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Rethinking the NFIP

ASFPM Comments
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ASFPM is pleased FEMA is undertaking a major review of the NFIP with the intent to present Congress with options for NFIP Reform. This effort will also inform FEMA leadership and staff what actions can be taken through rules or guidance by the agency to improve implementation of the NFIP. ASFPM understands this effort is long term, and while it has been underway for about a year now, will need to continue to the summer of 2011, when FEMA plans to present a report and some options to the Administration and Congress. The effort will need to continue beyond that in order to provide Congress with more analysis and data to inform Congressional efforts if the needed significant Reform of the NFIP is to occur.

ASFPM has provided extensive comments to FEMA on various aspects of the NFIP for decades, and participated in the 5-year evaluation of the NFIP, as well as the current rethinking effort since its inception in the fall of 2009, through the December 2010 listening sessions held in Washington D.C. and Denver. We will continue to provide input based on the experience and expertise of our 14,000 members and 29 Chapters throughout the Nation as this effort continues.

Average annual flood damage in the Nation increased over the 20th century, despite 32 years of implementing the NFIP, and despite billions of Federal dollars spent for levee and dam building programs of the US Army Corps of Engineers (USACE), Natural Resources Conservation Service (NRCS), Department of the Interior (DOI), and other Federal agencies. Flood damages continue to increase this century as do the costs of disaster relief related to flooding. While the rate of increase has slowed in some years, it continues to rise and in years with extreme events, the negative physical, financial and social impacts are very large, such as occurred in 2001, 2004, 2005 and 2008. Direct flood damage in the first decade of the 21st century ranged from \$1.5 to \$48 billion, averaging \$10 billion/year.

The NFIP must be considered in the context of the Nation's total effort to manage flood risk and its consequences. While the NFIP is a key part of that effort, it is just one part. Changes to the NFIP must be viewed through the lens of all Federal, State and local efforts to manage flood risk and reduce the costs and human suffering from floods. For example, if changes to the NFIP result in avoiding borrowing from the Federal treasury to pay flood insurance claims, but those savings are more than offset by Federal dollars used for disaster relief, not just from FEMA, but for disaster dollars provided by the US Department of Housing and Urban Development (HUD), US Department of Transportation (DOT), US Army Corps of Engineers (USACE), Small Business Administration (SBA), Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration (NOAA), or other Federal programs - the Federal taxpayer loses. Someone may benefit, but someone else will pay.

For these reasons, it is important Congress (and FEMA) consider NFIP changes in the context of all Federal programs and Federal costs for managing flood risk in the Nation, and also in the context of the costs at all levels of government and the private sector for flooding. In reality, the most effective measures to manage flood risk rest at the local and State levels through land use management and building codes. The primary tool available from Federal programs is money, which should be used to provide incentives for communities and States to guide development toward lower flood risk areas, and to reward those communities who do that well, because in the long term, these actions will be less expensive for the Federal taxpayers. Managing flood risk and reducing flood damage and human suffering from flooding is a shared responsibility among all levels of government and the private sector. The current National approach does not incentivize good long-term approaches, but instead rewards those communities and States that do the least to prevent increasing risk or avoiding developing in high risk areas. Those communities and individuals who insist on placing future development in flood risk areas must become responsible for paying for the consequences of those decisions. At the same time, parts of some communities were established in flood risk areas before the flood risk was mapped, and individuals and businesses in those communities may need some assistance to reduce that risk, using the best mitigation practices that the Nation has developed over the past half century.

ASFPM does not believe the needed major adjustments in the Nation's programs to manage flood risk can happen in the next year or two. FEMA, the Administration, and Congress can make some needed modifications to the NFIP in the near term, while continuing to work toward a comprehensive flood risk management approach integrating the myriad of Federal programs impacting flood risk, and by working with State and local partners to appropriately share the responsibility for managing and reducing flood damages and human suffering from floods. Such an effort may take a few more years, but the Nation must move away from the piecemeal, one program at a time approach that often results in one program inadvertently working against another, or rewarding local and State activities that only compound the long-term problem.

The four policy options presented by FEMA each have composites of various ideas, but none by itself is the answer. These ASFPM comments set forth basic principles and concepts that can be used in the near term and long-term efforts by FEMA, the Administration, and Congress. Listed here are some basic principles that must apply to the NFIP reform, which link to the same principles in a National Flood Risk Management program or strategy:

- Flood risk management includes: identification of flood risk areas, community measures to guide development away from areas of high risk, flood insurance based on actual risk, vigorous promotion and support of hazard mitigation actions, including retreat from high risk areas, and as a last resort for some areas, flood control structures to provide some protection to existing development, along with flood insurance to enable citizens and businesses to protect their financial assets - all of which help people and communities be more sustainable and more resilient in recovering from disasters.
- The Nation must carefully balance the issue of who benefits and who pays for at-risk development. There are about 130 million housing units in the U.S. Of those, about 10 or 11 million are in flood hazard areas. Of those in flood hazard areas, fewer than half carry flood insurance. This means more than 90% of the U.S. population does not live in identified Special Flood Hazard Areas, but, as taxpayers, they continue to pay a large amount each year for disaster relief for flooding, rebuilding damaged infrastructure in flood areas, and may have to cover the current $19 billion debt of the NFIP. Yet those same taxpayers obtain few, if any, of the benefits from at-risk development. This points out the need to tie program outcomes of the NFIP to these other programs, such as disaster relief programs and programs of HUD, DOT, USDA, SBA and others.
- The current approach of the NFIP program is to identify the high-risk flood hazard area, then to establish standards that show communities and developers how to build in it. There is a need to help communities better understand how to avoid new development in high-risk flood hazard areas, especially the highest risk areas along our coasts and rivers.
- All citizens and land developers must be fully informed of their flood risk when new development occurs or is purchased and the actions they can take to reduce that risk.
- Those who live at flood risk must ultimately pay the full cost of that risk.
- It is likely that flood insurance managed by the Federal government will never be allowed to charge true actuarial rates, which is the cornerstone of insurance; therefore, movement to the private sector should be a long term goal, provided a means to require local land management of flood risk can be retained.

- The costs of disaster assistance for flooding and other Federal programs that pay for flood damages must be considered when arriving at the cost of various options for the NFIP.
- It must be clear that flood control structures such as levees, diversion channels, and dams can reduce the frequency of an area being flooded, but cannot remove all flood risk from that area. Numerous approaches must be used to reduce flood risk, and residual flood risk must be shown on maps, and understood.
- If development standards are used to reduce flood losses, those standards must be adequate to not only reduce damage in ordinary events such as the 100-year flood, but must provide the basis for resiliency for communities in extreme events such as the 500-year flood or worst case storm surge flooding from hurricanes.
- Natural floodplain resources and functions must be preserved or restored to allow nature not only to reduce flood impacts, but to provide the environmental services everyone in the Nation relies on.
- There are over 21,000 flood prone communities in the Nation. State capability is required to provide assistance, monitoring, and training to those communities in implementing the NFIP.
- A number of the functions of the NFIP program should be delegated to the States, similar to programs delegated by DOT and EPA. This would build capability and ownership of flood risk at the State level.

The following suggestions are grouped around the four legs of the NFIP stool as explained by FEMA.

Identification of Risk

To actually reduce flood-related loss of life and property, we must move toward a true flood risk management framework with the Nation's policies and programs. A comprehensive flood risk identification program is a key part of a total flood risk management program that incorporates these principles:

- Managing flood risk is a shared responsibility between individual, private sector, community, State and Federal government;
- The current approach of the NFIP is to identify the high-risk flood hazard areas, then show communities and developers how to build in that high-risk area. There is a need to assist communities and developers to understand the benefits of avoiding high flood hazard areas, especially the highest risk along our coasts and rivers;
- Flood risk is not isolated to the 100-year flood hazard area, but is rather a continuum of risk that is currently not identified, communicated, and shown to communities and citizens on NFIP maps;
- Identification of flood hazard and flood-risk areas must incorporate stormwater flooding, erosion, residual risk associated with dam and levee failure, or other risk areas where insurance loss claims are covered by the NFIP. It makes little sense to insure buildings and pay claims in these areas if the NFIP does not require buildings in those areas to meet mitigation standards similar to those required of other buildings insured in special flood hazard areas;
- Development and other activity outside the 100-year floodplain impacts flood levels on existing properties and infrastructure – so if the NFIP only shows existing risk on the flood map and only manages activity in that 100-year floodplain, the NFIP will miss opportunities to save lives and reduce flood damages and impacts;
- All structural protection measures will fail or be overtopped at some time by some flood event - so there is always residual risk associated with the structure which must be shown on the flood map;
- Flood levels will increase in the future because development in the watershed increases runoff, and inland and coastal storms are intensifying; and
- Flood risk will increase as the natural resources and functions (such as flood storage) of floodplains and wetlands are altered by watershed development, levees, and dams or channelization, since these activities destroy the natural system that reduce the negative impact of flooding.

Accurate identification of flood risk is a major element in an effective, comprehensive flood risk management program. Because good flood risk maps provide the technical basis for a variety of purposes (managing floodplain development, flood insurance purchase requirements, pricing of flood insurance, mitigation planning, risk identification and communication, etc.), the flood maps can and should be a valuable tool for improving community resilience to flooding. However, if the flood maps do not accurately or credibly represent the flood hazard, the maps are instead seen as instruments of unreasonable Federal policies. What adjustments are needed to act on better risk identification through improved flood maps? ASFPM has endorsed the following concepts for improvement in flood risk identification through improved flood maps:

- ASFPM is supportive of the NFIP's Risk MAP approach, where the concept is to show more than one flood hazard, and to assist communities, developers, and citizens to assess their risk and plan how to mitigate that risk, as well as understand how future unwise development can increase their flood risk.
- An annual investment of funds is needed to close the significant gap between the current available flood map products and timely, accurate and reliable flood hazard information for all flood prone communities in the Nation.
- Integration of the NFIP flood mapping efforts with other Federal programs that also manage, identify, or affect flood risk, including those of the USACE, EPA, NOAA, NRCS, USGS, DOI and others.
- Flood risk must be shown as a continuum on flood maps that does not imply there is a line separating the flood risk area from an implied "no flood risk" area.
- NFIP flood maps must be based on future conditions, whether those conditions are the result of future watershed development or increasingly intense storms in riverine and coastal areas.
- Delegate the floodplain management and mapping elements of the NFIP to qualified States, similar to programs managed by the EPA and Department of Transportation (DOT).

Mitigation

Mitigation includes not only the efforts to reduce risk to existing buildings and infrastructure that are already located in flood risk areas elevate, or relocate existing structures in flood risk areas, but most importantly, mitigation includes the NFIP's quid pro quo requirement that communities guide new and improved development to be at less risk of flooding. There are several foundational principles that must be in any NFIP reform package as it relates to mitigation that the ASFPM supports.

- Preserve a mandatory quid pro quo between incentives, land use, and building regulations. While incentives are necessary, mandatory consequences are also needed to compel decision making that results in long-term resiliency. Privatization of the insurance side of the NFIP may not lend itself easily to the quid pro quo option — e.g., if insurance is provided by the private sector, some mechanism will need to be developed to incentivize communities to adopt minimum land use and building regulations, or tied to the right incentives, higher than minimum land use and building approaches).
- Managing flood risk requires a mix of measures that includes avoidance of high risk areas, retreat from high risk areas, and as a last resort for some areas, structures to provide some protection to existing development. Selection of only one measure, such as a levee, leads to catastrophic losses in severe events. Levee failures caused by high storm surge and large rainfall or runoff events have shown the need for a mix of approaches that includes avoidance of high risk areas, relocation, elevation, insurance, and in some instances, structural measures.
- Regulations that control the location or design of buildings are a form of mitigation and as such, any minimum Federal standards should be adjusted to result in more significant loss reduction <u>and</u> avoidance of high flood risk areas. ASFPM has provided extensive recommendations on these adjustments in the past, including adding freeboard to the lowest floor of structures, changing the floodway encroachment standards to avoid adverse impacts on the property of others, and more rigorous treatment of filling.

While part of the NFIP's enabling authority, standards that truly encourage guiding development away from high risk areas are largely absent from the NFIP minimum standards.

- To properly balance regulatory standards when existing structures are damaged, continued emphasis needs to be placed on grant mechanisms that assist building owners in offsetting the cost of compliance. The Increased Cost of Compliance (ICC) provision of the NFIP flood insurance policy, and the five mitigation grant programs, are helpful, and need to be continued and improved.
  - As it relates to mitigation grant funding, while funding eligibility and damage triggers are tied together in an attempt to optimize use of funds for the most flood prone structures, there is an overreliance on a computed benefit/cost (B/C) analysis that does not account for all benefits. The key is not a B/C number, but cost-effectiveness. Cost effectiveness needs to continue to be defined and refined to ensure that we are meeting the overall goals of the program, not just a threshold number; and the <u>full</u> benefits and costs of mitigating flood prone properties, not just direct costs, must be considered in any analysis of cost effectiveness.
  - In cases where communities are unwilling to participate in mitigation that leads to loss reduction, mechanisms need to be developed to encourage more administration by States, or direct mitigation by FEMA.
- Integration of the NFIP flood loss reduction standards, as they relate to the EPA's stormwater water quality standards affecting flood risk areas, need to be examined. A disconnect still exists between the sizing of new or replacement stormwater infrastructure and older stormwater management measures (i.e., using 10 or 25 year design events versus something more substantial, like the 100 year design used for floodplain management).

Flood Insurance Role in Managing Flood Risk

Among the various straw man policy options under consideration are several ways of dealing with flood insurance. These range from shifting insurance from a public program to the private sector, to group policies for communities or specific areas such as levee districts, to optimizing the existing public sector framework. Whichever path forward emerges as the most effective and desirable, there are a number of underlying concepts that ASFPM feels are important:

- When those impacted by flooding have flood insurance, it leads to more substantial and expeditious recovery for citizens and communities than taxpayer funded disaster relief. Flood insurance claims are paid whenever a qualifying event occurs, not just after major events that rise to the level of a disaster declaration by the President.
- Flood insurance assures that persons living and running businesses in at-risk locations pay for a portion of their risk.
- No option for insurance should allow individuals to opt out of flood insurance by waiving eligibility for future disaster relief — this is unworkable, and importantly, assumes that people fully understand their risk, and the liability they assume.
- It would be much more effective to require insurance of all properties within the Special Flood Hazard Area (SFHA), not just those with Federally backed mortgages. This would result in spreading the risk, lower premiums, and improve the feeling of equity and shared risk.
- Flood insurance premiums must be actuarially based, or it is not an insurance program.
- It is unlikely that flood insurance managed by the Federal government will ever be allowed to charge actuarial rates, so movement to the private sector should be a long term goal.
- If the Federal government continues to provide the financial backing for flood insurance, it would be more effective if those who can buy the policy would be those who can make the decisions to add to or decrease the community's flood risk. Community policies, or those owned by levee districts or similar entities, would provide a clear nexus between decisions to allow future development in flood risk areas,

and flood insurance premiums. Under the current system, the property owner buys the policy but does not make the decisions to add or decrease future flood risk.

- To be actuarially correct, rates must be more refined than at present, both in and outside of the SFHA.
- If some disadvantaged residents need public assistance to pay for flood insurance, that help should be provided through a means tested program in an agency that has programs that do means testing, namely HUD. Affordability should not be addressed through the insurance rating (subsidies) mechanism because that clouds the risk message.
- Taxpayers or other flood insurance policy holders should not subsidize premiums for those at risk who can afford to pay for that risk.
- Actuarial insurance premium rates should provide the true risk message and provide the basis for determining cost effective mitigation.
- Insurance, whether private or public, must be closely linked to mitigation measures undertaken, both in terms of the probability a building will be flooded, and the consequences when the building is flooded.
- Insurance to cover residual risk should be mandatory in areas "protected" by levees and downstream of dams and other residual risk areas.
- The Congressionally chosen option for managing flood risk will need to address losses from catastrophic flood events, whether through shifting to the private insurance industry through re-insurance, through the existing system of borrowing from the Treasury, through folding catastrophic costs into the program through higher premiums, and expanding the policy holder base, or devising a new mechanism to cover catastrophic losses.

Incentives as Drivers to Effective Flood Risk Management

Managing flood risk effectively must involve everyone in a shared Federal/State/local/private sector approach, as recommended by the Interagency Floodplain Management Task Force's Unified Floodplain Management documents. The current system has few incentives for communities, States or citizens that would encourage them to more effectively manage and reduce flood risk. They often assume flood losses and disaster costs will be largely borne by the Federal taxpayers, and/or that flooding is a Federal problem. The exact opposite is true: flooding is, and should be, a primary responsibility of local and State governments, since the most effective tools to reduce flood losses and flood risk are land use (planning and zoning) and building codes, which are exclusive to State and local governments, as reserved to them by the U.S. Constitution.

In fact, the total current Federal system of flood risk management rewards the wrong behavior by States and communities. Those who do the least to prevent flood losses, and allow more at risk development, are rewarded with disaster relief time after time after time, and often with a higher or no non-Federal cost share. They obtain a massive amount of funding for repair of infrastructure, such as roads, bridges, water and wastewater facilities, public buildings, etc.

Why should the Federal government provide financial incentives for communities and State to reduce flood losses?
Because the overall disaster costs to the taxpayer, especially those that are often not related to reducing future risks such as disaster assistance, is too high, and we as a country cannot afford for this to continue. A prime example is Hurricane Katrina, where the NFIP suffered about $17 billion in claims. But that cost is relatively minor, compared to the myriad of Federal programs that provided over $100 billion to the area for repair of infrastructure, homes, public buildings, and other recovery costs. There are also the costs of response, rescue, temporary housing, and others, including lost income tax and business taxes as employers across the affected region were shut down, some never to reopen. It would be more cost effective for the Federal taxpayers to provide some incentives before disasters to encourage communities and States to prevent or minimize the chances of a flood disaster, which would also reduce human suffering and social disruption disasters bring. It has been

over five years since Katrina, and New Orleans still has a long way to go to recover, if it ever does. Basic principles for incentives in the NFIP and Federal programs include:

- Incentives for more State involvement should be based on offsetting savings to the Federal taxpayer for reduced disaster relief, public assistance, and infrastructure reconstruction. For example, those States and communities doing a better job of managing and reducing future flood risk should get a larger cost share for related programs, such as disaster relief, etc.
- Essentially, incentives should subsidize a decrease in risk, as opposed to the current system that subsidizes increased risk through various programs for disaster relief, water resources development projects, and in extreme events, flood insurance.
- Many opportunities exist outside the NFIP for providing incentives, or for removing current disincentives for better flood risk management. In the USACE a number of such opportunities exist, with a prime example being the PL 84-99 Program, which provides Federal monies to repair and replace damages of failed levees after a flood. Those Federal monies are available whether the levee sponsor allows increased risk behind those levees or not. Such funding should cap the Federal taxpayer liability at the amount of consequences that existed at the time the levee was allowed into the PL 84-99 program. Any additional consequences should be the liability of the entity approving the development that increases the consequences.
- Tie disaster dollars to NFIP compliance, with a sliding scale to reflect how well communities and States are managing flood risk and the natural systems that naturally reduce the effects of flooding.
- There are two key elements to incentives, the first being a sliding scale for Federal monies provided for flood related costs. This provides a mechanism for communities to understand the steps they can take to reduce their current or future flood risk, thus improving their cost share. The second major concept is to tie NFIP compliance to Federal dollars, especially disaster dollars, rather than flood insurance availability. There is an obvious relationship between better flood risk management and reduction in disaster relief, but very little tie between community decisions and flood insurance under the current system.
- The CRS program is considered an incentive within the NFIP. While the concept seems valid, it has some issues that need to be corrected if it is to truly incentivize the most effective actions. Some areas that need work include making sure the most credit is given to activities that are the most effective in reducing flood insurance claims, better ties between community actions and those buying insurance policies (since it is the community decisions that add or reduce flood risk under CRS, not the policy holder). Private sector property insurance has better mechanisms to recognize mitigation actions taken by individual property owners, such as wind retrofits, but the NFIP does not recognize many damage-reduction measures with premium reductions.
- Some incentives for the owners of existing at-risk buildings to reduce exposure to flooding could be provided, perhaps through tax credits, and again should be tied to Federal cost savings for disaster related costs.
- Impediments to the success of existing mitigation mechanisms must be identified and overcome, notably the obstacles to effective use of Increased Cost of Compliance (ICC) and the NFIP funded mitigation grant programs. These should be aggressively pursued, since the payoff is large.

ASFPM will continue to provide input and ideas to the NFIP Reform effort as it moves forward. Questions or comments on this paper can be sent to Larry Larson, ASFPM Executive Director, *Larry@floods.org*