and created a delay to make any administrative updates or changes in regulation. Now, the process is streamlined to improve the ability of FEMA and its industry partners to negotiate operational adjustments and corrections more quickly and efficiently.

The NFIP has also implemented changes to take a more proactive role in disaster readiness and response. During recovery from the Louisiana floods and Hurricane Matthew, FEMA successfully executed components of the new Flood Response Playbook to support insured survivors, including:

- Issuing advance payments to policyholders of up to $10,000 while the NFIP processes their full claims;
- Coordinating with State insurance commissioners and WYO companies to ensure the NFIP meets policyholder needs;
- Deploying FIMA staff to directly support field operations;
- Providing analytical support to assist FEMA operational leadership in making resource decisions; and
- Proactively communicating with WYO insurers and with policyholders through disaster-specific bulletins, webpages, and fact sheets.

In 2016, the NFIP made more than $4 billion claim payments to 83,000 insured survivors. This major year of flood losses highlighted the success of recently implemented NFIP reforms, as well as the importance of continuing to improve customers' experience with the program. By the end of 2016, FEMA closed 92 percent of the claims from the mid-summer severe storms in Louisiana. In the first 30 days of the incident, FEMA authorized and issued almost $300 million in advance payments to the NFIP policyholders in Louisiana who sustained damages by the flood, providing expedited relief to disaster survivors.

FEMA continues to work on other initiatives to support policyholders, including:

- Simplifying the claims process through improved proof of loss and other forms;
- Modernizing the underwriting process; and
- Redesigning the risk rating system to help customers better understand their flood risk.

Successes From Recent Legislative Reforms

Recognizing the need for NFIP reforms in 2012, Congress acted by passing the Biggert–Waters Flood Insurance Reform Act of 2012 (BW12). This statute served as a key first step to strengthen the NFIP's fiscal soundness by addressing discounted premiums and giving FEMA new tools to manage risk exposure. In March 2014, Congress passed the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), repealing certain provisions of BW12 and modifying components of the NFIP including flood insurance, flood hazard mapping, grants, and floodplain management.

FEMA has completed implementation of several of key provisions of these laws, including:

- Establishing the Technical Mapping Advisory Council: BW12 directed the creation of the Technical Mapping Advisory Council (TMAC). The Council reviews FEMA's mapping program and develops recommendations for improving it. During its assessment, the TMAC found that the mapping program, when applied as designed, results in technically credible flood hazard data in areas where FIRMs are developed or updated, and also provided recommendations to enhance the program in the future. FEMA has established a consistent, integrated, and transparent process to assess and respond to all TMAC recommendations. FEMA has fully implemented 4 of the Council's 22 recommendations outlined in the 2015 report through current operations or ongoing initiatives, and has initiated implementation on an additional 17 recommendations. This year, we began implementation of a TMAC recommendation to develop a national 5-year operations plan to help us bridge operations from our current status to where we are headed in the future.

- Designating an Office of the Flood Insurance Advocate (OFIA): HFIAA directed FEMA to establish the OFIA in 2015, and the office has experienced significant growth and increased capability since its inception. The OFIA provides assistance to policyholders who are unable to get the support they need after using other existing resources. The OFIA helps coordinate referrals, verify insurance rate information, educate on flood risks and rates, and communicate program changes. Through a new customer relationship management tool, OFIA is able to capture data and provide insights into issues faced by policyholders in order to inform program improvements.
- Unifying the FMA Grants Programs: Prior to the passage of BW12, there were three flood grant programs: FMA, Repetitive Flood Claims, and Severe Repetitive Loss. BW12 eliminated the Repetitive Flood Claims and Severe Repetitive Loss programs and added funding for the mitigation of repetitive loss and severe repetitive loss properties under the FMA program. Since unification of the programs, demand for FMA grants has exceeded available funds so FEMA awards grants to those projects that provide the most risk reduction benefit.
- Establishing a Reserve Fund: BW12 directed FEMA to set up a reserve fund for meeting the expected future obligations of the NFIP, including payment of claims, claim adjustment expenses, and the repayment of amounts outstanding under any note or other obligation issued by the Administrator. In 2016, the Reserve Fund paid out $1.3 billion in claims to insured survivors. The NFIP has also paid for reinsurance through the Reserve Fund, consistent with its designated purpose for meeting expected future obligations.
- Managing Risk through Reinsurance: BW12 gave FEMA the authority to obtain reinsurance from the private reinsurance and capital markets. Reinsurance is an important financial risk management tool used by private insurance companies and public entities to protect themselves from large financial losses by diversifying risk across multiple markets. FEMA executed a 1-year agreement, effective January 1, 2017, with a consortium of 25 reinsurers. Under the agreement, reinsurers agreed to indemnify FEMA for flood claims paid during 2017 on an occurrence basis. The layer is structured to cover 26 percent of losses between $4 billion and $8 billion. This agreement transferred a combined total of $1.042 billion of the NFIP's flood risk to the private reinsurance market. This reinsurance placement stands as a first of its kind for a Federal program.

FEMA's Core Principles for Reauthorization

Through internal analysis and lessons learned, FEMA offers the following principles that would improve NFIP effectiveness as Congress considers reauthorization.

First, the NFIP reauthorization should be enacted before the September 30, 2017 expiration of the program, and should extend the program for multiple years. The stability of the real estate and mortgage markets depend on an on-time, multiyear reauthorization. All federally backed mortgage lenders are required to verify that properties in special flood hazard areas (SFHA) have flood insurance policies prior to approving a mortgage. During periods in the past when the NFIP's authorization lapsed, or was only extended for a short period, uncertainty about flood insurance availability impacted property owners' ability to buy and sell homes in high risk flooding areas.

Second, the reauthorization should recognize the need to increase flood insurance coverage across the Nation. At a national scale, estimates lead us to believe as little as one third of residential properties in the SFHA have NFIP policies. Yet flooding can happen anywhere. Floods are not wholly contained within SFHAs. Over the past 10 years, approximately 20 percent of all NFIP claims come from low to moderate-risk policyholders.

Flood insurance facilitates the ability of a property owner or renter to recover after a flood, whether the insurance is provided by the NFIP or private insurers. FEMA recognizes that there is a growing interest by private insurers to offer flood insurance protection. FEMA supports this because an insured survivor—regardless of where they purchase their coverage—will recover more quickly and more fully. Two related areas require attention. First, it will take time for the private market to adapt to a market currently primarily served by a public program. Second, if the private market were to glean only the lower-risk policies, the NFIP would be left with all of the highest-risk policies. This could lower NFIP premium revenue while increasing potential claims payouts. Such actions would leave the program and taxpayers with even more financial risk.

As we look forward to the next several years, a number of opportunities should be explored that could provide for the growth of the private market for flood insurance. Improving the Nation's overall flood resiliency will depend on finding an appropriate balance between reducing risk to the taxpayer through a greater private sector role while sustaining a robust and affordable Federal program. Among the ideas to explore would be identifying a future point in time by which flood policies for all new construction would be provided by the private market. When coupled with ongoing floodplain management and building code enforcement, these new residential structures would be built to insurable levels of risk for the private market.

In some States, the private flood market already provides excess and surplus coverage as well as "flood riders" on some homeowner's policies. While the private markets are expanding, FEMA is exploring improving the suite of options available for NFIP policies, such as including increased policy limits deck and basement coverage, and various deductible levels. The NFIP would collect additional premiums commensurate with any extra coverage policyholders select. Moreover, by providing coverage options that customers need, the additions could attract new NFIP customers improving the program's financial stability expanding the number of Americans with flood insurance. FEMA also recognizes the unique challenges that farmers may experience when navigating the NFIP's current requirements with regards to agricultural structures. These agricultural needs can be addressed through this re-authorization.

Additionally, the statutory definitions of "repetitive loss" must be brought into alignment so that there is consistency across program elements. Properties that experience multiple losses have an increasingly adverse impact on the financial stability of the program. Congress has previously acknowledged this circumstance, and should explore caps on cumulative losses that well exceed policy limits and the value of the structure. As the program moves forward, NFIP premiums should reflect a property's true risk. We need to move from today's program, which delivers only a final premium which may be lower than a current estimate of the full risk rate, to a program which clearly communicates the full risk rate and any discounts (such as pre-firm subsidy, newly mapped subsidy, or grandfathered rates). Given concerns related to affordability, it may take some time, but the program needs to be on a course to eventually arrive at full risk rates for all policyholders. This includes addressing grandfathered and subsidized rates.

Ultimately, the premium paid for flood insurance must reflect the risk—whether this is done by increasing premiums, reducing risk through mitigation grants, or a combination thereof—the fiscal solvency of the program depends on it. This is central to a sound financial framework for the NFIP. The NFIP currently carries a debt of $24.6 billion dollars which is serviced through increasingly large interest payments. It is important to note that nearly all of the flood programs mandated by law—programs to reduce risk, the administrative costs of WYO companies, and the payment of interest on the debt—are funded solely through the payment of premiums.

Conclusion

To reiterate, flooding continues to be the most common and costly natural disaster in the United States, with the greatest damage potential of all natural disasters worldwide. Over the past 50 years, the NFIP has helped communities, households, and businesses reduce flood risk, supported flood risk analysis and mapping projects, expanded sound floodplain management practices across the country, and reduced the financial burden to survivors when floods occur. We recognize that the Nation faces broad public policy questions around flood insurance affordability, continued development in flood-prone areas, the soundness of the NFIP's financial framework, and greater private sector participation in flood insurance markets.

Through all of this, FEMA's priority is to increase flood insurance coverage so that disaster survivors can recover more quickly and fully after flood events. Through a timely, multiyear reauthorization, Congress would enable FEMA to continue supporting those who take steps to protect their homes and businesses.

Thank you again for affording me the opportunity to speak with you today about this program. I am happy to respond to any questions you may have.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SHELBY FROM ROY E. WRIGHT

Q.1. Mr. Wright, we have discussed on several occasions the accuracy of the information that determines risk in the National Flood Insurance Program (NFIP).

What is the status of FEMA's attempt to have a Flood Insurance Program with accurate actuarial data, and what further steps is FEMA taking to achieve this goal?

A.1. As part of FEMA's efforts to improving the quality of data used in the delivery of the NFIP, FEMA is looking to redesign its approach to risk rating. To ensure FEMA follows leading practices used in the industry for rating natural catastrophe risk, including considerations of the actuarial data used, FEMA is conducting market research through a Request for Information (RFI) that was issued on January 24, 2017. The RFI can be found here: *https://www.fbo.gov/index?s=opportunity&mode=form&id=557d24817170f7475b0f445f44f9c73d&tab=core&_cview=1*

In addition to the RFI, FEMA conducted market research calls to identify data tools and models that should be used for risk rating, including tools to determine replacement cost values. The market research was conducted to determine industry capabilities in the following areas:

1. Assessment of the current state of catastrophic risk rating and classification programs;
2. Design of alternate risk rating models;
3. Testing of the alternate risk rating models; and
4. Implementation of alternate models.

FEMA is working to develop a new rating methodology. Once developed, FEMA will begin a multiyear implementation of the new methodology, which will be carried out in tandem with a redesign of our IT systems and will be aligned with improvements to our insurance product.

Q.2. Mr. Wright, FEMA is not the only Federal agency that is actively tracking real-time data to assess flood risks in different communities across the nation. However, it appears that this information is often not communicated across all agencies, even though many are working towards the same goal.

Would it be helpful for all agencies that track floodplain data to work together to share and communicate this data?

A.2. FEMA is working and collaborating with the other Federal agencies that are involved in the collection, evaluation, and use of flood risk data to promote sharing of floodplain data. Together, we are working to improve the ways that we develop, share, and communicate this information, so that communities will be better able to understand their flood risks. Interoperable datasets that are collected and consolidated using consistent and clear standards across the Federal family will yield higher quality floodplain data more efficiently, for both real-time assessments and hazard identification. This would also lead to simpler, consistent outputs from the Federal agencies informing more effective decisions at the state and local level. The availability of this data could also better incentivize innovation.

One area where FEMA is modeling this behavior is topographic data acquisition. FEMA recognizes that quality topographic data is not only essential for credible flood hazard mapping but for a multitude of other functions of the Federal Government, states, local communities, and others. Thus, FEMA's formal policy is to ensure that all topographic information acquired to support flood hazard mapping is compliant with U.S. Geological Survey (USGS) 3D Elevation Program (3DEP) standards to ensure that the information can be leveraged across Federal agencies.

There are a multitude of datasets that routinely inform real time response, short term planning, and long term strategic decisions and come from a number of agencies across the Federal family. For FEMA to achieve its mission, "To support our citizens and first responders to ensure that as a Nation we work together to build, sustain and improve our capability to prepare for, protect against, respond to, recover from and mitigate all hazards", numerous resources are required. These resources include, for example, gauge data from the National Oceanic and Atmospheric Administration (NOAA) and USGS, critical infrastructure information from the U.S. Army Corps of Engineers (USACE) and others, land use change datasets, demographic and population information, power grid information from the Department of Energy, and many other sources which must come together routinely. One venue, in particular, where these datasets can and should come together to improve operational efficiency across the Federal family during times of flood related disaster is the National Water Center within NOAA. Similarly, in the coastal communities, many of these datasets come together on NOAA's Digital Coast website. FEMA is committed to continued collaboration with its Federal Partners and welcomes efforts to ensure that agencies are incentivized and encouraged to work together and share and communicate this data more routinely and consistently.

Q.3. Mr. Wright, since the enactment of Biggert–Waters, FEMA has attempted to strike an appropriate balance between protecting individuals and the stability of the NFIP.

Can you commit to fully evaluating further policy proposals to improve the NFIP?

A.3. We commit to fully evaluating further policy proposals to improve the NFIP.

The Affordability Framework is due to Congress in September 2017. FEMA is working diligently to meet the deadline.

Q.4. Mr. Wright, the Technical Mapping Advisory Council (TMAC) created a list of 22 recommendations to improve FEMA's flood mapping data.

What is the status of implementing TMAC's recommendations?

A.4. The 22 recommendations generally fall into 3 key categories: (1) credible flood data, (2) improved access and ease of use of FEMA mapping products, and (3) more customer-oriented products. FEMA has communicated a fundamental agreement with all 22 of the recommendations and is currently working toward implementation of each. While FEMA has used existing mechanisms to implement several of the recommendations related to credible flood data, we are actively building a better infrastructure to ensure increased simplicity and ease of use of NFIP products and services. Currently, FEMA is working to implement a 5-year mapping, planning, and prioritization framework and improved measures for FEMA hazard mapping, and finishing several ongoing improvements to our Cooperating Technical Partners (CTP) program, consistent with the TMAC's recommendations. In addition, FEMA is exploring how to implement some of the customer-oriented product recommendations that are transformative in nature. FEMA has taken on two Customer Experience endeavors; one for NFIP policyholders and one for communities. FEMA is leveraging the findings from the Customer Experience for Policyholders effort to kick off an effort to redesign flood risk-rating to better meet identified needs of NFIP policyholders. The outputs of these ongoing initiatives are currently being used to refine and add clarity to the long-term trajectory of the mapping program and the larger NFIP. Each of these 22 recommendations are addressed in greater detail in a response to Congress that will be delivered this summer.

Q.5. When considering a reauthorization of the NFIP, what steps would you recommend that Congress take to improve the accuracy of flood mapping information?

A.5. The most critical and foundational element of credible flood mapping is high-resolution topography. For this reason, FEMA has and will continue to make targeted investments, consistent with USGS 3DEP standards, in high-resolution topography prior to all flood mapping efforts that FEMA undertakes. These data offer value beyond just the NFIP and should always be considered when evaluating the needs of any flood hazard mapping program.

While we continue to make these strategic investments and to deliver credible flood hazard information, these efforts must be met with the complementary advances we are making in our actuarial underwriting practices so that insurance premiums better reflect the risk that our mapping analyses yield. Nothing is more powerful to communicate the risk than a pricing signal.

Q.6. Mr. Wright, an important feature of the NFIP is FEMA's role in communicating the real risks of certain floodplains.

In addition to the work FEMA is doing to implement more actuarially sound rates, what steps is FEMA taking to use the latest technology to inform individuals of the actual risk associated with living in certain floodplains?

A.6. As you mentioned, the Federal Insurance and Mitigation Administration (FIMA) is beginning to update the National Flood Insurance Program's (NFIP) risk rating model. The NFIP's current approach to risk rating was modeled on insurance industry practices at the time the NFIP was established. Since that time, the insurance industry has developed more efficient and accurate approaches to risk rating. FIMA has an opportunity to modernize its risk rating approach to deliver accurate, cost-effective ratings of flood risk to property owners. While this transformation may take up to five years to design and fully implement, it will have lasting impacts across FIMA operations and result in long-term program stability, increased simplicity and ease of use of NFIP products and services, and an improved value proposition for customers. A new risk rating approach could influence not only the rating of insurance, but also flood hazard mapping and the implementation of floodplain management requirements.

In addition to risk rating, FEMA continues to work in a variety of other ways to provide accurate risk information and increase risk awareness. The FEMA Risk Mapping, Assessment, and Planning (Risk MAP) program was designed to align efforts within FEMA to help individuals and communities understand and take actions to manage their flood risk. Risk MAP defined new digital, geospatial mapping products to communicate flood hazards and flood risk more effectively than the traditional flood maps that have been used for years to administer the legal requirements of the NFIP. These products include maps of flood depths that allow individuals to envision the direct impact on their property of floods of various magnitudes and detailed risk assessments that quantify the potential losses for communities and neighborhoods over time. FEMA continues to work with our stakeholders on how to improve these products to communicate flood risks more effectively.

The Technical Mapping Advisory Council (TMAC) established by the Biggert-Waters Flood Insurance Reform Act of 2012 has also made several transformative recommendations of ways that FEMA can further leverage technology to fundamentally shift how FEMA communicates risk. These recommendations include shifting the delivery of FEMA's flood mapping information to a fully database-driven digital display environment and moving to structure-specific risk assessments. FEMA currently maintains the regulatory flood hazard information for the nation in the National Flood Hazard Layer (NFHL) geospatial database. This data is updated daily as revisions and amendments are processed and FEMA provides a database-driven viewer for this data online. Over the next few years, FEMA will design and construct a new system that builds on existing capabilities, leverages the innovative projects its partners are currently undertaking, integrates the new Risk MAP products, and provides the foundation for the future of the mapping program. FEMA will also evaluate technologies, data sources, and trends for flood risk quantification aimed at moving to a structure-specific risk assessment model in the context of the overall effort to redesign our risk rating methodology.

Another foundational element of credible flood mapping is high-resolution topography. For this reason, FEMA has and will continue to make targeted investments, consistent with USGS 3DEP standards, in high-resolution topography prior to undertaking all flood mapping efforts.

Finally, FEMA has directed the Write Your Own (WYO) Insurance Companies to review all NFIP policies to determine the current risk information for each property. While the grandfathering rating procedure remains in place, this will allow FEMA to communicate the current flood risk to NFIP policyholders. FEMA is also able to explain the current policy rating to policyholders and discuss how and when an Elevation Certificate can be useful.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HELLER FROM ROY E. WRIGHT

Q.1. In your testimony you stated that FEMA recognizes that there is a growing interest by private insurers to offer flood insurance protection. Does FEMA support current legislative efforts to clarify that lenders can accept private flood insurance as meeting mandatory purchase requirements? Would eliminating the noncompete clause for companies that write flood insurance through the NFIP's Write Your Own program help provide more flood insurance coverage options for homeowners and businesses?

A.1. In helping the Nation prepare for, mitigate against, respond to, and recover from flood disasters, FEMA's priority is to extend opportunities for flood insurance coverage. Survivors of flood disasters can recover more quickly and more fully if they were insured against flood losses, whether they purchase that insurance from the NFIP or through private flood insurance markets. There is great opportunity to increase levels of flood insurance coverage around the Nation given that a large percentage of homes in high and moderate risk areas remain uninsured. Private sector providers of flood insurance can play an important role in increasing coverage.

To that end, FEMA would be happy to work with Congress on legislative efforts to clarify that federally regulated lenders and Federal agencies can accept private flood insurance to meet the mandatory purchase requirements.

An individual can purchase an NFIP flood insurance policy either: (1) directly from the Federal Government through a direct servicing agent (known as NFIP Direct), or (2) from a private insurance company through the Write Your Own (WYO) Program. FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with the WYO companies, which addresses the terms and conditions for administering NFIP policies.

Article XIII of the Fiscal Year 2017 Arrangement, entitled "Restriction on Other Flood Insurance," restricts WYO companies from selling certain competing standalone flood insurance products. This provision traces back to the inception of the WYO Program in 1984 and is intended to prevent WYO companies from deriving undue advantage from participating in the WYO program. The restriction does not prevent:

1. Independent agents from offering both NFIP flood policies and private flood policies at the same time;
2. WYO companies from offering coverage in excess of NFIP flood policies; or
3. WYO companies from offering a non-NFIP endorsement of flood coverage to a homeowner insurance policy.

FEMA encourages WYO companies to offer private flood coverage through these avenues commensurate with the flood risk. Some WYO companies currently offer coverage through these avenues, though many do not, despite the fact that all WYO companies are free to do so. Accordingly, it is unclear at this time how much removing the restrictions in Article XIII of the Arrangement will help increase the availability of private flood policies.

Q.2. Earlier this year FEMA announced it had secured more than $1 billion in reinsurance from 25 reinsurers. This was only the second time in history reinsurance had been secured for the NFIP. Does the NFIP plan on purchasing any more reinsurance from the private market this year?

A.2. In January 2017, FEMA made a cornerstone placement of reinsurance to establish a multiyear NFIP Reinsurance Program. FEMA does not intend to buy more reinsurance in 2017. FEMA will evaluate its opportunity to renew and expand upon the cornerstone placement in January 2018.

In practice, this looks like:

- Upgrading the Reinsurance Program's vision, strategy, and operations based on 2017 lessons learned to optimize a future multiyear program.
- Expanding the NFIP's flood modeling capabilities.
- Engaging industry partners to incorporate best practices from the private sector.

The multiyear Reinsurance Program vision is:

- Financial Strength: To strengthen the NFIP's financial standing by sharing financial risk with private industry at a price that is fair to the Federal Government.
- Level of Risk: To manage claims exposure by lessening the need to incur additional Treasury debt.
- Stability: To stabilize NFIP's annual expenditures in order to operate within a predictable and defensible annual budget.
- Customer Experience: To foster strong trust-based relationships with policyholders based on delivering consistently outstanding support during and after major floods.
- Efficiency: To institutionalize effective program and financial management discipline to ensure informed, data-based decision making.
- Transparency: To enhance the credibility of the NFIP with Federal, state, and local decision-makers and the private sector thought leaders through bilateral learning and sharing of detailed risk information.

Q.3. The NFIP has eliminated the ability for a consumer to cancel their NFIP policy if it is being replaced by a similar non-NFIP policy. This basically disincentives homeowners to purchase a private flood insurance policy to replace a more expensive NFIP policy. Is the NFIP aware of the impact this policy is having and how soon will the NFIP reinstate the needed cancellation code to allow homeowners to receive a pro rata refund for cancellation due to purchase of a duplicate policy at any time?

A.3. FEMA's current regulations restrict the agency's ability to issue refunds for cancelled policies. As explained in 44 CFR 61.5(c), the seasonal nature of flooding may encourage some policyholders to only maintain policies during time of the year more prone to flood and then cancel policies during lower risk months. Accordingly, FEMA's regulations only permit refunds after an insured sells their interest in the insured property. 44 CFR 62.5 also describes circumstances allowing for refunds related to changes in applicable flood maps and the ending of mandatory purchase requirements. These regulations do not provide for refunds related to policyholders obtaining a private flood insurance policy.

FEMA understands the impact of the current regulation and is seeking regulatory changes to allow FEMA to cancel the NFIP policy with premium refund when the insured has obtained a replacement flood insurance policy through the private company. In the interim, FEMA currently notifies policyholders at 45 days prior to the expiration date of the NFIP policy. This should allow policyholders sufficient time to coordinate the end of their NFIP policy with the beginning of their private policy.

Q.4. Currently, the NFIP does not consider actual replacement costs when establishing a customer premium, but it is my understanding that FEMA is working to develop methods to obtain a verifiable replacement cost value when a policy is sold. I also understand that FEMA must redesign its rating systems in order to implement actual replacement costs. What is the current status of FEMA's efforts to obtain the necessary data and development of new rating systems? Also, what is your current timeline for completion for each of these initiatives?

A.4. As you mentioned, FIMA is beginning to update the NFIP's risk rating model. The NFIP's current approach to risk rating was modeled on insurance industry practices at the time the NFIP was established. Since that time, the insurance industry has developed more efficient and accurate approaches to risk rating. FIMA has an opportunity to modernize its risk rating approach to deliver accurate, cost-effective ratings of flood risk to property owners. While this transformation may take up to five years to design and fully implement, it will have lasting impacts across FIMA operations and result in long-term program stability, increased simplicity and ease of use of NFIP products and services, and an improved value proposition for customers. A new risk rating approach could influence not only the rating of insurance, but also flood hazard mapping and the implementation of floodplain management requirements.

To ensure FEMA follows industry best practices for rating natural catastrophe risk, including considerations of the actuarial data used, we are conducting market research through a Request for Information (RFI) issued on January 24, 2017. The RFI can be found here: *https://www.fbo.gov/ index?s=opportunity&mode= form&id= 557d24817170f7475b0f 445f44f9c73d&tab= core&__cview=1*

In addition to the RFI, FEMA conducted market research calls to identify data tools and models that should be used for risk rating, including tools to determine replacement cost values. The market research was conducted to determine industry capabilities in the following areas:

1. Assessment of the current state of catastrophic risk rating and classification programs;
2. Design of alternate risk rating models;
3. Testing of the alternate risk rating models; and
4. Implementation of alternate models.

FEMA is working to develop a new rating methodology. Once developed, FEMA will begin a multiyear implementation of the new methodology, which will be carried out in tandem with a redesign of our IT systems and will be aligned with improvements to our insurance product.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM ROY E. WRIGHT

Q.1. Mr. Wright, you stated that Increase Cost of Compliance (ICC) is a "mini-grant" mitigation program and there is an obvious assumption that when a structure is brought into compliance the flood risks are reduced; however, they are not eliminated. If the ICC program only funds elevations and demolitions, it seems the NFIP is incentivizing people and property to remain in some hazardous locations that may not be compatible with community plans. Wouldn't it be more effective to provide owners and the community a choice to eliminate the flood risk by allowing the comparable ICC amount to be used for demolition and acquisition costs as a means of compliance? This would eliminate the risk in appropriate situations and allow for greater coordination on the distribution of ICC funds to ensure the property owner is fully aware of all mitigation opportunities that exist, as well as, the risks and building restrictions that still remain if the property owner elects to elevate.

A.1. The Increased Cost of Compliance (ICC) provision of the Standard Flood Insurance Policy (SFIP) provides policyholders an individual choice to mitigate flood damaged property through elevation, relocation and demolition. The original intent of ICC was set forth in the National Flood Insurance Reform Act of 1994, Section 555, which required the NFIP to provide insurance coverage for the increased cost of complying with local and State land use laws that require elevation of structures that have been substantially or repetitively damaged by a flood event. In general, substantial damage means "damages from any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the property's market value before the damage." Therefore, ICC provides additional funding to policyholders for the consequential cost to comply with state or local building laws during reconstruction. Prior to ICC, a policy holder was only reimbursed for the cost to repair the actual physical damages to the structure, but did not receive funding for mitigation opportunities to protect the structure against future flooding. Instead of encouraging people to remain in the flood hazard area, ICC provisions added mitigation options of elevation, demolition and relocation to reduce future flood risk.

Currently, ICC claims payments are limited to $30,000. In most cases, this would not cover the entire costs of a property acquisition. In addition, there is no buyout authority within the ICC program to enable property acquisition and ownership transfer to a community that would allow the property to be maintained as open space.

However, ICC is available to be used for acquisition if the local community chooses to participate in a Federal grant program. In a FEMA grant, ICC funding can be used as the non-Federal cost share to support a homeowner's decision for acquisition. One such FEMA grant program, Flood Mitigation Assistance (FMA) provides funding for reducing or eliminating the long-term risk of flood damage to structures insured under the NFIP. FMA funding is appropriated by Congress out of the National Flood Insurance Fund (NFIF). After a flood event, many homeowners bring their homes in compliance with the local flood standard, through the use of ICC funds toward elevation, relocation, demolition or acquisition, thereby removing or reducing their flood risk.

Q.2. If FEMA cannot pay back its debt, what percentage of an increase in policy premiums would it take to pay back that debt?

A.2. Given the current state of the program, on average, premiums would need to at least double to repay the debt within ten years. This estimate comes with two important caveats:

1. repayment of the debt cannot be guaranteed if the NFIP sustains a large event within the ten year period, and
2. such large, unprecedented premium increases to the entirety of NFIP policyholders would probably greatly reduce the number of policies in force due to policyholders leaving the program, and therefore, the NFIP would still not have the revenue necessary to pay back the debt.

For a detailed examination of the NFIP's ability to repay the debt, please refer to our December 17, 2014 report to Congress, in which we outlined four different ten year repayment strategies in the Appendix D. Two scenarios looked at increases in the reserve fund assessment to pay off the debt, and two scenarios explored debt forgiveness. At that time, we would have needed to either implement an immediate 76 percent reserve fund assessment, whereby premiums would almost double, or phase in a reserve fund assessment that would increase to 113 percent, whereby premiums would comply with the statutory 15 percent premium increase limitation but would more than double over the ten year period, to repay that debt within ten years. Since the issuance of that report, the NFIP's policyholder base has declined and our debt has increased following the flooding of Calendar Year 2016.

Q.3. What is FEMA doing to modernize its IT systems? In April of 2016, the GAO did a study recommending that FEMA fully define its investment board's roles and responsibilities and procedures for selecting and overseeing investments, update its strategic plan and complete plans for IT modernization, and establish time frames for completing workforce planning efforts. In addition the GAO also recommended that FEMA should establish policies and guidance for implementing key IT management controls & DHS concurred with those recommendations. How is FEMA comporting with the GAO study? Do you agree with the GAO's assessment of the NFIP particularly relating to IT issues? What efforts have you taken to work with FEMA management on IT issues? What recommendations would you make to help improve the NFIP program and move it off of the high-risk list?

A.3. FEMA's Component Acquisition Executive (CAE) is leading the management and response for the April 2016 Government Accounting Office (GAO) study for overseeing investments. The CAE has put into place several processes and procedures to improve our oversight of investments and modernization efforts, such as conducting FEMA Acquisition Review Boards (ARB) and establishing CAE Executive steering committees. For Information Technology (IT) modernization, FEMA is participating as one of the five Department of Homeland Security's (DHS) Agile Pilot Programs. These programs are subject to routine oversight by the DHS Financial Systems Modernization Executive Steering Committee, as well as the DHS ARB. The ARB recently approved the NFIP IT Modernization Program, known as PIVOT, to enter the Obtain Phase and is running several months ahead of schedule due to the deep engagement and commitment from FEMA and DHS to make sure this program is successful.

We do agree with the GAO study that IT issues must be addressed for the NFIP to be more effective and efficient, and to that end, not only have we launched the NFIP IT Modernization Program (PIVOT) mentioned above, but as FIMA has reorganized, we invested in developing a Federal oversight staff and establishing an Insurance Systems Branch.

Q.4. Mr. Wright, in your testimony, you stated that "the program needs to be on a course to eventually arrive at full risk for all policyholders [and] [t]his includes addressing grandfathered and subsidized rates."

This could take some time to achieve, how long do you think it would take to resolve this matter and arrive at a property's true risk? In the marketplace, especially at a local community level, there is significant fear of the unknown-what is your ideal timeline?

A.4. Some policyholders' rates are far below the rate that reflects their current flood risk. Under current law, the rates on certain pre-FIRM subsidized policies—including those for nonprimary homes, severe repetitive loss properties, businesses, and substantially damaged structures—are required to increase by 25 percent annually. The rates on all other pre-FIRM subsidized policyholders must increase at least 5 percent per year but no more than 15 percent as a class and 18 percent per policy on an annual basis.

But not all policyholders are on track to move to rates that reflect their current risk. For example, while subsidies for pre-FIRM structures and unfunded discounts for newly mapped policies are being removed, other discounts, including grandfathered discounts, have not yet been phased out. Also, towards the lower end of the range allowable for the mandatory annual rate increases (e.g., an increase of 5 percent per year), it could take much longer than 10 years to move to full-risk rates.

In short, consideration should be given to phase out discounts for all policyholders not paying rates that reflect their current risk. And, as I stated in my testimony, this is especially true for those that have incurred multiple losses. Furthermore, addressing affordability for low-income policyholders can ameliorate rate increases for those individuals for whom NFIP rates present a true financial burden.

But, as you point out, giving policyholders and markets predictability about the timeline for phasing out subsidies and discounts is important. We are exploring options for phasing out remaining subsidies and discounts over a realizable timeframe, such as a ten year horizon.

Q.5. What legislative changes are needed to ensure that FEMA has adequate safeguards and controls in place to prevent improper payments from its flood insurance and disaster recovery programs?

A.5. There is a robust statutorily-required process in place to address improper payments in flood insurance and disaster recovery programs. The Improper Payments Information Act of 2002 (IPIA) requires Federal agencies that are susceptible to issuing significant improper payments to take specific steps to identify and prevent improper payments. Congress later added the Recovery Audit Act that replaced and consolidated the requirements of both IPIA and the Recovery Audit Act. The Improper Payments Elimination and Recovery Act of 2010 (IPERA) amended the Act and required an increase in diligence of auditing Federal agencies to prevent improper payments. A subsequent statute, the Improper Payments Elimination Recovery Information Act of 2012 (IPERIA), was also enacted. It requires Federal agencies to improve the quality of oversight for high dollar and high-risk programs. It mandates that agencies share data on improper payments they recovered and identify ways to increase recovered amounts. To comply with these laws, the FEMA Office of the Chief Financial Officer leads the IPIA/IPERA/IPERIA efforts to assess the National Flood Insurance Program and to identify and recover overpayments.

Furthermore, FEMA Hazard Mitigation Assistance (HMA) programs have regulatory (2 Code of Federal Regulations) and programmatic procedures, including internal controls, to prevent improper payments to the extent possible.

FEMA will continue to identify and eliminate improper payments, in accordance with statutory requirements and regulations.

Q.6. Does FEMA maintain a central data warehouse or database where it might be able to undertake data analysis to better understand its program performance and effectiveness? Would better, more complete data help FEMA in the administration of these programs?

A.6. FEMA does centrally manage the transactional history of the NFIP policies and claims, though we are working to update our system for these data. The NFIP's IT Modernization effort (known as PIVOT) will improve access to the historical record of the NFIP for data analysis, performance management, and program policy development. The new system will not only provide near-real time access to NFIP claims and policy data, it will also enable industry standard practices—such as Customer Relationship Management and case tracking—to help give FEMA better insight into the customer experience and program performance. In addition, we will have much timelier insight on the program's financial position.

As we have awarded our new NFIP Direct contract, we have created a "laboratory" to test potential program and product changes to determine how they affect the customer experience and program performance. We have also established an Industry Management

Branch and a Program Management Branch to improve our coordination and oversight efforts to ensure that contractors meet program and contractual performance standards. Lastly, we have established an Analytics and Policy Branch, charged with the dual mission to "serve as the data hub and analytic center for Federal insurance" and "promote the continuous improvement of NFIP practices and policies." The analytics and policy functions are within the same branch to enable policy decisions to consider data insights.

To support the above efforts, FEMA staff are committed to developing requirements for and building an Enterprise Data Warehouse, which will enable us to leverage "big data" from numerous sources to perform data analytics and gain insight on the impacts of flooding, potential program changes, and ensure that we are supporting the response and recovery efforts post-disaster. Better and more complete data pertaining to policyholder characteristics, flood risk, and the built environment will enhance FIMA's ability to undertake data analysis to better understand its program performance and effectiveness.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY FROM ROY E. WRIGHT

Q.1. Under the Homeowner Flood Insurance Affordability Act of 2014, Congress required FEMA to develop a Draft Affordability Framework "that proposes to address, via programmatic and regulatory changes, the issues of affordability of flood insurance sold under the National Flood Insurance Program, including issues identified in the affordability study . . . "

When will FEMA complete this study?

A.1. The Affordability Framework is due to Congress in September 2017. FEMA is working diligently to meet the deadline.

Q.2. The Homeowner Flood Insurance Affordability Act of 2014 requires gradual rate increases to properties now receiving artificially low (or subsidized) rates instead of immediate increases to full-risk rates required in certain cases under BW-12. FEMA is required to increase premiums for most subsidized properties by no less than 5 percent annually until the class premium reaches its full-risk rate. With limited exceptions, flood insurance premiums cannot increase more than 18 percent annually.

What percentage do you anticipate premium rates increasing for these subsidized properties by over the coming years and what considerations will be taken into account to reach this decision?

How many policyholders are paying subsidized rates? What percentage of the total policyholders do these subsidized ratepayers represent.

A.2. Under the current statute, certain pre-FIRM subsidized policies-including those for nonprimary homes, Severe Repetitive Loss properties, businesses, and substantially damaged structures-are required by statute to increase 25 percent annually until they reach full actuarial rates (42 U.S.C. 4015 (e)(4));(42 U.S.C. 4014(a)(2)(A)-(E). All other pre-FIRM subsidized policyholders, including primary single family residences, must increase at least 5 percent but no more than 15 percent as a class and 18 percent per policy (42 U.S.C. 4015 (e)(1) through (3)). The increase for any given year is a balance of many factors, primarily a balance between affordability to the property owner and program solvency of the insurance fund. Premium increases at the higher end of the range would tend to increase the overall amounts collected from policyholders, unless the increases induce policyholders to drop their coverage. Premium increases at the lower end of the range will barely exceed inflation and could take years, even decades, to reach full risk for some, but will retain more policyholders. Each year, the Federal Insurance and Mitigation Administration sets the increase factor for the following year's rate changes. This year, FEMA increased premiums for pre-FIRM primary single family residences at the lower end of allowable range with average increases of 5.5 percent beginning on April 1, 2017. On October 1, 2017, we will announce rate increases that will become effective on April 1, 2018.

As of the beginning of Fiscal Year 2017, roughly 800,000 or 16 percent of policyholders pay pre-FIRM subsidized rates, roughly 200,000 or 4 percent of policyholders pay Newly Mapped subsidized rates, and roughly 20,000 or less than 1 percent of policyholders pay rates in the other subsidized categories.

Q.3. Flood insurance policyholders are often unaware of the exclusions and limitations in their policies until they have a claim. In contrast, these same people have a much better understanding of their homeowners insurance policy and the various optional coverages and benefits the homeowners policy provides. The consumer's lack of understanding about their flood policy results in complaints, coverage disputes and sometimes lawsuits when they become aware at the time of claim that there is no coverage under the NFIP flood policy for loss to their basement, for building code upgrades during repair, or for additional living expenses to pay for alternative lodging when their home becomes uninhabitable due to flooding. They cannot understand why these coverages are available under their homeowners policy but not the NFIP policy. Many complaints about flood insurance arise from coverage disputes and the fact that the NFIP policy's coverage is not as robust as consumers expect.

What steps are you taking to minimize coverage disputes and improve customer satisfaction?

A.3. FEMA is committed to making our products and procedures easier-to-understand for the policyholder. Under the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (FIRA), Public Law 108-264, 118 Stat. 725, 42 U.S.C. 4001, Congress requires the NFIP to ensure that policyholders receive important information about their flood insurance coverage. In October 2005, in an attempt to help policyholders understand their coverage prior to a flood, FEMA began providing policyholders with: (a) the property's flood loss history information, as required by FIRA, Section 202 (a)(4); (b) the claims handbook, as required by FIRA, Section 204; (c) the acknowledgement, as required by FIRA Section 203; (d) a summary of coverage; (e) a copy of the flood insurance policy; and (f) a cover letter referencing these enclosures.

FEMA is also currently re-writing the NFIP Claims and Underwriting Manuals in plain language to provide consistent guidance for adjusters and insurance examiners as they interact with NFIP policyholders. Additionally during recent flooding events, FEMA prepared and distributed an "NFIP Claims Process Fact Sheet" that guides policyholders through the claims process and clearly explains the steps to take if they do not agree with the adjuster's estimate.

FEMA also improved our appeals process to better serve our customers—providing greater transparency, access, and accountability. FEMA has dedicated insurance examiners specializing in appeals. FEMA tracks each step of the appeals process to increase accountability, assure quality, and make the process more timely and efficient.

During the appeal review, FEMA ensures the adjustor and Write Your Own (WYO) company or NFIP Direct Servicing Agent applied FEMA's rules correctly. FEMA begins with the materials submitted by the customer, either by mail or using a new email option (FEMA-NFIP-Appeals@fema.dhs.gov), in support of the appeal. FEMA identifies the information needed to resolve the appeal at the outset, and works with the WYO companies to ensure that information is received as quickly as possible. FEMA encourages carriers to resolve issues in favor of policyholders based on FEMA's input whenever possible. Regardless of whether FEMA upholds or overturns the original denial, FEMA explains every detail of the decision to the policyholder in writing at the completion of the review. The decision sets forth the key facts, the relevant rules, and how those rules apply to the situation presented on appeal.

Q.4. Can you assure us that every person who lives in a special flood hazard zone and has a federally backed mortgage has flood insurance?

If not, can you estimate it?

What prevents you from knowing this figure?

A.4. Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) requires Federal lending regulators and Federal agencies that provide direct housing assistance, including mortgage loans, to require properties located in a Special Flood Hazard Area (SFHA) to obtain flood insurance. As such, FEMA has a very limited role in the monitoring and implementation of the mandatory purchase requirement. As explained below, FEMA does not have current, definitive information on the compliance rate for mandatory purchase properties, because FEMA does not regulate or carry out the mandatory purchase requirement.

From FEMA's perspective, flood insurance take-up is much broader than the mandatory purchase requirement. While the mandatory purchase requirement is one way to increase participation in the National Flood Insurance Program, it only targets those homeowners in the SFHA with federally backed mortgages. FEMA considers its market for flood insurance to include all potential flood insurance purchasers, regardless of their mortgage status. Flood insurance take-up or market penetration is not synonymous with those people subject to the mandatory purchase requirement.

FEMA commissioned an analysis in 2014 that explored penetration rates and mandatory purchase compliance, but we do not currently have a basis to validate the compliance rate in that analysis. In the three years since FEMA commissioned the analysis, FEMA has learned more about its own data and the potential limitations of the analysis.

Other entities have examined mandatory purchase compliance. For example, the National Academies of Sciences (NAS) Report: Levees and the National Flood Insurance Program notes that estimates of the mandatory purchase requirement compliance have been between 50 and 78 percent. However, the NAS study also notes that "studies indicate that estimates of both market penetration in the SFHA and compliance with the mandatory purchase requirement have varied considerably and are very sensitive to the assumptions made in the study process."

FEMA does not know which properties are subject to the mandatory purchase requirement. We obtain no data on insurance requirements beyond those who may receive a FEMA grant under the Stafford Act following a disaster. FEMA does not track compliance with the mandatory purchase requirements primarily because we have no available data on which residential structures have a federally backed mortgage.

While FEMA does not have access to mandatory purchase compliance rates, we do have estimated market penetration rates for NFIP flood insurance. Market penetration is a measure of flood insurance take-up and we calculate this penetration rate based on the number of NFIP insured residential structures compared to the number of residential structures overall. This includes NFIP insurance only, and does not include private flood insurance policies. FEMA does not define market penetration in terms of mandatory purchase compliance, because the NFIP total market includes all potential flood insurance purchasers, regardless of their mortgage status.

FEMA estimates that market penetration in SFHAs varies state to state, ranging from 6 percent to 65 percent with a national average of 30 percent. In other words, FEMA estimates that nationwide, approximately 30 percent of the residential structures in the SFHA carry NFIP insurance. FEMA believes that the statewide totals provide an accurate market penetration estimate for the majority of states. Regardless of how well mandatory purchase is enforced, this low rate indicates that the majority of homes at high risk of flood do not have NFIP flood insurance policies. In case of a major flood, uninsured residents will not be able to recover as quickly or as fully as insured individuals will.

FEMA will continue to refine its methodology and utilize additional data to provide more accurate state and county-level estimates of NFIP market penetration in the future.

Q.5. Prior to Biggert Waters 12, were all of the post firm policyholders paying actuarial rates for FEMA flood insurance policies?

Given the fact that BW12 forced the inclusion of catastrophic lost years in the actuarial rate calculations, would you say that post BW12 the post firm policyholders are paying greater that the actuarial rates?

A.5. In response to the first question in this QFR, post-FIRM policyholders in the following classes paid less than actuarial rates prior to enactment of the Biggert-Waters Flood Insurance Reform Act of 2012:

- Pre-1981 V-Zone Policies: Pre-FIRM and Post-FIRM properties in a V zone, built before FEMA introduced wave height into its coastal maps.
- Zones AR and A99: Pre-FIRM and Post-FIRM Policyholders in areas with levees under construction or reconstruction were rated as if the levee was complete.
- Group Flood Insurance Policy: Low-cost policy issued to homeowners who did not have NFIP coverage prior to receiving Federal disaster assistance for flood damage. These were issued to both pre-FIRM and post-FIRM structures.
- Emergency Program: Policyholders in a community in the initial phase of participating in the NFIP when flood hazard information was not yet available. (This category is not technically post-FIRM, since the community had not yet adopted a FIRM, but is included in this answer to complete the list of subsidized rates other than pre-FIRM rates that were in effect prior to the Biggert-Waters Flood Insurance Reform Act of 2012).

In response to the second part of the question, FEMA has always considered the full range of all possible loss years, including catastrophic years, in its calculation of actuarially rated policies. Both the likelihood that catastrophic years occur and the possibility of higher damages resulting from catastrophic events are included in FEMA's rate setting practices. Therefore, the statutory requirement to reflect catastrophic loss years did not alter FEMA's rate setting practices.

Q.6. How much money does FEMA pay annually in interest to the Federal treasury for its debt?

A.6. The NFIP carries $24.6 billion in debt to the Department of Treasury. The program pays nearly $400 million per year in interest to the Treasury on these borrowed funds. Since Hurricane Katrina, the NFIP has paid over $3.4 billion in interest to the Department of Treasury. In FY17, FEMA anticipates that it will pay an additional $390.2 million in interest.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR DONNELLY FROM ROY E. WRIGHT

Q.1. Mr. Wright, in recent years, communities across my state have shared with me their frustrations with FEMA, NFIP, and the flood mapping process. The mapping program, particularly when it needs amending, can be costly and time-consuming for communities, who often have difficulty getting suitable answers or assistance when complicated situations arise.

Do you believe recent internal changes, such as the Technical Mapping Advisory Council (TMAC), have improved FEMA's coordination and communication with impacted communities?

A.1. Yes, FEMA's coordination and communication with communities expanded significantly and continues to improve as a result of a number of internally-driven initiatives. Several TMAC recommendations have enhanced those efforts. In particular, two recommendations in the 2015 TMAC Annual Report, Recommendations No. 1 and No. 15, focus on ensuring that FEMA's products meet the needs of their users and that FEMA's communication conveys the importance of addressing flood risk for more resilient communities today and in the future. Many of these recommendations are intended to ensure that FEMA provides better data and information so that communities can make better risk-informed decisions. FEMA is actively implementing both of these recommendations through our Customer Experience for Communities initiative, a multiyear effort that was initiated in 2016.

FEMA can help a community become more resilient provided the community is prepared to be an active and full partner in planning and implementation. As users of flood risk data and products, communities are also customers. Thus, excellent communication and strong relationships are crucial in our engagement with communities. FEMA aspires to provide clear, direct, and timely communication as well as products and processes that are easy to navigate, and to foster trusting relationships with our state, local, tribal, and territorial partners.

We have made significant progress toward this goal. In 2015, FEMA created the Community Engagement and Risk Communication (CERC) initiative to help FEMA do a better job of talking and working with communities nationwide to help them understand and manage their flood risk in a way that is participatory and productive. As mentioned above, FEMA is implementing the Customer Experience for Communities initiative to determine how we might better improve our engagement with communities. Our exploratory efforts, which included a number of community interviews and site visits, resulted in the proposal of several new initiatives aimed at improving how we work with communities through the National Flood Insurance Program (NFIP). Over the next year, FEMA will continue to act upon lessons learned via the Customer Experience for Communities effort, while re-designing the approach FEMA follows when working collaboratively with communities to update flood risk. It is important for FEMA to do so in a manner that is flexible enough to account for communities with varying capabilities of assessing and managing their risks.

Q.2. What are the most common concerns and complaints heard from communities about the mapping process? What more can be done to assist small and rural communities concerned by the costs and time-consuming nature of challenging flood hazard maps?

A.2. As part of our ongoing multiyear Customer Experience for Communities effort, FEMA has had a number of conversations with National Flood Insurance Program (NFIP) participating communities regarding the challenges they face while working with FEMA to update their flood insurance rate maps. Most often, communities asked for increased engagement and public education, shorter map development timelines, and the flexibility to tailor our processes and procedures to better align to their individual needs. As a result of this feedback, FEMA is taking a comprehensive look at how we engage with communities during a Risk MAP project and designing a streamlined and segmented approach to support the needs of communities with varying capacities and capabilities. Under this new approach, we would provide more flexibility for our customers that seek to take a more active role in updating their flood risk assessment data and associated products, while providing additional support to small and rural communities that might not have the same levels of expertise or resources. We are also identifying ways to shorten the process while engaging more members of a community, introducing and/or leveraging tools that afford more visibility into our process. Later this summer we will test these new streamlined approaches with communities; we plan to roll out successful changes in FY18.

Q.3. Mr. Wright, I have repeatedly heard complaints from homeowners, small businesses, and even realtors, about the cost-prohibitive nature of the appeals process. If you are drawn into a flood map, the financial burden is on the taxpayer to prove their case and successfully challenge. If they don't win the appeal, it will have been very expensive. That is a financial risk many families and businesses cannot afford to take.

Are there ways to improve the appeals process to eliminate the financial disincentives to challenging a potentially erroneous flood map?

A.3. Throughout an ongoing flood study to update a Flood Insurance Rate Map (FIRM), better communication with the affected communities during the study process can avoid the need for an appeal or, in the event of an appeal, help reduce the costs of challenging potential errors on a FIRM. In accordance with 44 C.F.R. δ 67.6, appeals must be accompanied by data supporting the view that the flood hazard information proposed by FEMA is scientifically or technically incorrect. This technical data to support an appeal must be provided by licensed professionals. Helping communities during and after a flood study to understand the requirements for submitting an appeal, including the need for technical data, may help reduce their costs for providing this information.

The most efficient way for local communities to contribute to enhancing their updated flood map is to participate in the mapping process during an ongoing study and to alert FEMA at that time to any additional relevant information that they want it to consider, preferably before or while the preliminary maps are being prepared. Community officials are given several opportunities prior to the statutory 90-day appeal period to understand the engineering methodologies and techniques that will be used to update the FIRM. Participation in Flood Risk Review meetings can be valuable to all parties, including and giving communities the opportunity to present information to FEMA that may guide the depiction of revised floodplains. Through the early involvement of a community in the mapping process, resources can be saved by avoiding the need for potential challenge after the FIRM is prepared.

Flood hazards change over time, as do the available technologies and methodologies for studying them. FEMA's goal in this area is to provide communities across the Nation with high-quality flood maps and other tools that they can use to identify and mitigate their flood risk and the potential impacts of flooding. Using more precise flood hazard mapping, residents and businesses are better equipped to make informed decisions about their flood risk and take appropriate measures to protect themselves and their property.

It should be noted that a FIRM can be revised at any time, and community officials may submit scientific or technical data to FEMA to support specific map revisions after an updated FIRM goes into effect. All requests for map revisions should be submitted through the Chief Executive Officer of the community as the community must adopt any changes to the FIRM to maintain its participation in the NFIP. To help communities compile the data required to support map revision requests, FEMA has developed step-by-step instructions and forms, which are available on the FEMA website at http://www.fema.gov/mt-2-application-forms-and-instructions. Following a review of the community's map revision request and supporting data, FEMA will revise the FIRM and the Flood Insurance Study report, if appropriate. This type of revision is generally issued within 90 days of the date all required data are received, and most revisions will be effective within 120 days of the date they are issued. For questions about FEMA's map revision processes, your constituents can contact the FEMA Map Information exchange at 1-877-336-2627.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

LETTER SUBMITTED BY THE NATIONAL MULTIFAMILY HOUSING COUNCIL AND THE NATIONAL APARTMENT ASSOCIATION

NMHC NATIONAL MULTIFAMILY HOUSING COUNCIL NAA NATIONAL APARTMENT ASSOCIATION

March 14, 2017

The Honorable Mike Crapo
Chairman
Banking, Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Sherrod Brown
Ranking Member
Banking, Housing & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Crapo and Ranking Member Brown:

The National Multifamily Housing Council (NMHC) and National Apartment Association (NAA) applaud the Committee for calling a hearing entitled "Reauthorization of the National Flood Insurance Program, Part I." We appreciate the Committee exploring the issues facing the NFIP early this year in advance of the program's needed reauthorization before September 30, 2017. We strongly support the efforts of Congress to ensure the NFIP is functioning properly and continuing to reduce taxpayer funded disaster assistance for flooding.

For more than 20 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 72,000 members representing more than 8.8 million apartment homes throughout the United States and Canada.

Like the broader real estate community NMHC/NAA understand that the future stability of the property insurance market and its ability to withstand the continued occurrence of catastrophic events must remain a top concern of our sector. With floods being the most common natural disaster in the United States, the NFIP ensures that affordable flood insurance is available at all times, in all market conditions for every at-risk rental property. These include more than just high-rise multifamily properties in urban centers and extend across every state to include rental homes of all sizes and types. Ensuring that all rental properties continue to have access to affordable, quality flood insurance through the NFIP is a top priority for our membership to not only protect their property investment but to help manage the increasing costs of providing housing that is affordable.

We acknowledge that the NFIP comes with its challenges and agree that further reforms are necessary to protect the long-term financial viability of the program. It took several catastrophic weather events to force the NFIP into negative fiscal standing and returning it to solid footing cannot happen overnight. We believe that many of the reforms included in both the Biggert-Waters Flood Insurance Reform Act and the Homeowner Flood Insurance Affordability Act of 2014 will help slowly return the program to solvency. To that end, outlined below are the multifamily industry's priorities as we move towards reform and reauthorization of the NFIP this year. We believe these proposals could offer significant improvements to the efficiency, affordability, and long-term health of the NFIP.

- **Long-Term Authorization** – Prior to the enactment of Biggert-Waters in 2012, the NFIP had been operating on a series of short-term extensions that began in 2008. The stop-gap measures continually created an environment of uncertainty

APARTMENTS. WE LIVE HERE. NMHC/NAA Joint Legislative Program
1850 M Street, NW, Suite 540 | Washington, DC 20036 | 202 974 2300 WeAreApartments.org

for multifamily property owners and managers who rely on this program for coverage in the absence of a high level of private sector participation. More broadly, during a time of economic recovery, real estate transactions across both the residential and commercial sectors could not legally be secured without this critical protection in place. NMHC/NAA strongly urge Congress to prevent disruption in the marketplace and pass a long-term reauthorization of the NFIP that maintains the government's backstop before it is set to expire on September 30, 2017. We also urge Congress to protect the ability of all property owners to enter the NFIP market should they so choose or should there be no private market readily available for sufficient, affordable coverage.

- **Mapping** - It is common for apartment owners to have their properties misclassified as being in high-risk flood zones, or Special Flood Hazard Areas (SFHA). Yet, the process for property owners to challenge those designations and the maps on which they are based is overly complex and financially burdensome. The onus is wrongly placed on the property owner to prove the maps inaccurate, incur engineering and surveying expenses and vast amounts of time to appeal under the current system. Inaccurate maps not only have financial repercussions for existing property owners but also have a chilling effect on development in inaccurately zoned areas, which is problematic in a time of a rental housing shortage. NMHC/NAA encourage Congress to provide sufficient resources to coordinate and build upon efforts such as the U.S. Geological Service's 3D Elevation Program (3DEP) that could provide increased accuracy to existing tools currently used to determine risk and premium levels under the NFIP. Additionally, we recommend Congress require FEMA improve the efficiency of the overall mapping process to reduce cycle time and costs and improve the mapping appeals process to make it more affordable, transparent, and less time-consuming for both communities and property owners.

- **Flood Risk Mitigation** –FEMA currently administers several mitigation grant programs in an effort to reduce damage, claims, and overall risk in the event of a natural disaster such as flooding. NMHC/NAA strongly support pre-disaster mitigation programs to lessen fiscal pressure upon the NFIP and taxpayers more broadly. That said, while apartment communities are not explicitly excluded from eligibility for existing FEMA funds, the grant programs are overwhelmingly focused on primary, single-family homes. Even further, FEMA has only recently focused attention on the importance of mitigation efforts for properties that cannot benefit from traditional mitigation techniques like building elevation. Consistent with the requirements under the Homeowner Flood Insurance Affordability Act of 2014, FEMA issued advisory guidelines to property owners on alternative methods of mitigation. Unfortunately, many of the recommendations made are impractical for apartment communities and the majority would not afford any flood insurance premium reduction despite the large cost of implementation. NMHC/NAA urge Congress to require FEMA to undertake further actuarial work and issue alternative guidance specific to multifamily property owners that is both realistic, cost effective and would result in premium reductions under the NFIP. Additionally, NMHC/NAA would ask that Congress direct FEMA to expand the focus of existing mitigation programs to better include multifamily properties or consider establishing a multifamily specific mitigation grant program to address the unique challenges faced by our property owners.

- **Business Interruption Coverage** –Property owners fortunate enough to be able to purchase flood insurance through the private sector also frequently purchase Business Interruption coverage to help restart operations and defray the financial impacts surrounding the relocation of business services, resident relocations, and other expenses. For those property owners who are unable to secure adequate or affordable private sector coverage, NMHC/NAA urge Congress to support the creation of Business Interruption Coverage as an additional policy option under the NFIP for multifamily and commercial policies. This coverage would allow property owners to resume normal operations more quickly and get residents back into their homes after a disaster in a timelier manner.

- **Streamline and Enhance the Efficiency of NFIP Policies**— Current mandatory purchase requirements require multifamily property owners secure coverage for each structure on their properties that lie in an at-risk flood zone. Often, this means that multifamily owners must secure a separate NFIP policy for multiple buildings throughout the same apartment community, all of which require separate deductibles and policy renewals. NMHC/NAA urge Congress to provide a property owner the option to secure just one "umbrella" NFIP policy with combined coverage for each of their at-risk structures on a given property or throughout their portfolio. This change would greatly streamline and enhance the business efficiency of using the NFIP.

- **Align NFIP Single Family & Multifamily Claim Reimbursement**— Currently commercial and multifamily property owners receive Actual Cost Value (ACV) for claim payments from FEMA while single-family homeowners receive Replacement Cost Value (RCV) for their losses. The discrepancy places commercial and multifamily property owners at a disadvantage because they often suffer the same, if not more, flood damage. NMHC/NAA encourage Congress to direct FEMA to move NFIP multifamily and commercial coverage from ACV to RCV claim reimbursement.

- **Foster a More Viable Private Flood Market**—NMHC/NAA believe that a more viable private flood insurance market would serve a benefit to both property owners through increased competition and enhanced market efficiencies while reducing financial demands on taxpayers. NMHC/NAA support passage of the Flood Insurance Market Parity and Modernization Act to bolster the private flood market. The bill would expand coverage options for at-risk property owners by clarifying that flood insurance offered by private carriers outside of the NFIP meets the mandatory purchase requirements in place today. Of particular note is the bill's language that ensures both private and NFIP coverage satisfies the federal government's requirement of "continuous coverage" and protects policyholders from seeing rate hikes should they wish to return to the NFIP coverage at a later date. NMHC/NAA encourage Congress to consider including the Flood Insurance Market Parity and Modernization Act in the overall flood insurance reauthorization package.

- **Outline Multifamily & Commercial Specific Requirements**—The needs of multifamily and commercial property owners are substantially different than homeowners and condominium associations. Federal regulators should afford greater flexibility so that private flood policies can be tailored to the unique needs of each insured and allow for one policy for multiple properties and buildings, RCV claim coverage, Business Interruption coverage, and coverage for property outside of the building such as security fences, parking lots, and equipment. Until such time of enactment of the Flood Insurance Market Parity and Modernization Act, NMHC/NAA urge Congress to require Federal banking regulators to issue guidance to lenders that addresses the acceptability of private flood insurance coverage specific to multifamily and commercial properties and existing federal coverage requirements.

We thank you for the opportunity to present the views of the multifamily industry as you begin deliberations to reauthorize and reform the NFIP. The NFIP serves an important purpose and is a valued and necessary risk management tool for apartment owners and managers. We stand ready to support the efforts of Congress to make the necessary improvements to the program to ensure its long-term success.

Sincerely,

Douglas M. Bibby
President
National Multifamily Housing Council

Robert Pinnegar
President & CEO
National Apartment Association

STATEMENT SUBMITTED BY THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

PCI

Property Casualty Insurers
Association of America

Advocacy. Leadership. Results.

STATEMENT FOR THE RECORD
ON BEHALF OF THE
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

"REAUTHORIZATION OF THE NATIONAL FLOOD INSURANCE PROGRAM, PART I"

THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

March 14, 2017

8700 West Bryn Mawr Avenue, Suite 1200S, Chicago, IL 60631-3512 Telephone 847-297-7800 Facsimile 847-297-5064 www.pciaa.net
444 North Capitol Street NW, Suite 801, Washington, DC 20001 Telephone 202-639-0490

Thank you, Mr. Chairman, Ranking Member and Members of the Committee for the opportunity to provide a statement on "Reauthorization of the National Flood Insurance Program, Part I." The Property Casualty Insurers Association of America (PCI) is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any national trade association. Our members write more than $202 billion in annual premium and 35 percent of the nation's home, auto and business insurance, reflecting the diversity and strength of the U.S. and global insurance markets. PCI members include two-thirds of the "Write-Your-Own" (WYO) insurers that partner with the Federal Emergency Management Agency (FEMA) to administer the National Flood Insurance Program (NFIP).

PCI appreciates the committee's continued interest in the NFIP, and we are pleased that you are holding this hearing. While the program has undergone numerous changes over the past several years, PCI and our members stand ready to work with Congress on additional improvements to the program while providing new opportunities for the private sector to better serve consumers. This statement provides a broad overview of the evolution of the program, private sector involvement in providing flood insurance coverage and some views on flood insurance reform ahead of the program's September 30, 2017 expiration.

PCI strongly supports reauthorization of the NFIP, and we adopted a number of important flood insurance reform principles that our Board and our members believe will improve the program, provide more choices for consumers and increase opportunities for private insurer involvement. Reauthorization and reforms to the program should include:

- A long enough extension to provide stability in the marketplace for both consumers and the companies entering, servicing, or competing with the program;
- Increased lender acceptance of private flood policies similar to bi-partisan, bi-cameral legislation that unanimously passed the House last year;
- Elimination of the WYO non-compete clause;
- Insurer access to NFIP underwriting data and publication of updated NFIP rate reviews;
- Language to encourage further reinsurance purchases; and
- Public service education on the necessity and benefits of flood insurance.

Evolution of Flood Insurance and the Private and Public Sector Roles

Flood insurance was provided in the United States by the private sector in the late 1800's and early 1900's. After catastrophic floods in 1927 and 1928, private flood insurance became less available. Flood losses were borne primarily by consumers and, over time, increasingly by the federal government in the form of disaster relief. President Truman in the 1950's proposed a flood program based on private insurance with federal reinsurance, with mandatory purchasing required for homeowners with federally insured mortgages. The program was enacted but never funded or implemented. Critics at the time were concerned about adverse selection with most homeowners unwilling to voluntarily pay risk-based rates, a high concentration of risks, and inadequate land-use planning and mitigation efforts. In 1966, President Johnson raised with Congress four possibilities for providing flood insurance – purely private sector underwriting, private underwriting with government backing, a purely government program, or a government program run with private assistance. The Administration ultimately recommended a public-private partnership for offering flood insurance, although requiring homeowners to bear their full risk costs.

In 1968, Congress created the NFIP that provided for a public-private partnership with communities agreeing to land-use restrictions in order to be eligible to purchase flood insurance from a risk pool (the National Flood Insurers Association) run by the private sector with oversight by the Federal Insurance Administration (FIA), then part of the Department of Housing and Urban Development (HUD). The federal government made loans to the private pool to pay claims, repaid with premiums over time, as well as providing reinsurance for catastrophic flood losses (lowering the premiums by eliminating the catastrophic risk costs). An explicit subsidy was provided for existing structures determined to be in a special flood hazard area with the expectation that those structures would disappear over time after severe weather events.

In 1977, disagreements between the private sector and the government over the authority and the financial control of the program led to the FIA exercising its authority under an existing section (Part B) of the 1968 legislation that allowed for an all-federal program in which the federal government bears all of the risk while making use of insurance industry resources. This also led to a period of tension between the industry and NFIP. In 1979, President Carter created the FEMA and the NFIP, along with several other disaster-related agencies were brought into that agency.

From 1977 through 1983, property owners purchased flood insurance through an agent that in turn dealt directly with the federal government. However, during these early years, there was extremely limited participation in the NFIP, despite a congressionally imposed requirement in 1973 that all properties in a special flood hazard area with federally backed or regulated mortgages purchase flood insurance. On its own, the federal government lacked adequate marketing and distribution channels as well as sufficient claims handling and payment capacity.

In 1983, the government turned again to the private sector to help market, service and settle claims for the program. The WYO program was created to use the existing private insurance infrastructure of insurance agents, companies and claims adjusters to help increase market participation and settle claims, while the risk of flood loss was retained by the government to keep premiums low. Participation in the flood program ultimately soared, climaxing at a post-Katrina high of 5.7 million NFIP policyholders.

How the NFIP and Write Your Own (WYO) Claims Process Works

There are now just 73 companies, of the more than 1,300 active home, auto and business insurers in the U.S. that have partnered with the federal government to help administer the NFIP program as WYO insurers. The WYO's serve the current 5 million policyholders and act as a fiduciary for the federal government and taxpayers to market flood insurance and settle NFIP claims. In return for their marketing, claims adjustment, legal fees and other administrative costs, NFIP pays WYO's a servicing fee as well as additional fees based on the amounts and volume of settled claims. Also, FEMA writes approximately 12-14 percent of flood insurance policies through its Direct

Program, although even the direct program relies largely on outsourced claims adjusting and processing resources as well as private sector agents.

Decisions on federal flood insurance claims payments are made by claims adjusters. When policyholders experience a flood loss, they contact their insurance agent or WYO insurer. The insurer then assigns a flood claims adjuster, who may be an employee of the WYO, a contractor with a third-party vendor or an independent contractor. The flood claims adjuster determines the amount payable on a claim based on very specific guidelines and rules established by the NFIP. Flood claims adjusters and the independent contracting firms they represent are generally compensated in proportion to the amount of the loss paid. The compensation formulas are set by the NFIP and periodically updated.

WYO insurers can be penalized for either underpayments or overpayments, and WYOs are audited regularly by the federal government under the Improper Payments Elimination and Recovery Act (IPERA) to ensure that they follow federal requirements.

Federal compensation and settlement guidelines are periodically adjusted by Congress and the NFIP. For example, following Hurricane Katrina, the Government Accountability Office (GAO) raised concerns that the existing compensation structure could result in WYOs being overcompensated for claims settlement, particularly following a catastrophic event. As a result, the claims compensation formula was refined in 2009 by reducing the portion tied to the claim value and basing a portion of the payment on the WYO insurer's NFIP premium volume. There also are specific processes in place for dissatisfied policyholders to appeal claims decisions to the NFIP. The existing FEMA appeals process was put in place as a result of the enactment of the Flood Insurance Reform Act of 2004.

Recent Challenges in the WYO Program

Administering and marketing the NFIP is very complex and expensive, particularly with numerous recent statutory changes to the program (many retroactive). The number of private insurers participating in the WYO program has declined significantly in recent years, with several major insurers exiting the program. Most WYOs sell and administer a small number of NFIP policies, largely as an extra service to their policyholders. The last decade of turmoil in the program has further increased costs and reputational concerns, weighing heavily on insurers' ability to continue offering access to the NFIP as a service for their policyholders.

Unfortunately, as WYO private participation in the program has declined and many of the recent legislative changes have been implemented, the number of households and businesses in the program has also dropped significantly. After nine years (2006-2013) of having about 5.6 million policies in force, the NFIP's number of policies in force is now just over 5 million. It is more important than ever to educate consumers about the importance of having adequate flood insurance coverage to protect their property.

Needed NFIP Reforms

Program Stability

The last time a long-term NFIP reauthorization was set to expire was September 30, 2008. There were at least 17 short-term extensions and four lapses before a longer-term reauthorization was passed and signed into law on July 6, 2012. The short-term extensions and lapses created turmoil in the program and housing market. A property in a special flood hazard area, with a federally-backed mortgage requiring the purchase of flood insurance, could not go to closing during a lapse. Due to the mounting debt owed to taxpayers, issues related to Hurricane Katrina and a desire to put the program on a more sound fiscal footing, the reauthorization process was not completed until July 6, 2012, when the President signed the Biggert-Waters Flood Insurance Reform Act. Following the passage of Biggert-Waters, Congress passed the Homeowners Flood Insurance Affordability Act (HFIAA) in 2014, which scaled back some of the rate increases for certain previously subsidized properties. Congress must do more to ensure the long-term viability and financial stability of the program.

Private insurers interested in writing flood insurance risk need to develop rates, obtain state approval of those rates, set up administrative systems, purchase reinsurance, train agents and educate consumers about the options to purchase flood insurance. Those are substantial investments of capital and resources. To encourage the private sector to more actively apply capital to this risk on behalf of consumers, it is important for Congress to provide more long-term certainty regarding the shape and reauthorization of the federal program and its transition toward risk-based rates.

Accordingly, the insurance industry seeks a long enough extension to provide stability in the marketplace for both consumers and the companies entering, servicing, or competing with the program.

Lender Acceptance

Both recent flood reform bills, Biggert-Waters and HFIAA, included language designed to increase lender acceptance of private flood insurance. Federal lender-regulating entities have struggled to implement the provisions of these requirements. Federal regulators issued draft rules in 2013 and then again in 2016. The impact of these actions has not resulted in the intended effect, which was to increase private insurer risk-bearing and shift some of the potential losses from the NFIP and taxpayers to the private marketplace.

The Flood Insurance Market Parity and Modernization Act (S. 563; H.R. 1422) was recently reintroduced and clarifies the roles of the various entities involved -- the Federal lending regulators; state insurance regulators; insurers and consumers -- to accomplish the original goal of the provision in Biggert-Waters. We strongly support passage of this important legislation that will further encourage private insurers to enter the marketplace.

Elimination of the WYO Non-Compete Clause

Insurers that partner with the Federal government to sell NFIP flood insurance policies and help administer the program, sign an agreement called "the arrangement" annually that prohibits them from selling a product or products that compete directly with those offered through the NFIP.

Congress is interested in the private sector taking on more flood risk, the industry is interested in writing more flood risk, and consumers are interested in having more choices. The antiquated "non-compete" clause prevents many of the companies with the most experience with flood risk from writing it privately, unless they no longer participate in the WYO program. This either/or choice means that it will take significantly longer for a robust private marketplace to develop. Therefore, this provision should be eliminated immediately as part of any enacted legislation.

Data and Rate Reviews

One of the key components needed to develop and assure a stable and competitive public or private marketplace for insurance products is the availability of reliable data. Since the NFIP has been largely the only risk-bearing insurer for almost 50 years, it has a significant amount of data that would be critical to developing reasonable and accurate rates for consumers for flood insurance.

PCI supports the NFIP sharing its data with insurers willing to underwrite flood risk that can provide consumers with additional coverage options. Insurers do not need any "personally identifiable information" with regard to the data, just the data on the properties in the program. This includes loss history, past premiums and elevation information.

The private sector rate development process is somewhat different than what is used by the NFIP. Nevertheless, a more robust and transparent market can be developed if the NFIP makes available the last several years of rate reviews done by its NFIP actuaries. This information has previously been published but not publicly updated for several years. Similar information is filed in many states by private insurers, in developing and charging consumers an appropriate, risk-based premium for flood insurance. Making such data available to the market would lead to more accurate private market rates, leading to more choices and stability for consumers.

Reinsurance

Language to encourage the purchase of reinsurance by the NFIP was included in both Biggert-Waters and HFIAA. FEMA made an initial small purchase in 2016 and has made a much larger purchase for 2017. Private market reinsurance is helpful in reducing the potential exposure to losses from the program and further protects taxpayers. PCI strongly supports a continued and expanded role with regard to purchasing private market reinsurance as it spreads the risk worldwide, provides valuable pricing standards regarding the risk and required FEMA to provide those reinsurers participating in the NFIP reinsurance placement with the key data mentioned earlier in this testimony.

Public Education

Since the last NFIP reauthorization, in July 2012, a number of significant flooding events have caused tragic human and physical losses, including Superstorm Sandy and the Louisiana floods last year. Unfortunately, many of those victims had not purchased flood insurance or their federal policies did not provide the full types and amounts of coverage typically provided in the private insurance marketplace. Consumers need to understand their flood risk. PCI is advocating for a government-led program to help educate consumers on their flood risk and the need for flood insurance. Additionally, Congress needs to enact flood insurance reform that includes a private insurance market so that consumers have more options and can find better protection for their property and financial security going forward.

Governmental Coordination

In the immediate aftermath of a natural catastrophe it is critical for local, state, and federal officials to coordinate their efforts to get basic services up and running as quickly as possible, to get people back in their homes, and to get businesses to begin remediation and rebuilding. Insurers need to be at the table during pre- and post-disaster emergency planning and coordination to ensure that smooth claims adjustment can be a part of the catastrophe response planning. It also is essential to the rebuilding process that local law enforcement and government officials allow insurers and insurance claims adjusters into damaged areas as soon it is safe – at least as soon as property owners are provided access.

Available Claims Adjusters

A problem following any major catastrophe when thousands of properties are damaged is the lack of locally licensed flood insurance adjusters. This delays the claims settlement and the rebuilding process. Most flood insurance adjusters are located in areas that frequently flood. Many states implement reciprocal recognition of claims adjusters from other states to help, and the state insurance department grants out-of-state adjusters access if the proper credentials are provided. However, it can often be difficult in the middle of a catastrophic event with an unusual number of claims to process the necessary paperwork in a timely manner. PCI supports federal legislation to require more reciprocal claims adjuster recognition.

Mitigation and Flood Maps

Preparation is a key factor in minimizing financial loss after a natural catastrophe. Strong, uniform statewide building codes that are regularly updated play a significant role in reducing the risk of injury or death to homeowners during a natural catastrophe. Structures built or retrofitted to comply with the most recent edition of the *International Building Code*, and other recognized building standards, incur less property damage during a significant weather event. Less property damage following an event reduces the need for federal disaster aid and can help expedite a community's recovery after a natural catastrophe. PCI promotes strong building codes and responsible land use policies, which are crucial for all stakeholders, to promote public safety and to be as prepared as possible for the next hurricane, tornado, or flood disaster. Updating flood maps immediately following such an event is critical to ensuring that homes and businesses being rebuilt meet the appropriate flood elevation criteria.

Ongoing Discussions of NFIP Reforms

PCI hosted the National Flood Insurance Conference in 2015, 2016 and will co-host it in 2017. The 2016 program, with over 800 attendees included all the stakeholders in this program. The 2017 conference agenda includes potential program improvements, other approaches to address the risk, technical issues and challenges to private sector participation and risk bearing. PCI will continue these discussions with stakeholders and would welcome further conversations on potential improvements to the NFIP with the committee.

Conclusion

The flood insurance program protects millions of American businesses and families from catastrophic flood risk. PCI members and our WYO companies appreciate the opportunity to service the federal government and consumers. We are encouraged to see the committee taking up this issue early in the year. First and foremost, it is important to secure a long-term reauthorization of the program, without any lapses. PCI members and our WYO companies welcome a discussion with the committee about how to improve the program, encourage private sector alternatives and shape the program for the future.

TESTIMONY SUBMITTED BY THE CONSUMER MORTGAGE COALITION

Consumer Mortgage Coalition

Testimony for the Hearing Record

Senate Committee on Banking, Housing and Urban Affairs
Subcommittee on Housing and Insurance

"Reauthorization of the National Flood Insurance Program, Part I."

March 14, 2017

The Consumer Mortgage Coalition ("CMC"), a mortgage industry trade association, appreciates the opportunity to submit testimony for the hearing record.

We support the following flood policy objectives:

- Property owners should have flood insurance options, including the option of purchasing private flood insurance, consistent with safety and soundness.
- Federal and local flood policies should be to prevent and mitigate neighborhood blight.
- Flood hazard areas should be mapped as expeditiously as possible, and maps should be updated as needed. As this letter describes, study of flood-prone areas has been federal policy for nearly a century, yet most of the country remains unmapped. This means people are unknowingly developing and occupying areas that are prone to flood, causing unnecessary and avoidable risk of death, injury, and property damage. Policymakers should consider having FEMA use newer mapping technologies that are available and are being used in the private sector.
- Mortgage investors, lenders, and servicers should be permitted to require flood insurance policies to be sufficient, including: coverage of appropriate perils; reasonable deductibles, exclusions, and conditions; including the lender or servicer as an additional loss payee; and the ability to reject insurers that lack sufficient claims-paying ability.
- Floodplain management practices should remain in place, whether flood insurance is federal or private.
- FEMA should have adequate funding to carry out its functions.

Flood insurance is only one aspect of flood policies in this country. Floodplain management and flood hazard mapping are also central to flood policies nationwide. By design, the different aspects of flood policies are intertwined. A Congressional finding in the National Flood Insurance Act of 1968 ("NFIA")[1] is that:

> "the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management[.]"[2]

Flood policies use subsidized flood insurance as an incentive to encourage communities to participate in the NFIP. That participation requires communities to adopt and enforce floodplain management and flood mitigation practices to reduce flood damages. In addition, some of the fees for SFIPs fund floodplain management and flood mitigation activities. Because these different policies are intertwined, we urge policymakers to consider flood policies broadly, and to consider that if private flood insurance were to become widespread, Congress would need to adopt an alternative incentive for communities to participate in the NFIP, and Congress would need to replace the funding

[1] Title XIII of the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 572.

[2] *Id* § 1302(c), 82 Stat. at 573. This remains current law, 42 U.S.C. § 4001(c).

that SFIPs today provide for FEMA flood programs.

The NFIP will require Congressional reauthorization this year. This presents a timely opportunity to address the broader federal flood policies. This is also an opportunity to ensure that there are sufficient funds for robust flood hazard mapping. We urge Congress during the reauthorization debate to ensure that that sound flood policies, including flood insurance, floodplain management, and flood hazard mapping are in place so that blighted neighborhoods are avoided.

Table of Contents

I. HISTORY of FLOOD POLICIES in AMERICA

Floods can cause widespread devastation, taking lives and destroying properties over large areas simultaneously. Floods occur repeatedly, and yet with little notice of where or when they will hit. Floods can have multiple causes, including hurricanes, rainfall and melting snow, and infrastructure failures, making them difficult to predict.

The federal, state, and local governments in this country have always contended with floods. Congress over the years has created carefully aligned incentives that encourage activities that reduce flooding in populated areas, that prevent development in flood-prone areas, and that minimize future damage after a flood. This history will demonstrate how flood insurance is one, but only one, aspect of our nation's flood policies. Other aspects are intertwined with flood insurance, and need to be considered together.

Notably, Congress has addressed the need to study flood-prone areas repeatedly over many decades, yet today much of the country remains unmapped. This is unfortunate because it means development can unknowingly occur in areas that have flood risks. Building in flood-prone areas increases both the risk and the extent of flood damage.

A. Early Flood Laws

1. 1917 – First Act to Provide for Flood Control

The first major federal legislation by which Congress involved itself in flood mitigation was enacted in 1917.[3] Congress authorized up to $45 million for flood control along the Mississippi River, and for surveys to determine the cost of flood control.[4] It also authorized funds for levee construction and repair on the Mississippi River, on the condition that all rights of way be provided free of cost to the federal government.[5] The law also authorized up to $5.6 million for flood control, debris removal, and "for the rectification and enlargement of river channels and the construction of weirs" on the Sacramento River.[6] The funds could be used for levees on the condition that California bear half of the cost.[7] Again, Congress required that the federal government would not pay for rights of way.[8] The law also called for "a comprehensive study of the watershed

[3] Act of March 1, 1917, ch. 144, 39 Stat. 948. Old Statutes at Large are available here.

[4] *Id.* and para. (a); 39 Stat. at 948.

[5] *Id.* paras. (b) and (d); 39 Stat. at 948 – 49.

[6] *Id.* § 2, 39 Stat. at 949.

[7] *Id.* § 2(a), 39 Stat. at 949 – 50.

[8] *Id.* § 2(b), 39 Stat. at 950.

or watersheds," with a report to be published and submitted to Congress.[9] These early approaches to flood mitigation, study of flood-prone areas and federal assistance, continue as central aspects of flood policy today.

2. 1928 – Flood Control on the Mississippi River

In 1928, Congress authorized $325 million for surveys between Baton Rouge, Louisiana, and Cape Girardeau, Missouri, for floodways, spillways, diversion channels, and levee improvements, with the states responsible for maintaining the flood-control works.[10] Where levees were impracticable on the Mississippi River, the law authorized the federal government to purchase land subject to flooding or floodage rights over the land.[11] The law authorized funding for mapping "in furtherance of this project."[12] It called for surveys of the Mississippi River "as speedily as practicable," with studies on how flood control could be attained by reservoirs, flood control in the Mississippi Valley through forestry,[13] and the effects of overflow on the side of the river opposite levees.[14] The policy was flood mitigation with federal funding, and, again, Congress called for mapping of flood-prone areas.

3. 1933 – Tennessee Valley Authority

In 1933, Congress created the Tennessee Valley Authority ("TVA") and authorized it, among other things, to implement flood control measures "to control destructive flood waters in the in the Tennessee River and Mississippi River basins[.]"[15] This was additional federal assistance for flood control.

4. 1934 – Reconstruction Finance Corporation Loans

In 1934, Congress authorized the Reconstruction Finance Corporation to finance up to $5 million for "the acquisition of home or building sites in replacement of sites formerly occupied by buildings where such sites are declared by public authority to be unsafe by

[9] *Id.* § 3, 39 Stat. at 950 – 51.

[10] Act of May 15, 1928, ch. 569, 45 Stat. 534.

[11] *Id.* § 3, 45 Stat. at 536.

[12] *Id.* § 5, 45 Stat. at 536.

[13] *Id.* § 10, 45 Stat. at 538.

[14] *Id.* § 11, 45 Stat. at 538.

[15] Tennessee Valley Authority Act of 1933, ch. 32, 48 Stat. 58.

reason of flood, danger of flood, or earthquake" and to finance drainage and flood control systems."[16]

5. *1936 – Flood Control Act of 1938*

Two years later, Congress declared the following policy:

> "It is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected."[17]

The Flood Control Act of 1936 authorized $310 million[18] for a long list of flood improvement projects,[19] to be maintained by the states,[20] and another $10 million for examinations and surveys.[21] It tasked the Corps of Engineers with "Federal investigations and improvements of rivers and other waterways" and tasked the Agriculture Department with "Federal investigations of watersheds and measures for run-off and waterflow retardation and soil erosion prevention on watersheds[.]"[22] This was a strong declaration of the need for flood mitigation and, again, for examinations and surveys of flood-prone areas. These policy objectives remain central to the nation's flood policy today.

---

[16] Act of April 13, 1934, ch. 121, 48 Stat. 589.

[17] Flood Control Act of 1936, ch. 688, § 1, 49 Stat. 1570.

[18] *Id.* § 9, 49 Stat. at 1596.

[19] *Id.* § 5, 49 Stat. at 1572 – 92.

[20] *Id.* § 3(c), 49 Stat. at 1571.

[21] *Id.* § 9, 49 Stat. at 1596 – 97.

[22] *Id.* § 2, 49 Stat. at 1570.

6. 1950 – Federal Disaster Assistance

After World War II, Congress enacted a disaster relief law, stating:

> "it is the intent of Congress to provide an orderly and continuing means of assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary."[23]

This law authorized $5 million for its purposes.[24]

7. 1954 – Watershed Protection and Flood Prevention Act

In 1954, Congress declared:

> "That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and that it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages and of furthering the conservation, development, utilization, and disposal of water and thereby of preserving and protecting the Nation's land and water resources."[25]

This law authorized works of improvement for flood prevention and agriculture in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres.[26] It tasked the Agriculture Department, upon state request, with conducting investigations and surveys, to determine the soundness and a cost-benefit analysis of plans for improvement, and to enter into agreements with local organizations, and to provide federal assistance.[27] This law authorized the agriculture Department, in cooperation with other Federal agencies and with States and local agencies, to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs.[28]

---

[23] Act of September 30, 1950, ch. 1125, 64 Stat. 1109.

[24] *Id.* § 8, 64 Stat. at 1111.

[25] Watershed Protection and Flood Prevention Act, ch. 656, 68 Stat. 666 (1954).

[26] *Id.* § 2, 68 Stat. at 666 and § 4, 68 Stat. at 667.

[27] *Id.* § 3, 68 Stat. at 666.

[28] *Id.* § 6, 68 Stat. at 668.

8. 1955 – Examinations and Surveys

In reaction to hurricanes on the eastern seaboard, Congress acted again to require "an examination and survey to be made of the eastern and southern seaboard of the United States with respect to hurricanes, with particular reference to areas where severe damages have occurred."[29] This survey was to include "data on the behavior and frequency of hurricanes, and the determination of methods of forecasting their paths and improving warning services, and of possible means of preventing loss of human lives and damages to property, with due consideration of the economics of proposed breakwaters, seawalls, dikes, dams, and other structures, warning services, or other measures which might be required."[30] Congress wanted additional ability to predict where hazards were likely to occur.

9. 1956 – Attempted Flood Insurance

Finding flood insurance unavailable, Congress tried to create a federal flood insurance program in 1956.[31] Congress never appropriated funds for this program, so it was not implemented.[32] Nevertheless, it is instructive because it set a model for flood insurance policies today. As with flood insurance today, the 1956 program was designed to be an "adjunct" to complement, rather than to replace, preventive and protective measures:

> "The Congress finds that in the case of recurring natural disasters, including recurring floods, insurance protection against individual and public loss is not always practically available through private or public sources. With specific reference to insurance against flood loss, the Congress finds that insurance against certain losses resulting from this peril is not so available. Since preventive and protective means and structures against the effects of these disasters can never wholly anticipate the geographic incidence and infinite variety of the destructive aspects of these forces, the Congress finds that the safeguards of insurance are a necessary adjunct of preventive and protective means and structures."[33]

One of the purposes of this program was "to encourage private insurance companies to write insurance covering the extent of the risks above [$10,000 per policy for property insurance and $250,000 per person] and to provide Federal reinsurance to the extent

---

[29] Act of June 15, 1955, ch. 140, 69 Stat. 132.

[30] *Id.* § 2.

[31] Federal Flood Insurance Act of 1956, ch. 1025, 70 Stat. 1078.

[32] "In 1956 Congress passed the Federal Flood Insurance Act, but failed to appropriate funds for the administration of the Act because there were not adequate mitigation measures to reduce the incidence of flood damage." S. Rep. 93-583 (1973) (accompanying the Flood Disaster Protection Act of 1973).

[33] Federal Flood Insurance Act of 1956, § 2(a), 70 Stat. 1078.

desirable and necessary to carry out this purpose."[34] As today, premiums would not be fully actuarial. An Administrator would set "estimated rates" for premiums that would be sufficient to pay claims "over a reasonable period of years" and the insurance cost would not be less than 60 percent of the "estimated rates[.]"[35] At the same time, Congress directed the Administrator to design costs to "achieve marketability[.]"[36] As the premiums would not necessarily cover the cost of claims, Congress authorized the Administrator to borrow $500 million from the Treasury.[37]

No insurance or federal loans were permitted for a property in violation of state or local flood zoning laws.[38] In addition, insurance or loans required the property's locality to have adopted and kept in effect zoning restrictions that the Administrator deemed necessary "to reduce, within practicable limits, damages from flood in such location."[39] Incentives to comply with flood laws are a critical aspect of flood policies today.

10. Flood Control Act of 1960

The Flood Control Act of 1960[40] provided, among other things, for identification of areas subject to floods:

> "[I]n recognition of the increasing use and development of the flood plains of the rivers of the United States and of the need for information on flood hazards to serve as a guide to such development, and as a basis for avoiding future flood hazards by regulation of use by States and municipalities, the Secretary of the Army, through the Chief of Engineers, Department of the Army, is hereby authorized to compile and disseminate information on floods and flood damages, including identification of areas subject to inundation by floods of various magnitudes and frequencies, and general criteria for guidance in the use of flood plain areas; and to provide engineering advice to local interests for their use in planning to ameliorate the flood hazard[.]"[41]

It authorized $1 million annually for this purpose.[42]

B. National Flood Insurance Act of 1968

---

[34] *Id.* § 2(b)(2).

[35] *Id.* § 7(a), 70 Stat. at 1080.

[36] *Id.*

[37] *Id.* § 15(e), 70 Stat. at 1084.

[38] *Id.* § 12(b), 70 Stat. at 1082.

[39] *Id.* § 12(c).

[40] Title II of Pub. L. No. 86-645, 74 Stat. 480, 488, given a short title in § 212, 74 Stat. at 502.

[41] *Id.* § 206(a), 74 Stat. at 500.

[42] *Id.* § 206(b), 74 Stat. at 500.

The NFIA created the NFIP. The NFIA is based on Congressional findings and purposes that remain current law unamended:

> "(a) The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures[.]"[43]
> "(c) Congress further finds that . . . ***the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management***[.]"[44]
> * * *
> "It is the further purpose of this title to (1) ***encourage*** State and local governments to make ***appropriate land use adjustments*** to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government . . . ."[45]

Since 1968, at the beginning of national flood insurance, federal policy has been that federal flood insurance is "***integrally related to a unified national program for flood plain management***[.]" One of the purposes of the NFIA is and has always been to "***encourage*** . . . ***appropriate land use adjustments***" to minimize flood damage. It is therefore important, when the Agencies impact federal flood insurance, to consider the integration of flood insurance with floodplain management policies, and to consider how expanding private insurance could reduce community incentives to maintain sound floodplain management practices and could increase neighborhood blight.

---

[43] NFIA § 1302(a), 82 Stat. at 572-73. This remains current law, 42 U.S.C. § 4001(a).

[44] *Id.* § 1302(c), 82 Stat. at 573 (emphasis added). This remains current law, 42 U.S.C. § 4001(c).

[45] *Id.* § 1302(e), 82 Stat. at 573 (emphasis added). This remains current law, 42 U.S.C. § 4001(e).

1. Mapping as a Priority

Identifying flood-prone areas was an NFIA priority. The NFIA required the Department of Housing and Urban Development ("HUD"), in consultation with several federal, state, and local agencies, to:

> "(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act, and (2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas, within fifteen years following such date."[46]

2. Criteria for Land Management and Use

Congress required HUD to study existing flood controls, including related laws, and to develop "comprehensive criteria" to improve long-range land management and use of flood-prone areas, as follows. Congress authorized HUD to investigate:

> "the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention[.]"[47]

These investigations were to include, but not be limited to:

> "laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions."[48]

Congress required HUD to:

> "develop comprehensive criteria designed to encourage, where necessary, the adoption of permanent State and local measures which, to the maximum extent feasible, will–
>
> (1) constrict the development of land which is exposed to flood damage where appropriate,
>
> (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
>
> (3) assist in reducing damage caused by floods, and

---

[46] *Id.* § 1360, 82 Stat. at 587.

[47] *Id.* § 1361(a) 82 Stat. at 587.

[48] *Id.* § 1361(b) 82 Stat. at 587.

(4) otherwise improve the long-range land management and use of flood-prone areas,

and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures."[49]

3. *The NFIP Is Based on Incentives*

The NFIP does not require state and local governments to adopt or enforce flood prevention or mitigation measures even though they are critical. Nor does it require all property owners in flood-prone areas to purchase flood insurance. The NFIP is based on incentives.

Congress limited flood insurance availability to qualified communities that have:

> "(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and
> (2) given satisfactory assurance that by June 30, 1970, permanent land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 1361, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available."[50]

More specifically, a "positive interest" and "satisfactory assurance" were not enough. Within communities that were eligible for insurance under the NFIP, new NFIP flood insurance coverage was permissible after June 30, 1970 only in areas where an appropriate public body has adopted "permanent land use and control measures (with effective enforcement provisions) which the Secretary finds are consistent with the comprehensive criteria for land management and use under section 1361."[51] Congress prohibited new insurance in areas that are "in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas."[52]

That is, Congress used federal flood insurance availability as an incentive for localities to undertake land use measures to prevent flood damages. The land use restrictions can be costly, but the NFIP incentives were designed to outweigh the costs of adopting sensible land use measures. By participating in the NFIP, communities could enable their

---

[49] *Id.* § 1361(c) 82 Stat. at 587.

[50] *Id.* § 1305(c), 82 Stat. at 574. Congress extended this June 30, 1970 deadline by 18 months in 1969.

[51] *Id.* § 1315, 82 Stat. at 580. Congress extended this June 30, 1970 deadline by 18 months, and replaced the word "permanent" with "adequate" land use and control measures, in 1969, as described below.

[52] *Id.* § 1316, 82 Stat. at 580.

residents to avail themselves of the NFIA's subsidized flood insurance. The subsidy, with the potential loss of federal disaster assistance for losses that could have been covered by the insurance, is an incentive for citizens to encourage their local authorities to participate in the NFIP.

These incentives remain a critical aspect of federal flood policies today. If private flood insurance were widely available, the incentives for communities to participate in the NFIP's floodplain management would need to be replaced with alternative incentives.

4. How the NFIA Subsidizes Flood Insurance

The NFIA flood insurance subsidy is explicit. The NFIA required HUD, first, to estimate "risk premium rates" on an actuarial basis, and, second, to estimate and set by regulation lower "chargeable" rates that encourage purchase of flood insurance.

First, HUD was to estimate actuarial "risk premium rates":

> "(a) [HUD] . . . shall from time to time estimate, on an area, subdivision, or other appropriate basis–
> (l) the risk premium rates for flood insurance which–
> (A) based on consideration of the risk involved and accepted actuarial principles, and
> (B) including–
> (i) the applicable operating costs and allowances set forth in the schedules prescribed under section 1311 and reflected in such rates, and
> (ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates,
> would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available . . . ."[53]

Second, the NFIA required HUD to estimate:

> "the rates, if less than the [risk premium] rates estimated under paragraph (1) [above], which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this title[.]"[54]

These lower premiums are the "chargeable" premiums, as set by regulation:

> "On the basis of estimates made under section 1307 and such other information as

[53] *Id.* § 1307(a)(1), 82 Stat. at 576, today at 42 U.S.C. § 4014(a).

[54] *Id.* § 1307(a)(2), 82 Stat. at 576, today at 42 U.S.C. § 4014(a)(2).

> may be necessary, the Secretary shall . . . prescribe by regulation–
> (1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 1305 (at less than the estimated risk premium rates under section 1307(a)(1), where necessary) . . . ."[55]
>
> "(b) Such [chargeable] rates shall, insofar as practicable, be–
> (1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, floodproofing, flood forecasting, and similar measures.
> (2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this title, and
> (3) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 1307(a)(1) and the estimated rates under section 1307(a)(2)."[56]

Moreover, Congress did not require reserves to cover all losses. Rather, § 1308(b)(2) above was, and is today, explicit that the reserves were to cover "anticipated losses, or [ ] less than such amount" but not more than that amount. That is, Congress made insurance available at reasonable rates to encourage purchase, even though rates had to be subsidized.

As described below, the Biggert-Waters generally reduced NFIP subsidies, but Congress restored them less than two years later. Federal law today subsidizes federal flood insurance.

5. Borrowing From Treasury

Additionally making the subsidy explicit, the program was designed to rely on Congressional appropriations.[57] The NFIA repealed most of the 1956 flood insurance statute, but it did not repeal § 15(e),[58] which authorized the Administrator to borrow from Treasury. The NFIA transferred this authority to HUD.[59] Section 15(e) of the 1956 law had Treasury set the interest rate, and capped borrowing at $500 million, although the President could increase the cap. The 1968 law amended this to require Treasury to set

[55] *Id.* § 1308(a), 82 Stat. at 576, today at 42 U.S.C. § 4015(a).

[56] *Id.* § 1308(b), 82 Stat. at 577, today at 42 U.S.C. § 4015(b).

[57] *Id.* § 1310(b)(3) 82 Stat. at 578 (Congressional appropriations to be deposited into a National Flood Insurance Fund at Treasury), today at 42 U.S.C. § 4017(b)(3); and § 1376(a) 82 Stat. at 589 (authorizing appropriations to carry out Title XIII), today at 42 U.S.C. § 4127(a).

[58] Federal Flood Insurance Act of 1956, § 15(e), 70 Stat. at 1084, today at 42 U.S.C. § 2414(e).

[59] NFIA § 1309(a), 82 Stat. at 577, today at 42 U.S.C. § 4016.

the rate at a market rate,[60] and capped the borrowing at $250 million.[61]

This insurance subsidy was unavailable for properties built in special flood hazard areas – if construction or substantial improvement of a property began after the property was identified as in an SFHA, the chargeable rate had to be at least the estimated risk premium rate, rather than at the lower chargeable rate.[62] This incentive was designed to promote sensible land use.

6. *NFIA Cost Controls*

The insurance subsidy was available for single-family homes for coverage up to $17,500 ($30,000 if the property had more than one dwelling unit).[63] In addition, Congress capped the total amount of flood insurance outstanding at $2.5 billion.[64]

C. *1969 NFIA Amendments to Promote and Expand Subsidized Insurance*

The NFIA incentives proved insufficient, and Congress quickly acted to make them more attractive.

1. *Emergency NFIP Implementation*

Congress enacted a provision "for the purpose of providing flood insurance coverage at the earliest possible time" and before the end of 1971.[65] Congress required HUD to establish flood insurance premiums "without regard to any estimated risk premium rates which would otherwise be determined under section 1307[.]"[66] That is, insurance would be available although HUD had not estimated actuarial risk premium rates as originally intended.

Congress also provided communities additional time to adopt local flood control measures.

---

[60] *Id.* § 1303(a)(1), 82 Stat. at 573.

[61] *Id.* § 1309(a), 82 Stat. at 577.

[62] *Id.* § 1308(c), 82 Stat. at 577.

[63] Insurance coverage on single-family residential properties in excess of $17,500 per single family dwelling, or $30,000 if it contained more than one dwelling unit, required the premiums to be no less than the estimated premium rates, *i.e.*, insurance coverage below these caps was subsidized. NFIA § 1306(b), 82 Stat. at 575.

[64] NFIA § 1319, 82 Stat. at 581.

[65] Housing and Urban Development Act of 1969, Pub. L. No. 91-152, sec. 408, 83 Stat. 379, 396 – 97, adding NFIA § 1336(a), today at 42 U.S.C. § 4056. Congress incorporated by reference into this provision the date that is in 42 U.S.C. § 4026. This is the date by which the NFIP will need reauthorization, currently September 30, 2017.

[66] *Id.* sec. 408, 83 Stat. at 397, adding NFIA § 1336(b).

- Congress provided an additional 18 months for communities to provide HUD with the NFIA § 1305(c)(2) "satisfactory assurance" that they would adopt permanent land management criteria, originally required by June 30, 1970.[67]
- Congress similarly extended by 18 months the NFIA § 1315 prohibition on new insurance policies after June 30, 1970, in communities that had sufficient permanent land use and control measures.[68] Congress also replaced the section 1315 and section 1361(c) requirement that these measures be "permanent" with the requirement that they be "adequate".[69]

2. *Mudslides as a New Covered Peril*

In the same law, Congress also extended the NFIP's covered perils to include mudslides:

> The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this title for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground."[70]

Congress did so by adding mudslides to the NFIA definition of flood:

> "The term 'flood' shall also include inundation from mudslides which are caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such mudslides) the purposes of this title and the

---

[67] *Id.* sec. 410(a), 83 Stat. at 397, amending NFIA § 1305(c)(2).

[68] *Id.* sec. 410(b)(1), 83 Stat. at 397, amending NFIA § 1315.

[69] *Id.* sec. 410(b)(2) and (c), 83 Stat. at 397, amending NFIA § 1315 and § 1361(c).

[70] *Id.* sec. 409(a), 83 Stat. at 397, adding NFIA § 1302(f).

objectives of the program."[71]

D. The Flood Disaster Protection Act of 1973 Expanded NFIA Policies

Congress again enacted major flood legislation in the Flood Disaster Protection Act of 1973 ("FDPA").[72] Congress set out finding and purposes as follows:

> "(a) The Congress finds that–
> (1) annual losses throughout the nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;
> (2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;
> (3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;
> (4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;
> (5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and
> (6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage so that they will be indemnified for their losses in the event of future flood disasters.
>
> (b) The purpose of this Act, therefore, is to–
> (1) substantially increase the limits of coverage authorized under the national flood insurance program;
> (2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;
> (3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plain ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and
> (4) require the purchase of flood insurance by property owners who are being

---

[71] *Id.* sec. 409(b), 83 Stat. at 397, adding NFIA § 1370(b).

[72] Pub. L. No. 93-234, 87 Stat. 975.

assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards."[73]

1. Purchase Mandate

The FDPA introduced the Purchase Mandate, with two aspects:

- Federal agencies are prohibited from approving financial assistance for acquisition or construction of property in an SFHA if NFIP flood insurance is available unless the property is insured, for the economic or useful life of the project, to the lesser of the development cost (less land value) or the maximum NFIP coverage available.[74]
- Certain federal agencies must direct institutions they regulate not to make, increase, extend, or renew a loan on real property or a mobile home in an SFHA if NFIP flood insurance is available unless the property is insured for the term of the loan by flood insurance up to the lesser of the loan amount or the maximum NFIP coverage available.[75]

2. Incentives for NFIP Participation

The FDPA provided incentives for communities in SFHAs to participate in the NFIP. Participation enabled the community to access federal assistance, including mortgage loans from federally regulated lenders.

- Financial assistance for the acquisition or construction of property in an SFHA is prohibited unless the community participates in the NFIP.[76]
- Certain federal agencies are required to prohibit financial institutions they regulate from "making increasing, extending, or renewing" loans on real estate or mobile homes in special flood hazard areas unless the community participates in the NFIP.[77]

Congress required notice to affected communities. Congress required HUD to identify all flood plain areas that have special flood hazards within six months, rather than within five years as under the NFIA.[78] HUD was to notify each known flood-prone community

[73] *Id.* § 2, 87 Stat. at 975-76.

[74] *Id.* § 102(a), 87 Stat. at 978.

[75] *Id.* § 102(b), 87 Stat. at 978.

[76] *Id.* § 202(a), 87 Stat. at 982.

[77] *Id.* § 202(b), 87 Stat. at 982. Congress amended this in 1977, as described below.

[78] *Id.* sec. 201(a), 87 Stat. at 982, referencing NFIA § 1360(1).

that was not participating in the NFIP about its flood hazards.[79] A community with special flood hazards could either apply to participate in the NFIP or establish that it is not seriously flood-prone or that it has corrected its hazards through floodworks or other flood control methods.[80] This also applies to communities that later are identified as having special flood hazard areas.[81]

3. *New Construction at Estimated Premium Rates*

The FDPA amended NFIA § 1308(c), which required flood insurance at the more expensive estimated risk premium rates for new construction or substantial property improvements on properties in special flood hazard areas. Under the NFIA, this went into effect only after HUD had identified whether the property was in an SFHA,[82] which was to have been within five years of the NFIA's enactment.[83] Congress enacted the FDPA just over five years after the NFIA. The FDPA amended this to apply the estimated risk premium rates to new construction on the later of December 31, 1974 [one year after the FDPA's enactment] or when the property is determined to be in an SFHA.[84]

4. *Expedited Mapping*

The FDPA required HUD "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."[85] Several agencies, and all "Federal agencies engaged in the identification or delineation of flood-risk zones shall, in consultation with the Secretary, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones in order to assist the Secretary to meet the deadline established by this section."[86]

5. *Increased Subsidized Coverage*

The FDPA increased the amount of subsidized flood insurance coverage. Under the NFIA, subsidized premiums were only available for single-family properties up to $17,500 ($30,000 if it contained more than one dwelling unit). The FDPA increased these to $35,000 per single-family dwelling, or $100,000 if it contained more than one

---

[79] *Id.* § 201(a), 87 Stat. at 982.

[80] *Id.* § 201(b), 87 Stat. at 982.

[81] *Id.* § 201(c), 87 Stat. at 982.

[82] NFIA § 1308(c), 82 Stat. at 577.

[83] NFIA § 1360(1), 82 Stat. at 587.

[84] FDPA sec. 103, 87 Stat. at 978-79, amending NFIA § 1308(c).

[85] *Id.* sec. 204(a), 87 Stat. at 983, adding NFIA § 1360(b).

[86] *Id.* sec. 204(a), 87 Stat. at 983, adding NFIA § 1360(c).

dwelling unit. In Alaska, Hawaii, the Virgin Islands, and Guam, the caps increased to \$50,000 per single-family dwelling, or \$150,000 if it contained more than one dwelling unit.[87]

6. *Community Notice*

The law required HUD to consult with local officials regarding "notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies[.]"[88]

The FDPA added to the NFIA a requirement that HUD publish flood elevation determinations in the *Federal Register* and send them to the affected community.[89] It provided property owners a right to appeal to the local government and for the community to appeal to HUD.[90] After a final HUD determination, the community has time to adopt local land use and control measures.[91] It provided for appeal to a federal district court as well.[92]

7. *Borrowing From Treasury*

The FDPA increased the cap on borrowing from the Treasury from \$250 million in the NFIA to \$500 million, and to \$1 billion with the President's approval.[93] The FDPA also repealed an NFIA cap of \$2.5 billion on the total insurance outstanding.[94] In its place, the FDPA put a sunset date of June 30, 1977 on flood insurance.[95] Congress extended this date repeatedly,[96] most recently by Biggert-Waters, to extend the insurance through September 30, 2017.[97]

8. *Erosion as a New Covered Peril*

Similar to the 1969 addition of mudslides to the NFIA's protections, the FDPA added erosion damage:

---

[87] *Id.* sec. 101(a), 87 Stat. at 977, amending NFIA § 1306(b)(1)(A).

[88] *Id.* sec. 206, 87 Stat. at 983.

[89] *Id.* sec. 110, 87 Stat. at 980, adding NFIA § 1363(a).

[90] *Id.* sec. 110, 87 Stat. at 980 – 81, adding NFIA § 1363(b) and (c).

[91] *Id.* sec. 110, 87 Stat. at 981, adding NFIA § 1363(e).

[92] *Id.* sec. 110, 87 Stat. at 981, adding NFIA § 1363(f).

[93] *Id.* sec. 104, 87 Stat. at 979, amending NFIA § 1309(a).

[94] *Id.* sec. 105, 87 Stat. at 979, amending NFIA § 1319.

[95] *Id.* sec. 105, 87 Stat. at 979, amending NFIA § 1319.

[96] 42 U.S.C. § 4026, as amended repeatedly.

[97] Biggert-Waters § 100203(b), 126 Stat. at 916.

> "The Congress also finds that (1) the damage and loss which may result from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems invoked in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or a available under this title for purposes of the flood insurance program protection against damage and loss resulting from the erosion and undermining of shorelines by waves or currents in lakes and other bodies of water exceeding anticipated cyclical levels."[98]

Again, Congress extended the reach of the NFIP by expanding the NFIA definition of flood:

> "The term 'flood' shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in paragraph (1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Secretary may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program."[99]

9. Agency FDPA Responsibilities

The FDPA required that several agencies, today the Agencies, "shall, in cooperation with the Secretary, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act."[100]

E. Congress Enacted Several Flood Laws After the FDPA and Before 1994

1. Housing and Community Development Act of 1974

---

[98] FDPA sec. 108(a), 87 Stat. at 979-80, adding NFIA§ 1302(g).

[99] *Id.* sec. 108(b), 87 Stat. at 980, adding NFIA § 1370(c).

[100] *Id.* sec. 205(b), 87 Stat. at 983, today at 42 U.S.C. § 4128(b).

In 1974, Congress added a requirement that lenders subject to the Purchase Mandate notify borrowers and lessees of special flood hazards, as a condition of making, increasing, extending, or renewing loans on property in special flood hazard areas.[101]

This 1974 law also added the following to NFIA § 1307:

> "[A]ny community that has made adequate progress, acceptable to the Secretary, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Secretary, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section [NFIA § 1307] if such flood protection system had been completed. The Secretary shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed."[102]

Estimated risk premium rates are based on "a consideration of the risks involved[.]"[103] This amendment permitted risk premium rates to be estimated as if the flood protection were complete in the specified circumstances.

2. *Housing and Community Development Act of 1977*

In 1977, Congress permitted federally regulated lenders to make mortgage loans in SFHAs in communities that do not participate in the NFIP, and required the lenders to notify the borrower whether, in the event of a flood, federal disaster assistance would be available.[104] Congress retained the requirement that loans in SFHAs have flood insurance if available.

The law also authorized appeals of mapping a property into a special flood hazard area.[105]

---

[101] Housing and Community Development Act of 1974, Pub. L. No. 93-383, sec. 816(a), 88 Stat. 633, 739, adding NFIA § 1364.

[102] *Id.* sec. 816(b), 88 Stat. at 739, adding NFIA § 1307(e).

[103] NFIA § 1307(a)(1)(A), today at 42 U.S.C. § 4014(a)(1)(A)(i).

[104] Housing and Community Development Act of 1977, Pub. L. No. 95-128, sec. 703(a), 91 Stat. 1111, 1144, amending FDPA § 202(b).

[105] *Id.* sec. 704(d), 91 Stat. at 1146-47, adding FDPA § 201(e).

3. Flood Functions Transferred to FEMA

In 1979, by Executive Order President Jimmy Carter transferred HUD's flood policy functions to the newly-created FEMA.[106] In 1983, Congress amended the NFIA to transfer HUD responsibilities to FEMA.[107] This 1983 law also required FEMA to submit a plan to Congress by September 30, 1984 "a plan for bringing all communities containing flood risk zones into full program status by September 30, 1987."[108]

4. Housing and Community Development Act of 1987

In 1987, Congress enacted a law that permitted insurance payments to demolish or relocate a flood-insured structure along the shore that is subject to imminent collapse or subsidence from erosion or undermining from waves exceeding anticipated cyclical levels.[109]

5. SFIP Fee for Fund Floodplain Management and Mapping

In 1990, Congress required SFIP policyholders to pay FEMA a federal policy fee to pay for "administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)[.]"[110] It required chargeable premium rates, with the new fee, to cover the same costs.[111]

That is, SFIP fees pay for important floodplain management and FEMA's flood hazard mapping. Private policies do not. We believe the Agencies should take this into consideration as part of this rulemaking to avoid neighborhood blight.

F. National Flood Insurance Reform Act of 1994

In 1994, Congress enacted the National Flood Insurance Reform Act of 1994

106 Executive Order 12127, 44 Fed. Reg. 19367 (April 3, 1979).

107 Act of November 30, 1983, Pub. L. No. 98-181 sec. 451(d), 97 Stat. 1153, 1229, amending NFIA generally.

108 *Id.* sec. 451(d)(7), 97 Stat. at 1229, adding NFIA § 1360(d).

109 Housing and Community Development Act of 1987, Pub. L. No. 100-242, sec. 544(a), 101 Stat. 1815, 1940, adding NFIA § 1306(c).

110 Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, sec. 2302(e)(1)(C) and (D), 104 Stat. 1388, 1388-24, adding NFIA § 1307(a)(1)(B)(iii) and amending § 1307(a)(2).

111 *Id.* sec. 2302(e)(2)(A)(iii), 104 Stat. at 1388-24, redesignating and amending NFIA § 1308(b)(3).

("NFIRA"),[112] making significant reforms regarding flood insurance, floodplain management, and flood risk mitigation.

1. Redefined Agencies and New Rulewriting Authority

The NFIRA amended the FDPA definition of "Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions[.]" The amendments replaced this unwieldy term with "Federal entity for lending regulation[.]"[113] Originally, these agencies were the Federal Reserve, Federal Deposit Insurance Corporation ("FDIC"), Office of the Comptroller of the Currency ("OCC"), Federal Home Loan Bank Board ("FHLBB"), Federal Savings and Loan Insurance Corporation ("FSLIC"), and the National Credit Union Administration ("NCUA").[114] The NFIRA removed the FHLBB and FSLIC, and added the Office of Thrift Supervision ("OTS") and the Farm Credit Administration.[115] The law added the same (amended) definition to the NFIA, which previously had not defined either the old or the amended term.[116] Today, both definitions omit the OTS.[117]

In addition, the NFIRA authorized FEMA and "any appropriate Federal agency" to issue any regulations necessary to carry out the NFIRA and the amendments it made.[118]

2. Increased Flood Insurance Coverage

Congress, finding insufficient flood insurance coverage in place, acted to increase borrowers' flood insurance coverage. A significant change was to authorize mortgage servicers to force-place flood insurance, at any time during the life of a loan, if a borrower who was required to have it allowed coverage to lapse.[119] The Purchase Mandate is triggered when lenders "make, increase, extend, or renew" loans, but it is not triggered at other times, such as when insurance lapses.[120] Before Congress enacted this

---

[112] National Flood Insurance Reform Act of 1994, enacted as Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat. 2160, 2255 – 2287.

[113] *Id.* sec. 511(a)(1), 108 Stat. at 2255, amending FDPA § 3(a)(5).

[114] FDPA § 3(a)(5), 87 Stat. at 977.

[115] NFIRA sec. 511(a)(1), 108 Stat. at 2255, amending FDPA § 3(a)(5).

[116] *Id.* sec. 512(a)(3), 108 Stat. at 2256, adding NFIA § 1370(a)(9).

[117] 42 U.S.C. § 4003(a)(5) (FDPA); 42 U.S.C. § 4121(a)(9) (NFIA).

[118] NFIRA § 583, 108 Stat. at 2287.

[119] *Id.* sec. 524, 108 Stat. at 2259 – 60, adding FDPA § 102(e).

[120] "It is the view of the Committee that the making, increasing, extension or renewal of a loan serves as a 'tripwire' of sorts for compliance with the flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes the opportunity for compliance action by a lender increasingly likely, as borrowers obtain new loans on existing structures, for example, or refinance existing loans." H. Rep. 103-414 (1994).

NFIRA provision, there had been uncertainty about whether mortgage servicers had authority to require flood insurance absent a Purchase Mandate trigger.[121] Congress made clear that coverage is required even absent a trigger.

Congress also increased flood insurance in other ways:

- Congress expanded the Purchase Mandate to federal agency lenders and to the GSEs.[122]
- Congress generally required servicers to escrow flood insurance premiums.[123]
- Congress authorized lenders to assess a flood hazard determination fee, and preempted contrary state law.[124]
- Congress required FEMA to develop a standard flood hazard determination form.[125]
- Congress prohibited federal disaster relief assistance in a flood disaster area for repair, replacement, or restoration of a property if the owner had received flood disaster assistance that was conditional on having flood insurance but who did not have the required insurance.[126]
- Congress extended the FDPA § 102(a) ban on financial assistance relating to properties in SFHAs, where federal flood insurance is available, unless the property has flood insurance, to require the insurance "during the life of the property" rather than the life of the project, even if ownership transfers.[127]

3. *Incentives for Floodplain Management and Flood Risk Mitigation*

The NFIRA put a heavy emphasis on floodplain management and on flood risk mitigation using incentives.

The law required FEMA to carry out its pre-existing Community Rating System ("CRS"), a voluntary program to encourage community floodplain management activities exceeding NFIP standards; to encourage adoption of more effective measures that protect

[121] "This requirement . . . clarifies existing servicers as one of several components in a renewed effort to ensure compliance with purchase and maintenance of federal flood insurance. The Committee has found that while some borrowers purchase flood insurance at the time of loan origination, this authority has been used sparingly because of concerns raised by lenders about its validity. Section 204 clarifies any ambiguities: the lender or servicer is now clearly authorized, and required, to purchase the insurance on behalf of the borrower who refuses to do so voluntarily, and to recover premiums and fees incurred as a result of that purchase." H. Rep. 103-414 (1994).

[122] NFIRA sec. 522(a), 108 Stat at 2257 – 58, amending FDPA § 102(b).

[123] *Id.* sec. 523, 108 Stat at 2258 – 59, adding FDPA § 102(d).

[124] *Id.* sec. 526, 108 Stat. at 2262 – 63, adding FDPA § 102(h).

[125] *Id.* sec. 528, 108 Stat. at 2264, adding NFIA § 1365.

[126] *Id.* sec. 582(a), 108 Stat. at 2286.

[127] *Id.* sec. 582(c), 108 Stat. at 2287, amending FDPA§ 102(a).

natural and beneficial floodplain functions; to encourage floodplain and erosion management; and to promote the reduction of flood insurance losses.[128]

Congress required discounted flood insurance premiums for communities participating in CRS, based on the estimated risk reduction from the voluntary measures.[129] These remain in place today.[130] We urge the Agencies to consider the effects of this rulemaking on these incentives, which can prevent neighborhood blight.

The NFIRA included flood risk mitigation incentives:

- The law repealed authority to purchase flood-damaged insured properties.[131]
- The law terminated a 1988 program of paying under flood insurance contracts to demolish or relocate properties at risk of damage from erosion or waves.[132]

Instead, the law required FEMA to provide grants to states and communities for "planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this title."[133] Congress included a prerequisite for these grants:

> "To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the Director, a flood risk mitigation plan (in this section referred to as a 'mitigation plan'), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the Director under section 1361, and provides protection against flood losses to structures for which contracts for flood insurance are available under this title. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing."[134]

Congress directed how the grants were to be used for mitigation assistance:

> "Amounts provided under this section (other than [for planning]) may be used

---

[128] *Id.* sec. 541, 108 Stat. at 2268, adding NFIA § 1315(b)(1).

[129] *Id.* sec. 541, 108 Stat. at 2268, adding NFIA § 1315(b)(2) and (3).

[130] 42 U.S.C. § 4022(b)(2)

[131] NFIRA. sec. 551(a), 108 Stat. at 2269, repealing NFIA § 1362.

[132] *Id.* sec. 552, 108 Stat. at 2269, repealing NFIA § 1306(c); that provision was enacted in the Housing and Community Development Act of 1987, Pub. L. No. 100-242, sec. 544(a), 101 Stat. 1815, 1940 – 42 (enacted in 1988 despite the 1987 in its name).

[133] NFIRA sec. 553(a), 108 Stat. at 2270, adding NFIA § 1366(a).

[134] *Id.* sec. 553(a), 108 Stat. at 2270, adding NFIA § 1366(c).

> only for mitigation activities specified in a mitigation plan approved by the Director[.]"[135]

Congress directed that FEMA only approve mitigation plans for activities that "are technically feasible and cost-effective" and cost-beneficial.[136] Congress directed FEMA to prioritize "activities for repetitive loss structures and structures that have incurred substantial damage."[137]

Congress authorized FEMA to approve mitigation plans for several activities:

- To demolish or relocate coastal structures subject to imminent collapse or subsidence from erosion or flooding;
- To elevate, relocate, demolish, or floodproof structures in special flood hazard areas or in other areas of flood risk;
- For state and community acquisition of properties in special flood hazard areas or in other areas of flood risk, or properties substantially damaged by flood, consistent with sound land management and use;
- Minor physical mitigation efforts that do not duplicate flood prevention activities of other federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, but not major flood control projects unless FEMA determines they are the most cost-effective mitigation activities for the National Flood Mitigation Fund;
- Beach nourishment activities;
- Providing technical assistance by states to communities and individuals; and
- Other activities specified in a FEMA regulation or described in a state or community mitigation plan.[138]

4. *SFIPs Cover Increased Cost of Compliance*

Significant to this rulemaking, Congress authorized NFIP insurance to cover the cost of compliance with land use and control measures for repetitive loss structures, properties where flood damage repair costs exceed half of the structure value at the time of flood, and for properties that have flooded more than once.[139] Congress added a surcharge up to $75 on each insurance policy for this cost of compliance coverage.[140] This so-called ICC (increased cost of compliance) coverage provides policyholders in special flood hazard

---

[135] *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(1).

[136] *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(2).

[137] *Id.* sec. 553(a), 108 Stat. at 2271, adding NFIA § 1366(e)(4).

[138] *Id.* sec. 553(a), 108 Stat. at 2271-72, adding NFIA § 1366(e)(5). NFIRA sec 554, 108 Stat. at 2273-74, created the National Flood Mitigation Fund, separately from the National Flood Insurance Fund.

[139] NFIRA sec. 555(a), 108 Stat. at 2274, redesignating and amending NFIA § 1304(b).

[140] *Id.*

areas up to $30,000[141] to help pay the costs to bring their home or business into compliance with their community's floodplain ordinance after a flood.[142]

This is significant to the present rulemaking because private policies, under the proposal, could apparently meet the Purchase Mandate even if they do not provide ICC coverage. Policymakers needs to address the impact of reduced ICC coverage on communities after a flood because of the potential for neighborhood blight in the absence of ICC coverage.

5. *Improved Flood Hazard Mapping*

Just as it had been doing since the country's earliest federal flood policies, in the NFIRA Congress emphasized improved flood hazard mapping. The law created an interagency Flood Insurance Task Force,[143] a Task Force on Natural and Beneficial Functions of the Floodplain,[144] and a Technical Mapping Advisory Council.[145]

The law required FEMA:

- To assess the need to revise and update all floodplain areas and flood risk zones at least every five years.
- To update them as necessary, or on request of any state or local government that submits sufficient technical data justifying the request and that agrees to fund an amount FEMA determines, but not more than half of the cost of the requested revision or update.
- To make flood insurance rate maps available free of charge to several federal regulators, to state agencies directly responsible for coordinating the NFIP and to appropriate representatives of NFIP communities, and at a reasonable cost to all others.
- To publish any changes to flood insurance maps, and to publish compendia of all changes every six months.[146]

6. *Capped Flood Insurance Premiums*

The NFIRA made permanent a cap on premiums for federal flood insurance. Specifically, Congress had capped premium increases at ten percent per year several times for several periods. The NFIRA capped increases in chargeable premiums for

---

[141] FEMA's *Increased Cost of Compliance Coverage* webpage.

[142] *Id.*

[143] NFIRA sec. 561, 108 Stat. at 2275.

[144] *Id.* sec. 562, 108 Stat. at 2276.

[145] *Id.* sec. 576, 108 Stat. at 2280.

[146] *Id.* sec. 575, 108 Stat. at 2278-79, adding NFIA § 1360(e) through (j).

properties with a single risk classification at ten percent per year.[147]

G. *2004 Expansion of Increased Cost of Compliance Coverage*

In 2004, Congress expanded the increased cost of compliance coverage provisions.[148] The coverage had been available to pay for "compliance" with land use and control measures. This was broadened to cover implementing measures consistent with land use and control measures.[149] Coverage continued to be permitted for substantially damaged structures, but the requirement that the damage exceed half the property value was repealed.[150] Coverage was also permitted for properties for which an offer of mitigation assistance is made under the Flood Mitigation Assistance Program, the Repetitive Loss Priority Program and Individual Priority Property Program, the Hazard Mitigation Grant Program, and the Predisaster Hazard Mitigation Program.[151]

H. *The Biggert-Waters Act*

In 2012, Congress enacted the Biggert-Waters Act. This legislation introduced major flood reforms, not the least of which was to require more actuarial NFIP flood insurance premiums. Among other things, this law was intended:

> "to increase the role of private markets in the management of flood insurance risk"[152]
> "to achieve reforms to improve the financial integrity and stability of the program,"[153] and
> to "reduce the burden on taxpayers, and facilitate the creation of a private market that eliminates taxpayer risk over the long-term."[154]

Again, Congress called for significant new mapping efforts,[155] and mitigation efforts too numerous to detail here.

---

[147] *Id.* sec. 572(a)(2), 108 Stat. at 2277 –78, adding NFIA § 1308(e).

[148] Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Pub. L. No. 108-264, 118 Stat. 712.

[149] *Id.* sec. 105(a)(1) and (3), 118 Stat. at 723, amending NFIA § 1304(b).

[150] *Id.* sec. 105(a)(2), 118 Stat. at 723, amending NFIA § 1304(b)(2).

[151] *Id.* sec. 105(a)(4), 118 Stat. 712, 723, adding NFIA § 1304(b)(4).

[152] H. Rep. No. 112-102 at 1 (2011).

[153] *Id.*

[154] *Id.* at 21.

[155] Biggert-Waters secs. 100215, 100216, 100218 – 100221, 126 Stat. at 924 – 934.

1. Subsidy Reductions and Repeals

Biggert-Waters was notable for reducing and repealing the subsidies for flood insurance premiums. It did so by making the premiums risk-based in several ways, including the following:

- In estimating risk premium rates, Biggert-Waters required FEMA to consider "all costs, as prescribed by principles and standards of practice in ratemaking adopted by the American Academy of Actuaries and the Casualty Actuarial Society[.]"[156] The law also required the estimated risk premium rates to be to be "adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the" NFIP insurance fund,[157] including catastrophic loss years, in accordance with generally accepted actuarial principles.[158]
- Biggert-Waters phased out rates below the risk premium rate for severe repetitive loss properties; properties for which insurance claims had been paid in excess of the property value; commercial properties; and properties that, after enactment, incurred substantial damage or were substantially improved.[159]
- The law prohibited rates below the risk premium rates for insurance: on properties not insured on the date Biggert-Waters was enacted; on properties purchased after that date; after the property owner allowed a policy to lapse; or for owners who declined mitigation assistance offers.[160]
- Biggert-Waters doubled a cap on annual premium increases from ten percent to 20 percent.[161]

2. "Shall Accept" and the Definition of Private Flood Insurance

As to private insurance, Biggert-Waters did two things. First, it required that regulated lending institutions, federal agency lenders, and the GSEs "shall accept" private flood insurance to meet the Purchase Mandate.[162] Second, it defined the private flood insurance that meets the Purchase Mandate as largely the same as an SFIP.[163]

---

[156] *Id.* sec. 100205(b)(3), 126 Stat. at 918, adding NFIA § 1307(a)(1)(B)(iii).

[157] *Id.* sec. 100211(2)(E), 126 Stat. at 921, adding NFIA § 1308(b)(5).

[158] *Id.* sec. 100211(3), 126 Stat. at 921, adding NFIA § 1308(i).

[159] *Id.* sec. 100205(a)(1)(A), 126 Stat. at 917, amending NFIA § 1307(a)(2).

[160] *Id.* sec. 100205(a)(1)(B), 126 Stat. at 917, adding NFIA § 1307(g).

[161] *Id.* sec. 100205(c)(2)(B), 126 Stat. at 918, amending NFIA § 1308(e).

[162] *Id.* secs. 100239(a)(1)(C); (a)(2)(B); and (a)(3), 126 Stat. at 958 – 59, adding FDPA § 102(b)(1)(B); amending FDPA § 102(b)(2); and amending FDPA § 102(b)(3).

[163] Biggert-Waters sec. 100239(a)(4), 126 Stat. at 959 – 60, adding, among other provisions, FDPA § 102(b)(7).

For noncommercial loans, private policies meet the Biggert-Waters definition of private flood insurance when all of the following conditions are met:

- The insurer is licensed, admitted, or otherwise approved to sell insurance in the state where the insured property is.[164]
- The policy provides coverage "at least as broad" as an SFIP, "including when considering deductibles, exclusions, and conditions offered by the insurer[.]"[165]
- The policy requires the insurer to give 45 days notice of cancellation or non-renewal to the insured and the lender[166] and the policy includes information about SFIPs.[167]
- The policy includes "a mortgage interest clause similar to the clause contained in" an SFIP.[168]
- The policy contains "cancellation provisions that are as restrictive as" those in an SFIP.[169]

Taken together, the "shall accept" language and private insurance definition require acceptance of private flood insurance as long as the private insurance is similar to SFIP policies. Lenders, federal agency lenders, and the GSEs do not need to accept private insurance that, for example, has an unreasonably high deductible, that excludes perils that SFIP covers, or that does not name the lender or servicer as an additional loss payee.

I. Homeowner Flood Insurance Affordability Act of 2014

As FEMA began to implement the Biggert-Waters premium increases in 2013, the outcry was vehement. Congress quickly enacted the Homeowner Flood Insurance Affordability Act of 2014[170] ("HFIAA") to roll back the premiums increases generally.[171] It did not, however, amend the Biggert-Waters "shall accept" language or its definition of private flood insurance.

The HFIAA imposed premium surcharges an all NFIP insurance policies, $25 for policies on a primary residence and $250 for other policies.[172] The funds go to the National Flood

---

[164] *Id.* sec. 100239(a)(4), 126 Stat. at 960, adding FDPA § 102(b)(7)(A)(i), 42 U.S.C. § 4012a(b)(7)(A)(i).

[165] *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(B), 42 U.S.C. § 4012a(b)(7)(B).

[166] *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(i), 42 U.S.C. § 4012a(b)(7)(C)(i).

[167] *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(ii), 42 U.S.C. § 4012a(b)(7)(C)(ii).

[168] *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(C)(iii), 42 U.S.C. § 4012a(b)(7)(C)(iii).

[169] *Id.* sec. 100239(a)(4), adding FDPA § 102(b)(7)(D), 42 U.S.C. § 4012a(b)(7)(D).

[170] Pub. L. No. 113-89, 128 Stat. 1020.

[171] HFIAA secs. 3 – 6, 12, 14, 128 Stat at 1021 – 23 and 1025 – 26, among other things, amending the NFIA.

[172] *Id.* sec. 8(a), 128 Stat. at 1023 – 24, adding NFIA § 1308A.

Insurance Reserve Fund.[173] Private policies have no such surcharge. Policymakers should consider the impact of private flood policies, absent a surcharge being imposed, would have on FEMA's ability to make up for any lost surcharges.

II. THE FLOOD INSURANCE MARKET PARITY AND MODERNAZATION ACT (H.R. 2901 – 114th Congress)

In 2016, the House, but not the Senate, passed a bill, H.R. 2901 that would have amended the Biggert-Waters definition of private flood insurance policies by removing the requirement that private policies, under the definition, must be similar to SFIPs. It would not have repealed, however, the Biggert-Waters requirement that federal agency lenders and the GSEs "shall accept" private policies. (It would have repealed the requirement that mortgage lenders regulated by the Agencies accept private flood insurance.) In combination, these two amendments would have permitted homeowners to purchase inexpensive but insufficient insurance, and would have required agencies, including the GSEs, to accept that insurance coverage.

Mortgage servicers, acting on behalf of mortgage investors, including the GSEs, ensure that appropriate flood insurance policies remain in place, on properties in flood hazard areas where insurance is available, over the life of the mortgage loan. This is important because it ensures that in the event of a flood or other damage, the consumer's property is covered and repaired. Servicers have several procedures for making sure a property has, and benefits from, appropriate insurance:

- Throughout the life of the loan, servicers review insurance policies to make sure they cover appropriate perils and have reasonable deductibles. If not, servicers require additional protection.
- Servicers ensure that the insurance provider will be able to pay claims should they occur. If a borrower selects an insurer that lacks sufficient financial strength, servicers require the borrower to change insurers.
- If there is a claim, servicers, named as a loss payee on the insurance policy, require that the proceeds are used to repair the property. If the claim is a significant dollar amount, the servicer holds the proceeds and disburses them as repair work progresses.

H.R. 2901 would have interfered with each of these sensible protections. This was not the intent of the legislation, but it would have been the effect.

Promoting private flood insurance does not require permitting insufficient insurance. Private flood insurance and reasonable protections do, and should continue to, work hand-in-hand.

---

[173] *Id.* sec. 8(b), 128 Stat. at 1024, adding NFIA § 1310A(c)(4).

If enacted, H.R. 2901 would have amended the definition of private flood insurance for new loans, as well as for loans originated before enactment of the legislation. For new loans, even though the lender requires adequate flood insurance coverage at origination, when the policy renews, the consumer could have switched to a private policy that did not adequately insure the property. The GSEs would not have been able to reject the policy. For pre-existing GSE loans, consumers would have had a new statutory right to purchase private flood insurance coverage that would have been sufficient to protect the collateral backing the loan. In addition, the GSEs would not have been able to require that the mortgage servicer, operating on behalf of the GSEs, to be named as additional loss payees. This would have meant that consumers would have received the insurance proceeds directly and might have had an incentive to abandon the damaged property and keep the insurance proceeds.

Under this legislation, widespread private policies would have reduced the incentives for communities to participate in the NFIP, and retain and enforce sensible floodplain management practices. The bill did not address the effects of reducing this incentive, nor did it contain any alternative incentive.

III. COMMENTS on the FEDERAL REGULATORS 2016 PROPOSED REGULATION

A. Difficulty of Determining Whether Private Insurance Meets the Biggert-Waters Definition

Private insurers that want to sell, and mortgage investors, lenders, and servicers that want to accept, private flood insurance are faced with the difficulty of determining whether a private policy meets the Biggert-Waters definition. This is a significant hurdle because an SFIP takes 26 pages to detail what it does and does not cover. It has several features that make it very difficult to determine whether a private policy is sufficiently similar.

One significant difference between SFIPs and private policies is that SFIPs are not subject to state law. They provide:

> "This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law."[174]

Private insurance is governed by state law. SFIPs also differ from private policies in that private insurers cannot avail themselves of sovereign immunity or preemption of state

---

[174] SFIP § IX.

law. Private insurance litigation may be conducted in state court but litigation against FEMA under an SFIP must be in Federal court.[175] It is difficult to determine that a private policy is as broad as SFIPs given these differences.

B. Federal Agencies Propose Compliance Aid

In their 2016 joint proposed rulemaking, the federal financial regulators proposed a compliance aid to help determine whether a private flood insurance policy meets the Biggert-Waters definition of private flood insurance. The proposed compliance aid has three required components:

- A private flood insurance policy must include or be accompanied by a written summary demonstrating how the policy meets the definition of private flood insurance by identifying the policy provisions that meet each criterion in the definition, and by confirming that the insurer is regulated in accordance with that definition.
- The lender or servicer must verify in writing that the policy includes the provisions the insurer identified in the summary.
- The policy states that it meets the statutory private flood insurance definition.

The CMC appreciated the Agencies' efforts to assist with the difficulties in comparing SFIPs with private policies. In the CMC comment letter, we requested confirmation that, even if a policy does meet the statutory definition, investors, lenders, and servicers may reject the policy if it is inadequate for any safety and soundness reason. It would not be reasonable to construe the Biggert-Waters Act as requiring any unsafe or unsound mortgage practice, and we do not believe the Agencies proposed to require any unsafe or sound practice.

C. Proposed Discretionary Acceptance of Private Policies

The Agencies proposed to permit lenders and servicers discretion to meet their Purchase Mandate with private flood insurance that meets the Biggert-Waters definition, or that did not meet the that definition as long as the private policies have certain protections. For consumer loans, the proposal would permit private policies that differ from the statutory definition in the following ways:

[175] *Id.* § VII.r.

Statutory Definition	Proposal
The policy must contain a mortgage interest clause similar to the clause contained in an SFIP.[176]	The policy must cover the mortgagor(s) and mortgagee(s) as loss payees.
The policy must contain cancellation provisions that are as restrictive as the provisions contained in an SFIP.[177] The policy must require the insurer to give 45 days notice of cancellation or nonrenewal to the borrower and servicer, and notice to the borrower of the availability of NFIP insurance.[178]	The policy must provide for cancellation following reasonable notice to the borrower only for reasons permitted for SFIPs, in any case of nonpayment, and when mandated by state law.
The policy must provide coverage that is at least as broad as SFIP coverage, including when considering deductibles, exclusions, and conditions.[179]	The policy must either: • Define flood as in an SFIP, and contain coverage provisions as in an SFIP, including building coverage and personal property coverage if purchased; other coverages; and cover the increased cost of compliance; or • Provide coverage that is similar to SFIP coverage, including when considering deductibles, exclusions, and conditions. The lender or servicer would need to document a reasonable determination that the private policy provides "sufficient protection of the loan[.]"

The Agencies requested comment on (1) whether the phrase "sufficient protection of the loan" is adequately clear, (2) whether the proposed criteria for discretionary acceptance of private policies raise any safety and soundness risks for regulated lending institutions, and (3) whether the proposed criteria raise any consumer protection issues.

We believe the phrase "sufficient protection of the loan" is adequately clear for mortgage investors, lenders, and servicers, who have a strong interest in protecting their collateral. Discretionary acceptance necessarily means discretionary rejection, meaning that investors, lenders, and servicers are free to reject policies that provide insufficient

[176] 42 U.S.C. § 4012a(b)(7)(C)(iii).

[177] 42 U.S.C. § 4012a(b)(7)(D).

[178] 42 U.S.C. § 4012a(b)(7)(C)(i) and (ii).

[179] 42 U.S.C. § 4012a(b)(7)(B).

coverage for the loans. This ability to reject coverage that is insufficient is a safety and soundness protection. We do not believe the proposal raised any consumer protection issues because flood insurance that protects mortgaged property, for consumers whose homes are in SFHAs, is a consumer protection, and has been required for years.

However, the Agencies did not ask whether the proposal raised any broader flood policy concerns. We recommended that the Agencies address this possibility.

- It did not appear that the Agencies addressed the fact that if private insurance were widely available, communities would have less incentive to require and enforce floodplain management practices of the NFIP. If private insurance will reduce this incentive, an alternative incentive will be necessary.
- The Agencies' proposal would apparently permit meeting the Purchase Mandate through private policies that do not provide ICC coverage. This could mean that in the event of a flood, homeowners might not be able to restore their properties to meet the applicable standards.
- It does not appear that the Agencies weighed the fact that FEMA insurance fees support flood protections other than flood insurance, including mapping and floodplain management activities. These are critical to preventing flood damages. If private insurance would decrease FEMA's funding, Congress will need to provide alternate funding.

Congress requires the Agencies to consider flood policy concerns other than merely flood insurance. The FDPA requires that several agencies, including agencies that regulate financial institutions, "shall, in cooperation with the Administrator, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act."[180] That is, Congress directed the Agencies to consider all of their responsibilities under the FDPA.

In addition to their FDPA rulewriting responsibilities, the NFIRA authorized the Agencies to issue regulations to carry out the applicable provisions of, and amendments made by, the NFIRA.[181] Some of those NFIRA amendments are to the NFIA, meaning the Agencies have responsibilities to carry out NFIA purposes as well as FDPA purposes. The NFIRA amendments to the NFIA included the creation of ICC coverage.[182] We believe the Agencies should address ICC coverage beyond the context of flood insurance in isolation. The NFIRA amendments to the NFIA also include incentives, in the form of reduced flood insurance premiums, for communities to adopt and enforce measures that reduce the risk of flood and erosion damage, and in communities that have implemented

---

[180] FDPA § 205(b), 87 Stat. at 983, as amended, 42 U.S.C. § 4128(b).

[181] NFIRA § 583, 108 Stat. at 2281, 43 U.S.C. § 4001 note.

[182] *Id.* sec. 555(a)(2), 108 Stat. at 2274, adding NFIA § 1304(b), today at 42 U.S.C. § 4011(b).

measures that protect natural and beneficial floodplain functions.[183] These incentives are to promote measures that will reduce flood damages.

The CMC recommended that the federal financial regulators conduct a flood insurance rulemaking with thorough consideration of all NFIA, FDPA, NFIRA, and other flood policies, protections, and incentives. We urged the federal financial regulators to consider the effects of their rulemaking on all aspects of flood policies to help prevent unintended neighborhood blight.

IV. CONCLUSION

As Congress considers the reauthorization of the NFIP flood insurance this year, there is an opportunity for Congress to work with FEMA and the federal financial regulators to examine more broadly and improve upon our nation's flood policies.

Flood hazard mapping prevents development in areas that are only later discovered to be at risk of floods. Mapping can prevent floods from destroying buildings, and can prevent people from occupying flood-prone land. Prevention is certainly preferable to putting lives and property at risk. Unfortunately, the lack of mapping has been a chronic problem in flood policy is this country for the past century. We urge Congress to adopt measures that ensure adequate funding for mapping. In addition, we believe that the federal government should avail itself of the newer mapping technologies that are available and are being used in the private sector.

Reauthorization also provides an opportunity for the federal government to ensure that the incentives for NFIP participation remain, including its important floodplain management and mitigation practices. Sound flood practices are too critical to ignore.

We appreciate the opportunity to submit our remarks for the hearing record, and look forward to working with the Committee on these important issues as they are considered this year.

---

[183] *Id*. sec. 541(2), 108 Stat. at 2268 –69, adding NFIA § 1315(b), today at 42 U.S.C. § 4022(b).

REAUTHORIZATION OF THE NATIONAL FLOOD INSURANCE PROGRAM—PART II

THURSDAY, MAY 4, 2017

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:04 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order.

During our last flood insurance hearing, Mr. Wright outlined FEMA's four core principles for reauthorization, including: an on-time, multiyear reauthorization; increasing flood insurance coverage through both the NFIP and the private markets; addressing barriers to meeting the needs and demands of their customers; and enhancing the transparency of the program's financial framework.

Another takeaway from the hearing was that FEMA is still in the process of implementing some of the 2012 and 2014 reform's major provisions.

FEMA also continually receives recommendations for more improvements from groups that were created by the laws. For instance, both the re-established Technical Mapping Advisory Council and the newly established Office of the Flood Insurance Advocate recently released their annual reports outlining additional changes for mapping and consumer experience.

I encourage FEMA to continue its important work implementing previous reforms and making appropriate improvements. Even so, there is still much work to do.

The NFIP expires at the end of September unless reauthorized by Congress. Working together and balancing reforms that protect taxpayers and assist consumers, we can reauthorize the program on time.

To build upon our previous hearing, organizations representing a diverse set of the program's stakeholders join us today to provide their recommendations.

I look forward to engaging our witnesses on a number of important questions, including: how to offer consumers more choice by growing the private market and ensuring shared risk by both the Government and the private sector; how new and better technologies, such as LIDAR, can be more incorporated in mapping; how to continue toward risk-based rates while balancing affordability; and how long the program should be reauthorized.

Senator Brown and I continue, on a bipartisan basis, to receive the thoughts and concerns from the program's stakeholders. We have also been gathering priorities for the program from Committee Members.

I want to thank each of our witnesses today for joining us today and look forward to hearing your ideas.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. I appreciate your having this hearing today.

This is the Committee's second hearing on reauthorization of NFIP. As we have discussed before, flooding is the most common and costly natural disaster facing our constituents today. At my every Thursday morning coffee, there were a number of people there today interested in it. In my State, it may not be as important on the surface as a number of other States, but it clearly matters in pretty much every State of the Union. So thank you to the witnesses. Thank you for the work you have done.

With a growing population and a changing climate, our entire Nation will continue to grapple with this issue in the years ahead. Many often associated flooding with coastal States that bear the brunt of devastating hurricanes, like Katrina and Superstorm Sandy. We know this is an issue that affects people in my State and all other States. The sheer power of heavy rainfall combined with a river, stream, or other body of water can have tragic and costly results, as we are seeing right now in the Midwest.

In my own State, northwest Ohio, the flattest part of the State and generally the lowest part of the State, is also under threat of flooding today.

NFIP seeks to combat the effects of flooding through four interrelated components: flood insurance, floodplain management, floodplain mapping, and mitigation. Because these activities are intertwined, it will be important for us to be aware of how policy changes in one area can affect others.

Today we will hear stakeholders' views about reauthorization and the path forward for NFIP. I am also interested to hear your views about the implementation of authorizing bills we enacted in 2012 and 2014. FEMA is still working to implement many of these changes.

I look forward to continuing to work with Chairman Crapo and the Members of this Committee to strengthen the NFIP and the country's comprehensive approach to mitigating flood risk through a timely reauthorization, and we recognize, of course, the date of expiration. It is important for homebuyers that Congress not let this program expire.

Thank you.

Chairman CRAPO. Thank you, Senator Brown.

Today we will first receive testimony from Steve Ellis, vice president of Taxpayers for Common Sense, on behalf of the SmarterSafer Coalition.

Next we will hear from Michael Hecht, president and CEO of Greater New Orleans, Inc., on behalf of the Coalition for Sustainable Flood Insurance.

And then, finally, we will hear from Larry Larson, director emeritus and the senior policy advisor for the Association of State Floodplain Managers.

I want to remind our witnesses that we ask you to keep your oral testimony to 5 minutes. Your written testimony will be included in the record, and you will have ample opportunity to respond and supplement your first statements.

I also want to remind our Senators to honor the 5-minute rule in their questioning.

With that, please proceed, Mr. Ellis.

STATEMENT OF STEVE ELLIS, VICE PRESIDENT, TAXPAYERS FOR COMMON SENSE, ON BEHALF OF THE SMARTERSAFER COALITION

Mr. ELLIS. Thank you, Mr. Chairman. Good morning, Chairman Crapo, Ranking Member Brown, Members of the Committee. I am Steve Ellis, vice president of Taxpayers for Common Sense, a national nonpartisan budget watchdog. Thank you for inviting me to testify on the National Flood Insurance Program. With the recent flooding in several States, this hearing is tragically timely. My sympathies are with those who are affected by those floods.

Taxpayers for Common Sense is allied with SmarterSafer, a coalition in favor of promoting public safety through fiscally sound, environmentally responsible approaches to natural catastrophe policy. The coalition ranges from free market and taxpayer groups to consumer and housing advocates to environmental and insurance industry groups.

The NFIP is nearly $25 billion in debt and must be reformed to ensure it is financially sustainable, has sufficient incentives for reducing future flood damages and vulnerabilities, provides better protection for taxpayers, and that it promotes mitigation solutions that have long-term benefits.

SmarterSafer released a reform proposal in February. TCS supports this proposal and I request it be included in the record.

Chairman CRAPO. Without objection.

Mr. ELLIS. The four main recommendations are:

Risk analysis and mapping must be up to date and must provide property level elevation data.

Rates must be tied to risk, with assistance for mitigation and premium support for low-income homeowners.

Increased Federal investments and efforts on mitigation both at a property level and community wide so that we are reducing rates by reducing risk.

And ensuring consumer choice and private sector competition which will also reduce taxpayer exposure.

To help people understand their risk and ensure proper NFIP rates, maps must be up to date and accurate, and property elevations or effective proxies must be known. Private companies already perform assessments of risk to individual properties—something that is not currently reflected in FEMA maps. FEMA must be required to update its maps, include the best science on known conditions and risks, but also conduct (or purchase) property-level (or close to) risk assessments. FEMA should be required to assess elevation at a higher resolution or conduct more granular analysis.

This is something that is possible. The State of North Carolina has undertaken a mapping effort where they have not only gotten property level data at a reasonable cost, but they have a digital system to allow property owners to search and understand their risk, potential flood premiums, and mitigation options.

The Government Accountability Office has documented large cross-subsidies in the program, many of which benefit high-income homeowners, finding that over 78 percent of subsidized properties in NFIP are located in counties with the highest home values, while only 5 percent of subsidized properties are in counties with the lowest home values.

Rates in the program must over time be linked to risk while understanding that there may be some in the program who will need assistance in order to pay higher rates or reduce risk. Masking subsidies with lower rates prevents policyholders from understanding their true level of risk. A 2014 FEMA report noted that the presence of subsidies "removes the incentive to undertake mitigation efforts, thereby encouraging ever increasing societal costs."

Instead, premium assistance should be targeted to those who need it and encourage and fund mitigation measures that could serve to reduce rates by reducing risk. These mitigation efforts should be targeted at higher-risk and lower-income property owners.

In April, the GAO noted: "Prioritizing mitigation over premium assistance could address the policy goal of enhancing resilience because it would involve taking steps to reduce the risk of the property, thus reducing the likelihood of future flood claims and potentially reducing long-term Federal fiscal exposure."

Also, as rates gradually increase, there is more incentive for individuals and communities to mitigate. We know that each dollar of mitigation reduces post-disaster costs by $4 or more.

The private sector is now writing first dollar flood insurance, even in the highest-risk areas. There are roughly 20 companies writing private flood insurance in Florida, home to nearly 40 percent of NFIP policies. A majority of these are writing flood coverage in the highest risk areas.

Competition provides consumers choice in flood policies, instead of forcing homeowners into a one-size-fits-all Government policy. It also takes risk off of taxpayers. I request to include for the record a recent analysis done by the Reinsurance Association of America on Florida Citizens Property Insurance Corporation, a State-run, subsidized wind insurer.

Chairman CRAPO. Without objection.

Mr. ELLIS. They reviewed an initiative to get the private sector to "take out" policies, resulting in a two-third policy reduction for the program. Instead of choosing only low-risk properties, private insurers took out properties across the risk spectrum, including those along the coast in the highest-risk areas. This left a smaller, stronger insurance program that could meet its obligations.

Senators Heller and Tester's Flood Insurance Market Parity and Modernization Act clarifies that private flood insurance can be used to meet mandatory purchase requirements and puts the regulatory responsibility where it belongs—on the State insurance commissioners. A version of this bill passed the House last year 419–0.

I strongly believe the burgeoning flood insurance industry will lead to more homeowners purchasing needed flood coverage.

Finally, there is no need for the Federal Government to further extend into the catastrophe insurance market through reinsurance or increasing coverage limits or other means.

Thank you very much for the opportunity to testify today. I look forward to your questions.

Chairman CRAPO. Thank you very much, Mr. Ellis.

Mr. Hecht.

STATEMENT OF MICHAEL HECHT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GREATER NEW ORLEANS, INC., ON BEHALF OF THE COALITION FOR SUSTAINABLE FLOOD INSURANCE

Mr. HECHT. Thank you. Good morning, Chairman Crapo, Ranking Member Brown, and Members of the Committee. I am honored to speak to you today about reforming and modernizing the National Flood Insurance Program. My name is Michael Hecht, and I am president and CEO of Greater New Orleans, Inc., the 10-parish economic development organization for southeast Louisiana. Since April 2013, GNO, Inc. has led the Coalition for Sustainable Flood Insurance, a national alliance of approximately 250 organizations across 35 States. We were formed in the wake of the implementation of the Biggert–Waters Act, when homeowners across the Nation began to see skyrocketing rate increases due to a combination of the removal of grandfathering and new and often inaccurate maps. CSFI became a driving force behind the passage of the Homeowner Flood Insurance Affordability Act, which was signed into law in March 2014.

As was made clear in these previous debates, there is no simple answer to the complex puzzle of flood insurance. Simultaneously maintaining premium affordability, keeping the NFIP on sound financial footing, and accurately communicating risk is indeed a challenge. But it is in the national interest to recognize that, first of all, all 50 States have experienced floods in the past 5 years; and, second, that many of these communities exposed to flood risk are vital hubs of domestic energy production, international trade, finance, agriculture, and other nationally significant economic and defense activities. Simply put, affordable and sustainable flood insurance is integral to ensuring that these communities continue their vital contributions to America. With this in mind, CSFI is focused on advocating for a better framework, recognizing the complexity but also the importance to America for getting it right.

There are four primary areas in which we are advocating for this framework. We denote them by the acronym of AP, or MMAP.

The first "M" is mitigation. The long-term solution to flood insurance absolutely lies in mitigation—reducing the risk of flood losses before a disaster occurs. This is clearly the best means of reducing economic loss and protecting taxpayer interests, and it is vastly preferable to ejecting households and businesses from NFIP via unaffordable flood insurance premiums.

The second "M" is mapping. Enhancing the way we assess and communicate risk through improvements to the mapping process will protect communities and the NFIP over the long term. The more accurate information that we have, the better.

The "A" is for affordability. Premiums must remain affordable in order to keep communities across America economically viable.

And the final "P" is for program participation. Adopting policies that encourage more people to buy flood insurance will make both the program more financially sustainable and help communities recover more quickly after an unexpected event.

Of note, last week, Senator Bill Cassidy and Senator Kirsten Gillibrand released a discussion draft that includes many of the provisions for which CSFI is advocating, and I strongly urge the Committee to give the legislation thoughtful consideration as we move toward reauthorization.

In terms of mitigation, despite our current coordinated, multilayered approach to flood mitigation, substantial sums of taxpayer funds are appropriated each year in response to disaster damage caused by flooding. Aggressively addressing flood risks at the regional and community levels while providing homeowners options and resources to lower flood risks will save lives and properties and reduce flood damage, claims, and premiums. A policy that could be included would be redirecting premium insurance surcharges included in HFIAA actually toward mitigation in the first place. That could be $400 million annually for mitigation.

In terms of mapping, accurate mapping is fundamental to assessing and communicating risk and pricing it appropriately. The current mapping process often results in communities having to fight inaccurate maps that do not take into account locally built protection features or building off inadequate mapping.

So, for example, in the 2016 floods in Baton Rouge, Louisiana, over 80 percent of flood victims did not have flood insurance. I know it is easy for those of you not from Louisiana to question why they did not have flood insurance given what has occurred in Louisiana over the past 12 years. The answer is that many of those communities were not mapped into a flood zone or were only in optional purchase areas. More accurate mapping would have prevented this.

In terms of affordability, this is the bedrock of our policy. When homeowners across the Nation face skyrocketing premiums, legislators reasserted the long-held view that premium affordability is fundamental. So in policies to maintain affordability, preserving grandfathering is most key.

And then, finally, under program participation, we have to recognize that, unfortunately, NFIP participation is declining. According to FEMA, we have gone down from 5.7 million in 2009 to only 5.1 million now, almost an 11-percent decline. A policy to potentially address this would be to offer a default opt-out flood policy as a standard part of the homeowners flood insurance package. NFIP could be directed to test offering consumers a default flood insurance option whereby homeowners would be required to actively decline, or opt out of, flood insurance coverage when they get their general homeowners insurance.

Finally, we do think that the private market can play an important role in terms of bringing discipline into this market. We should just do it in a thoughtful and considerate way.

In closing, four parts of MMAP: mitigation, mapping, affordability, and participation. I thank you for the opportunity to speak with you today about reauthorizing and reforming the National Flood Insurance Program and for your service to America. The Coalition for Sustainable Flood Insurance stands ready and willing to assist the Committee as we work to reauthorize by September 30th.

Thank you, Chairman.

Chairman CRAPO. Thank you, Mr. Hecht.

Mr. Larson.

STATEMENT OF LARRY LARSON, DIRECTOR EMERITUS, ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

Mr. LARSON. Thank you, Chairman Crapo, Ranking Member Brown, and the Committee, for holding this important hearing. I am Larry Larson, director emeritus of the ASFPM, whose 17,000 members include many of the boots-on-the-ground State and local people who actually implement this program and working with their private sector partners.

I will begin by emphasizing that the NFIP is not an insurance program. It is the Nation's major flood risk management program that happens to have four legs to it, and we have talked about those already this morning: mapping, floodplain management, flood mitigation, and flood insurance. All of those work together, and you cannot upset one without making sure the others are not adversely impacted.

The program benefits not only policyholders but all taxpayers and communities. For example, building compliant with NFIP standards saves nearly $2 billion a year, most of which would be picked up in disaster relief by the Federal taxpayers. The 1.2 million miles of flood mapping in the country will allow not only policyholders but citizens, emergency managers, insurance agents, and the rest to have the information they need to take action to reduce that risk.

The mitigation programs in the NFIP—Increased Cost of Compliance, part of the policy, and Flood Mitigation Assistance program are cost-effective, resulting in $5 saved for every $1 invested. These programs have provided $1.3 billion in mitigation since 1997. They not only help individual property owners, but strengthen neighborhoods, communities, and reduce blight. And while the NFIP can always be improved, we do not believe it is broken, and it does not need massive reform, but it can use some reforms.

We are pleased to see the bipartisan comprehensive NFIP reauthorization discussion draft from Senators Cassidy and Gillibrand that was previously mentioned. It has some good ideas that we would like to see pursued. At the same time, we are concerned about the 10-year reauthorization timeframe. We do not believe that it is appropriate, and I think Congress needs some more oversight during that period of time.

Our written testimony today, while it covers 20 specific reform ideas, I am going to concentrate now on four of them.

First is to deal with the debt, not only the current debt but the long-term solution to the debt. If the debt in Katrina had been resolved after Katrina, the NFIP would have been able to handle Sandy without additional borrowing. That is the reality.

Second is to reaffirm your commitment to and enhance the Flood Mapping Program. The 2012 act had an excellent mapping section. I think Congress did a great job on that, and we need to continue and finish the job of mapping. Many maps in rural districts, for example, in your States have not even yet been developed. Only a third of the Nation's streams and coasts have been mapped. We need to get mapping ahead of development. If we do not get it ahead of development and development occurs without regulation, without guidance, then FEMA comes in and maps it, and then everybody gets upset. People not only are annoyed because they think they were put in a floodplain, which was always, of course, there, but now they have built too low and their flood insurance premiums are too high. So we need to get ahead of that development.

Third is to strengthen the mitigation components of the NFIP. ICC has some existing authority in the law that is not being fully implemented. We think that that is important and that ICC must be available in addition to the basic policy beyond the limits.

Finally, there are many interested in promoting private flood that we have heard about this morning. Congress must ensure the other three elements of the NFIP are not weakened and that the NFIP and private flood are on an equal footing. We can grow the policy base, but to do that, two critical reforms.

First is the requirement that private flood policies must meet the mandatory purchase requirements of the NFIP and pay an equivalency fee because they use the maps and they use the data that are necessary. Currently, the fee pays for 100 percent of the floodplain management to help 22,000 communities, and it pays for roughly half on the flood mapping. For every million policies lost to the NFIP, the NFIP will lose $50 million to run the program. The policy fee is not a tax. It is a user fee, and we need to make sure that we understand that.

Second is the requirement that private flood policies should only be sold in NFIP-participating communities so that we do not lose that policy base and the communities belonging to the program so we can guide future development in losses. We need to do that to make sure we do not increase future disaster costs.

Thank you very much.

Chairman CRAPO. Thank you very much, Mr. Larson.

I am going to switch places with Senator Scott on our list on the Republican side here and let him go first. He has got something he has got to get to right away. So, Senator Scott, please proceed.

Senator SCOTT. Thank you, Mr. Chairman. And thank you, Mr. Chairman, for hosting this hearing that is very important to my State of South Carolina. I will tell you that I have spent about 15 years as an agency owner for Allstate writing flood insurance policies, responding to flood insurance claims, going to homes that have been flooded, and watching the families try to piece their lives back together.

As a Senator in 2015, we had the 1,000-year flood in South Carolina that devastated so many families, and, unfortunately, as I was going door to door in Sumter, South Carolina, some of the folks did not have flood insurance. I would venture to say almost no one had flood insurance policies in Sumter, South Carolina, because they did not think they needed flood insurance policies because, based on the maps, they did not need flood insurance policies.

This is very concerning to me as we want the NFIP to be there not only for South Carolina but for States all across the Nation. Mr. Hecht, you testified that all 50 States had experienced flooding. And if I heard you correctly, 40 percent of all those policies, so about 5.1 million policies in force, two out of five of all the policies written are in the State of Florida. That means that Florida and South Carolina and other States are disproportionately represented, along with North Carolina, but at the same time, in Louisiana, at the same time, when you circle those three or four States, you probably have 75 to 85 percent of all the policies, which means that we are carrying a disproportionate burden on the flood issue, though the flood experience is nationwide.

Did I understand that correctly?

Mr. HECHT. Yes, Senator, that is correct, that the vast majority of the policies are in Louisiana and Florida and some parts of the east coast. But we do know now that we can experience flood across the country, and that really nowhere, even areas in the mountains, can experience flooding.

Senator SCOTT. Does that not reinforce the necessity—and the panel can discuss this, if you would like—for nationwide mapping and for it to be as clear and accurate as possible?

Mr. HECHT. Yes, sir, I would agree for nationwide mapping, and I think the issue of accuracy is critical. We want to know to as granular a level as possible, using new technology, the actual risk of actual individual properties.

Senator SCOTT. Mr. Ellis.

Mr. ELLIS. Absolutely, Senator Scott. I think that we all agreed, I think, in our testimony that mapping is critical, and doing it nationally, and then also, as I cited, you know, leadership from States like North Carolina where they did LIDAR data down to higher-risk areas, that this is actually possible and it is actually reasonable pricing.

Senator SCOTT. Yes, sir. Any comments, Mr. Larson, before I go on?

Mr. LARSON. Yes, I agree with you. Our mapping report indicates that the entire Nation should be mapped and can be for about $4 billion, what we have already spent for mapping, because we have a lot better technology, and LIDAR mapping will really make it accurate.

Senator SCOTT. Thank you, sir.

Another concern of mine is that everyone has talked about the importance of mitigation, and my understanding is that about 1 percent of the policies in the NFIP represent about 30 percent of the claims, and that the repetitive loss conversation and issue, that some properties, those properties actually have had two or more claims in the last 10 years, and a part of mitigation should be considered as it relates to those policies that have loss after loss after loss and are rebuilding and rebuilding and rebuilding.

I am not much for mandates, but is there any conversation about voluntary buybacks or something where we would eliminate that exposure?

Mr. HECHT. Senator, I think that for some properties, that might be an appropriate conversation. For many others, it might simply be an issue of increasing the Increased Cost of Compliance coverage so that individuals do have adequate funds to raise their homes or otherwise mitigate and prevent future incidents.

Senator SCOTT. Thank you.

Mr. LARSON. Increased Cost of Compliance is the most effective mitigation tool the NFIP has. It is there immediately for the property owner, and it helps them recover quickly, and we do need to expand it and use it broadly.

Senator SCOTT. Mr. Chairman, I am running out of time, but I do want to submit a question for the record and perhaps get the answer later, because you have been very kind and gracious with your time. But I know in South Carolina there are parts of our State where zoning regulations have allowed for more construction that appears to have exacerbated the situation for homeowners where apartments have been built and the easements and the way that you design the drainage system, it drains down in the neighborhoods. I would love to hear your response to the need for us to coordinate with local officials to prevent and/or absorb some of the costs associated with those changes in zoning that have an impact on others.

Thank you.

Chairman CRAPO. Thank you. And to the witnesses, you can answer that question in writing afterward, and you probably will receive other questions from Senators that we will ask you at the conclusion of the hearing to respond to.

Senator SCOTT. Thank you, Chairman.

Chairman CRAPO. Thank you, Senator.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

This is a question for all three of you, starting with Mr. Larson, and then Mr. Hecht and Mr. Ellis, if you would. Some have proposed means-tested subsidies like vouchers to help lower-income homeowners afford flood insurance. Starting with you, Mr. Larson, give us your thoughts on such an approach. If you support it, how do you think it should be structured and how would we administer it?

Mr. LARSON. We like that idea of low-cost loans for mitigating the properties. Rather than subsidized insurance, which goes on forever and ever, as you know, we have already done 48 years in the NFIP. If we help subsidize mitigation, then the property is safer; the property owner can afford the insurance, and the taxpayer helps pay off that loan in some ways. But then the process is over, and we do not have to keep going back and back.

So I think it can work. It may have to happen outside the NFIP. But the process, as you know——

Senator BROWN. What do you mean outside——

Mr. LARSON. In other words, rather than cross-subsidizing that money out of the fund, flood insurance fund, it may need to be appropriated funding, because there are benefits to the taxpayer as well as the other policyholders.

Senator BROWN. OK. Mr. Hecht.

Mr. HECHT. Senator, I do agree as well that since affordability is the fundamental issue, this is one way to get at that by helping low- and moderate-income individuals. We do not have a framework right now, and I apologize. We can come back with some thoughts on how to implement that. But I would like to emphasize what Mr. Larson said, and that is that to the degree that we can put funds into mitigation up front and outlay that expense today, we are going to save the need to subsidize down the road. Long-term mitigation is the solution for this challenge.

Senator BROWN. OK. Mr. Ellis.

Mr. ELLIS. Thank you, Senator Brown. We certainly agree, I mean, the best way to reduce rates is by reducing risk and make the insurance more affordable. That said, what we have supported and is in our policy proposal, both SmarterSafer and Taxpayers for Common Sense, is some means-tested assistance for homeowners that need it, and so we have done it at 80 percent of the median income, and basically our housing allies in the SmarterSafer Coalition have pointed to, you know, working with—being creative in setting up loan programs or using existing loan programs, for instance, with the FHA to help homeowners do their mitigation up front, and then also—but in some cases, we are going to have to provide subsidies.

And the last thing I would say is what is really critical is to have that done outside the rate structure so that the rate is a risk indicator to people so that people need to know what their risk is, and the way you know that is if you see you have a high rate, you still may be paying less, but you actually have that risk communication factor. So we also would say that is critical, too, Senator.

Senator BROWN. How did you settle on the 80 percent of median income?

Mr. ELLIS. My understanding is that is the standard for a lot of the housing programs, as far as for low-income assistance, and so I really would rely on—we can get back to you on that more, but I would really rely on the National Housing Council Coalition, which is a member of SmarterSafer.

Senator BROWN. OK. Thank you. And also, for the whole panel, we hear about FEMA's existing Cooperating Technical Partners Program meant to increase local participation in the data-gathering and mapping process. Each of you in written testimony expressed the need to improve flood map accuracy and increase outreach to local communities in the mapping process. Mr. Larson especially talked about obviously the more and more useful technology.

My questions are this: Has the Cooperating Technical Partners Program given communities sufficient opportunity to contribute data and knowledge of local conditions in the mapping process? And, second, are there ways that we could improve this to get the full benefit of the local expertise to build local capacity and limit expensive appeals? Mr. Ellis, do you want to start with that?

Mr. ELLIS. I have not been as much involved in the mapping process. We have made recommendations as far as improving it, and so as far as the communities, I think that Mr. Hecht and Mr. Larson would actually be better able to answer that question for you, sir.

Senator BROWN. Mr. Hecht.

Mr. HECHT. Thank you, Senator. I think that the impulse to have locals provide more information is better because it will give us more data and also, of course, locals understand what their man-made and natural features are.

The challenge that we see in southeast Louisiana is that those communities that have more funds and more bandwidth are able to do this. Those that simply do not have the funds or the man-power to do so simply do not. And so increasing their capacity through some type of grant or other funding mechanism might be a way to help increase the data coming from local counties.

Mr. LARSON. We strongly support the CTP program. Some communities, usually the ones that have capability, and States being CTPs know what is going on in their communities within their States. Having them help with the mapping programs makes for making sure everything is included up front, so we are not missing areas that are going to be developed tomorrow and all those sorts of things. CTP is a very good program that needs to be expanded.

Senator BROWN. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

I will take my questioning period now. First I want to focus on prioritization. Between 2008 and 2012, our program, the NFIP, sought 17 short-term extensions and lapsed four times in 2010. That process was not healthy for policyholders or for the market. During this reauthorization effort, we must work together and deliver an on-time product.

To each of you, I would like you to just respond on how we narrow the set of issues, if that is what becomes necessary, and deliver an on-time product. In other words, how would you balance between taxpayer protection reforms and affordability and mitigation reforms, balance or prioritize among them? Why don't we start with you, Mr. Ellis?

Mr. ELLIS. Thank you very much, Mr. Chairman. We certainly support and want to see the reauthorization done before September 30th of this year. But it is also very critical to get it right because it is likely to be a 5-year reauthorization, and so we are going to be stuck with that for that period of time.

And so, as you listen to the panel, I think that we have highlighted areas of mapping, mitigation, affordability, but also continue to move toward risk-based rates, and then, last, private competition. So, for instance, the legislation that passed the House last year 419–0, we think that should be a critical part of it as well.

Chairman CRAPO. Thank you.

Mr. Hecht.

Mr. HECHT. Thank you, Senator. I do think that getting this done and continuing is critical. I will remind everybody as well that September 30th is the middle of the flood season, so that timing is very particular to those of us that are in those areas, and the market is looking for reassurances so that they can continue and homes can continue to close.

In an attempt to try to get our arms around this to prioritize, we did come up with the acronym of MMAP, or AP. Within that, I would say that the "A," the affordability, is kind of the fundamental bedrock of this program working going forward. That being said, long term, the first "M," mitigation, is the way that we actually work our way out of this over time. And then within that, mapping using improvements in technology and participation, getting individuals who should have flood insurance to carry it, are incremental improvements we should try to make by September 30th.

Chairman CRAPO. All right. Thank you.

Mr. Larson.

Mr. LARSON. Yes, if we look at those four legs, I concur with much of what has been said. Mapping, let us get the mapping done. Let us get that mapping ahead of development, and that means let us invest in the mapping. We now have the technology to do that.

Flood risk management, let us make sure all 22,000 communities that are now in the program stay in the program and not drop out because, oh, they can go to the private sector and get their insurance.

So then let us get on to mitigation, and I agree with what Mr. Hecht has said. That is how we work our way out of this affordability issue. So we have got to be able to help those who cannot make it, because most of the unaffordable stuff is properties that have been there for a long time, long before there was an NFIP. So we have got to help them get out of that process. So by doing that, I think we start on that process, and then we balance that, because that is how the taxpayer reduces their long-term cost. This program was created to reduce disaster costs. So those ties must be together.

Chairman CRAPO. Thank you. And, Mr. Larson, a consistent recommendation we hear from stakeholders is to modify mapping for better accuracy and risk assessment. We have heard it here today. Significant attention was given to mapping in the 2012 and 2014 reforms, and FEMA is continually receiving feedback from the Technical Mapping Advisory Council. Is it a question now of simply providing adequate funding to get the job done? Or do we need additional reforms and improvement of the mapping programs?

Mr. LARSON. By and large, FEMA is now in a position to produce good, accurate maps. Technology has done that. LIDAR is a big issue. So funding LIDAR and getting that completed for the Nation through USGS—they are doing a fabulous job, but that needs about 8 year's worth of funding for that digital elevation program.

The technology in hydrology and hydraulics is there. Remember, in your 2012 act, you said, FEMA, you need to make sure you take into account future conditions. So that has not yet been incorporated, but needs to be—sea level rise, for example.

Chairman CRAPO. All right. Thank you very much.

And one last question. It is no secret that the NFIP is in poor financial condition. Mr. Wright testified in our last flood insurance hearing that there is no practical way for FEMA to repay the $24.6 billion in debt that they have amassed. Some of you have talked about in your testimony the structural challenges the program still faces. Mr. Ellis, can you provide—and I am just about out of time, so very quickly, please—additional details on your top two priorities to strengthen taxpayer protections in the program?

Mr. ELLIS. Well, certainly it is to continue the movement toward risk-based rates and to actually only provide subsidies to those who actually need it, and then funding mitigation. So those would be the top priorities.

Chairman CRAPO. All right. Thank you.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman. Thanks to the panel. I am glad we are still focusing on this issue on behalf of the Committee. I appreciate the Committee's leadership in this regard.

In the aftermath of Superstorm Sandy, we experienced the best and the worst of the National Flood Insurance Program—painful frustrations, endless delays, in some cases outright fraud on behalf of private contractors of FEMA.

Now, many have said that we should eliminate the NFIP and simply leave homeowners and communities at the mercy of private insurance companies. I think property values would drop, causing a housing crisis, housing stock that is coming back. So while some might think privatizing the program is a simple solution, the truth is far more complicated and dangerous.

Mr. Larson, what would be the impact on rates, accessibility, and community resiliency if the NFIP was eliminated?

Mr. LARSON. Well, it would be dramatic, not only for the real estate industry but for the people involved. So I do not think—we need to go much further to incorporate the private sector. In the end, someday we may want community-based insurance where the communities do the right things in order to keep their insurance rates down, tying those things together. But in the meantime, we have got to make slow transitions toward that and making sure we do not lose the NFIP along the way, and those other key three legs. It is important to do that. You cannot just eliminate the NFIP.

Senator MENENDEZ. So when we talk about the financial state of the program, much has been made of the debt largely occurred as a result of failures of flood levees by the Army Corps of Engineers in Louisiana in Hurricane Katrina. It is about $12 billion. And some have argued that premiums should be increased dramatically to get the program back on sound financial footing.

I for one think the rates are already incredibly high for so many families, and instead of continuing to ask them to pay more, we should do better to control costs and make the program run more efficiently.

One of the biggest costs to the program is fees paid to private insurance companies to service policies and adjust losses. In fact, approximately one-third of all premiums goes to these private insurance companies and their vendors, with that number reaching 42 percent after Sandy. And what makes this number even more egregious is the fact that these insurance companies do not bear any risk. The NFIP covers all losses and insurance companies profit risk-free.

In fact, the GAO has found repeatedly that FEMA does not know the actual costs of their contractors, nor how much profit they are bringing in. As the report said last December, I quote, "FEMA continues to lack the information it needs to determine whether its compensation payments are appropriate and how much profit is included in what it pays Write Your Own companies."

So it is no surprise then that policyholders as a whole are paying over 50 percent more for private insurance companies to administer policies than for FEMA to do it themselves.

So, Mr. Hecht, are homeowners getting their money's worth with private insurance companies serving the NFIP?

Mr. HECHT. Thank you, Senator, for that question. I think that there is a lot of complexity to this that has to be looked at. If you look at the commissions that the Write Your Owns are getting, the largest percentage of that I think is what is getting paid to the individual agents, in some cases upwards of 20 percent. And the question is: Is that the appropriate amount?

Another question is: Should you get paid the same amount for writing a policy as you get for simply renewing it year after year?

We should also consider about whether as premiums go up, maybe the percentage should go down because you are doing the same work, but you are getting more funds.

And then, finally, on the flip side, I think there is a consideration to can we do things to actually reduce the complexity of the program itself so that the administration of it in the field requires less steps and is inherently less expensive. A lot of ways to take a bite of this apple.

Senator MENENDEZ. When you have no liability and all the upside, you know, that is—we would all like to have that business. But it is also challenging to me when we talk about increasingly moving to a more private-sector based insurance that at the end of the day, what happens when you get companies that will cherry-pick the properties that are the least possible loss consequence and then what is left.

I just do not know how we ask homeowners to pay higher premiums to cover $400 million per year in interest payments to ourselves, to the Federal Government, mostly because of that levee failure in Louisiana. That is pretty crazy.

And a final point. We need to do, I would say, Mr. Chairman, a lot more on mitigation. If we look at what we spend, we spent $277 billion on disaster assistance from 2005 to 2014, with FEMA only designating a mere $600 million to its pre-disaster mitigation program. That is 461 times more money that we spent on recovery from a flood than mitigating against one. And I think we need to be looking at that mitigation element significantly as part of controlling costs, and I appreciate the Chair's attention.

Chairman CRAPO. Thank you, Senator Menendez. We appreciate your interest and help on this.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

First of all, I think there is a real need for the nationwide mapping to be expedited and then maintained. In my former life, I was a insurance agent. We had an insurance agency with multiple locations around the State of South Dakota, and we were one of the agencies that actually sold the Write Your Own products, I believe, through separate carriers, and it truly simplified the process of being able to assist our clients, our customers, who were writing homeowner policies.

I am just curious because it seems to me that—and I should also say this: I am also a recipient of a flood insurance policy. I have a flood insurance policy that I purchased on a home in 2011, and I continue it in effect. And in doing so, I kind of learned a little bit more about the program than what I really wanted to at one point, and I can tell you that while I have never had a loss on a homeowner's policy, I thought I was going to with regard to the National Flood Insurance Program.

There is a provision, and particularly with those in the areas that have been identified as having a lower risk than other areas—and I am going to lay this out, and maybe you can look at this. But in a Category A situation, as an example, you can buy a quarter-million dollars of insurance coverage for flood for about $300 a year, with about a $5,000 deductible, or something like that, if my memory serves me correct. And yet a lot of homes today, particularly newer homes going up, easily exceed $250,000 in value.

One of the rules that any insurance underwriter will tell you is that you insure to value or you have a coinsurance clause of some sort placed on the policy, because if you do not, regardless of which part of the risk is lost, the company actually pays from dollar one or after a deductible.

So you could have a half-million-dollar home sitting in a fairly protected class that still buys flood insurance, but you have committed yourself, when you buy or sell a quarter-million-dollar policy, that you are going to pick up the first quarter-million dollars in losses.

There is no insurance company out there that does that on any other type of a risk. Every underwriter out there understands that if you want more premium dollars, particularly, as I call it, "healthy premium dollars," you allow the value in those areas, in those areas which are actually healthy premium dollars, profitable premium dollars, to go up.

I think one of the simple ways to actually bring more premium dollars into the program is to invite higher limits to be sold in some of those areas. You are going to pick up the first quarter-million no matter what, and yet you ought to be able to collect premium dollars on closer to the full value of a home.

This was first done, these numbers, a quarter-million, was put in in 1984. Even at 2 percent, you should easily be at $400,000 as an upper limit. And, remember, you are going to pay the first quarter-million no matter what you do today. So why not collect the premium dollars based upon more dollars actually at risk, but with a higher percentage of not having to pay anything out, if you follow me.

And then along with that, it seems to me that—and I would like your thoughts on that, but along with that, it seems to me that we ought to be making it easier for the rest of those private carriers out there to write a flood insurance, particularly in those areas that have a lower risk across the country, every homeowner policy, whether it is a special form or a broad form policy—most of them write a special form today—all have an exclusion for flood insurance—or flood. But if there was a provision to allow for an add-on feature in those areas that have the least amount of risk but for people that want to be risk averse to buy that product as a part of a homeowner's policy as an add-on, it seems to me that we could add a lot of, once again, healthy premium dollars back into the mix to help offset the losses in those higher-risk areas. And I would like your thoughts on that, if you could. And, once again, I have used up most of my time making a statement, but I would like that. And if we run out of time, I will ask it for the record.

Mr. ELLIS. Thank you, Senator Rounds. We do not support expanding the program. The private sector is there. There are private sector alternatives to add on to carry that extra dollar. I understand your point, but from our perspective, it is better to limit the risk to the taxpayers.

And then on your second point, just trying to be brief, we definitely think that there should be the ability to do add-ons to the policy. But we also think that the private sector can write in a lot of these areas, both the high-risk areas and the lower-risk areas.

Mr. HECHT. Thank you, Senator. I actually agree with your point, spoken like somebody with years of experience in the industry. I believe that the Cassidy–Gillibrand bill does actually double potential coverage to $500,000 for homes and $1 million for business.

And then to your second point, the idea that we are exploring this, could you have actually an opt-out that is there by default when you are closing on your home as part of your homeowner's insurance that many people would simply opt in by default to carrying flood as part of their overall policy? Maybe you could modify RESPA to make that happen.

Mr. LARSON. I agree on the caps, increasing the limit. Private insurance is already being sold by numerous companies, so I am a little confused about why we need to open up the market more. It is already happening.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. I thank all of you for your testimony today.

I want to dig a little deeper into the issue of the flood maps and the accuracy of the flood maps. As I understand it, a few years ago there was an Executive order from the Obama White House that requires FEMA to take into account the impact of climate change in projecting flooding. Is that the case? Mr. Larson.

Mr. LARSON. Well, all the agencies, it was said in your decision-making process try to include climate change in that Executive order. It was also in BW–12 that essentially said you need to look at future conditions when you are doing the mapping.

Senator VAN HOLLEN. Right. And so, in your opinion, are we adequately taking into account all those future conditions, including sea level rise at this point in time?

Mr. LARSON. As you know, the maps that were done, for example, after Sandy still do not include sea level rise. FEMA has not yet been able to incorporate those issues. There are some steps that need to happen. We also, in terms of climate, need to have some agreement across the Federal agencies and the experts upon what—you know, are you going to use this number, this number, or this—you know, we need to have some agreement on that process.

Senator VAN HOLLEN. In terms of the level of sea level rise projected?

Mr. LARSON. Correct, for example.

Senator VAN HOLLEN. And do you know of any process ongoing now that would do that? After all, President Trump recently eliminated an Executive order from the previous Administration that was supposed to look at mitigating the impact of climate change. I do not know if that is impacting this program at all at this point.

Mr. LARSON. I think at this point we need to get the processes into place, and that really has not started yet. I do not know that it will be——

Senator VAN HOLLEN. So let me just ask, because this is obviously—as you pointed out, adequately projecting for the impact of sea level rise is directly related to, you know, the accuracy of the mapping. So do you have any recommendations as to what needs to be done in order to do this and do it as fast as we need to do it?

Mr. LARSON. I think the agencies—the Corps of Engineers, FEMA, USGS—those technical agencies can get together and agree. What are going to use for sea level projections? Are we going to use the upper-middle? Are we going to pick the middle? What is the appropriate one? They agree on it, we all start to use that. Same thing with increased intensity of storms. As we know, storm intensity has gone up 45 percent in some areas, 60 percent in others, in the Northeast. So we need to have some agreement on the process we are going to use and the appropriate hydrology we are going to use for those. And it is broad across-the-board increases amongst the players involved.

Senator VAN HOLLEN. I do not know if any of the other witnesses have——

Mr. HECHT. Well, I would just add one kind of corollary point to this, Senator, that we also need to allow for partial mapping. We need to allow counties, or parishes in our case, to adopt parts of the map that they think do reflect current and future conditions while they still work on the others. I think more granularity as well as better projections will give us better mapping over time.

Senator VAN HOLLEN. Mr. Ellis.

Mr. ELLIS. We certainly agree, Senator Van Hollen, on the granularity, and then also about really trying to adjust to where the maps are not just a static line on a piece of paper or a digital line, but actually risk assessment and getting more toward that characterization, which is what we have testified on.

Senator VAN HOLLEN. Right, and I think especially in Louisiana and other places, we have seen dramatic flooding outside—you know, more than the 100-year flood projections would suggest, especially with these heavy-rain downfalls.

Let me ask you all a question. The Trump administration's skinny budget that was submitted calls for a $190 million cut to the appropriation for mapping of NFIP programs. Can you all let us know what impact that would have on our ability to do what all of you gentlemen are talking about the need to move forward?

Mr. LARSON. Well, essentially what is happening is that appropriated money is kind of what is paying for new maps. The fee income that is coming in kind of keeps the program running and works with the communities and the maps. So appropriated money is really needed to get mapping done in the Nation. That is why we support the Cassidy–Gillibrand that says let us do $500 million a year for 10 years and get the mapping done for the entire Nation and get ahead of that development.

Mr. ELLIS. Senator Van Hollen, I will just add that I think in the skinny budget it failed to recognize—I mean, they claim that it was because all the costs should be internalized to the program and failed to recognize the benefit to communities and to outside that are not necessarily in the program, but knowing what the flood zones are, whether you are going to place a hospital, and knowing that you do not want to put that in a special flood hazard area or other infrastructure. And so there is greater benefit than just to the people who are paying NFIP policies.

Senator Van Hollen. I appreciate it. Thank you. Thank you all.

Chairman CRAPO. Thank you.

Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair. Gentlemen, thank you for being here. I am from North Carolina and proud to have been, as part of the State legislature, on the forefront of getting funding to advance mapping in the State, and hopefully we can make progress on a national basis.

Mr. Hecht, you made a comment that I want to go back, and some of my questions are in line with Senator Menendez's. If you accept that half of the $24 billion debt right now is related to the events from Katrina and Rita, then the other $12 billion may speak to some of the business practices that we need to take a look at compensation structures for the Write Your Own, for the insurance companies that are working in the program.

Do you feel like we have adequate controls, or do you feel like that at least our relationship with these third parties is similar to the kinds of relationships other insurers have with third parties in terms of compensation models and reimbursement models? I will start with you, but anybody who would like to opine on it.

Mr. HECHT. Thank you, Senator. I think it is clear that we need more information and better data and comparisons to the private sector in this. We do not get from the GAO and others enough data to understand really the fidelity of that relationship.

Senator TILLIS. The sort of fundamental process, as you alluded to, in terms of compensation structures, sound like they were maybe circa 1970s compensation structures. Mr. Ellis.

Mr. ELLIS. Senator Tillis, certainly we agree that we need to have more data and we need to be able to compare to the private sector. I would also—and make sure that we are in alignment and recognizing the amount of risk, or not risk, that these companies are taking on. And I am speaking for Taxpayers for Common Sense here.

But, also, you know, I think that Senator Menendez's argument also makes the case for more private sector involvement in flood insurance. I mean, then you do not have the Government making some of these decisions about what are the compensation structures, what is this? It is actually a competitive marketplace, and companies are going to pay their agents what is going to get them to be able to sell more policies.

Senator TILLIS. I would tend to agree with that.

I want to move on to something else and stay within time, and that is the ICC program. I have received a fair amount of feedback from various governmental agencies that feel like they would like to see some changes that really allow for more demolition and acquisition, and we have actually proposed to the Banking Committee a few things, one having to do with claim limits, and I was just trying to go through some of the major provisions, raising—the claim limits should be raised to at least 60,000. I will not get into the specifics of the provisions.

But what they are saying is we would like to actually acquire property, demolish buildings, remove the threat. Do you all generally think the changes to the ICC program that would lead to that end are something we should consider? Mr. Larson.

Mr. LARSON. I think definitely the ICC should be moving in that direction. We have communities in Charlotte–Mecklenburg that are trying to use ICC for those purposes, and it is——

Senator TILLIS. I live in Mecklenburg.

Mr. LARSON. Yes, right. And so the ICC can be that tool, but it needs to be opened up to allow the tool to be used.

Senator TILLIS. Yes, and I think we need it to be more agile. One thing that we have suggested is waiving rulemaking requirements so that it could be—remove impediments, basically, to making ICC changes so that we could act more swiftly.

Mr. Hecht.

Mr. HECHT. I agree as well. Mr. Larson made a subtle but very important point up front, which is that the National Flood Insurance Program is not really an insurance program. It is a land-use policy. I think as part of that, we should be smart about how we manage our lands and our building going forward.

Senator TILLIS. You see that in Mecklenburg County, down in Fayetteville, which was hard hit by Matthew. There are a number of instances where, if we reform this program, we can remove the future threat in flood-prone areas, and that is why I am hoping the Committee will indulge us on some of the suggestions that we have made for the program changes.

Also, with respect to mapping, you said something important, and that is having the level of granularity so that you can really rate for the risk. When I first moved to North Carolina in 1998, I bought a house on Lake Norman, and I had to get flood insurance. Now, my physical structure was 12 feet above a 1-mile dam down the river on Lake Norman, and there was maybe about a 10-square-foot part of my beach that was in the floodplain, and I had to get insurance. So that is actually an area where perhaps I did not—or if I had to get it, it should not be at the level that others that are sitting at the level of the dam. And I think that granularity with mapping is the way that we get through those disparities.

Mr. HECHT. As well, Senator, with structures and the type of structure and whether it is integral to your primary residence.

Senator TILLIS. Yeah, so if there is no structure there——

Mr. LARSON. And the new mapping does that. LIDAR will do that. It will get that granularity.

Senator TILLIS. It may have been one of the reasons why I supported the funding at the State level.

[Laughter.]

Senator TILLIS. Thank you, Mr. Chair.

Chairman CRAPO. Thank you.

Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman. Thank you for having this hearing.

I have just got a couple questions, and this is for you, Mr. Ellis. You spoke of the bill that Senator Heller and I have. I just want to get your perspective on if you believe Congress should pass a multiyear authorization. And if that reauthorization were to pass, would that help us build out a private insurance program, working in tandem with NFIP, or would it not?

Mr. ELLIS. I certainly think that it would help build out a private insurance program, and your legislation, which we strongly support, simply clarifies something that was already in Biggert–Waters that said that you can have a private flood policy to meet the mandatory purchase requirement.

And then, second—and I think this is really important—it does have the provision about that you can go back and forth from NFIP to the private sector back to NFIP without losing any grandfathering or anything else like that.

And then, last, it is important that it puts it into the insurance commissioners—the State insurance commissioners are the ones who will be regulating it.

Senator TESTER. So we have got two different lines to go on this. The first one is I think there is some heartburn with our bill or with the private insurance that if the event comes, the insurance will not be there to the degree that they need it. Could you talk about that and how we can ensure that the private insurance would be just as good as any other insurance that is out there?

Mr. ELLIS. Well, that is certainly going to be the job of the State insurance regulators, making sure that policyholders are not being duped or are getting a bad product.

And then the other thing, I think—and this kind of came up when I was talking about having sort of a policy rider added on. Senator Rounds was talking about this. You know, the more we make flood insurance to be a normal insurance product, something that people just get or their insurance agent asks them, "Do you want this?" we are going to get more people covered. I mean, right now we already have a problem with adverse selection. The only people buying flood insurance are the people who are the most likely to need it. We should see more people buying flood insurance, as Senator Scott mentioned about the people in South Carolina, how so many of them did not have flood insurance, and that is the real tragedy. And it was pointed out by FEMA in previous testimony that in the flooding that happened in Louisiana a year or so ago, the average NFIP payment was about $87,000. If you did not have flood insurance, you got about $9,000 in disaster assistance. And so that is a real problem, and so we want to see more and more people buying flood insurance.

Senator TESTER. OK. So has anybody done any actuarials on if private insurance competition would help bring down the rates?

Mr. ELLIS. Certainly it seems—you know, the only reason why you would go to a private sector policy over an NFIP policy is if you got a better rate or a better policy or both. And so certainly that is what we are seeing, and we have seen—you know, as I mentioned in my testimony, there are about 20 companies writing private flood insurance in Florida, where there is 40 percent of the NFIP policies. And so, clearly, there is some interest because somebody is buying those policies.

Senator TESTER. One last question, and any of you can respond to these, by the way. I am picking on Mr. Ellis, but it does not necessarily have to be that way.

There are some that will say if the private insurers get in the market, they will cherry-pick the policies that have less potential for a claim, and it will leave the National Flood Insurance Program with only the policies that have the most likelihood of flooding. Could you respond to that?

Mr. ELLIS. Well, the Reinsurance Association of America, their analysis—and we are trying to look at this as an analog of the Florida windstorm insurance and the depopulation of that where they had the private sector come in and take out policies, about two-thirds of the policies out of the program. We found that they took policies from coastal areas, from all over the place. And then, second, the flood insurance companies that are writing in Florida, more than half of them are writing in the V zones, so in the higher-risk areas. So, clearly, there is an appetite for risk.

And that gets to the last point, which is if you are an insurance company, if you do not take on risk, you are not going to make money. And so, clearly, that is part of the incentive, because a lot of the flooding—and FEMA will tell you this—occurs outside of the high-risk areas. So you are writing a lower insurance rate policy, but you are still going to have to pay claims. So you want to get a higher rate of return by writing higher-risk policies.

Senator TESTER. OK. And so we have—and I live on the Northern Plains, OK? So flooding is not something that we have much of—not that it could not change with climate change. But we have a situation where storms are happening in places they have not happened before, and then flood insurance is like, for instance, crop hail insurance, if you do not get hailstorms very often, you pay a pretty low rate. I would imagine it is the same thing for flood insurance.

What do you say for those companies that may be insuring in places where the flood is very unlikely, but it seems like those unlikely events are happening with more regularity, 100-year events are happening with more regularity?

Mr. LARSON. Well, we see more of that happening all the time. Storm intensity is happening. I mean, we call things "a 1,000-year flood." Well, it is not a 1,000-year flood at all. It may be a 1,000-year rainfall, but not a flood. So we will see companies dealing—the advantage of private is adding to the base. As long as we do it in a way that does not upset the four legs of the NFIP and pulls it out so that communities start dropping out of the NFIP, because if they do that, we will not be guiding future development, and that needs to happen in a balanced fashion.

Senator TESTER. Well, I just want to thank you all for your testimony and appreciate your answers.

Chairman CRAPO. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I want to thank all three of you gentlemen. I have learned a lot listening to you today. I especially want to thank Mr. Hecht. He has become an expert the Flood Insurance Program and is recognized as such in my State, and I think here in Washington, DC.

Mr. Ellis, let me ask you, I will start with you, if I could. As I appreciate it, you want to give more authority to the State insurance commissioners?

Mr. ELLIS. We want to, in the Heller–Tester bill, essentially have them be the regulators of the private insurance market. Yes, sir.

Senator KENNEDY. OK. They have done a good job with health insurance. In my State—I cannot speak for other States, but in my State, the main job of our insurance commissioner is to hold fundraisers with the insurance industry. I am just going to be blunt.

Mr. ELLIS. Well, I can say, Senator, you know, earlier Senator Menendez talked about the experience of his constituents dealing with FEMA and the Write Your Owns, and in that case, they would have been able to go to the State insurance commissioner to hold those companies to account, which was not happening with FEMA, sir.

Senator KENNEDY. Right.

Mr. LARSON. I would like to remind people that the fraud that happened in Sandy was done by the private sector. It was not FEMA changing the reports. So is there—the concern with this will upset the national program by not looking at how this will apply to four legs of a stool. So insurance commissioners in all 50 States will now treat it differently? That is a little concerning.

Senator KENNEDY. Yeah, if they will do their job, and if they are willing to make the insurance industry mad sometimes.

How much do you think, gentlemen, we could knock that $25 billion debt down if we stopped paying interest to ourselves?

Mr. HECHT. Senator, I think that the amount is about $400 million a year of that interest that could get applied to that, or we could apply it toward mitigation to make the program more sound over time. What we are doing right now, taking it out of one pocket and putting it in the other, does not seem to be serving anybody best interests over the long term.

Senator KENNEDY. And that $25 billion, it is not like we went down to the local bank and borrowed $25 billion and we have got to pay interest. We are paying interest to ourselves, right?

Mr. LARSON. About $4 billion so far, and like I say, if the debt after Katrina would have been forgiven, the NFIP could have handled Sandy without additional borrowing.

Mr. ELLIS. I would just flag, Senator, that is how intergovernmental debt is treated across the board, including things like Social Security and other areas.

Now, if we wanted to talk about not paying interest, I would certainly entertain that at Taxpayers for Common Sense. But I just want to flag that is the standard for how Government operates.

Senator KENNEDY. OK. And, Mr. Ellis, I am not disagreeing with you. You make really good points. I am all for—I mean, I am a taxpayer, and I believe in common sense, too. So I am with you.

[Laughter.]

Mr. ELLIS. I appreciate that, Senator.

Senator KENNEDY. If you do not mind me asking, where do you live?

Mr. ELLIS. I live in DC.

Senator KENNEDY. OK. Do you carry flood insurance?

Mr. ELLIS. No. I rent a condo, and so I am well above——

Senator KENNEDY. OK. Well, let me tell you part of the problem. I am going to make a——

Mr. ELLIS. One thing I would just add, sir, is that I was an officer in the Coast Guard, and so I have definitely dealt with flooding and those issues. And so I understand that.

Senator KENNEDY. I did not mean to insinuate you are not—please, that is not what I meant.

Let me make a prediction on your condo, OK? You get 26 inches of rain in 2 days, you are going to flood. You are not in a floodplain. You live on Mount Everest, you get 26 inches of rain in 2 days, you are going to flood. And that is what makes this whole situation difficult.

But in my State, I will tell you what the—it does not do any good to give people insurance if they cannot afford it. We tried that with the Affordable Care Act. It did not work. So you have got to start with affordability, and there is nothing wrong with starting with affordability.

I want to ask Mr. Hecht a question. Can you explain what would happen in Louisiana, Mr. Hecht, if—we have got over 100,000 policyholders. What would happen if the lower-risk policies were moved to private insurers and the commercial properties were exempted? What do you think would happen?

Mr. HECHT. We would see slowly the decimation of our coastal communities.

Senator KENNEDY. Kind of like with Biggert–Waters.

Mr. HECHT. What we began to see was a spiraling where people could not afford their homes. They were going to walk away from them. That was going to impact the banks. That would then impact the tax base. It is a cascading effect, sir.

Senator KENNEDY. Look, I think everybody was well intentioned with Biggert–Waters. But 150 years ago, doctors used to believe their patients with the best of intentions. If it killed their patients, they stopped doing it. So it is really easy to talk about risk-adjusted rates, but we do not live in “La La Land.” That is a movie.

Mr. ELLIS. I would just add, Senator, we have talked about affordability, and affordability is part of our proposal. We want to make sure that people are able to have flood insurance, and we would like to see more Americans carry flood insurance.

Senator KENNEDY. You ought to buy some.

Mr. ELLIS. Thank you very much, Senator.

[Laughter.]

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator.

Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman, and thank you, gentlemen. I apologize. I have a simultaneous hearing in Armed Services, so I could not be here for the entire testimony.

Mr. Larson and Mr. Hecht, the Flood Insurance Program does much more than just provide flood insurance. It provides flood assistance, flood mapping. It provides mitigation assistance, outreach, oversight. If we go more toward a private marketplace of flood insurers, can you comment on or suggest actions we can take to maintain these other aspects of the Flood Insurance Program? Mr. Hecht, please.

Mr. HECHT. I apologize. Could you repeat the beginning of the question? I was talking to the Senator as you—I apologize.

[Laughter.]

Senator REED. Let me repeat it. The Flood Insurance Program provides much more than simply reimbursement to people who suffer damage: flood mapping, mitigation, a whole host of issues that are critical to communities and critical to resiliency. If there is a more pronounced private insurance aspect, how do we in Congress maintain those activities for the National Flood Program? Do you have any ideas or suggestions?

Mr. HECHT. I think it is a critical point that we understand that those structures remain in place and that FEMA is mandated and is funded to do so, mapping and mitigation, again, being the two key things that over time are going to reduce the risk for the entire system. And so I do think it is critical that we do not simply say we are going to leave this to the private sector, that we go toward a hybrid model that increases competition and the discipline of the program, but does not abandon those pillars of long-term sustainability.

Senator REED. Mr. Larson, please.

Mr. LARSON. Yes, you know, some of the private sector insurance industry is saying, well, there should not be a policy fee on the private sector, and that the taxpayers should fund that through appropriations. My answer to them is as soon as you get Congress to appropriate $250 million to take care of those other activities, we will get rid of the policy fee. But unless we have a level playing field, the whole house of cards comes down.

Senator REED. Thank you.

Mr. Ellis, you are looking at a private sector that you would and I think we would all suggest has more flexibility. Do you think we should give the NFIP more flexibility in terms of insurance, what they can do so they can be more competitive with the private sector, so that people really do have choices?

Mr. ELLIS. I think that there is, Senator, problems and challenges within the NFIP, and it is a program that exists—I do not think that exists to provide flood insurance to people, but I think that expanding it and trying to compete with the private sector, it kind of gets away from what the initial intent was. Basically, the reason why we created NFIP in 1968 or Congress created NFIP in 1968 was because of the failure in the private marketplace. The private marketplace now wants to write flood, so why are we trying to crowd them out or outcompete them with the NFIP program?

Senator REED. Well, they want to write private flood insurance if they can make money on it. But as 1968 suggested, there are many parts of the country and areas where they do not think they can make money, and then that leaves not an opportunity but, I would argue, an obligation for us to step in.

One of the issues, too, you know, you have pointed out how in Florida, for example, there is a very active private market. Coming from a coastal State, the Ocean State, I have noticed that a lot of the homes around the coast are quite expensive, and I believe there are limits on what the NFIP can write. I think it is $250,000 for the structure, $100,000 for contents. So, frankly, a lot of the private sort of flood insurance are necessitated because the value of the home is way beyond what could be done. So, you know, that is where I think the private insurers are coming in, and they are doing very well because they can charge rates to those homeowners that are, you know, cost-effective for them.

Mr. ELLIS. But they are actually doing first dollar insurance in Florida, Senator, and we assume—and part of it is because just like NFIP reflects, 40 percent of NFIP is in Florida because that is—I mean, as much as it is the Ocean State in Rhode Island, you know, there is a lot more——

Senator REED. But, again, I think when we look at this private participation, some of it is as a result of very expensive real estate located—and it is not just Rhode Island. It is the gold coast of Florida and other places where the NFIP program, if it would be taken up by these—but they are too expensive, the homes.

So, again, I want to thank you gentlemen for your testimony and for what you have been doing to help us go through this and think about it. Thank you.

Chairman CRAPO. Thank you, Senator Reed.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

So Congress enacted the Biggert–Waters Flood Insurance Program Reform Act to make the National Flood Insurance Program more financially sound and to accurately reflect the true cost of flood insurance.

Now, as part of the plan to achieve those goals, right now some Senators want to dramatically increase the number of private policies. And I am not against private sector insurance, but there would be real costs to simply turning over the Federal program to the private sector.

The NFIP has a four-pronged comprehensive flood risk reduction program that is comprised of insurance, flood mapping, floodplain management, and flood mitigation. And these four missions, each of them is critical to reducing the impact of dangerous floods. And each is funded, at least in part, by user fees and surcharges added to the Federal premium.

So private insurance companies benefit from those services, but private flood insurance does not contribute to any of these other critical missions. As the number of private policies grow, it is critical that the private sector contributes its fair share to the flood management functions of NFIP.

So, Mr. Ellis, let me just start with you. You have previously testified before Congress, stating that—and I am going to quote you here—"The primarily private sector program is where flood insurance is heading, but Congress should be intentional about this development and ensure the mitigation benefits achieved by NFIP are retained and funds for mapping maintained."

Do you believe that private primary policies should include NFIP equivalency fees and surcharges to ensure that the private sector is sharing the national costs of flood mapping and floodplain management?

Mr. ELLIS. Taxpayers for Common Sense certainly believes that, yes, Senator.

Senator WARREN. Thank you.

Mr. Hecht, do you agree?

Mr. HECHT. Senator, I agree completely. If we consider that mapping and mitigation are the long-term solutions for all of America, then all of America should be supporting these initiatives.

Senator WARREN. All right. And, Mr. Larson, do you agree?

Mr. LARSON. Yeah, the private sector should be on a level playing field and pay the policy fee.

Senator WARREN. So either everybody pays the fee or nobody pays it, right?

Mr. ELLIS. But, Senator Warren, one thing I would flag is that it should be specifically delineated so that people know. That is one of the problems with the Flood Insurance Program now, that that fee has been kind of hidden into the overall rate rather than actually being explicit.

Senator WARREN. Fair enough. I am all for transparency with consumers so they know what they are paying for. But those who buy private insurance and those who buy public insurance should be paying the same set of fees to get us forward in the future.

OK, good. I think this is just really important because shifting to private insurance is not going to work if private insurance does not contribute the fees we need to flood mapping and floodplain management and flood mitigation.

So I want to ask another question, if I can, in the time I have left. As we have heard, mitigation is a vital part of NFIP's flood-resilient efforts. And, in fact, the GAO recently reported that it estimated that for every dollar spent on mitigation, losses were reduced by an average of about $4.

Now, Congress currently subsidizes NFIP rates to make flood insurance more affordable, but mitigation loans could be another tool to lower the cost of flood insurance. A Wharton University study that you may be familiar with has shown that low-interest loans to elevate or flood-proof structures in high-risk areas could lower flood insurance premiums for many homeowners and also decrease the Government subsidization assistance.

So, Mr. Larson, when it is economically appropriate, do you believe that offering mitigation loans to elevate flood-proof or flood-proof high-risk homes can be an effective way for NFIP to minimize flood risk and damage for homeowners?

Mr. LARSON. Absolutely. Subsidizing mitigation rather than subsidizing insurance is——

Senator WARREN. Right.

Mr. LARSON. ——actually the way you want to go, and, in fact, the other side of that coin is those repeat losses, right now, you know, the NFIP has no ability to ultimately say no, no matter whether you have had claims five times the value of your structure. Maybe that is something that should be considered, too.

Senator WARREN. I think this point about mitigation is kind of opening a new lens that we should be looking at this. You know, the Government typically offers low-interest SBA loans to help homeowners rebuild after a disaster has damaged their homes. I think it would be a smart idea for the Government to do more to help homeowners prevent damage by making their homes more resilient before damage strikes.

Mr. Hecht, you wanted to add on that?

Mr. HECHT. I did just want to say, Senator, we visualized this about getting on the left side of the disaster curve. We tend to always operate in the acute moment, and then in the aftermath, we need to pull back to the left side, and everybody is going to win—the Government, the taxpayer, the citizen.

Senator WARREN. That sounds like a much more cost-effective way to deal with this problem. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you very much, Senator Warren.

That concludes the Senators' questioning, and that will be the end of the hearing. I would like to thank our witnesses again. Both your written and your testimony here today at the hearing has been very helpful to us. We are going to continue to proceed to meet the deadline and to beat the deadline and get a reauthorization done on time. And we will continue to seek your assistance, the witnesses, as we work on that process. In fact, you can expect questions from Senators, I assume.

I will tell all the Senators that we have 7 days in order to submit those questions, and I will not put a time limit on you, but please respond to the questions very promptly as we will be moving ahead on this rapidly.

With that, the hearing is adjourned.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF STEVE ELLIS

VICE PRESIDENT, TAXPAYERS FOR COMMON SENSE, ON BEHALF OF THE SMARTERSAFER COALITION

MAY 4, 2017

Good morning, Chairman Crapo, Ranking Member Brown, Members of the Committee. I am Steve Ellis, Vice President of Taxpayers for Common Sense (TCS), a national nonpartisan budget watchdog. Thank you for inviting me to testify on opportunities and challenges facing the National Flood Insurance Program (NFIP). With the recent flooding in several States just in the past week this hearing is tragically timely. My sympathies are with those affected by the floods. TCS has worked on flood insurance issues and reform of the program for our entire 21 years of existence and I've been involved in flood issues dating back to my days as a young Coast Guard officer dealing with the aftermath of the Great Midwest Flood of 1993. This is a critical issue for taxpayers and smart public policy that protects people and property.

Taxpayers for Common Sense is allied with SmarterSafer, a coalition in favor of promoting public safety through fiscally sound, environmentally responsible approaches to natural catastrophe policy. The groups involved represent a broad set of interests, from free market and taxpayer groups to consumer and housing advocates to environmental and insurance industry groups.[1] For a decade the coalition has advocated reforms in the National Flood Insurance Program that ensure the program is smarter and safer for those in harm's way, the environment, and for Federal taxpayers.

Though the NFIP provides critical insurance coverage to those at risk, the program must be significantly reformed to ensure it is financially sustainable, that there are sufficient incentives for reducing future flood damages and vulnerabilities, that it provides better protection for taxpayers who have repeatedly backstopped the program, and that it better protects the environment and promotes the use of nature-based mitigation solutions that have a long term benefit for homeowners and the taxpayers.

SmarterSafer released a comprehensive flood insurance reform proposal in February that is attached to this testimony as an addendum. TCS supports this proposal and I request it be included in the record. The recommended reforms are grouped in four main areas:

1. Risk analysis and mapping must be up to date and must provide property level elevation data.
2. Rates must be tied to risk, with support for mitigation and premium support for low-income homeowners.
3. Increased Federal investments and efforts on mitigation both at a property level and community wide, so that we are reducing rates by reducing risk.
4. Ensuring consumer choice and private sector competition which will also reduce taxpayer exposure.

Background on the National Flood Insurance Program

It is important to understand the context of how the Nation got into the flood insurance business. After years of ad hoc disaster aid being meted out by Congress, the National Flood Insurance Program (NFIP) was established in 1968 to create "a reasonable method of sharing the risk of flood losses through a program of flood insurance which can complement and encourage preventative and protective measures."[2] The program was to make up for a perceived lack of available flood insurance. But even at that time Congress was warned that it was playing with fire. The Presidential Task Force on Federal Flood Control Policy wrote in 1966:

> A flood insurance program is a tool that should be used expertly or not at all. Correctly applied it could promote wise use of flood plains. Incorrectly applied, it could exacerbate the whole problem of flood losses. For the Federal Government to subsidize low premium disaster insurance or provide insurance in which premiums are not proportionate to risk would be to invite economic waste of great magnitude.[3]

[1] Full list of groups is available at *www.smartersafer.org.*

[2] P.L. 90-448.

[3] U.S. Task Force on Federal Flood Control Policy. "A Unified National Program for Managing Flood Losses". August 1966. p17. *http://www.loc.gov/law/find/hearings/floods/floods89-465.pdf*

With the program nearly $25 billion in debt to taxpayers, it is clear that the program has resulted in a waste of great magnitude and not promoted a wise use of floodplains. In fact it represents a significant lost opportunity to strengthen our country's protections against natural disasters. Although subsidies were largely envisioned to be limited and short-term, they weren't. And while the program has encouraged standards and construction that help reduce flood risks for participating communities, the availability of subsidized Federal flood insurance over the last several decades made it financially attractive to develop in high risk areas. Along with other factors, NFIP helped fuel the coastal development boom that increased the program's risk exposure and losses.

$25 Billion in Debt and Subsidized Rates

There is a general misperception that NFIP is financially healthy but for a couple of large storms—namely Katrina and Sandy. However, for years prior to Katrina, NFIP teetered on either side of solvency, covering shortfalls with Treasury borrowing and repaying the loans in years of surplus. Then in 2005, the inevitable happened—a catastrophic loss year—and after Katrina, Rita, and Wilma, the program was roughly $18 billion in debt to the Treasury. That was followed by the Superstorm Sandy losses in 2012 which resulted in the program being $23 billion in debt to taxpayers.

Losses continue to grow, however, with 2016—as a result of Hurricane Matthew and several other rain events—representing one of NFIP's largest loss years with $3.7 billion in payouts triggering additional borrowing from the Treasury. The program is now nearly $25 billion in debt to U.S. taxpayers. As storms and flooding become more frequent and more severe, the debt in this program will only continue to grow. Nuisance flooding, disaster declarations, and billion dollar disasters are all on the rise; leaving the flood program as is basically guarantees additional borrowing from the Treasury.

To put the program's debt into perspective, FEMA data indicates that in 2016 the 5.1 million policies resulted in $3.3 billion in premium to insure $1.25 trillion worth of property.[4] The Government Accountability Office has estimated that approximately 20 percent of policies are explicitly subsidized and paying only 35–45 percent of their actual full-risk level premiums.[5] These numbers have likely changed some subsequent to the enactment of the Homeowners Flood Insurance Affordability Act of 2014, also known as Grimm–Waters.

As this Committee well knows, reforms to the NFIP were enacted in the Biggert–Waters Flood Insurance Reform Act of 2012 to align premiums with risk, which would not only help program solvency, but also help policyholders better understand their risk and take measures to mitigate that risk. Despite some concerns, TCS and SmarterSafer supported the 2012 legislation while also favoring additional efforts to help address affordability. Unfortunately, in Grimm–Waters, Congress rolled back many of the reforms that would have led to more actuarial rates. The rollbacks actually exacerbated the inequities in the program, placing surcharges on policies to pay for continued subsidies.

The authorization for NFIP expires September 30, 2017. Before the long-term reauthorization in 2012, NFIP required 17 extensions after the 2004 reauthorization expired in 2009 and even occasionally lapsed only to be temporarily reauthorized retroactively. We think all involved should work together so the program doesn't lapse again. That said, TCS believes that a 5-year reauthorization schedule is preferable to a longer one that would delay adjustments and reforms to the program. To put it in perspective, if the 2004 reauthorization would have been for 10 years, the 2005 storm season and Superstorm Sandy would have occurred in that time period with no opportunity to make clearly needed reforms.

Risk Analysis and Mapping

FEMA is required to map the Special Flood Hazard Area (SFHA). This delineates the area considered to have a one percent chance of flooding in any given year (so-called 100-year floodplain) and therefore has a mandatory purchase requirement for federally backed mortgages. These maps are the backbone of the NFIP and are used to determine rates. However, the flood maps do not look at property level risk or elevation, and this means that there is a lack of confidence in maps and the risk analysis provided by those maps. The current lack of confidence in the flood maps hobbles FEMA implementation of the program.

---

[4] Federal Emergency Management Agency. Available at: *https://www.fema.gov/statistics-calendar-year.*

[5] Government Accountability Office. "Flood Insurance: More Information Needed on Subsidized Policies". July 2013.

Mapping is both a challenge and an opportunity. Technology has enabled greater level of detail and accuracy in mapping. It also can be used by the private sector for more intensive risk analysis and modeling that can benefit private sector flood insurance alternatives (and NFIP as well) particularly in providing risk-based coverage in areas outside the SFHA. In addition, flood claims should inform mapping. While it is true that just because a property has never flooded in no way guarantees it won't flood, the converse does provide an indicator. Absent significant mitigation action for structural changes, a property that has flooded is certainly at risk of flooding again. Yet, in a three-part series published in early 2014, NBC News documented instances where FEMA agreed to remap out of the floodplain large condominiums built in previously flooded areas.[6] One company head that made the remapping program his business (only for commercial properties, not residential) dubbed himself Robin Hood. Hardly. Maps have to be accurate for both sides. Taxpayers and ratepayers.

Mapping also has to be smarter. Private companies are using tools that enable property level mapping and elevation. The SmarterSafer reform proposal includes requiring FEMA to move to a system of more granular, property level mapping. This would not only ensure proper risk analysis and rates, but it would take the onus off of homeowners who now have to go through a burdensome and expensive process if they believe they are mapped incorrectly. To ensure that maps are accurate and inform property owners, Government officials, and the public at large, SmarterSafer urges Congress to make revisions to FEMA's mapping requirements. Many of these recommendations are consistent with those of FEMA's own Technical Mapping Advisory Council.

To help people understand their risk and to ensure proper NFIP rates, maps must be up-to-date and accurate, and property elevations (or effective proxies) must be known. Private companies already perform assessments of risk to individual properties—something that is not currently reflected in FEMA maps. FEMA must be required to update its maps, include the best science on known conditions and risks, but also conduct (or purchase) property level (or close to) risk assessments. The Government must continue to map for purposes of the Special Flood Hazard Area designation (which triggers mandatory purchase requirements); however, this is not enough. FEMA should be required to assess elevation at a higher resolution or conduct more granular risk analysis. This is something that is possible—the State of North Carolina has undertaken a mapping effort where they have not only gotten property level data at a reasonable cost, but they have a digital system to allow property owners to search and understand their risk, potential flood premiums and mitigation options. FEMA should be required to move in this direction.

There are also many different Federal agencies that engage in mapping. This should be more coordinated and shared among agencies to avoid duplication. This is also where—and I know this is also outside the committee's jurisdiction—the Nation's mitigation and pre-disaster programs have to dovetail with NFIP and post-disaster response.

More needs to be done for the public to have a greater understanding of their flood risk. As discussed earlier, FEMA is tasked with mapping the SFHA for the mandatory purchase requirement. That is a Federal mandate that isn't likely to change. However these maps are static—lines on a map designating various flood risk areas and charging various rates based on those risks. If a homeowner has an elevation certificate that proves they are elevated "out" of the floodplain they can have those rates adjusted. But the creation of the rates are sort of a black box and it is not entirely clear that even "full-risk" rates are actuarially sound.[7] In some cases there are significant cross-subsidies where lower risk properties pay more to maintain subsidies for higher risk properties.

Risk-Based Rates, Targeting Mitigation, and Premium Support

NFIP has subsidized rates in the program virtually since its inception, regardless of need. FEMA estimates 20 percent of properties in the program pay subsidized rates, but that doesn't include properties with grandfathered rates where the flood zone designation has changed. Even with the properties that are paying supposed risk-based premiums, the fact that the program can borrow from the Treasury is a built in subsidy. The GAO has documented large cross-subsidies, many of which

---

[6] Dedman. "Why Taxpayers Will Bail Out the Rich When the Next Storm Hits U.S.". *http://www.nbcnews.com/news/investigations/why-taxpayers-will-bail-out-rich-when-next-storm-hits-n25901-NBC-News*

[7] Beider. "Understanding FEMA's Rate-Setting Methods for the National Flood Insurance Program". Congressional Budget Office. October 7, 2014. Available at: *https://www.cbo.gov/sites/default/files/presentation/49441-femaratemethodsnfip.pdf.*

benefit high-income homeowners.[8] The Government Accountability Office found that over 78 percent of subsidized properties in NFIP are located in counties with the highest home values (the top three deciles), while only 5 percent of subsidized properties are in counties with the lowest home values (the bottom five deciles).[9] This represents a real challenge to the program's sustainability.

TCS and SmarterSafer believe that rates in the program must over time be linked to risk while understanding that there may be some in the program who will need assistance in order to pay higher rates or reduce their risk. Currently subsidies are effectively hidden from the homeowner, which eliminates any price signal of risk or incentive to mitigate to reduce the risk and thereby the premium. Masking subsidies with lower rates prevents policyholders from understanding their true level of risk. As was noted in the FEMA privatization report mandated by Biggert–Waters, subsidized rates "can promote (and have promoted) poor decisions on the part of property owners and political representatives . . . they also create a moral hazard, especially when the subsidies are not well targeted."[10] The report continues that the presences of subsidies "removes the incentive to undertake mitigation efforts, thereby encouraging ever increasing societal costs."

A far better approach is to target any premium assistance to those who need it, and to encourage and fund mitigation measures that could serve to reduce rates by reducing risk. These mitigation efforts should be targeted at higher risk and lower income property owners.

While affordability must be addressed, we must also separate out those who truly cannot afford their risk based rates and those who need time to plan for rate increases, but for whom those rates would not cause a substantial hardship. TCS and SmarterSafer recommends that as rates move to risk-based, Congress ensure that there is assistance for those in need—but it must be done in a means-tested, targeted, and time-limited manner outside the rate structure. Under the SmarterSafer proposal, low-income property owners would be eligible for this premium support. However, premium support is not the preferred option for reducing premiums—we should be doing more to reduce premiums by reducing risk.

While noting some of the challenges of creating a premium assistance program, an April 2017 Government Accountability Office report on flood insurance noted: "Prioritizing mitigation over premium assistance could address the policy goal of enhancing resilience because it would involve taking steps to reduce the risk of the property, thus reducing the likelihood of future flood claims and potentially reducing long-term Federal fiscal exposure."[11]

We believe FEMA should be working to conduct cost-benefit analyses so that subsidies can be used for mitigation where cost-effective. In addition, FEMA should be required to work with private lenders as well as the Federal Housing Administration to develop or modify existing loan products that homeowners could use to mitigate thus reducing their flood-insurance rates.

Increased Emphasis on Property and Community Wide Mitigation

Subsidized rates provide a disincentive to mitigation, but as rates gradually increase there is more incentive for individuals, and by extension communities, to mitigate. This should be encouraged by further Federal investment. We know that each dollar of mitigation reduces post-disaster costs by four dollars or more.[12] Instead of providing premium subsidies the goal should be to reduce rates by reducing risk. Conversely, subsidizing rates does not reduce risk to people and property, in fact it encourages people to develop or stay in high risk areas. FEMA's subsidies should be used for mitigation where possible and cost-effective. SmarterSafer's proposal also includes a number of recommendations to better target mitigation funds to homeowners and communities most at risk, to provide additional flexibility for increased Cost of Compliance funds and to strengthen the Community Rating System to incentivize nature-based mitigation approaches.

---

[8] Supra note 5.

[9] U.S. Government Accountability Office. July 2013. Flood Insurance: More Information Needed on Subsidized Properties. (Publication No. GAO-13-607). Retrieved from: *http://www.gao.gov/assets/660/655734.pdf.*

[10] Oliver Wyman. Flood Insurance Risk Study: "Options for Privatizing the NFIP". P60 Available at: *http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.*

[11] Government Accountability Office. "Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resiliency". April 2017.

[12] Multi-Hazard Mitigation Council. "Natural Hazard Mitigation Saves: An Independent Study To Assess the Future Savings From Mitigation Activities". Available at: *https://c.ymcdn.com/sites/www.nibs.org/resource/resmgr/MMC/hms_vol1.pdf.*

There is a greater benefit from larger scale, community wide mitigation efforts than mitigating house by house or property by property. In addition, this type of mitigation often becomes a community amenity that can actually increase home values beyond the flood damage reduction benefits alone. FEMA should establish a system to promote mitigation of groups of adjacent properties in order to maximize flood damage reduction and provide additional opportunities for preservation of wetlands and other natural buffers against storm surge and other flooding. Under the SmarterSafer reform proposal, FEMA would be required to identify 'Flood Hotspots'—communities with clusters of, or significant numbers of, severe repetitive loss properties and areas with a significant number of properties at high flood risk. These areas would be required to work with FEMA to develop plans to reduce flood risk, with a priority for nature-based, nonstructural mitigation.

Consumer Choice and Private Sector Competition

Though for many years NFIP was the only viable option for flood insurance, the private sector has begun to write first dollar flood insurance, even in the highest risk areas. For instance, there are at least 19 companies writing private flood insurance in Florida, home to nearly 40 percent of the NFIP policies. A majority of these are writing flood coverage in the highest risk areas, and many are providing much higher coverage limits.

This provides needed competition in the flood marketplace—it provides consumers choice in flood policies, instead of forcing homeowners to purchase a one-size-fits-all Government policy that is significantly limited. It also takes risk off of the Federal Government, helping to stabilize the flood program and reduce the burden on taxpayers. I request to include for the record a recent analysis done by the Reinsurance Association of America (RAA) of a comparable public insurance system for hurricane risk—Florida Citizens Property Insurance Corporation, a State-run, subsidized wind insurer. This analysis reveals the results of an effort to get the private sector to "take out" policies from the program—an exodus of nearly a million policies out of a million and half total. But instead of choosing only low risk properties, private insurers took out properties across the risk spectrum, including those along the coast in the highest risk areas. This left a smaller, stronger State run insurance program that could meet its obligations. While it is an extrapolation, the RAA analysis concludes that private sector engagement in flood insurance would "be extremely beneficial to both policyholders, taxpayers, and NFIP."[13] Through private competition, purchase of reinsurance and a continued move toward risk based rates, NFIP would be able to meet its obligation in a 100-year flood with little Treasury borrowing.

S. 563, The Flood Insurance Market Parity and Modernization Act—introduced by Committee Members Sens. Heller (R-NV) and Tester (D-MT)—is the first step towards leveling the playing field for private sector flood insurance and bringing competition and consumer choice to the flood insurance marketplace. TCS and SmarterSafer believes that private sector participation would increase coverage while decreasing the cost for consumers, and should be encouraged. Consumers should be able to choose private flood insurance policies, potentially with terms and coverage that can be tailored to the interests of the consumer, as well as better incentives for mitigation. In fact, private flood policies could allow property owners to purchase enough coverage to ensure they can rebuild after a storm, not constrained by NFIP limits or by the amount of the mortgage.

S. 563 would ensure that private flood insurance counts for purposes of the mandatory purchase requirements, and would also provide an important consumer protection that ensures rate stability for consumers if they leave NFIP for private coverage and then come back to NFIP. This bill is merely a clarification that Congress never intended for homeowners to be required to purchase flood coverage through the Federal Government, only that they had to have coverage if they were in the 100-year floodplain and had a federally backed mortgage. An identical version of this bill passed the House of Representatives 419-0 last year. This represents a broad, bipartisan recognition that consumers should be given choices in flood coverage and the unanticipated regulatory hurdle to acceptance of private flood coverage should be addressed.

The idea is not that private companies will only compete for the 5 million polices in NFIP already covered by flood insurance. The goal is to ensure that more people around the Nation purchase needed flood coverage. Recent flooding events have sadly demonstrated that many people who need coverage do not have it. The average NFIP payment for the 2016 flooding in Louisiana was $86,500, the average individual aid payment was $9,150. Absent flood insurance the homeowner is left with

[13] Reinsurance Association of America. "Private Flood Improves NFIP's Stability".

low interest Small Business Administration loans to rebuild. Piling a loan on top of a mortgage to rebuild a currently uninhabitable house is not conducive to efficient and resilient rebuilding.

Also, there is no need for the Federal Government to further extend into the catastrophe insurance market through reinsurance or other means.

Additional Thoughts

Adverse Selection—The simple fact is that most of the people who are purchasing flood insurance are those most likely to get a payout. As I indicated there are 5.1 million policies in the program. According to the U.S. Census Bureau there are 134 million housing units [14] in the country and even leaving out multi-unit structures—that could be purchasing flood insurance—and commercial properties, roughly 5.4 percent of the houses in the country have flood insurance. Just about everybody has some level of flood risk, but for the most part, unless it's acute, they don't buy it. This means that NFIP as currently structured is essentially a high risk pool covering the most at-risk properties; the $25 billion in debt shows this to be the case. This concentration of risk has put significant strain on the program, particularly given the lack of risk based rates. The private sector would most likely not concentrate all of their risk in flood, but would have diverse risk pools; in addition they could write multi-peril insurance that includes flood and other risks, making the pricing for the peril less, and they can also lay off risk on the worldwide reinsurance marketplace.

Reinsurance—FEMA's recent purchase of reinsurance demonstrated that there is interest and capacity in the reinsurance markets to take on U.S. flood risk. Obviously industry will have to gain a greater understanding of the nature of the underlying flood risk in the NFIP portfolio, but that can be managed through responsible data sharing. Laying off risk on the private sector will help protect taxpayers from debts racked up by future large storms.

Disaster Assistance—NFIP's inter-relationship with Federal disaster aid programs under the Stafford Act is both an opportunity for reform and a challenge to a more rational holistic Federal approach.

An observation from a the 2014 FEMA privatization report " . . . highly publicized instances of Federal aid following catastrophic events have also created a public perception that individual property owners do not need to insure against low-probability high severity flood events, effectively creating moral hazard." [15] What people are not realizing is that the vast majority of the aid goes to rebuild public and Federal infrastructure, not individuals to help them move on after disaster. A 2014 study by the Wharton Center for Risk Management and Decision Processes at the University of Pennsylvania found that increasing disaster assistance by $1,000 reduced subsequent insurance coverage by $6,000. [16]

Conclusion

There are a number of reforms that Congress should make when it reauthorizes the NFIP to ensure the program is sustainable in the long term. With better, property level mapping, a focus on mitigation and risk reduction, a move to risk based rates with targeted subsidies, and private sector competition, we believe NFIP will be strengthened and more people will purchase needed flood coverage.

PREPARED STATEMENT OF MICHAEL HECHT

PRESIDENT AND CHIEF EXECUTIVE OFFICER, GREATER NEW ORLEANS, INC., ON BEHALF OF THE COALITION FOR SUSTAINABLE FLOOD INSURANCE

MAY 4, 2017

Good Morning Chairman Crapo, Ranking Member Brown, and Members of the Committee. I am honored to speak to you today about reforming and modernizing the National Flood Insurance Program (NFIP). My name is Michael Hecht, and I am the President and CEO of Greater New Orleans, Inc., the 10-parish economic development organization for Southeast Louisiana. Since April 2013, GNO, Inc. has led the Coalition for Sustainable Flood Insurance (CSFI), a national alliance of ap-

[14] *http://quickfacts.census.gov/qfd/states/00000.html*

[15] Oliver Wyman. Flood Insurance Risk Study: "Options for Privatizing the NFIP". P52 Available at: *http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.*

[16] Kousky, Michel-Kerjan, Raschky. "Does Federal Disaster Assistance Crowd Out Private Demand for Insurance?" Available at: *http://opim.wharton.upenn.edu/risk/library/WP2013-10_FedDisasterAssistance.pdf.*

proximately 250 organizations across 35 States. CSFI was formed in the wake of the implementation of the Biggert–Waters Act, when homeowners across the Nation were facing skyrocketing rate increases through a combination of the removal of grandfathering and new maps, which often times were inaccurate. CSFI was a driving force behind the passage of the Homeowner Flood Insurance Affordability Act (HFIAA), which was signed into law in March 2014.

As was made clear in those debates, there is no simple answer to the complex problem of maintaining premium affordability, keeping the NFIP on sound financial footing, and accurately communicating risk. And it is in the national interest to recognize that many communities exposed to flood risk are hubs of domestic energy production, international trade, national and international finance, agriculture production, and other nationally significant economic and defense activities. Affordable and sustainable flood insurance is an integral component of ensuring these communities continue their vital contributions to America. CSFI is now focused on advocating for a stronger policy framework for the NFIP that recognizes the economic, cultural, defense, and other national contributions made by communities exposed to flood risk.

There are four primary policy areas CSFI has focused on that will provide for this stronger framework, denoted by the acronym "MMAP":

- *Mitigation*—A comprehensive approach to reducing flood losses before a disaster occurs is a more effective means to reducing economic loss and protecting taxpayer interests, than ejecting households and businesses from NFIP via unaffordable flood insurance premiums
- *Mapping*—Enhancing the way we assess and communicate risk through improvements to the mapping process will protect communities and the NFIP over the long-term
- *Affordability*—Premiums must remain affordable in order to keep communities across America economically viable
- *Program Participation*—Adopting policies that encourage more people to buy flood insurance will help to bring the program's costs in line with revenues in a responsible way and help communities recover more quickly following a flood event

My testimony today will explain the policy suggestions we've proposed in this framework. CSFI has also produced a whitepaper series, which has been submitted for the record, that makes the case for these proposals in greater detail.

Of note, last week, Senator Bill Cassidy and Senator Kirsten Gillibrand released a discussion draft that includes many of the provisions for which CSFI is advocating. The Cassidy–Gillibrand legislation will reform and modernize the NFIP; improve how risk is assessed and communicated; keep insurance affordable; increase options for mitigation; and, allow for some responsible private market entry provisions, among other policy priorities. I strongly urge this committee to give the legislation thoughtful consideration as we move towards reauthorization on September 30.

Mitigation

Flooding is the most common natural disaster in the United States, affecting communities in each of the 50 States and territories. Across the Nation, States and municipalities have worked diligently to reduce the frequency and impact of flooding in their communities even while resources to reduce flood losses remain limited.

Effective flood mitigation is a multifaceted enterprise. The Federal and State governments share significant responsibilities in the planning, design, construction, and maintenance of major flood control projects that protect hundreds of millions of homes and businesses. At the community level, particularly those communities participating in the National Flood Insurance Program (NFIP), Governments adopt and enforce floodplain management standards and building codes. County and parish governments that adopt stronger standards and participate in the Community Rating System (CRS) achieve a greater level of flood protection for the community that is reflected in reduced flood insurance premiums.

Property owners have a key responsibility to reduce flood damage and secure resources to comply with floodplain management and building code requirements. Property owners may fulfill this responsibility to protect property by purchasing flood insurance and Increased Cost of Compliance (ICC) coverage. Appropriate flood insurance and ICC coverage ensures flood damage is repaired and that damaged structures are restored to a higher level of flood protection if required by current floodplain management standards and building codes. Property owners further have the obligation to work through local, State, and Federal programs to mitigate high-risk structures having sustained repetitive flood loss events.

Despite this coordinated, multilayered approach to flood mitigation, substantial sums of taxpayer funds are appropriated each year in response to disaster damage caused by flooding. This raises important questions about the efficacy of the national flood loss mitigation strategy and the efficiency of deploying substantial taxpayer funds for disaster response while making limited investments in disaster mitigation by comparison. Aggressively addressing flood risks at the regional and community levels, while providing homeowners options and resources to lower flood risks will save lives and property, reducing flood damage, flood insurance claims, and flood insurance premiums.

Federal policymakers must work with State and local governments and individual property owners to reduce the frequency and expense of flood losses. This necessarily requires allocating resources for disaster prevention and flood loss mitigation. Reducing the exposure of our communities, homes, and businesses to flood losses is a more efficient and effective use of taxpayer resources and will reduce future disaster costs and preserve flood insurance affordability.

Policies that would increase mitigation include:

- Redirecting Premium Surcharges Included in HFIAA—The Cassidy–Gillibrand legislation would require FEMA to reallocate the existing surcharges established in HFIAA to better finance the Pre-Disaster Mitigation and the Flood Mitigation Assistance Programs. This proposal to redirect existing fees would yield approximately $400 million annually for flood mitigation activities
- Modernize Increased Cost of Compliance (ICC) Coverage—Currently, ICC claims payments must be used to fund up to $30,000 in compliance costs associated with State or local floodplain management laws or ordinances, which typically require structure elevation. The limit of $30,000 is inadequate to elevate most structures. Under the Cassidy–Gillibrand legislation, FEMA will be required to increase ICC coverage to $75,000 with $30,000 of ICC payments allowed to occur outside policy limits
- Provide a Premium Credits to Offset the Cost of Obtaining an Elevation Certificate—This proposal would offer policyholders without an elevation certificate a one-time rate credit of $500 for the cost of obtaining elevation data. Knowledge of flood risk and accuracy of a structure's base flood elevation information will be enhanced by removing or reducing the financial barrier associated with the acquisition of elevation certificates. This policy proposal is included in the Cassidy–Gillibrand legislation
- Facilitate Mitigation Credits that Reduce Premium Rates—The Cassidy–Gillibrand legislation would require FEMA to develop meaningful cost reductions, in excess of 10 percent of the current risk premium rate for a property, for flood mitigation activities undertaken on properties in all zones, including moderate risk zones
- Partner with participating communities and State Governments to obtain elevation data—NFIP should offer Community Rating System (CRS) credit for participating jurisdictions that require an elevation certificate to be prepared at a subsequent transfer of title for structures in a flood zone where elevation data are not available
- Provide Effective Oversight of the U.S. Army Corps of Engineers—While this is not germane to reauthorizing the NFIP, I want to urge Congress to conduct effective oversight of U.S. Army Corps of Engineers (USACE) procedures and project approval timelines to ensure authorized flood control projects do not languish, needlessly putting communities, homes, and businesses at risk of flood damage

Mapping

Accurate mapping is fundamental to assessing and communicating risk, and to pricing it appropriately. The current mapping process often results in communities having to fight inaccurate maps that do not take into account locally built flood protection features and communities building off of outdated mapping, which results in artificially inflated risk. We must question whether we can truly determine actuarial rates if they are based on flawed mapping. Further, many areas of the country are not mapped or mapped accurately, which results in communities who are at risk of flooding unaware of the risk.

For example, in the August 2016 floods in Baton Rouge, Louisiana, over 80 percent of flood survivors did not have flood insurance. I know it is easy for those of you not from Louisiana to question why these people did not have flood insurance given what has occurred in Louisiana over the last 12 years. Here's the answer: many of those communities were not mapped into a flood zone or were only in optional purchase areas. Updated and accurate mapping and better communication about risk when purchasing property could have limited the number of uninsured properties significantly. This in turn could have resulted in these affected communities needing less post-disaster funding, thus saving the taxpayer. Technology around assessing and communicating risk is also rapidly evolving, and FEMA should embrace this technology to provide more accurate maps for America.

Proposals that could improve the way we assess and communicate risk include:

- Increasing the authorization for the National Flood Mapping Program to $500M—The Government funding bill currently being debated provides $177M for the National Flood Mapping Program, which is a good start. For the next funding cycle, I urge Congress to increase the authorization of the National Flood Mapping Program to $500M, which would allow FEMA to accelerate the completion of mapping of the entire country, would help communities better understand and plan for risk
- Allowing Counties to Adopt Portions of Maps at a Time—Congress should require FEMA to allow communities to adopt portions of a flood map that they agree with at one time while still allowing for map appeals in other areas of the community. The current policy puts the entire county's new map on hold during the appeals process, which results in the entire community planning land use policies around outdated maps and some residents paying higher than necessary rates

The Cassidy–Gillibrand legislation also includes several policy suggestions that would enhance the mapping process and should be included in reauthorization, including:

- Provide Mapping Standards and Guidelines for Nongovernmental Entities—This proposal would authorize the Technical Mapping Advisory Council (TMAC) to develop map standards for FEMA and nongovernment entities, thereby giving communities additional avenues to streamline the FEMA mapping process and develop maps that use updated community data & technology
- Encourage the Use of High-Resolution Mapping Technology—This proposal would instruct FEMA to facilitate, partner, and leverage current high-resolution topographic data (e.g., Light Detection and Ranging [LIDAR] data, or other new and emerging technologies) in the development of flood insurance rate maps
- Improve the Flood Mapping of Levee-Protected Areas—This proposal would require FEMA to replace its "Zone D" designation (defined as an area of undetermined/undefined risk) in levee-protected areas with risk zones that are more appropriate for the level of protection that the flood mitigation features afford

Affordability

Following the Biggert–Waters Act, when homeowners across the Nation faced skyrocketing premiums, legislators reasserted the long-held view that premium affordability is a fundamental tenet of national flood insurance. In HFIAA, policymakers addressed premium affordability concerns by restoring the practice of rate "grandfathering", reversing the elimination of pre-FIRM subsidized (PFS) policies, eliminating the property sales trigger, and increasing damage and improvement thresholds. Those policies must be maintained in reauthorization.

In HFIAA, Congress revised key policies driving substantial increases in flood insurance premiums yet retained the Biggert–Waters Act imperative to reduce or eliminate certain premium subsidies. In general, HFIAA limits year-over-year premium increases to 18 percent for individual properties and 15 percent for the average of all premium increases within a risk classification. Premiums for most subsidized policies must, by law, increase at least 5 percent on an annual basis, subject to the overall limitation that NFIP not charge rates greater than a classification's determined risk. Further, certain property classifications will see premium increases designed to rapidly eliminate subsidies.

Policies to maintain affordability include:

- Formalizing 1 percent cost to value ratio—This proposal means that no premium could be more than 1 percent of the policy value. So, for example, a policy worth $250,000 could never cost more than $2,500. Language was included in the Homeowner Flood Insurance Affordability Act that FEMA should strive to accomplish this policy, and the Cassidy–Gillibrand legislation strengthens that language. Congress should consider this policy as a way to easily address affordability

- Maintaining Current Rate Structure—Proposals to increase the floor of rate increases from 5 percent to 10 percent or up should be avoided. According to FEMA, beginning April 1, 2017, premiums are increasing an average of 6.3 percent. Increasing the floor rate of increases to 10 percent or higher would represent a substantial premium increase on homeowners
- Preserving grandfathering—Preserving grandfathering is of critical importance. Meaning, if you built your house to according to FEMA's base flood elevation at the time of construction, you will not be penalized when new maps are introduced. The confluence of removing grandfathering and the introduction of new maps are what drove skyrocketing rates post Biggert–Waters, which was unfair to homeowners who built as they should. Congress must maintain grandfathering permanently. The Cassidy–Gillibrand legislation maintains this provision
- Addressing the NFIP's debt—Congress should consider forgiving the NFIP's debt, which currently stands at $24.6 billion, at least the portion related to the Federal levee failures following Hurricane Katrina. At a minimum, Congress should stop the requirement of FEMA to pay interest on this debt, which next year will cost $400M.That $400M could be used to build reserves or provide greater funding for mitigation. To require the NFIP to pay this debt back to the U.S. Treasury is robbing Peter to pay Paul

The Cassidy–Gillibrand legislation also includes some additional affordability proposals, including vouchers for low to moderate income Americans that are worthy of consideration.

Program Participation

Sustainability and affordability of flood insurance coverage is a growing concern as NFIP is experiencing a year-over-year decline in several key metrics. According to FEMA data, NFIP policies-in-force peaked in 2009 at 5,700,235. As of June 30, 2016, the number of policies-in-force was 5,083,071, a decline of almost 11 percent from 2009. Total coverage-in-force is also in decline after peaking at approximately $1.3 trillion in 2013 and as of June 30, 2016, is approximately $1.25 trillion. For only the second time since 1978, total premium earned has fallen from the previous year, with $3.54 billion of premium earned in 2014 compared to $3.44 billion in 2015.

This is not sufficient evidence to validate a long-term forecast of year-over-year decline for NFIP, but policymakers must be mindful of data showing declines in core program variables over the short-term. It must also be noted that key coverage-in-force and premium earned declines have largely occurred post-Biggert–Waters Act.

For policymakers to more fully achieve the core purposes of national flood insurance—floodplain management, limiting Government disaster costs, and facilitating property owner purchase of insurance—the NFIP must be designed with the interests of end users as preeminent. Increases in both policies written and coverage in force will bring greater stability to communities and provide greater protection for the Federal treasury. Simply put, with both the severity and frequency of floods increasing, we need more people buying flood insurance.

Policies to increase program participation include:

- Offering a default "opt-out" flood policy as standard part of homeowners insurance package—NFIP should be directed to engage in product testing that offers consumers a "default" insurance option where consumers are required to actively decline (opt-out) flood insurance coverage. Based on the outcome of consumer testing, NFIP and NAIC should move to expand "default" options that include NFIP coverage as appropriate
- Expanding the definition of the Special Flood Hazard Area—Congress should authorize a study to assess the effectiveness of the mandatory purchase requirement; assess the benefit of mandatory purchase to taxpayers, communities, and households; and identify areas outside designated SFHAs or adjacent thereto where mandatory purchase would have a demonstrable, positive cost-benefit impact for taxpayers and property owners
- Mandatory purchase of flood insurance for properties that have experienced a loss and Federal disaster assistance was accepted to repair or replace the structure—Congress should consider requiring mandatory purchase of flood insurance for at least ten years for properties that have experienced a flood loss event and Federal disaster assistance was accepted to repair or replace the damaged structure and contents. The mandatory purchase requirement should attach to the structure and the requirement should be noted in local land

records in a manner that is readily apparent to title researchers, lenders, appraisers, borrowers, and other parties interested in the transfer of property

The Role of the Private Market

Another concept being widely discussed as we move towards reauthorization is the role of the private market. While a fuller entry of the private market would bring needed competition and discipline to the flood insurance market, I urge Congress to be mindful of the risk of cherry-picking. A scenario where the private market comes in and takes all of the low risk properties while leaving the NFIP with nothing but high risk properties will not serve the policy holder well and leaves the NFIP open to needing further loans from the U.S. Treasury. An increase in private market coverage should occur parallel to a healthy and sustainable NFIP.

The Cassidy–Gillibrand legislation includes policy solutions to ease private market reentry in a responsible way, and those proposals should be included in reauthorization. One policy related to the private market that must be included in reauthorization is:

- Including continuous coverage language in reauthorization—Language should be included in reauthorization that allows policyholders to maintain continuous coverage, which would allow them to leave the NFIP for the private market and subsequently return to the NFIP while proving continuous coverage, and thus maintain a grandfathered rate. This policy is key to providing consumers with the assurance needed that the NFIP will be available should they be priced out of the private market or should private flood insurance become unavailable. Under current law, policy holders who may have access to more affordable, comprehensive private market coverage are not incentivized to leave the NFIP.

Multiyear Reauthorization

It is critically important that we reauthorize the NFIP for a multiyear period. Short-term extensions, and especially lapses in authorization, have real world implications. Lapses in authorization stall or kill home closings. Particularly with a September 30 expiration—in the middle of hurricane season—American home and business owners need to be able to rest assured that the flood insurance they have purchased and relied on will be available should a flood happen. A multiyear reauthorization is needed to bring certainty to consumers and real estate markets.

Again, thank you for the opportunity to speak to you today about the reauthorizing and reforming the National Flood Insurance Program, and for your service. CSFI stands ready and willing to assist the Committee as we work to reauthorize the NFIP by September 30.

PREPARED STATEMENT OF LARRY LARSON

DIRECTOR EMERITUS, ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

MAY 4, 2017

Introduction

The Association of State Floodplain Managers is pleased to participate in this hearing about the reauthorization of the National Flood Insurance Program (NFIP). We appreciate the opportunity to discuss our views and recommendations for the future of the program. We thank you, Chairman Crapo, Ranking Member Brown, and Members of the Committee for your interest in this important subject.

The ASFPM and its 36 chapters represent more than 17,000 local and State officials as well as other professionals engaged in all aspects of floodplain management and flood hazard mitigation including management of local floodplain ordinances, flood risk mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources development, and flood insurance. All ASFPM members are concerned with reducing our Nation's flood-related losses. For more information on the association, its 14 policy committees and 36 State chapters, our website is: *www.floods.org.*

Floods are this Nation's most frequent and costly natural disasters and the trends are worsening. The NFIP is the Nation's most widely used tool to reduce flood risk through an innovative and unique mix of incentives, requirements, codes, hazard mitigation, mapping, and insurance. At the same time, we understand the four main pillars of the NFIP are interconnected; and making significant changes to one pillar without thoughtful consideration of the other three can erode the program overall. While we are under no illusion that the NFIP is the only tool in the toolbox, it is one that serves 22,000 communities, policyholders, taxpayers, and the public well.

ASFPM's testimony is intended to provide a better description of these interdependencies as well as 24 recommendations for Congress to consider to reform the NFIP.

The NFIP Is a National Comprehensive Flood Risk Reduction Program

The NFIP was created by statute in 1968 to accomplish several objectives. Among other things, the NFIP was created to:

- Provide for the expeditious identification of and dissemination of information concerning flood-prone areas
- Require States and communities, as a condition of future Federal financial assistance, to participate in the NFIP and to adopt adequate floodplain ordinances consistent with Federal flood loss reduction standards
- Require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies in special flood hazard areas
- Encourage State and local governments to make appropriate land use adjustments to constrict the development of land exposed to flood damage so homes and businesses are safer and to minimize damage caused by flood losses
- Guide the development of proposed future construction, where practicable, away from high risk locations threatened by flood hazards
- Authorize nationwide flood insurance program through the cooperative efforts of the Federal Government and private insurance industry
- Provide flexibility in the program so flood insurance may be based on workable methods of distributing burdens equitably among those protected by flood insurance and the general public who benefit from lower disaster costs

Beyond merely providing flood insurance, the NFIP is unique as it integrates multiple approaches to identify flood risk, communication of the risk, and reduction of flood losses. It is a unique collaborative partnership enlisting participation at the State and local level. It is a multifaceted, multiple objective program—a four legged stool as it is often called. The four legs of the stool are (1) floodplain mapping, (2) flood standards, (3) flood hazard mitigation, and (4) flood insurance. Altering one leg without careful consideration of impacts on the other three legs can have serious repercussions on reducing flood losses. NFIP on the whole provides substantial public benefits as our testimony will further detail.

A Pivotal Time for the NFIP—Current Status

At the end of 2016 the NFIP, which is 50 years old, had paid $56.4 billion in claims. But beyond paying insurance claims, the NFIP has also mapped 1.2 million miles of streams, rivers and coastlines. It has invested more than $1.3 billion in flood hazard mitigation for older, at-risk structures. Because of the program, over 22,000 communities adopted local flood risk reduction standards, which results in nearly $2 billion of flood losses reduced annually. The NFIP has provided innumerable public benefits as well as direct monetary ones to taxpayers.

At the same time, based on historical flooding and dealing with ongoing development, future conditions are and will continue to change, perhaps quite significantly. While floodplain managers know upstream development often results in increased flood heights, we also observe changing weather patterns that result in shifting snowmelt/rainfall in the West. Nationally, more intense short duration storms are causing more flash floods, and unrelenting sea level rise (SLR) is beginning to affect communities from Florida to Virginia to Alaska. A recent NOAA report added a new upper boundary for SLR this century up to 2.5m (8 feet) by 2100 due to new data on the melting of the Greenland and Antarctic ice sheets. This new data is getting the attention of our State and community members. For example, a recent article shows Rhode Island State officials discussing how to deal with these new scenarios. Luckily the NFIP, as it exists today, can help States and communities address these problems with its innovative mix of incentives, requirements, data, and tools.

Still, improvements can be made. NFIP reform legislation in 1994 and 2004, in addition to other measures, outlined reforms focused on reducing repetitive loss properties. Today those remain problematic. Reform legislation in 2012 focused on flood mapping. Today the National Flood Mapping Program provides important authorities for FEMA and cooperating technical partners to map all flood hazard areas across the country. Reform legislation in 2004, 2012, and 2014 addressed deficiencies in the insurance element of the NFIP. There is still more work to be done. It is important to note that the 2012 and 2014 reform legislation resulted in 80 new sections of law that are not yet fully implemented. ASFPM hopes Congress will be thoughtful about reforms that might be considered in 2017 as we do not yet fully know the program outcomes that will result from the previous two reform bills.

So what will the NFIP of tomorrow look like? ASFPM believes the Nation will continue to need a robust, fiscally strong NFIP to comprehensively reduce flood risk. We also believe a strong NFIP can co-exist with a developing private market. But at the end of the day we must acknowledge that at least today's NFIP is far more than an insurance program. It is the Nation's primary tool to identify and map flood hazard areas used by a multitude of agencies. The program is also a tool to assess flood risk, used to work with communities and States to implement strong land use and building standards to prevent future disaster losses, and works with property owners and communities to undertake mitigation to reduce damage to older at-risk buildings, in addition to providing flood insurance. While we have witnessed several narrowly focused reform proposals since the convening of the 115th Congress, we are particularly encouraged by the recent release of the bipartisan Cassidy–Gillibrand discussion draft which is a comprehensive reform bill with several good ideas. We look forward to working with the committee on comprehensive NFIP reform bill that serves policyholders, communities, and taxpayers.

A Long-Term Sound Financial Framework Is Needed

The NFIP had generally been self-supporting until 2005. In the 1980s the program went into debt a few times and ultimately Congress forgave approximately $2 billion. But from the mid-1980s to 2005, the NFIP was largely self-sustaining and when borrowing from the U.S. Treasury, the debt was repaid with interest. However, due to catastrophic floods in 2004, 2005, and 2012, and now due to a high claims year in 2016, the program does currently owe $24.6 billion to the treasury. Unfortunately, we heard this past March in testimony to the House from FEMA, that this past January, the program had to even borrow to pay the interest on the debt (and today's debt is financed at historically low rates). This was done only one other time back in 2008 after Hurricane Ike. When interest rates eventually cycle back to more historic levels, the interest on the debt payments will destabilize the program.

The NFIP was never designed to pay for catastrophic events. In fact, from 1968 to 1978 the concept was one of risk sharing with the private sector with the program actually paying a subsidy to private insurers for pre-FIRM structures. As recently as the late 1980s, internal communications show that the Administration reaffirmed the Federal treasury was essentially the reinsurer of last resort.[1] It seems this history has been forgotten. Further, the NFIP is being held to a much different standard than another disaster loss management program that Congress annually subsidizes, the Federal crop insurance program. How can it be that a program like crop insurance, with a primary purpose is to encourage insurance as an alternative to ad hoc disaster spending, be annually subsidized at $6.5 billion annually,[2] with strong Congressional support?

Important progress toward putting the program on a more sound financial footing was made as part of the past two NFIP reforms in 2012 and 2014, which ASFPM supported. Under BW–12, reforms (later modified by HFIAA–14) were made to the rate structure to move subsidized policies to actuarial premium rates, to allow the NFIP to purchase reinsurance and to establish a reserve fund. All of these help reduce the financial risk to the program and ultimately to the American taxpayer.

But what has been very frustrating to ASFPM is Congress' unwillingness to address the program debt and any long term framework of stability should a truly catastrophic event happen again (such as another Katrina). After reviewing FEMA's interest and principle payments after 2005 and based on FEMA's analysis of cash flow, if Congress had promptly dealt with the debt amassed from the 2004–2005 hurricane seasons, then the NFIP wouldn't have had to borrow from the treasury to pay Hurricane Sandy claims and would have likely not had to borrow for claims in 2016. Those pointing to today's debt in the NFIP as evidence that the NFIP is irreparably broken do not understand that if the 2004–2005 debt had been resolved in a timely manner by Congress (as had been done in the 1980s and consistent with

[1] Dr. Len Shabman with Resources for the Future has been researching this topic in-depth and will be soon developing a paper detailing the history and specifically the financial arrangement of the NFIP from 1968–1978 as well as the strengths and weaknesses of the public–private loss sharing model that actually still exists today.

[2] According to the Congressional Budget Office, the Federal outlays for crop insurance is expected to average $8.8 billion per year from FY2015–FY2024 based on the 2014 farm bill changes. It is also interesting to note that the Federal Government subsidizes approximately 62 percent of the crop insurance premium; that the subsidy was expressly increased to stimulate participation in the crop insurance program in order to avoid disaster assistance; and that premium subsidies, administration and operating expenses, and underwriting losses/gains are considered mandatory spending in the Federal budget. (Congressional Research Service: Proposals to Reduce Premium Subsidies for Federal Crop Insurance, 2015.)

the program's design), the NFIP would be functioning well with little or no debt today.

- ASFPM recommends Congress forgive the current NFIP debt
- Congress should also develop a threshold above which the Federal Government will backstop claims resulting from catastrophic events for the NFIP based on an evaluation of the program's current financial capacity and level of risk transfer to the private sector given the financial risk management tools Congress has asked FEMA to implement

Floodplain Mapping

Floodplain mapping is the foundation of all flood risk reduction efforts, including design and location of transportation and other infrastructure essential to support businesses and the Nation's economy. Today FEMA has in place right policies and procedures (i.e., requiring high-resolution topography (LIDAR) for all flood map updates), and is using the best available technology to produce very good flood studies. For example, FEMA is doing some pilot studies in Minnesota and South Dakota using very precise topographic mapping and automated flood study methods to develop base level engineering that can be used as an input into future flood studies. This gives communities data immediately to use for planning and development rather than waiting years for the data. In coastal studies, FEMA now uses the state-of-the-art ADvanced CIRCulation (ADCIRC) model for storm surge analysis. Unfortunately, due to the length of time it takes from initiation of a flood study to final production, some maps coming out today may have been started a decade ago and are not being produced to today's specifications. It is important to distinguish between these legacy mapping projects and those meeting today's guidance and specifications. ASFPM is also pleased that FEMA has prioritized eliminating remaining pure "paper" maps that have never been modernized with newer flood study procedures.

Recently there has been confusion around whether or not sophisticated risk assessment modeling developed by the private sector can be a suitable replacement for FEMA flood maps and data. However, this is comparing apples to oranges. First, FEMA flood maps and data are already produced by the private sector (under contract to FEMA). Second, the private sector risk assessment methods largely developed to assist the reinsurance industry are not publicly available. Those models do not produce a "map" the community can use for multiple purposes and cannot inform the other needs of the program including hazard mitigation and floodplain management. Such methods can complement FEMA maps for the purposes of rating flood insurance, but do not replace FEMA maps. Further, those developing such models have indicated they depend on FEMA maps to calibrate their models.

Today, flood risk maps only exist for about ⅓ of the Nation—only 1.2 million of 3.5 million miles of streams, rivers and coastlines have been mapped. Even today some of the maps are many decades old, or were updated before the current standards to redraw boundaries based on more accurate study data and topography. Many areas have never been mapped, so there is no identification of areas at risk. The development occurs with no flood standards. This is what is happening in thousands of subdivisions across the country: areas are developing into tens of thousands of housing units that use to be cornfields and cow pastures. Later, after there is significant development at risk and often after a flood or two, FEMA comes in and maps it. Then the dynamic changes and everything becomes adversarial. People think FEMA put a floodplain on them when it was there all along. The property owner is mad because they have to buy flood insurance at high premiums because flood elevations were unknown. Realtors are upset because it is a surprise and may have an impact on the future salability of homes. And local elected officials fight to minimize the size of the mapped floodplain, spending thousands of dollars on competing flood studies that are often minimal changes.

The point is it doesn't have to be like this, but we have to start changing our mapping priorities. The entire dynamic can change if maps showing risk are available before development starts. We must map today's corn fields and cow pastures to get mapping ahead of development.

The National Flood Mapping Program (NFMP) authorized by Congress in 2012 Reform Act was one of the most important elements of the legislation and is the right approach. While FEMA has not made much progress on mapping residual risk areas, failure inundation areas or areas of future development, FEMA is making progress, paying attention to recommendations made by the Technical Mapping Advisory Council. Now we need 2.3 million miles of unidentified flood hazard areas, and maintain the existing inventory of 1.2 million miles of flood studies. ASFPM supports Section 501 of the Cassidy–Gillibrand bill to increase the authorization for flood mapping to $500 million annually.

Another key issue is mapping areas below dams and behind levees to show the residual risk areas that will be flooded when the dam or levee overtops, fails or a spillway is used. This was an issue with the recent flooding below Oroville Dam in California. While local emergency management officials had access to these maps, two hundred thousand evacuated property owners did not. People need to know they are living or buying in a residual risk area so they can take preparedness and mitigation measures such as buying a low cost flood insurance policy. In just the last 2 years, South Carolina alone has had 80 dam failures due to increasingly intense flooding events. Unfortunately, DHS policy has continued unchanged since 9/11 which is that inundation maps for Federal dams and levees are classified as For Official Use Only and not publicly available. This means citizens living there do not know they are at risk until law enforcement knocks on their door in the middle of the night and orders them to evacuate.

In recent years, a Federal Policy Fee associated with NFIP policies ($50 for high-risk policies; $25 for lower-risk policies) has paid between 30–60 percent of the flood mapping program and appropriations paid for the remainder. The highest level of appropriations in the past 5 years has fallen far short of the $400 million per year authorized in BW–12. So funding from the Federal Policy Fee is an important part of the funding for map updates and corrections. Fewer NFIP policies means less funding for updated maps.

- ASFPM recommends the reauthorization of the National Flood Mapping Program (NFMP)
- ASPFM supports an increased authorization for the National Flood Mapping Program to accelerate the completion of the job of initially mapping the Nation in 5 years and getting to a steady-state maintenance phase
- ASFPM recommends that Congress require Federal dam and levee inundation maps be publicly available and cease their classification as For Official Use Only

Finally, ASFPM would like to comment on the Cooperating Technical Partners (CTP) program. The CTP program. The CTP program is an innovative approach to creating partnerships between the Federal Emergency Management Agency (FEMA) and participating NFIP communities, regional agencies, State agencies, tribes and universities that have the interest in becoming more active participants in the FEMA flood hazard mapping program. Just this past Monday, at the ASFPM annual conference, FEMA presented its first annual CTP award to the San Antonio River Authority (SARA). SARA, a CTP since 2003, manages its own floodplain mapping projects for watersheds in the San Antonio River Basin, and also processes its letter of may revisions. By incorporating its local knowledge and data into the flood mapping process, FEMA maximizes its leveraging of local knowledge and data, and the community produces more acceptable mapping products for its citizens. In short, it is huge benefit for both FEMA and SARA. ASFPM strongly supports the continuation and expansion of the CTP program. ASFPM is concerned that the CTP program is focusing on communities that are already capable versus helping those communities which need assistance building mapping capabilities.

Floodplain Regulations, Standards, and Codes

More than 22,200 communities participate in the NFIP, which basically means they have adopted minimum development and construction standards to reduce flood losses. As floodplain areas are identified and mapped throughout the Nation, NFIP participating communities must adopt and enforce local floodplain management standards that apply to all development in such areas. In urban and rural areas alike, these standards have for decades set a minimum level of protection for development occurring in identified floodplains.

States are required to apply similar standards for State funded, financed and undertaken developments. In fact, NFIP standards are the most widely adopted development/construction standards in the Nation as compared to building codes, subdivision standards or zoning. FEMA has estimated that for approximately 6,000 of the NFIP participating communities, the only local codes they have adopted are their floodplain management standards. Today it is estimated nearly $2 billion of flood losses are avoided annually because of the adoption and implementation of minimum floodplain management standards. Often communities decide to adopt standards that exceed the Federal minimums. For example, over 60 percent of the population in the United States lives in a community that has adopted a freeboard—which is an elevation that is higher than the base flood (or 100-year flood) where buildings must be elevated. A freeboard not only has the benefit of making the construction safer, but it can have a tremendous impact on flood-insurance rates. A freeboard of 3 feet can reduce premiums by more than 70 percent.

In 2016, ASFPM participated in an agricultural floodplain ordinance task force which was formed to identify and develop refinements of the NFIP in agricultural and leveed agricultural areas. ASFPM's Chair Ceil Strauss, the State floodplain manager for Minnesota participated in this group, and was supported by floodplain managers from several States where agriculture is a significant element of the economy. While ASFPM supported several recommendations of that task force, including FEMA's update of Technical Bulletin 7–93, ASFPM urged caution to broader considerations to change NFIP standards to exempt certain classes of activities from needing floodplain development permits or needing to elevate certain agriculturally related structures. One only needs to remember the carnage of Hurricane Floyd in North Carolina in 1999 where over $2 billion in agricultural losses occurred including the loss of 30,000 hogs, 700,000 turkeys and 2.4 million chickens. If anything, NFIP minimum standards need strengthened to address modern agricultural methods including large concentrated animal feeding operations (CAFOs).

Why do communities participate in the NFIP and adopt local standards? State floodplain managers around the Nation who have enrolled nearly all of the communities in the past 40 years know a major reason is to make flood insurance available to their citizens. If a community hasn't joined (there are still about 2,000 communities not in the NFIP), it is usually compelled to do so when a resident gets a federally backed mortgage and needs to have flood insurance. While there are some non-participation disincentives in terms of restrictions on some forms of disaster assistance, such disincentives are weak and very limited. For most communities, they are not much of a disincentive at all, but getting flood insurance is.

The entire floodplain management budget (100 percent), which includes staffing, community and State technical assistance, and the Community Assistance Program (CAP–SSSE), comes out of the Federal Policy Fee.

- ASFPM recommends almost all forms of disaster assistance (especially public assistance) be tied to a community's participation on the NFIP

Flood Hazard Mitigation

NFIP has two built in flood mitigation programs: Increased Cost of Compliance (ICC) and Flood Mitigation Assistance (FMA). These NFIP funded mitigation programs have resulted in more than $1.3 billion in funds to reduce risk to thousands of at-risk, existing structures. The Multi-Hazard Mitigation Council in its research of FEMA flood hazard mitigation projects determined that such projects resulted in $5 in benefits for each $1 spent. ICC and FMA have mitigated, on average, 1,850 buildings annually between 2010 and 2014. ASFPM strongly supports both programs.

ICC is the fastest way to get flood mitigation done and is paid for 100 percent through a separate policy surcharge. Since it isn't run like a typical grant, funds are available much quicker. It is a transaction between the insured and insurance company. Sixty percent of ICC claims are used to elevate a building and 31 percent of the time it's used to demolish a building. Other techniques used are floodproofing or relocation of the building out of the floodplain altogether. From 1997 to 2014, ICC has been used to mitigate over 30,000 properties.

ASFPM has been frustrated for several years over the pace of FEMA's implementation of its existing authority to make ICC much more useful. In 2004 ASPFM worked with Congress to add triggers to ICC, so now there are four of them:

- A building being substantial damaged,
- A building classified as a repetitive loss,
- A building where an offer of mitigation is being made, and
- The administrator's discretion to offer ICC when it is in the best interest of the flood insurance fund.

Of these four, only one trigger is being utilized—when a structure has been determined to be substantially damaged. While FEMA will claim it also applies ICC to repetitive loss properties it, is only that subset of them that have also been substantially damaged. The point is that there are three triggers—in existing law—that could be used in a pre-disaster sense. ASFPM would note that this past fall, FEMA has finally convened an internal working group to look at ICC and evaluate how to make it more effective. ASFPM urges the committee to monitor the progress of this group to ensure that the congressional intent has been carried out.

Another frustration with how ICC is currently being implemented is the determination of how the surcharge is set by FEMA's actuaries. Currently funding for ICC is through a congressionally mandated surcharge capped at $75 per policy. The latest data ASFPM has is for calendar year 2014 where ICC brought in approximately $74 million for mitigation. On average this equals about $15 per NFIP policy—which is far below the statutory cap. However, as ASFPM has been discussing changes to ICC including increasing the ICC claim limit beyond $30,000, a response we often get is that the FEMA would have a tough time making the changes because it is collecting as much as it can under the existing cap and that the surcharge rate is set using actuarial principles.

However, in its 2010 rate review, FEMA discussed how it was collecting more in ICC than it was spending and therefore adjusted the amount it would collect per policy down in 2011. The result? In 2010 the surcharge collected $84.5 million and in 2011 the surcharge collected $78.2 million. The point of this is that the rate setting becomes a self-fulfilling prophesy—FEMA's inability to implement ICC's other triggers result in the program not being fully used. And its low utilization in turn led to FEMA determining that the rates should be lowered. So it gives the appearance there is room under the existing cap. ASFPM believes there is room under the existing cap and suggests Congress look at setting a tiered amount that would be consistent with the existing cap limit and reflective of risk. For example, ASFPM calculates that under such an approach an ICC surcharge set at $25 for BCX-Zone properties, $50 for actuarially rated A- and V-Zone properties and $75 for subsidized A- and V-Zone properties, would generate approximately $227 million in revenue that could be used by policyholders to mitigate their flood risk.

ASFPM believes ICC needs two other adjustments by Congress to be more effective. First, while ICC is collected on every policy, FEMA believes the statute requires the ICC claim be counted toward the total claim limit. This means a home that gets a $250,000 damage claim, the amount available for ICC is $0. Second, the ICC claim limit is too low. Estimates to elevate a home range from $30,000 to $150,000 with an average closer to $60,000. While $30,000 is very helpful, it often does not come close enough to cover enough of the mitigation cost. ASFPM is very supportive of Section 203 in the Cassidy–Gillibrand bill that increases the coverage limits of ICC to $75,000.

- ASFPM recommends the ICC claim limit be in addition to the maximum claim limit under a standard flood insurance policy
- ASFPM recommends the ICC claim limit be raised to $60,000 or higher
- ASFPM recommends Congress specifically allow FEMA to utilize the available ICC amount for both demolition and acquisition costs as a means of compliance, when the claim is assigned to the community and deed restricted as open space
- ASFPM recommends FEMA clarify to Congress whether or not expanding ICC to utilize pre-disaster triggers, raising the claim limit and allowing demolition and acquisition costs would necessitate increasing the cap and based on that information either raise the cap or set a tiered surcharge within the existing cap
- ASFPM recommends Congress waive any rulemaking requirements that may be an impediment to quickly implementing the pre-disaster triggers for ICC and allowing demolition and acquisition costs

FMA operates like a typical grant program where a community applies through the State through a grant application. Further, FMA also funds other types of mitigation that can address issues on the neighborhood- or community-scale such as stormwater management systems to reduce flood risk and flood mitigation plans. In recent years, the priority for the FMA program has been repetitive loss and severe repetitive loss properties. While this is an important objective, ASFPM worries that an exclusive focus on such projects is increasingly resulting in a gap where no assistance is available for properties that desperately need assistance, such as older pre-FIRM nonrepetitive loss structures for which insurance rates may be increasing significantly. ASFPM recommends that accommodations be made for these types of properties as well when FEMA formulates its new policy guidance. As our testimony will go into more detail below, one approach to flood insurance affordability is to subsidize flood hazard mitigation or at least give property owners a chance to mitigate. Another idea for Congress to consider is a mitigation surge where Congress would supplement FMA funds with a large one-time or multiyear appropriation to either address the growing number of repetitive loss properties, or specifically address pre-FIRM properties where affordability of flood insurance has become untenable.

Repetitive loss claims continue to drain the National Flood Insurance Fund and today, there are at least 160,000 repetitive loss properties. Hazard mitigation efforts have been insufficient to reduce flood damage to older structures and ultimately reduce the overall number repetitive loss properties. Current mitigation programs within the NFIP are underfunded and not reducing the overall number of repetitive losses in the country.

Flood Insurance

Flood insurance is the easiest way for a property owner to manage their flood risk. It was also viewed by the original authors of the program as a way to more equitably share risks and costs of development decisions. Yet too few property owners and renters carry flood insurance. Today it is estimated 10 percent of the population lives in an identified floodplain and that number is projected to grow to 15 percent by the year 2100 based on natural population growth and future conditions (land use, development, and climate change). It is also estimated the number of policies increasing by 100 percent and the average loss per policy increasing by 90 percent in 2100.[3] The point is that these trends show growth in the human occupation of flood hazard areas and the potential damage that may result. As we have pointed out earlier, there are many more miles of rivers, streams and coastlines that aren't even yet mapped (which is why it is unsurprising that 20 percent of NFIP claims and ⅓ of Federal disaster assistance come from outside of mapped floodplains).[4]

The Push for Expansion of a Private Flood Insurance Market

In 2012 and today, there appears to be much interest in expanding the private flood insurance market. Many believe the private sector is a cure-all and can get the taxpayer off the hook for flood losses. And there seems to be a belief that if not for Congressional intervention in 2017, a robust private market would develop. ASFPM believes that the private sector can be a partner to the NFIP in growing the policy base nationally, but any reforms to the law to do so should be done with care. For example, ASFPM rejects the notion that the NFIP should be a program of "last resort" only insuring the worst risks, and strongly urges Congress to consider reforms that do not lead to cherry-picking of the risks that maximize the private industry's profits—to the detriment of the NFIP. ASFPM has the following observations related to expanding the private flood insurance market. First, private flood insurance has always been part and will continue to be allowed under the NFIP. Currently, robust private markets exist for policies in excess of NFIP limits. The private market has almost all of the commercial and industrial flood risk in the country. And robust private markets exist for forced place properties. Too often in 2012 and again this year, conversations in Congress about private flood insurance imply private companies are not currently writing policies. Not true! Both industry leaders and even testimony by the CEO of the Nation's largest private flood insurance agency to the House in March indicated very strong growth, especially over the past 2 years.

Second, the reforms to stimulate more private market participation in 2012 have worked as intended. ASFPM strongly disagrees with those who believe that somehow the 2012 reforms were badly written or somehow missed its intent. ASFPM has spoken with numerous industry sources, as well as had extensive conversations with private sector companies interested in offering private flood insurance and former State insurance commissioners. This industry is growing and in the past 2 years has expanded significantly. For example, private flood policies today are required to contain a flood mitigation coverage that is similar to ICC because the 2012 reforms required that private policies have coverage "at least as broad as" NFIP policies. This ensures that property owners have funds to elevate flood prone homes and that communities are not faced with owners who just walk away from the property because it is too expensive to elevate. The 2012 reforms are ensuring that the private market is growing in an orderly way with appropriate safeguards that ensure protections for policyholders, lenders, taxpayers, and communities.

Current law requires private policies to include six key provisions: coverage that is at least as broad as coverage under a standard flood insurance policy under the NFIP including deductibles, exclusions, and conditions; a notice of cancellation requirement; information about availability of flood insurance coverage under the NFIP; a mortgage interest clause similar to that found in a NFIP policy; a time limitation for filing a lawsuit after a denial of a claim; and cancellation provisions as restrictive as those under a NFIP policy. ASFPM has significant concerns from both a policyholder and community perspective about recent legislative proposals to eliminate these provisions, especially the two that pertain coverage/exclusion requirements and the mortgage interest clause requirements. To offer a policy for half the NFIP price might sound good but if the coverage is only 25 percent of the NFIP

[3] "The Impact of Climate Change and Population Growth on the National Flood Insurance Program through 2100". 2013.

[4] "FloodSmart Flood Facts". Webpage accessed 3/14/17.

policy or if the deductible is beyond the ability of the property owner to pay it is a very bad deal (as the consumer will find out when a flood hits). Taxpayer costs of disaster relief will also explode if weak coverage is allowed in the private market. ASFPM urges that these six provisions be retained in any comprehensive NFIP reform legislation.

- As a result of the successful 2012 reforms to stimulate the private flood insurance market, ASFPM does not believe any further stimulation of the private market is needed at this time [5]
- If Congress does consider additional changes to stimulate the private market, ASFPM urges that the six requirements for private flood policies be retained. If these provisions are retained to ensure that a private policy is at least equivalent to that of an NFIP policy, ASFPM supports legislative proposals to ensure seamless continuous coverage between private policies and NFIP

Third, ASFPM strongly believes a strong NFIP can coexist with the private market offering flood insurance as long as both are on equal playing fields. In other words, neither the NFIP nor the private market should be at a competitive disadvantage. As explained earlier in this testimony, private insurers depend on NFIP maps and agrees local floodplain regulations help all insurance, yet private policies do not have to include the Federal Policy Fee to help pay a share of these costs. The wholly unfair PAYGO surcharge has allowed private policies to be written using FEMA rate tables and the private sector is profiting on the difference between the loaded NFIP policy (with surcharges and fees) and private sector policy that does not have to charge such fees.

Fourth, ASFPM believes that to preserve the many public benefits of the NFIP, to ensure fairness and to prevent erosion the NFIP, two changes must be made to the existing law to ensure private flood policies are paying their fair share of floodplain management and mapping costs, and to ensure that communities continue to participate in the NFIP.

The private insurance industry uses FEMA flood maps in various ways: sometimes to calibrate their risk assessment models, and sometimes to determine basic eligibility of their private flood insurance product. Industry officials ASFPM talks with all support the floodplain management efforts in a community that provide a meaningful program of risk reduction. Given that 100 percent of the Federal Policy Fee goes to mapping and floodplain management, it is only equitable that private policies help pay for these functions and that they are not just borne by policyholders. ASFPM strongly supports Section 404 of the Cassidy–Gillibrand bill that would assess a surcharge or user fee on private flood policies to pay for mapping and floodplain management and for ICC, especially if provisions of current law that require private policies to have comparable coverages are eliminated.

- ASFPM recommends an equivalency fee, equal to the Federal Policy Fee, be assessed on private flood insurance policies and remitted to the NFIP, and that fee be specifically dedicated for flood mapping and floodplain management

The equivalency fee is not unlike TSA security fee which helps fund TSA's airport security measures. For the traveling public, this fee supports critical security measures and ensures the safety of the commercial airline industry. And while from a purely philosophical standpoint one could argue that the Federal Government should pay this through appropriations, it does not. And as members of the flying public, we certainly do not object to paying such a fee to keep us safe. Similarly, some might argue that that floodplain management and floodplain mapping should be wholly supported by Federal appropriations as flood maps and floodplain management are public benefits. But for decades this has not been the case and that burden has been shared between the taxpayer at large and those with NFIP policies. And the simple fact is that private flood policies and those companies selling private flood policies, for a variety of reasons, need accurate flood maps and depend on having local flood codes adopted and enforced. It is entirely unfair that taxpayers and NFIP policy holders today are subsidizing private policies which is what is happening now in absence of such a fee. [6]

As private flood insurance becomes more widely and easily available, provisions must be made to ensure such policies can only be made available to meet the man-

[5] Last year ASFPM testified before the Senate Committee on Small Business and Entrepreneurship on flood insurance rate increases which also included detailed thoughts on H.R. 2901, which can be found here or on ASFPM's website at *www.floods.org.*

[6] It should be noted that in testimony before the House, Evan Hecht, CEO of the Nation's largest provider of private flood policies thought that such an equivalency fee was fair and was supportive of it.

datory purchase requirement if the community participates in the NFIP. Why? For thousands of communities in the NFIP, the primary reason for joining the program is the availability of flood insurance to meet the mandatory purchase requirement. As a requirement of joining, communities agree to adopt and enforce local floodplain management standards. As a result, floodplain management standards are the most widely adopted in the United States—exceeding the coverage of building codes, subdivision regulations and zoning. The adoption and enforcement of these codes, in turn, reduces future flood risk to the individual, businesses, communities and taxpayers. ASFPM members understand that once you remove the incentive for joining (flood insurance availability) thousands of communities may rescind their codes, drop out of the NFIP, and rely on the private policies to meet needs of property owners without the administrative burden of adopting and enforcing local codes. Particularly susceptible to this are small communities with low policy counts. As stated earlier in this testimony, most communities in the Nation already participate in the NFIP. And while the private industry is still emerging, let's be partners in persuading communities to comprehensively reduce flood losses. Finally, this fee has no cost to the private insurance industry.

- ASFPM recommends that private flood insurance policies meeting the mandatory purchase requirement and can only be sold in NFIP participating communities

As stated earlier, ASFPM is concerned about private industry cherry-picking the best risks from the NFIP leaving the portfolio of the program more adversely selected. Because of this concern and the growth that is occurring in the private flood market which could lead to such a state for NFIP, ASFPM can only support, at most, a five-year reauthorization of the NFIP to ensure that Congress will exercise its oversight in a reasonable period of time.

Flood Insurance Affordability

Despite the longer glide path for premium increases set in HFIAA, rates may again reach high levels in another three or four years and a long-term solution to affordability was not included in either BW–12 or HFIAA. Also, to meet House PAYGO rules, there was a large surcharge imposed on nonprimary residences, small businesses and other nonresidential structures. The surcharge is neither risk-based nor need-based. Premium increases and surcharges have led to a notable reduction in policies in force, declining from a high of 5.5 million to about 5.1 million today.

On one hand ASFPM supports pricing flood insurance premiums to accurately reflect risk. Premiums reflecting risk inform individuals as to the level of hazard in flood prone areas and encourage investment in flood mitigation measures. On the other hand, many low and middle income homeowners living in older homes in flood prone areas may not be able to afford flood insurance if premiums are priced to reflect risk. ASFPM believes that it is imperative that issues of affordability be addressed, but not necessarily by only subsidizing premiums. The University of Pennsylvania Wharton Risk Management and Decision Process Center has developed a conceptual approach that would pair a needs based voucher program with implementation of a low interest mitigation loan program. ASFPM supports approaches like this that emphasize mitigation as part of the solution. We recognize and commend the Cassidy–Gillibrand bill for presenting a concrete proposal to address affordability and would strongly urge the approach taken to incorporate mitigation where it is cost effective to do so.

ASFPM notes that congressionally mandated studies on flood insurance affordability have been completed and now look forward to FEMA's completion of the affordability framework. However, we are also concerned about timing of the FEMA framework relative to the reauthorization deadline and whether any meaningful reforms will be developed and considered.

- ASFPM recommends considering a shorter multiyear reauthorization of 2–3 years so FEMA can more fully develop affordability recommendations for Congress to consider
- ASFPM recommends the elimination of the PAYGO surcharge established in 2014 from the standpoint of flood insurance affordability and equity with private flood policies
- ASFPM recommends that subsidies be focused on mitigation, rather than subsidizing insurance and that any subsidy be paid for outside of the NFIP (do not create a new cross-subsidy rather fund through appropriations)

Mandatory Purchase Requirement and Compliance

When first enacted in 1968, the NFIP did not have a mandatory purchase requirement. By 1973, only 200,000 property owners had flood insurance policies. Following a series of catastrophic floods, Congress enacted the Flood Disaster Protection Act of 1973, instituting the mandatory purchase requirement, obligating property-owners seeking a loan from a federally regulated lending institution to obtain flood insurance if their assets were within a special flood hazard area. As a result, these reforms led to a dramatic increase in insurance penetration and by 1977, more than 1.4 million properties had flood insurance. In short, mandatory purchase works! Even as you pass the 2017 omnibus spending bill which contains over a billion dollars in supplemental funding for storm and flood disaster recovery, consider that if there wasn't an NFIP and there wasn't a mandatory purchase requirement, the supplemental appropriations you provide would be much larger and the burden on the Federal taxpayer greater.

That is why ASFPM is concerned about some proposals circulating that would exempt some classes of properties (such as commercial properties) from the mandatory purchase requirement. This makes no sense and would end up costing taxpayers more through disaster assistance. In fact, ASFPM supports changing the mandatory purchase requirement to include more classes of properties.

- Expand the mandatory purchase requirement to include all flood risk areas including: Erosion zones, areas behind levees and other flood control structures, dam inundation zones, and moderate risk areas (Zone B/shaded X)
- Require flood insurance equal to the replacement cost on any structure outside the SFHA for which two or more damage claims or Federal disaster assistance have been paid due to flooding unless it is mitigated
- Evaluate expanding the mandatory purchase requirement for all buildings in coastal storm surge zones

ASFPM continues to be concerned about the enforcement of the mandatory purchase requirement. In 2014 our members became quite concerned when FEMA decided that because mandatory purchase was not the agency's responsibility, it rescinded the Mandatory Purchase of Flood Insurance Guidelines (ironically our members report the document is alive and well in circulation as a bootlegged resource and while dated, it is still very helpful).

What is the compliance rate? Attempts to quantify this in 2005 as part of the evaluation of the NFIP concluded that while overall the market penetration rate of the NFIP nationwide was estimated to be around 50 percent, the mandatory purchase requirement compliance rate could not be precisely determined. That same study did come to the conclusion that mandatory purchase compliance at the time of loan origination did not seem to be an issue.[7] While the number hasn't been precisely determined, another study as part of the evaluation of the NFIP contained a very good policy discussion of the mandatory purchase issue and contained 72 recommendations, including one that ASFPM strongly concurs with: "FEMA should explore opportunities to exercise a leadership role in promoting compliance and in assisting Federal entities for lending regulation to meet their obligations related to flood insurance."[8]

Aside from the compliance rate, it may be useful to divide mandatory purchase compliance into three areas: mandatory purchase associated with loans from federally regulated lenders, mandatory purchase associated with loans by Federal agencies that do direct lending (i.e., Dept. of Agriculture, Veterans Administration, SBA) and mandatory purchase associated with the receipt of some forms of disaster assistance. It is important to note that while FEMA has the authority to administer the NFIP, other Federal agencies typically have the authority to administer the NFIP's mandatory purchase requirement. Although ASFPM would note that compliance with mandatory purchase associated with disaster assistance falls on FEMA. This means there are likely very different processes and procedures in place.

While Congress continually raises questions about mandatory purchase, FEMA continually points out that it does not have explicit authority to enforce the requirement. ASFPM agrees with earlier Office of Inspector General recommendations that FEMA could have a useful role in the implementation of the mandatory purchase requirement including assisting other Federal entities in addressing the compliance

---

[7] The authors did try to make an estimate of 75–80 percent; however, stakeholders largely thought this number was high. Data source: "NFIP's Market Penetration Rate: Estimates and Policy Implications". RAND Corporation. 2006.

[8] "NFIP's Mandatory Purchase Requirement: Policies, Processes and Stakeholders". Tobin and Calfee. 2005.

issue. FEMA's Office of Inspector General in 2000 provided several examples of how FEMA could promote compliance without assuming a regulatory or enforcement role. One example is re-instituting a process FEMA used in the 1980s and early 1990s that collected information about mortgages and location in the SFHA from applicants seeking flood-related disaster assistance. FEMA then matched the information with data on which property owners carried flood insurance to determine the level of compliance with the mandatory purchase requirement.

- ASFPM recommends Congress clarify FEMA's role in mandatory purchase to provide leadership and give FEMA explicit authority to provide technical assistance to Federal entities to meet their obligations to related to mandatory purchase compliance
- ASFPM recommends the committee hold a hearing dedicated to compliance with the mandatory purchase requirement (including when flood insurance purchase is required as a condition of disaster assistance) to further explore this issue

Improving the NFIP Policy Offerings

Community floodplain managers often hear complaints about the NFIP centered around what is covered and what is not; and the inability to get additional coverages like living expenses as part of a NFIP policy. ASFPM has been impressed with FEMA's customer experience initiative after Sandy with FEMA committing to improving the insurance product it sells. Yet FEMA is constrained by a cumbersome rulemaking process that can take years to complete.

- ASFPM recommends Congress give FEMA the flexibility to offer additional flood insurance policy options and make changes to existing options without the need for extensive rulemaking

In Conclusion

Floods are this Nation's most frequent and costly natural disasters and the trends are worsening. The NFIP is the Nation's most widely used tool to reduce flood risk through an innovative and unique mix of incentives, requirements, codes, hazard mitigation, mapping, and insurance. At the same time, we understand the four main pillars of the NFIP are interconnected; and making significant changes to one pillar without thoughtful consideration of the other three can erode the program overall. While we are under no illusion that the NFIP is the only tool in the toolbox, it is one that serves policyholders, taxpayers, and the public well.

The Association of State Floodplain Managers appreciates this opportunity to share our observations and recommendations with the Committee.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT FROM LARRY LARSON

Q.1. In South Carolina, we have zoning laws that have allowed for the development of properties that drain directly into other properties.

As a result, some South Carolinians have their homes or businesses flooded over and over and over again, with the NFIP picking up the tab every time.

Without heavy-handed mandates, how can we incentivize local governments (municipal and county) to be proactive and rectify these repeat problem areas to the benefit of homeowners and taxpayers?

A.1. This is an issue that exists when local communities do not provide adequate development standards that protect the property rights of those adversely impacted by development as well as those of the developers. Property rights of both are important. No property owner has the right to do something on their property that will adversely impact someone else's property. Many communities require those developing to demonstrate how any increased runoff from the development will be retained on-site, or will otherwise be mitigated to not adversely impact others. ASFPM has how-to guides and tool kits on our website showing how communities can do accomplish this: *www.floods.org/index.asp?menuID=460&firstlevelmenuID=187&siteID=1.*

The NFIP currently provides community credits in "Activity 450" of the Community Rating System for community adoption of Low Impact Development (LID) stormwater management practices. These are generally modest levels of credit (of up to 25 points). Considerably higher levels of community credits are available when communities adopt requirements for new developments to control and provide for infiltration of water runoff for increasingly higher volume storms. Such approaches can make a substantial difference in reducing conflicts and controlling worsening future flooding conditions through thoughtfully managing the community's stormwater.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP FROM LARRY LARSON

Q.1. *Affordability:* As we examine reauthorizing the NFIP, we cannot repeat the mistakes of Biggert–Waters and increase costs that drive homeownership out of reach for working people.

Many of the fixes we passed in HFIAA—such as capping the rate of insurance increases for most primary residences and preserving grandfathering—were crucial to making sure homeowners in my State, especially in areas like Minot, Fargo, and Drayton, could afford to stay in their homes. In Minot in particular, the city is facing a looming remapping deadline in the fall of 2018 that will significantly alter the affordability for nearly three thousand properties in the area. Many properties are slated to be moved from an X (low risk) zone to an AE (high risk) zone, which will mean a huge premium increase for many of these homeowners. I've heard from some in my State that the jump could be from roughly $400 per month to $2K–$6K per month, if they don't secure flood insurance prior to the remapping.

Minot is a great example of why grandfathering is so critical for keeping families in their home. Do any of the witnesses believe that the grandfathering and affordability caps placed in HFIAA should be altered?

A.1. ASFPM warned in its testimony as Biggert–Waters was being debated that movement towards actuarial rates too fast would cause the problems that eventually occurred resulting in the changes under HFIAA. ASFPM supported the adjustments in HFIAA, which really resulted in the lengthening of time for policies to move to full risk rates. The important element that was preserved is a point of certainty that actuarial rates will truly happen. These rates had been grandfathered for 44 years until BW–12 started the move to actuarial. Three important things must happen to make this process successful:

1. Continual movement to actuarial,
2. FEMA should show policyholders what full risk rates will ultimately be on NFIP policies, and then show discounts being provided, and
3. Assistance should be provided to mitigate the building so the property owner can afford the premium—this mitigation assistance can be through ICC or mitigation programs like PDM or FMA, and, when available, HMGP or CDBG–DR or other assistance grants.

An additional idea to consider is establishment of a State-related "mitigation" revolving loan program working to assist communities and homeowners with voluntary property buyouts and relocations, or other building mitigation measures (such as loans for elevation of building utilities) to help lower homeowners' insurance costs through lowering flood risk to structures.

Q.2. In order for residents to obtain the benefit of affordable rates, they need to secure flood insurance prior to the remapping. How can we better educate homeowners about the critical importance of these mapping changes and the impact it will have on affordability?

A.2. It is clear from research and analysis that citizens most trust information from people they know; usually the local officials. It is important to enlist local officials to help educate the property owners on their risk and urge them to get insurance now. Any resources to assist local officials in doing this would be useful.

Q.3. As we see more and more extreme flooding across the country, FEMA will always be there for homeowners on the back end with at least some Federal money through hazard mitigation assistance.

Given that severe flooding occurs more often, and the Federal Government many times foots a lot of the bill irrespective of flood insurance, does it make sense to expand some level of mandatory flood coverage to all federally insured mortgages?

A.3. Yes, it makes sense to expand mandatory purchase and ASFPM has testified previously that many options exist, such as requiring insurance on all loans in 500-year floodplain and in residual risk areas behind or below structures that may fail or overtop,; or all the way up to consider requiring that all homeowner policies must cover all natural hazards, including floods just like they cover wind and fire now.

Q.4. What would the costs be for homeowners in low risk areas?

A.4. Similar to Preferred Risk Policy (PRP) now. However, under the current pricing scheme and surcharge mandated by Congress, the surcharge essentially equals the premium, so the surcharge, which is not risk based but artificial, needs to be appropriately reduced or eliminated.

Q.5. How would this help sure (shore?) up the NFIP program and what risks would it present?

A.5. By coming into closer harmony with a basic tenet of insurance—spreading the risk by increasing the risk pool (both by class of structure and geographically). Even now, the NFIP has an adversely selected portfolio—very high-risk areas have concentrations of policies whereas low risk areas are chronically underinsured. The more policies in the program, the lower the rates, in general. More people would have to buy, but if rates in low risk areas are really low, and paid monthly that would help homeowners manage costs.

Q.6. *Private Flood Insurance and Sustainability of the NFIP:* If private flood insurance is structured the right way it could play a helpful role within our Federal flood insurance system; however I have real concerns about cherry-picking and the impact that could have on the long-term risks for the NFIP.

Mr. Larson, in your testimony you express similar concerns about cherry-picking. How can we design a minimum coverage standard, or other sensible protections, that would allow for more private flood insurance without draining the best risk from the NFIP?

A.6. Level the field so private competes fairly—and this cuts both ways. The NFIP cannot be at a competitive disadvantage to private flood and vice versa. This means a couple of things:

First, private pays an equivalent policy fee to pay for mapping, mitigation and floodplain management, and the private policy must truly meet the minimums of the NFIP policy mentioned in next question.

Second, in order for the communities to have access to private insurance, as with NFIP, communities must continue in good standing to participate in the NFIP, meeting at least the program's minimum floodplain management standards.

Third, private policies must have at least some of the required elements of 42 U.S.C. 4012a(b) that are in existing law now—specifically the provision of flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer and the additional loss payee provision to ensure that claims go back into repairing the damaged building.

The private flood proposals being considered by Congress eliminate this consistency requirement, which puts the NFIP on the hook for very high-risk properties that private insurers will not insure through a continuous coverage provision. If the NFIP is to accept a private policy from a continuous coverage standpoint, shouldn't it be an "apples to apples" situation? ASFPM is strongly opposed to eliminating the requirements of 4012a(b) as we are witnessing a private flood market that is now already growing, WITH these requirements in place.

Q.7. If we decide to make the standard for private policies that they must be "at least as broad as coverage under a standard flood insurance policy" who should be making the determination of whether an individual private policy meets that standard? Are there challenges with allowing state Insurance Commissioners the option to make this determination, and if so, what are they?

A.7. First, the agencies overseeing lenders should complete their job of defining "at least as broad". This levels the field. Second, FEMA can be helpful in this regard and should be directed to assist (we have elaborated on this point in our written testimony). ASFPM is concerned there will be challenges with 50 State insurance commissioners having 50 different definitions for a program that applies nationally. Those 50 States can address other aspects of the insurance company, but the equivalent policy issue must be nationally consistent.

Q.8. One interesting way to better align incentives and risks between the private sector and Federal Government would be by having the Federal Government and private sector split losses and benefits on every policy. For example, you could have a design where for each dollar of loss or dollar of premium, there's a predetermined percentage of risk sharing between the Government and private sector. Could an approach like this be effective within the NFIP?

A.8. This sounds simple, but would likely be complex to administer. Private insurance is already expanding in the Nation, and if the NFIP rates continue toward actuarial, should increase. As long as the playing field is level, they should be able to coexist. ASFPM is aware of a proposal in the Cassidy–Gillibrand discussion draft, which establishes a pilot program for risk sharing with the private sector. We are supportive of trying this concept out on a purely pilot basis.

Q.9. *Mitigation:* In North Dakota we spend a lot of our resources on finding ways to mitigate flood damage. Many of our local homebuilders have built homes above and beyond local building codes in order to make sure homes are less susceptible to flooding. However, under the current system, many of these costs go unrecognized for purposes of lower flood insurance premiums.

Where can we make improvement to recognize mitigation efforts, not just at the community level, but at the homebuilder level?

A.9. There seems to be a misperception here. In fact, the current system recognizes many building standards that truly reduce the flood risk. The simplest way is to adopt a freeboard—or a building first floor elevation level above the base (100-year) flood. For example, if the first floor of a building is above the BFE (regulatory flood level—usually the 100-year flood level) reductions in premium rates look like this:

Feet above BFE for first floor	Premium reduction
1 foot	A zone 50% V zone 18%
2 foot	A zone 68% V zone 38%
3 foot	A zone 74% V zone 55%

These are data that Chad Berginnis (ASFPM) updated using April 2017 premium rates. Communities should also be encouraged to work with lenders, homebuilders, and realtors to inform homeowners of the long-term benefits of investment in prudent higher building elevations to reduce flood risks and insurance costs, currently and into the future. During new construction, one foot of elevation adds only about 1 percent to costs.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

SMARTSAFER NATIONAL FLOOD INSURANCE PROGRAM REFORM PROPOSAL, FEBRUARY 2017

SMARTERSAFER.org

Americans for Smart Natural Catastrophe Policy

SmarterSafer
National Flood Insurance Program Reform Proposal
February 2017

NFIP must be reformed to better protect taxpayers, the environment, and people in harm's way.

The National Flood Insurance Program (NFIP), which provides critical insurance coverage to those at risk, is up for reauthorization this year. The program must be reauthorized and reformed to ensure it is financially sustainable, that there are sufficient incentives for reducing future flood damages and vulnerabilities, that it provides better protection for taxpayers who have repeatedly backstopped the program, and that it better protects the environment and promotes the use of nature-based mitigation solutions.

While NFIP provides needed insurance coverage, it has numerous problems as currently constructed – it was not designed to accommodate major catastrophic events; it fails to adequately deter new development in areas vulnerable to flooding thus leading to further environmental degradation and additional financial losses; and it does not do enough to encourage states, communities, and individuals to reduce their vulnerability to floods. The NFIP must be reformed to address these issues — to provide increased transparency to the public, provide more information to people living in harm's way about past damages and the risk of flooding, to ensure mapping is timely and accurate, to tie rates to risk, to give consumers greater choice in flood insurance options, and to incentivize mitigation and risk reduction.

It is important that Congress lay out an updated vision for NFIP that includes managing the nation's escalating flood risks, reducing those risks over the long-term, promoting environmental stewardship, and easing the financial burden for flood risk now borne by the federal taxpayers. Toward these ends, any reauthorization of NFIP should prioritize the following:

- *More Accurate Mapping.* Accurate, up-to-date, and accessible mapping that takes into account the growing frequency and severity of floods as well as more detailed and granular risk analysis methods to determine risks and associated rates.
- *Risk-Based Rates with Support for Reducing Risk.* A move toward risk-based rates for properties over time, with means-tested assistance for those who cannot afford actuarial rates with an emphasis put on risk reduction instead of premium support.
- *Focus on Resilience.* A closer linkage of NFIP and hazard mitigation programs under the Stafford Act so that mitigation funds are used for those properties in NFIP most at risk in order to help reduce risk and lower NFIP premiums and losses.

- *Private Sector Participation and Consumer Choice.* There should be a growing role for private insurers in managing flood risk. To do this, there must be a level playing field for private flood policies so consumers have greater consumer choice.
- *Increased Flood Insurance Purchase.* Not enough people at risk purchase flood insurance; Additional property owners at risk should be encouraged to purchase flood insurance to ensure they can rebuild after disasters.
- *Environmental and other Actions to Reduce Risk.* Public policy should include incentives to identify, protect, and restore natural resources that reduce risk; to use nature-based features to reduce risk; and for communities to adopt floodplain management standards that go beyond NFIP's minimum requirements to reduce risk.

Helping those in Harm's Way Understand and Plan for Risk—More Accurate Mapping and Rates

For too many years, federal policies—and discounted flood rates that bear no relation to the potential for flood damages—have masked risk and encouraged development in unsafe and environmentally sensitive areas. SmarterSafer urges Congress to make a number of changes to mapping to ensure people understand and can prepare for known risks.

FEMA's Flood Insurance Rate Maps, also known as flood maps or FIRMs, are an essential component of NFIP and the nation's ability to manage the potential for flood damages. These maps serve two main purposes:

1. to establish the risk of flooding at a given location and the commensurate flood insurance rates a property owner is required to pay, based on the location of an individual parcel of land and the structure's elevation relative to the mapped floodplains; and
2. to provide the public and decision makers with the best available information on flood risks to guide decisions related to development, project design, siting and local land use decisions, and enforcement of provisions of the NFIP.

To ensure that maps are accurate and inform property owners, government officials, and the public at large, SmarterSafer urges Congress to make revisions to FEMA's mapping requirements. Many of these recommendations are consistent with those of FEMA's own Technical Mapping Advisory Council.

- FEMA must ensure that the highest quality datasets (like high resolution LIDAR) are more widely deployed.
- FEMA should consider mapping not only short-term flood risks that inform year-to-year decisions on flood insurance premiums, but FEMA should also consider mapping longer-term flood risks that need to be accounted for when siting developments, for instance, and for making other regulatory decisions under the NFIP. Many areas of the country have begun taking steps to map their erosion hazards and these actions should be incorporated into NFIP maps.
- Congress must ensure adequate funding for mapping, and should review mapping efforts and data collection across federal agencies to ensure FEMA has access to all relevant government data and to ensure efforts are not duplicative.

To help people understand their risk and to ensure proper NFIP rates, maps must be up-to- date and accurate, and property elevations (or effective proxies) must be known. Private companies already perform assessments of risk to individual properties—something that is not currently reflected in FEMA maps. FEMA must be required to update its maps, include the best science on known conditions and risks, but also conduct (or purchase) property level (or close to) risk assessments. The government must continue to map for purposes of the Special Flood Hazard Area designation (which triggers mandatory purchase requirements); however, this is not enough. FEMA should be required to assess elevation at a higher resolution or conduct more granular risk analysis.

Proposal on new mapping data. Rather than expending federal funds to digitize outdated flood maps FEMA should instead use some portion of these funds to procure new data and investigate the use of new modeling and risk analysis information currently being used in the private and public sectors. An emphasis should be put on accessing data that can be used to determine elevation in the highest risk areas.

- FEMA shall, within 3 months, conduct a detailed analysis of data available from public and private sources for mapping and risk analysis. Unless available from public sources, FEMA shall, within 6 months, accept bids from private risk analysis companies, mapping companies and others (including accessing google map data and LIDAR data) that provide the most accurate data on elevation and risk in the highest risk areas. FEMA could choose to begin this in a few targeted states—those with the greatest number of NFIP properties.
- In addition to the reallocation of funds described above, FEMA should also be authorized to spend funds to procure these datasets and be authorized to place a small and reasonable fee on each NFIP policy or to finance collection of these data so long as the data will provide needed elevations (or proxies); that rates will be based on the elevation/new data; and that new risk analysis will be readily available to members of the public.
- Any property for which FEMA uses these data shall have rates based on actual risk and elevations, and should dispense with the need for individual property owners to get elevation certificates. Where the updated analysis suggests a property's rates should increase, those risk-based rates should be phased in at the same rate as others.

Proposal on Mapping Council. FEMA's Technical Mapping Advisory Council (TMAC) has worked to establish guidelines for more accurate mapping. SmarterSafer supports the continuance of TMAC and recommends the following:

- TMAC should be required to continue its work and make a more detailed set of recommendations about incorporating land use information, including the type of land cover and identification of important natural resources and habitats that contribute to flood risk reduction and community resiliency. This would help communities assess their flood risks and develop strategies to reduce and manage those risks.
- TMAC should also be required to look at riverine and coastal erosion and how best to incorporate these zones into flood risk products.

- TMAC should consider and make recommendations on establishing future zones that reflect the changing conditions of coastal barrier resources. These recommendations should include where FEMA and Congress should consider restricting or removing availability of federal flood insurance, due to the likely risks and impacts on resources reaching unacceptable levels.
- TMAC and FEMA should formulate and establish meaningful outreach effort to states, tribes, communities and the private sector to identify the range and types of information that are needed and desired for planning and for managing current and future flood risks.
- The need for updated map and elevation data is not unique to FEMA, but is also critically needed by other federal agencies, as well as local and State governments. FEMA should pursue joint mapping initiatives with federal agencies that share needs for updated geospatial and elevation data. This would ensure that FEMA is not forced to pay for acquiring data on which other agencies also depend, and would promote unified utilization of best science and mapping techniques among federal agencies.

Tying Rates to Risk and Supporting Mitigation

Rates for flood insurance should accurately reflect risk. As a result of past reforms, NFIP is already moving towards insurance rates that more accurately reflect the risks faced by many, but not all, policyholders. Reauthorization should complete the shift toward risk-based rates while ensuring affordable access to coverage for low-income policy holders. Those already on the economic margins may not be able to afford risk-based rates, and assistance for these low-income property owners may be needed. One way to help low-income property owners in harm's way is to provide them with resources to mitigate flood risk, rather than simply providing rate subsidies.

In addition, information about risk must be transparent and provided to property owners. Households and communities should use the information provided by accurate insurance rates and past flood events to make changes that reduce their risk. Federal, state, and local assistance should help them to do so through cost-benefit analysis, support for up-front investment to relocate or renovate homes to make them safer from floods, and support for nature-based, community-level mitigation efforts.

<u>Proposal on Rates and Mitigation</u> As part of NFIP reauthorization, Congress and FEMA should cushion the adjustment to accurate flood insurance rates for low-income policyholders and encourage mitigation actions that lower risk and costs for property owners and communities. We recommend these steps to connect affordability and mitigation:

- *Risk Based Rates*. Rates for all properties should either begin or continue to move towards risk-based rates. Rate increases should be capped on an annual basis, as they were in 2012, to some percentage of current premiums to make the increases predictable. Any NFIP communication to policyholders—most importantly, premium statements-- must contain what the property's risk-based rate is as well as the current rate the policyholder is paying to ensure property owners understand their risks.

- *Support for Low-Income Families*. Those who can afford to pay the true cost of insuring their property should do so. However, Congress should require FEMA to establish a support program for low-income homeowners who cannot afford the risk-based rate. Support should be paid for within the program.

    - Any assistance would be outside the rate structure so as not to mask the true level of risk—premium support must be clear and transparent.

    - Premium support would be available to all low-income homeowners who would be cost-burdened by risk based rates. The support would be time-limited support available for a minimum of 10 years, with extensions available for families who would be displaced or otherwise face a hardship. Mitigation support would be available for the life of the loan made for mitigation activities.

    - Premium support would not be the only, or even the preferred, option; where cost-effective, mitigation should be used to reduce risk. FEMA should be required to work with private sector lenders and government agencies to facilitate low-interest loans for mitigation.

        - FEMA, working with state and local partners as appropriate, will establish a simple procedure to help property owners evaluate the costs and benefit of mitigation.
        - FEMA would work with lenders to facilitate mitigation loans, including arranging direct payment of the federal offset funds to the approved lender. As long as the homeowner maintained NFIP coverage, federal offset funds would repay the lender. The result would be a pay for performance structure—federal assistance would only flow if the required mitigation efforts occur and flood insurance is maintained.

    - Transparency on Needs. Each year FEMA shall report to Congress and the public on how many property owners have applied for and are receiving assistance, what form of assistance they are receiving, income levels of people receiving assistance, cost of assistance by type (mitigation and premium support), and overall cost.

- *Proposal on Community Mitigation for Severe Repetitive Loss Properties and 'Flood Hotspots.'* Mitigation should not only be done on a house by house or property by property basis. FEMA should establish a system to promote mitigation of groups of adjacent properties in order to maximize flood damage reduction and provide additional opportunities for preservation of wetlands and other natural buffers against storm surge and other flooding.

    - FEMA should be required to identify 'Flood Hotspots'—communities with clusters of, or significant numbers of, severe repetitive loss properties and areas with a significant number of properties at high flood risk.

- FEMA should use the best available data to determine those areas that have:

  - A propensity to flood now and an increasing vulnerability to flood in the future;
  - High losses and high potential future losses, including a high number of severe repetitive loss properties and properties that have incurred damage that totals more than 50 percent of a property's current value (e.g. cumulative substantial damage); and
  - Low income residents who must obtain coverage for the first time (for instance, due to updated flood maps) or pay higher flood insurance rates, either as property owners or for contents coverage as renters.

- For any identified Flood Hotspot, communities will be required to create plans and pursue community-level mitigation efforts that would protect the community from future flooding and produce savings for households in the community net of the costs of mitigation. Communities, working with FEMA would have to undertake studies of potential actions that could help reduce risk in the community through mitigation for clusters of flood-prone properties, rather than on a property by property basis to maximize flood damage reduction and ancillary benefits. Nature-based, non-structural mitigation should be a priority in these efforts, and communities should consider voluntary acquisition and buyouts.

- FEMA would use mitigation program funding through its various hazard mitigation programs to assist communities to finance mitigation efforts or access private financing, prioritizing communities at greatest risk, with the largest potential savings, and with the least ability to finance mitigation themselves. Community-level mitigation would be a priority in the hazard mitigation program and Congress should increase funding for mitigation programs since it is cost-effective and shown to reduce risks.

- Resources for mitigation for Flood Hotspots should only flow to communities that agree to and work with FEMA on mitigation efforts and are enrolled in the Community Rating System (CRS). However, Congress should consider taking steps to assist lower-income communities, those that may not have the resources, to meet minimum flood standards or enroll in the CRS program.

- Improvements to the Community Rating System would aid FEMA in these mitigation efforts. Rate reductions from community mitigation actions should accurately reflect the resulting reduction in risk. For instance, communities should receive lower rates for achieving higher percentages of insurance purchase by households, not for intermediate steps to notify or promote insurance.

Expanded Role for Private Insurers

The move to a system in which both the private sector and NFIP write flood insurance will provide consumer choice and ensure competition and innovation, while maximizing the number of properties covered by flood insurance. As people choose to purchase in the private sector, however, FEMA would continue to have a clear mandate to provide maps for mandatory purchase, establish minimum floodplain standards, and focus efforts on mitigation and resiliency assistance to reduce risk at the household and community levels in cost-effective ways. As more properties move to the private sector, NFIP would be able focus its mitigation efforts on the most at-risk properties. It is critical that mitigation and resiliency be elevated as part of NFIP's mission, as well as through disaster assistance reforms.

Private companies are poised to write flood risk, and some already have started to write flood risk in the United Sates. To ensure there is a level playing field, Congress must clarify that private flood insurance counts for purposes of mandatory purchase—no property owner should be forced to purchase from NFIP or any particular insurer. Consumers should have choice and should be able to choose policies that meet their needs and are not one-size-fits-all, like NFIP. This means private companies must be able to innovate and offer different coverages, limits, and deductibles. In addition, to reduce taxpayer liability, FEMA should continue to look for ways to transfer risk to the private sector, like through reinsurance purchase.

Proposal on Private Insurance.

- Lenders must be required to accept flood insurance policies written by private companies so long as the company is permitted by the relevant state insurance commissioner to write such coverage (including policies in the surplus lines market) so long as the policy covers "at least" the mortgage amount.

- Lenders may require that the mortgagee and mortgagor are covered by the policy. Language should be included to ensure that policyholders who leave NFIP for private policies and later return are considered as having continuous coverage for rate determination. (Ross-Murphy/Tester-Heller language)

- Private insurance policies should not be restricted or required to mirror NFIP policies or coverages. Private policies can have different coverage limits, coverages and terms to better meet consumer needs.

- Congress should eliminate the non-compete clause so that companies that write flood through NFIP Write Your Own program can also sell insurance on their own books, where the private company takes the risk.

- Currently, mapping and floodplain management are partially funded through a fee on all NFIP policies. If policies move from NFIP to the private sector, it is critical that mapping and floodplain management funds must not be reduced--these funds benefit everyone in communities, not just those who purchase flood insurance. Congress must maintain and expand Congress should expand these funds, and could consider a number of options to do so, including a potential fee on all flood insurance policies on real property within mandatory purchase areas, increased appropriations for these purposes, a potential fee on other transactions, and other funding streams.

- To ensure communities continue to meet flood standards, Congress should restrict pre-disaster mitigation funding to communities that meet minimum floodplain standards

Proposal on Other Private Sector Involvement. To better protect taxpayers and minimize the federal government's risk, the private sector could take risk directly from NFIP. This means:

- FEMA should continue to examine transferring risk to the private sector, including through reinsurance, catastrophic bonds, and other financial instruments. Specific goals should be set for FEMA reinsurance purchase.

- FEMA should be encouraged to carry out pilot programs for other public-private partnerships and risk-sharing with the private sector.

- FEMA should be required to release NFIP claims and policy records to the public, individual homeowners, insurers, reinsurers, reinsurance brokers, and modeling companies to allow companies to assess risk and understand claims. Appropriate non-disclosure and limited utilization could be required, as well as other requirements to protect personal information.

Encourage More People to Purchase Flood Insurance

A significant amount of flooding occurs outside of the '100 year floodplain' or the Special Flood Hazard Area (SFHA). Estimates are that 20% of NFIP claims overall and 17% of severe repetitive loss properties reside outside the mapped 100-year floodplain--those areas where purchase of flood insurance is mandatory for properties with federally backed mortgages. It is clear that flood waters do not stop for a line drawn on a map, and additional property owners should be purchasing flood insurance—whether through the NFIP or through private policies. Since standard homeowners' insurance policies do not cover flood, homeowners are often surprised to learn they have no insurance. Though there is federal disaster assistance provided many times, the amount per property is usually not enough to rebuild, much less to reduce future risk.

Property owners and prospective owners must be provided better information on risk so they can make decisions about purchasing flood insurance and resiliency. FEMA should be required to provide information about a property's history of flooding so that homeowners can make informed decisions about the need for flood insurance or the need to take mitigation actions. Providing actual flood history of a home could help buyers and owners understand the importance of getting and maintaining coverage year to year.

Proposal on Expansion of Flood Insurance Purchase.

- Properties that would be designated as located within a flood plain but for a flood protection system like dams and levees—residual risk areas—should be subject to the mandatory purchase requirement. Rates for these properties should clearly reflect the decreased risk the properties face as a result of the dam or levee. Requiring purchase of flood coverage would protect these property owners at a reasonable cost.

- Congress should consider requiring FEMA to provide additional information to homebuyers so they understand flood risk and can make better decisions about flood coverage.

- Communities should be required to purchase private insurance for public buildings and facilities for which they received federal funding to support the construction, purchase, or rehabilitation.

Proposal on Increased Transparency.

- A homeowner or prospective buyer should have the right to receive the following information from FEMA about their property:

  - a full history of claims and damages paid
  - a history of NFIP coverage
  - a full accounting of federal assistance received by previous owners that triggers a requirement by subsequent owners to maintain NFIP coverage (e.g. Individual Assistance Grants or a Small Business Administration Disaster Loan)

Focus on Resiliency-- FEMA's focus should be on mitigation and protecting those in harm's way. SmarterSafer has recommended a sliding scale for disaster assistance as a way to incentivize communities to become more resilient. This should be coupled with changes to NFIP to build resiliency. FEMA should look at mechanisms that encourage high-risk policy holders to consider relocating, or that provide incentives for taking mitigation actions that will protect their property from flood damage over the long term. It is also essential that means be developed to allow such relocations to take place on a much more timely basis. Currently, many distressed homeowners can be held up for years waiting for the necessary assistance.

Resiliency Proposals for Individuals.

- Congress should consider shifting some of the fee that is used to fund NFIP reserves to allow it to be used for mitigation of the most at-risk properties, particularly those of low-income policyholders, where a cost-benefit analysis has shown that resilience will reduce risk to the property and taxpayers.

- ICC funding (which is paid for within the program) should be increased from the current $30,000 cap when used for relocation or demolition, and should be raised somewhat for elevation. This would allow individuals in the program to mitigate their risk and reduce costs to taxpayers.

- To ensure mitigation activities can occur, FEMA should be required to further change their cost-benefit analysis on mitigation to take into account a number of additional benefits including ecosystem restoration and environmental benefits.

Resiliency Proposals for Communities/Nature Based Approaches.

Public policy should include incentives for nature based resilience. Communities or properties at risk from severe weather, storm surge, flooding, and other hazards, can undertake a variety of community wide approaches that make use of natural features, or those that emulate them with human-engineered features. Natural or nature based approaches such as protecting or restoring wetlands, berms, forests and natural floodplains can be as, or more, cost-effective as traditional man-made flood reduction structures. In addition, these approaches provide numerous additional benefits including improved water quality, public open space and wildlife habitat. Whenever possible, the NFIP should encourage and incentivize this type of mitigation to better protect people and properties and to reduce flood insurance premiums

Congress should encourage enrollment and participation in the voluntary Community Rating System and should strengthen the program's requirements to focus on non-structural mitigation and simplify administrative burdens. In addition, SmarterSafer has recommended a series of changes in disaster assistance to only provide maximum federal disaster assistance if states and communities are planning for and mitigating for known risks.

Proposal:

- Congress should encourage increased enrollment and greater participation in the voluntary Community Rating System and should strengthen the program's requirements to focus on non-structural mitigation and simplify administrative burdens.

- FEMA should be required to reevaluate the CRS point system to ensure that communities pursue the most ambitious and direct action steps to mitigate instead of focusing on earning points through notifications and public education.

- FEMA should prioritize funding for nature based mitigation approaches whenever possible as it administers the Hazard Mitigation Grant Programs.

- To ensure that communities remain in NFIP, mitigation assistance at both the community and individual level will only be available in communities that continue to take part in NFIP.

Data Transparency

FEMA has a vast amount of information on flood damages, NFIP claims and policies, properties that have been repeatedly damaged, compliance of communities with NFIP provisions, and communities' actions under the Community Rating System. Unfortunately, relatively little of this data is available to the public.

Congress should direct FEMA to make all data publicly available while still protecting private individuals' right to privacy under the Privacy Act. FEMA should release data that includes at least ZIP code resolution data that includes the following:

- Individual parcel's claims and policy information, including past records of properties that are no longer covered by the NFIP
- Identification of repetitive loss and severe repetitive loss properties
- Properties that have been mitigated through elevation, purchase, or some other action
- Regular updates on participating community compliance, nature of any deficiencies or incidents of non-compliance by individual communities, status of corrective actions and days of continuing non-compliance
- Number of claims by community and state that are post-FIRM vs pre-FIRM properties, properties that are substantially damaged, and properties that are located in the SFHA

SmarterSafer is a broad-based, diverse coalition of taxpayer advocates, environmental groups, insurance industry representatives, housing groups and mitigation interests that supports environmentally responsible, fiscally sound approaches to natural catastrophe policy that promotes public safety and encourages resiliency. A list of members and further information can be found at SmarterSafer.org.

AN ILLUSTRATION OF THE BENEFITS OF PRIVATE MARKET DEPOPULATION AND REINSURANCE RISK TRANSFER

National Flood Insurance Program (NFIP)

An Illustration of the Benefits of Private Market Depopulation and Reinsurance Risk Transfer

The NFIP can significantly improve its long-term financial strength and substantially reduce the risk to taxpayers through a combination of depopulation (*i.e.*, the assumption of existing NFIP policies by private insurers) and the purchase of reinsurance.

The chart below illustrates the financial projections for the NFIP from year-end 2016 to 2020, based on the recent experience of Florida Citizens' Insurance Corporation, which successfully reduced both its policy count and the risk to Florida taxpayers. We conclude that a combination of (1) the private market depopulation of NFIP policies, (2) currently-anticipated NFIP rate changes and (3) reinsurance purchases similar in scale to those undertaken by Florida Citizen's would result in a 31% decrease in the NFIP's exposures and a 91% decrease of the additional Treasury financing required to pay the losses for floods that have a 1% chance of occurring this year (1 in a 100-year flood.) We estimate these substantial reductions in risk will result in only a 10% decrease in premiums collected by the NFIP from the 2016 Projection. [i]

NFIP	Projection: Year End 2016	Projection: 2020 Private Market Depopulation Similar to Florida Citizens & Reinsurance Purchase	Projection 2016 to 2020
Earned Premium (EP) in millions	3,500	3,161	-10%
Earned Exposures in millions	5.1	3.5	-31%
	% of EP	% of EP	
Expected Loss & ALAE Ratio	80%	63%	
Expense Ratio	38%	49%	
Combined Ratio	118%	112%	
Additional Financing Required from Taxpayers to Pay Losses in millions			
250 year	16,752	5,527	-67%
100 Year	9,952	865	-91%
50 Year	5,252	0	-100%

Note: Additional Financing Required to Pay Losses is the Net Loss after the NFIP Cash Balance, Reserve Fund, Private Reinsurance and the Borrowing Limit

A Success Story--Florida Citizen's Experience

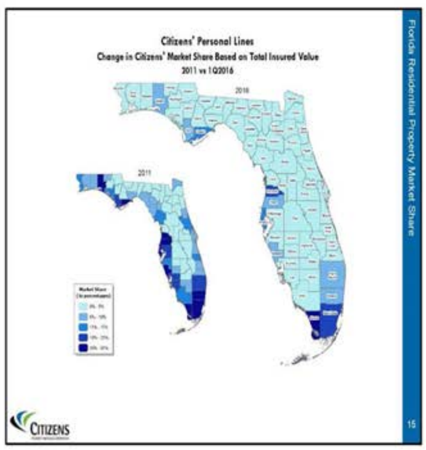
Florida Citizens Property Insurance Corporation, a state-sponsored entity that provides homeowners insurance, is a recent example of a successful private market depopulation and reinsurance risk transfer program. Combined with gradual rate increases, these actions decreased the exposure of and liabilities to Citizens from 2011 to 2016, allowing Citizens to significantly improve its financial performance.

Citizens	2011	2016	2011 to 2016
Written Premium in millions	2,473	578	-77%
Earned Exposures in millions	1.5	0.5	-66%
Additional Financing Required from Taxpayers to Pay Losses in millions			
250 year	20,913	2,814	-87%
100 Year	6,402	0	-100%
50 Year	12	0	-100%

Note: Additional Financing Required to Pay Losses is the Net Loss after FHCF, Private Reinsurance, Catastrophe Bonds and Surplus

The illustration presumes the private market appetite for flood policies that are currently written by the NFIP is expected to be similar to that for Florida Citizens. The majority of the policies assumed by the private market were coastal wind exposed policies where the premium exceeded the losses and expenses, *i.e.*, that had a reasonable expectation of profit. The private market is not expected to compete for policies where the premium is perceived to be inadequate.

The chart below maps the decrease of Citizens policies by county.



https://www.citizensfla.com/documents/20702/93160/20160331+Market+Share+Report/ab841adc-d5fb-45ca-bff6-8dbd15d5cac5

Conclusion

This illustration demonstrates that a reduction in NFIP policy count and aggregate exposure to catastrophic events by permitting private insurers to select and underwrite risks, combined with the use of reinsurance to manage the resulting catastrophic risk, can and will strengthen the financial condition of the NFIP and its ability to withstand extreme flooding events without burdening taxpayers.

While the analysis is not a prediction of the future, the private insurance and reinsurance markets have demonstrated that they are willing to underwrite difficult risks, such as wind or flood. Policymakers should continue to encourage and incentivize private insurance and reinsurance underwriting to compete along with the NFIP, supplement the NFIP's writings, and help the NFIP manage its risk and protect taxpayers.

Notes: The "projections" and time frames noted in the illustration are a "what if" analysis based upon an extrapolation of the experience of Florida's Citizens Property Insurance Corporation. The illustration is intended to demonstrate that the utilization of a facilitated depopulation program and reinsurance to reduce the NFIP policy count and aggregate exposure would enhance, not weaken, the NFIP financial condition.

Because Florida Citizens depopulation was a rapid, unqualified success, this illustration makes the assumption that the percentage decrease of exposures and losses at the NFIP will as half of what Citizens experience during a similar timeframe.

Despite such conservatism in the financial projection, as the private flood insurance market for residential homeowners is newly emerging, and because there are currently structural impediments to private market competition with the NFIP and the acceptance of private flood insurance by lending organizations, the time frames over which the NFIP policy count would be significantly reduced by private market competition is likely to be overstated. Action by Congress and the Administration to facilitate the ability of the private insurance market to compete with the NFIP and be accepted by lenders would accelerate the market development and reduce any such overstatement.

All assumptions assume the NFIP rates continue to increase as anticipated, there is no appreciable change in the underlying exposures of the NFIP portfolio, the expected losses are the losses the NFIP incurs every year and the interest on the Treasury loans and other expenses change remain relatively static. In actuality, we expect the annual losses to be volatile from year to year, causing some years to result in extra money to decrease the principal on the Treasury loans and other years where the NFIP may have to access additional funds from the borrowing authority, increasing the interest due on the Treasury loans. All year end 2016 expenses and losses were projected from data within www.fema.gov, bsa.nfipstat.fema.gov, "Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP Report", "Actuarial Rate Review in support of the recommended Oct 1 2011 Rate and Rule Changes" & "Information About NFIP Treasury Borrowing."

The 2016 and 2020 projections are not intended to be projected loss estimates to be used for rate setting. The projections are based on aggregated publically available information and trending assumptions. It is assumed the NFIP has better detailed exposure, loss and expense data to make a rate projection. This exercise is intended to demonstrate how the exposures, premium, expected losses, PMLs, reserve funds and borrowing authority change based on the rate increases mandated as of today, the potential for private market activity and the effect of reinsurance being purchased.

---

i

STATEMENT OF THE REINSURANCE ASSOCIATION OF AMERICA

RAA
REINSURANCE ASSOCIATION OF AMERICA

Private Flood Improves NFIP's Stability

As Congress debates NFIP reform, discussions about private sector competition have spurred concern about what private sector competition would do to the underlying economics of NFIP. Though some have raised concerns that private insurers would 'take out' the best properties from NFIP, this fear has not borne out. There are two key data points that show this is not likely to be the case: (1) most private companies writing flood in Florida currently are writing in higher hazard areas and are not choosing the least risky properties; and (2) in a similar insurance program in Florida, private insurance 'take outs' led to a much smaller and stronger insurance program. This paper focuses on the lessons learned from the 'take outs' in Florida Citizens-- a program with significant similarities to NFIP.

The Florida Citizens Experience

Florida's Citizens Property Insurance Corporation, a state-run, subsidized wind insurer, provides a useful proxy for an analysis of greater private competition with NFIP. In 2012 Citizens, had roughly 1.5 million insured properties, many heavily subsidized, and like NFIP, presented the likelihood of a massive deficit in the event of a major catastrophe. Policymakers and the program's management realized they had to do something different.

By 2016, after: (a)undertaking a program designed to move policies to the private sector; (b) gradually increasing rates; and (c) purchasing reinsurance, Citizens reduced its policy count to below 500,000, put itself on strong financial footing, and significantly reduced its probable losses. Taxpayers were better protected and homeowners had more choices in both providers and the terms and types of coverage offered.

Private insurance companies eventually took on 66% of policies previously covered in the program, a 77 percent reduction in written premium as of January 1 2016, but it is also financially more stable and stronger. This progress has continued into 2016. Citizens is now even smaller, with approximately 456,000 policies at year end 2016.

Currently, Citizens can meet potential losses from a 1 in 100 hurricane without needing any additional financing, compared to in 2011, when it would have needed over $6 billion in additional financing if such a storm hit Florida. While homeowners generally had the option of staying with Citizens, most policyholders accepted private insurance, and private insurers, applying their underwriting standards, chose policies across the risk spectrum, including those in "high risk" coastal zones.

NFIP Would Be Better Off

If NFIP were to undergo similar actions, we estimate the results would be extremely beneficial to both policyholders, taxpayers, and NFIP.

While the attached analysis is intended to demonstrate that private flood insurance competition will strengthen the NFIP's financial condition, equally important is that we anticipate that additional private flood insurance will actually increase the number of consumers and properties insured against the peril of flood. Private market flood insurance will supplement and enhance the NFIP, making it stronger and enhancing the financial resiliency of the consumers, communities, the NFIP and taxpayers

Using the assumptions in the analysis, over a four-year period the NFIP policy count could drop from 5.1 million to 3.5 million, while the projected future borrowing from Treasury to cover losses could drop from nearly $10 billion to about $860 million. This movement toward fiscal soundness would occur because of the same three factors that helped Citizens: gradual rate increases, purchase of reinsurance, and policies being written in the private market.

The Citizens depopulation program faced concerns around "cherry picking", but the results speak for themselves. By taking policies out of the program Citizens reduced its overall risk. Thus, the maximum loss faced by the program was smaller than before. The gradually increasing premiums infused more cash into the company, while reinsurance took on much of the catastrophic risk. In short, a smaller NFIP should be a healthier NFIP.

LETTER SUBMITTED BY THE CONSUMER FEDERATION OF AMERICA

Consumer Federation of America

To: U.S. Senate leadership

As a former Federal Insurance Administrator who ran the National Flood Insurance Program (NFIP), I am writing on behalf of the Consumer Federation of America (CFA) to warn you of the dangers to consumers that would arise if the Senate moves H.R. 2901, which recently passed the House, to become law.

We share the House concern that the current National Flood Insurance Program (NFIP) is too costly and actuarially unsound. We also agree that there is a role for private insurers and for state regulation in this insurance market. However, we also believe that allowing surplus lines insurers to write flood insurance, as the bill does, would put both consumers and taxpayers at great risk.

Risk to Consumers

There are many risks to consumers from the proposal to allow surplus lines carriers into the flood insurance market. The lack of meaningful state regulation is a primary concern.

Remarkably, the current legislation in Congress removes the 45-day notice of cancellation to consumers, which would allow private insurers to cancel a policy at will either immediately or with very short notice. This, coupled with the fact that the NFIP does not offer coverage until after 30 days have passed since application presents a real concern that consumers in flood prone areas could by made uninsurable for a month at the whim of their surplus lines insurer, perhaps in advance of an approaching storm. A regulated private insurer would presumably not be able to get away with placing short notice provisions in its regulated policy form if the state regulators are doing their job. But regulators are helpless in the case of surplus lines insurers since policy language is not regulated by the states for surplus lines carriers.

A second serious problem from the policyholder viewpoint is that if a surplus lines insurer goes bankrupt, the consumer has no access to any state guarantee fund that pays claims in the event of an insurer's insolvency. How is a consumer to know about that? Just imagine a small surplus lines carrier that was over-committed in Homestead, Florida when Hurricane Andrew hit, bankrupting several small insurers, to understand how big a problem this could be.

The legislation would allow surplus lines insurers to enter this market and possibly gain significant market share. However, these insurers are not regulated by the states in any meaningful way. Unlike consumers with auto or homeowner claim or other complaints who can seek a remedy from their state insurance department, consumers with flood insurance through a surplus lines insurer would be unable to seek effective assistance from their state since surplus lines carriers' claims and other practices are not regulated by the states. We remember, for example, that after the 1992 Los Angeles riots, surplus lines insurers not only went bankrupt but some simply walked away from claims, leaving many small businesses without coverage and forced into bankruptcy. The California Insurance Department reported that, in the wake of that tragic event, one-quarter of small businesses, many of them minority-owned, were unable to reopen after the riots because of this surplus lines debacle.

The bill would also put consumers at risk in several other ways: It would not give states the ability to regulate surplus lines policy language related, for instance, to clarity of minimum coverage requirements. The bill no longer requires the private insurers to offer coverage at least as strong as the NFIP so it is open season for "competing" with the NFIP by gutting coverage. If a surplus lines insurer wrote ambiguous or even clearly misleading policy language there is no way for the state or FEMA to stop that under this bill. As former Texas Insurance Commissioner I can attest that state regulation of forms frequently finds and removes many misleading, unclear, unfair, illegal, and ambiguous clauses from policies prior to their use. That option is not available for surplus lines policies sold in your states.

The state insurance departments cannot help a consumer of a surplus lines carrier who denies or delays payment on a legitimate flood claim. The states cannot make sure rates are not excessive, inadequate or unfair like they do in other lines of property/casualty insurance. If a surplus lines insurer sells policies with very low coverage at clearly excessive prices, you are handcuffed.

Risk to Taxpayers

The Senate should be deeply concerned that the legislation would allow private insurers, including surplus lines carriers to cherry pick against the NFIP, leaving taxpayers with responsibility for covering the worst risks. Insurers would seek to identify "overpriced" policies (and because of reserve rules imposed by Congress there will be many of these) that take into account the need of the NFIP to fairly price policies for everyone and also cover past losses. The NFIP then would increasingly be left with the highest risk policies, increasing the need for federal subsidies and/or higher NFIP prices to cover losses for a higher risk portfolio of properties. If prices were raised to make up for this shortfall, that would open the door for even greater cherry picking by the private insurers, creating a death spiral of higher losses and premium charges for the NFIP.

There are ways to allow private insurers into the flood insurance market that would greatly minimize these risks. To transition to a private system, a starting place might be FEMA negotiating with the Write Your Own companies for the WYO's to take a small percentage of the risk of the actuarially rated policies they insure. They would then have an incentive to help ensure that the NFIP's actuarial rates are based on actual risk and not outdated flood maps or other factors that have undermined actuarial pricing in NFIP. Over time, the small risk these insurers bore at first could be gradually raised as they gained experience, increasingly allowing the federal government to play less of an insurance role and more of a mitigation role as well as a reinsurance role in the event of a major catastrophe. As the insurers write more of the risk, there will be an appropriate time to allow the insurers to compete with each other for the flood insurance business as part of their homeowners insurance contracts with the federal role becoming more and more a reinsurer of private flood carriers. State regulators should partner with FEMA immediately to determine, as this new program of private involvement grew, when various aspects of the insurance regulation of the program could be shifted over to the states.

How Will Congress Warn Unsuspecting Homeowners Considering Buying a Surplus Lines Insurers Flood Insurance Policy?

If HR 2901 becomes law you have a duty, in our opinion, to warn consumers of the dangers of purchasing a surplus lines carriers flood insurance product. Consumers need to know what the lack of guarantee association protection means, particularly in the event of a major catastrophe. They need to be aware of the lack of regulation of policy language, price and claims practices. They need to be particularly aware of the cancellation provision so that they make sure it is well over 30 days to give them the chance to obtain NFIP coverage at a time that does not leave a gap in protection during storm season. They need to know the danger of policy language that would allow a surplus lines carrier to cancel immediately or with very short notice is a storm was predicted to hit in a few days. In short, consumers need to know that these policies do not come with the same protections against unfair practices that state insurance departments are normally able to provide when customers buy insurance policies from regulated, licensed insurers.

CFA is preparing a Consumer Alert for this very purpose. I attach a draft of CFA's Alert for your information and use as you see fit. Of course, we believe that a far better outcome would be if Congress approached flood insurance reform with these concerns in mind in the first place and request that you do not pass HR 2901 in its current, deeply flawed form.

Sincerely,

J. Robert Hunter

J. Robert Hunter, FCAS, MAAA
Director of Insurance

DRAFT

Consumer Federation of America

CONSUMER ALERT!

INSURANCE FROM AN UNLICENSED "SURPLUS LINES" INSURANCE COMPANY CAN BE RISKY FOR CONSUMERS

Buying Insurance is confusing enough. What is actually covered? What is a fair price? Will the insurance company pay my claim?

It is now important to ask one other question: *Is your insurance company fully licensed in your state?* If not, you could face several serious problems, including:

- → If an unlicensed insurer goes bankrupt, consumers have no access to any guarantee fund to protect you. If you have a claim, you are out of luck.
- → The claims practices of an unlicensed insurer are not regulated. The insurer could deny claims inappropriately or cut payments unfairly and the consumer has nowhere to go but to court. The state insurance department has no authority to help.
- → An unlicensed insurer faces no regulation to make sure its policy language is fair and clear. If the insurer wrote ambiguous (or even clear) language that let it deny what would normally be legitimate claims, there is no protection for consumers through the state insurance commissioner.
- → An unlicensed insurer's rates are not regulated. Rates can be excessive or unfair. Licensed insurers may not charge excessive, inadequate or unfair prices.

How do I know if I'm at risk?

People most at risk are the less sophisticated insurance buyers, which include most individuals and small business owners. Whenever buying insurance, make sure to ask if the company offering a policy is licensed in your state. If not, beware!

Also ask if the insurer is a "surplus lines" insurer. These companies are not licensed in your state and you have few if any consumer protections. A surplus lines insurer is often licensed or admitted in one state but operates in other states without a license. These insurers are known as "non-admitted, unlicensed *foreign* insurers." There are also surplus lines insurers based outside the U.S. and not licensed in any state; these are known as "non-admitted, unlicensed *alien* insurers."

A relatively new and very troubling development for consumers is the passage of state laws that allow insurers to operate as surplus lines insurers even in the state where they are licensed, adding even more confusion and danger for consumers.

If you have any doubt about the status of your insurance company, call your Department of Insurance to determine if the company is a surplus lines or otherwise unlicensed before you buy a policy.

NOTE: TO BE ADDED IF HR-2901 BECOMES LAW:

Flood insurance a particular concern

Congress has just allowed unlicensed surplus lines insurers to sell flood insurance beginning (add date). The bill does not remedy the serious problems cited above that make surplus lines policies dangerous for consumers to buy. The policies do not have to offer coverage equal to that available through the National Flood Insurance Program (NFIP). The policy language used by surplus lines insurers is not vetted by the state regulators, nor are the rates the surplus lines insurer reviewed by the state. If you have a claim, the state insurance department cannot help you if you are mistreated.

Worst of all are these tow extremely dangerous facts about the new flood insurance law:

1. If the surplus lines insurer miscalculates and goes bankrupt after a large flood, a person holding a flood insurance policy from that insurer will be unable to collect on their policy and no guarantee fund stands behind such policies.

2. Remarkably, Congress removed the requirement for a private insurer selling flood insurance to provide at least 45-days notice when canceling a flood insurance policy. The reason this is dangerous to consumers is that, if a flood policy was cancelled, a replacement policy from the NFIP has a 30-dat waiting period before it becomes effective. If a surplus lines insurer canceled a homeowner or small business owner with no of very short notice and a flood occurred shortly thereafter, the policyholder could face a period of no coverage through no fault of their own.

Consumers purchasing flood insurance should be very wary of buying it from a surplus lines insurer.