ASFPM Analysis of HR 3370
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Overall Conclusion:

This legislation either fully or partially addresses 8 of the 20 recommendations ASFPM has included in its testimony this past November to the House Financial Services Committee including the key provision which is to create a longer (implementation period) glide path for the elimination of Pre-FIRM rates and the elimination of the trigger of full actuarial rates on sale of a property. From that standpoint, it is probably the most reasonable legislation that has been introduced to address affordability issues created by Section 205 only using the glide path approach.

At the same time there are some bad provisions and other items that are not addressed at all. The legislation would eliminate Section 207 in its entirety. From a floodplain management point of view, this will only serve to reinforce the notion that risk on a particular property is lower than it really is due to reduced flood insurance rates. It also continues an actuarial weakness in the program. By far the worst provision is the creation of a new cross-subsidy in the program – a surcharge on all NFIP policies to offset the estimated additional costs of phasing-out the Pre-FIRM rates. It is a flawed principle and there could be a backlash (we already have Congressional members wanting to eliminate the NFIP because they see themselves as a donor state). This only will serve to perpetuate the perception and divide between donor and receiver states which could be very problematic for the program in the future. What is not included is any mitigation support to actually eliminate the risk problems in the first place including any reforms to ICC, mitigation loans, or targeted vouchers.

There have statement by other entities about how this guts BW-12. It does not. The subsidy reduction/elimination in sections 205 and 207 was just one of the 5 major actuarial reforms of the program. The others include allowance of reinsurance, change in how FEMA determines annual rates, the reserve fund, increase in annual cap. With the exception of modification of the annual cap on some policies, the other four reforms were not affected.

ASFPM did a side-by-side with the current law to check as to what all of the redesignations, etc. are. If not otherwise flagged as bad or unknown, it is either good or no harm, no foul. Bad sections are 4 and 6; Sections with unknown consequences are 5, 11, 19 and 26.

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Section by Section Analysis:

Section 3: Eliminates full risk rate triggers for new and lapsed policies, allows for assumption of existing policies at pre-FIRM rates by new property owners, refunds excess premium charges collected.

Commentary - This affects Section 205, in line with ASFPM recommendations to eliminate full risk rate trigger on new and lapsed policies. In Sec 3a(3), one concern is that this says the rates need to be posted in the Federal Register. This is new and will add additional time and hassle for FEMA to get them out in time for the WYOs to update (which is 6 months in advance right now). Also, it gives no direction of what they are to do with comments. Paying back already collected premiums will be very problematic; included in that will undoubtedly the requirement for agents to return commission and
WYOs to “return” (debited) the WYO Expense Allowance. That is another added expense for the WYOs and agents as this program gets more complicated and complex.

**Section 4:** Eliminates Section 207 entirely.

**Commentary -** The biggest concern about the BW 12 changes to 207 from FEMA and ASFPM members is that it will chill map updates and make it harder to update maps overall. But eliminating 207 altogether is bad because it reinforces the concept that flood zone risk doesn’t change due to grandfathering discounting premiums. Section 207 made a positive change to a basic premise of the NFIP that has been around since inception – that as long as you build compliant with maps at the time you would be grandfathered. This BW 12 change in philosophy is necessary for the NFIP.

In the end, perhaps amending Section 207 is a change for another day. Remember that TMAC hasn’t started yet and its charge is to retool the mapping program, including map maintenance. What might make their effort more difficult is current widespread discontent with mapping due to the elimination of grandfathering. There will be a lot more information available in three years when TMAC will have been well underway and the affordability study and framework have passed. At that time there may be adequate data and experience, so might be ripe time to address grandfathering.

**Section 5:** Preserves movement to full risk rates for those refusing an offer of mitigation, whether following a major disaster or in connection with a RL or SRL property; puts all Pre-FIRM policies on a longer glide path to actuarial soundness by increasing rates not less than 5% per year for the Pre-FIRM subsidy elimination; and establishes a two tiered cap on annual premium increases – 15% overall (reduced from 20% as passed in BW-12), but preserves the 25% cap for non-primary structures, SRLs, SD/SI, business properties and those that are damaged with total claims exceeding fair market value.

**Commentary –** This provision is very consistent with ASFPM recommendations and sets up a more fair and differential way to establish rates. It affects the currently existing Section 205 considerably. All pre-FIRM policies will be moving to full risk rates on a much slower glide path. At the same time, there is a lesser impact on primary homes versus non-primary and non-residential homes.

There are a few outstanding questions. 1) The bill language says “not less than 5% of the average of the risk premium rates for such properties within the risk classification during any 12-month period.” It is unclear exactly how that will be interpreted. We do not know how FEMA would calculate the “5% of the average.” Currently the three things that must fit under the proposed 15% annual cap are normal annual rate increases, the Reserve Fund (which will be a factor if/until the Reserve Fund is met) and the subsidy elimination amount. Let’s say that in 2015 the normal increase is 3%, the reserve fund is 5%; does that mean that the increase due to subsidy elimination will be 8% (3+5+8 = 15%)? That is the unknown. 2) What is the basis for the premium increase? According to a house staffer we reached out to, the basis of the increase will be the existing premium/rate, so new rate would be current rate x %.

**Section 6:** Establishes new annual premium surcharge, on all NFIP policies $25 per policy for residential and $250 for non-residential or non-primary residential. Surcharge goes into the Reserve Fund.

**Commentary:** Very bad provision – it is philosophically inconsistent with efforts to financially stabilize the program and communicate true risk. The surcharge goes into the Reserve Fund, so perhaps it will help that fund build up. The language seems to say that the surcharge will end when all Pre-FIRM properties move to actuarial rates.
**Section 7**: Requires FEMA to prepare an affordability framework, due to Congress 18 months after the affordability study.

*Commentary*: Good provision. It is a step closer in actually implementing the recommendations of the affordability study.

**Section 8**: Fully authorizes FEMA to purchase reinsurance.

*Commentary*: This is a restatement of language in BW-12 Section 100232(d). Not sure why it is included again.

**Section 9**: Allows for monthly Insurance Payment for Premiums.

*Commentary*: Seems to just be clarifying changes already made in BW-12, to specifically include the term “monthly.”

**Section 10**: Allows deductibles as high as $10,000 for residential properties.

*Commentary*: Currently residential deductibles are capped at 5K. Could be good for some situations, but not a panacea. Folks that can’t afford higher rates surely cannot afford to cover the losses with a higher deductible too. But those with second homes, etc. maybe a good option. Note that if there is a loan involved, many lenders will have to approve a higher-than-standard deductible.

**Section 11**: Does not require flood insurance, in the case of any residential property, for any structure that is a part of such property but detached from the primary residence and does not serve as a residence.

*Commentary*: Not sure what this is getting at – the desire for an agriculture exemption for structures other than the home? If so, are there significant unintended consequences? However, this applies strictly to residential properties and barns, etc. would likely be non-residential properties. A possible implication is if it is not required, could they get disaster aid a second time on one of these out buildings without having flood insurance as it was not required? This provision could be made better if FEMA would deny contents coverage and disaster assistance from any buildings exempted.

An analysis provided by another colleague has some important points. The section states that flood insurance “shall not be required” for detached non-residential structures associated with residential properties. The provision deviates from past federal policy in that flood insurance is intended to secure mortgaged property that is backed by federal deposit insurance. Damage to such structures is still likely to result in increased federal costs from federal individual disaster assistance grants, federal reduced interest Small Business Administration disaster loans and federal income tax uninsured casualty loss deductions. While this provision may be inspired to reduce flood insurance costs to an owner, it undermines the concept of federal flood insurance and increases federal disaster costs that flood insurance is intended to reduce.

**Section 12**: Directs FEMA to account for flood mitigation activities such as land use measures, floodproofing, flood forecasting, etc. in setting premium rates as long as it is based on accepted actuarial principles.
Commentary: This provision is good and FEMA, in previous conversations with ASFPM, has indicated a desire to move in this direction. But as FEMA says, they need data, and only those measures that truly reduce claims should get reflected in premiums.

**Section 13:** Changes substantial improvement (SI) threshold which was changed by BW-12 to 30%, back to 50%.

Commentary: This is good – 30% SI in BW-12 was an artifact that really had no champions and it made it different than substantial damage (SD). Would have required all communities to update regulations and regulate based on a 30% SI and 50% SD threshold, as FEMA had indicated they had no mechanism other than local floodplain management regulations to identify such structures. Makes SD and SI consistent again.

**Section 14:** Alters existing affordability study report to add 3 areas of inquiry, changes completion due date to 2 years after passage of new Act, and appropriates $2,000,000.

Commentary: This is good. Adds to the scope of the study, probably reflective of some of the more recent legislative proposals out there like disaster savings accounts. Gives much more money so the study can develop actual affordability recommendations.

**Section 15:** Requires FEMA to certify in writing to Congress that the approach for flood mapping will result in technically credible flood hazard data where prepared and updated.

Commentary: Big improvement over Senate version – there is no caveat or penalty to this whereas in the Senate the failure of such a certification precluded the mapping program from continuing. There will be questions to figure out, such as what determines if the approach is technically credible, so it can be a certified process? And what is the time limit to have it certified? But these should not be insurmountable.

**Section 16:** Allows FEMA to use Flood Insurance Fund money to reimburse homeowners for successful map appeals, eliminates $250,000 cap on expense payments.

Commentary: This is an improvement to the changes made under Biggert-Waters Section 100246 which added the following language: “When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed $250,000. The Administrator shall promulgate regulations to carry out this subsection.” Under BW-12 more than likely this cost would have come out of mapping funds; however, it seems that this provision would allow reimbursement to be made out of the NFIF itself, thereby lessening the impact on the flood mapping funds. Also requires FEMA to promulgate rules for establishment of this which means it would be in the queue competing with many other rules needing promulgated (for example, we are still waiting for full implementation of some
provisions of the 2004 Act). One question/concern is that the proposed language would eliminate the 250K cap.

**Section 17:** Clarifies what FEMA can consider adequate progress on the completion of a flood protection system by adding the term “or reconstruction” in addition to construction, by basing the determination on the present value of the completed flood protection system, and allows in that consideration funding from federal, state, and local sources.

Commentary: The language adds specificity to this section. It seems to expand the circumstances under which NFIP may allow subsidies and rating that is below the level of full-risk rates for flood insurance during the pendency of flood protection system restoration, construction or reconstruction in inland riverine and coastal protection projects.

**Section 18:** Requires the submission of a report to Congress monthly if the Administrator determines the reserve ratio cannot be achieved. Commentary – It appears Congress wants to know more quickly and frequently the status of the Reserve Fund.

**Section 19:** Requires continued extension of basement exceptions and variances under 44CFR 60.6 and 60.3.

Commentary – The concern here was if 207 was implemented and you could not grandfather in the previous BFE that you waterproofed against, and the BFE increased, you would then may have a HUGE jump in premium because it would no longer qualify as a floodproofed structure and the new LFE would be the basement floor!

**Section 20:** Allows exemption of review or processing fee for a map change based on a habitat restoration project including those that include dam removal, culvert redesign, and installation of fish passage.

Commentary – this is basically the Whitehouse amendment to the Senate bill. It has come up as an issue from time to time where a NGO or community is using limited grant funds to do one of these types of NBF projects and they cannot also secure the costs needed to change the flood map. The fee waiver is logical (given the public monies involved) and would serve as an encouragement for such Federal or State habitat restoration projects, although level of encouragement and cost is unclear

**Section 21:** Requires study of voluntary, community based flood insurance options.

Commentary: Very good, one of ASFPM’s primary recommendations. Disappointed that there is no implementing mechanism though.

**Section 22:** Requires FEMA to designate a flood insurance advocate. Commentary – This is a good provision. FEMA has said before they aren’t sure how they would implement, but this can only be helpful. There are questions how this might be implemented, certainly it isn’t a one person job. Could it be done through CAP-SSSE by having state staff do it, would it be regional staff? Contractors?

**Section 23:** Allows for escrow exceptions of flood insurance payments.
Commentary – ASFPM talked with a staffer at Mortgage Bankers Association. The problem with BW-12 is that it required all existing loans to set up escrow as well as new loans. This language would allow more flexibility going forward and has been supported by the lending industry. Made sense to us.

**Section 24:** Requires FEMA to issue guidelines to property owners that show alternative methods of mitigation other than elevation to reduce flood risk due to their structural characteristics, and inform them how this will affect premium rates.

Commentary – This is an issue that has come out of Sandy where you have old and historic buildings such as row houses, but also maybe in cases of older downtown areas.

**Section 25:** Amends National Flood Mapping Program to require consideration in both mapping and outreach, the identification of and protection from risk of non-structural flood mitigation features, including failure of such features.

Commentary – not sure where this came from. Seems to be ok – always good to have all risks identified. Perhaps this came from FEMA and it was an insertion to encompass some of the RiskMAP products such as identification of areas of mitigation interest which is part of their non-regulatory products? Just speculation. CB—do you want to speculate on coming from FEMA?

**Section 26:** Changes definition of private flood insurance and modifies authority for states to regulate private flood insurance.

Commentary – Substantially rewrites B-W’12 provision defining “private flood insurance”, expands to allow out-of-state companies, and removes much detail defining conditions of eligible flood insurance. There also appears to be a clarification probably for consistency with Dodd-Frank regulation of financial institutions.