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TESTIMONY

Reauthorization of the National Flood Insurance Program, Part II

Before the

Senate Committee on Banking, Housing and Urban Affairs

By

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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 twenty-four 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 multi-faceted, 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?

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[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*

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 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 todays guidance

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federal government subsidizes approximately 62% 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) 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 publically 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 1/3 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 two 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 publically 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% of the flood mapping program and appropriations paid for the remainder. The highest level of appropriations in the past five 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 five years and getting to a steady state maintenance phase**
- **ASFPM recommends that Congress require federal dam and levee inundation maps be publically 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% 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%.

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%), 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% 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. 60% of ICC claims are used to elevate a building and 31% 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 non-repetitive 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 multi-year 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% of the population lives in an identified floodplain and that number is projected to grow to 15% 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% and the average loss per policy increasing by 90% 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% of NFIP claims and 1/3 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 <u>can</u> 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 cherrypicking 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.

[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.*

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 two years.

Second, <u>the reforms to stimulate more private market participation in 2012 have worked as intended</u>. 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 two 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% of the NFIP 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 that the six requirements for private flood policies be retained. If these provisions are**

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[5] *Last year ASFPM testified before the Senate Committee on Small Business & Entrepreneurship on flood insurance rate increases which also included detailed thoughts on HR 2901, which can be found here or on ASFPM's website at www.floods.org*

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 co-exist 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% 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 travelling 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 mandatory 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 non-primary residences, small businesses and other non-residential 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

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[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.*

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 multi-year 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 & 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%, 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 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

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[7] *The authors did try to make an estimate of 75-80%; 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.*

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 subcommittee. For any questions, please contact Larry Larson, ASFPM Director Emeritus at *larry@floods.org* (608-828-3000), Chad Berginnis, ASFPM Executive Director at *cberginnis@floods.org* (608 828-3000) or Merrie Inderfurth, ASFPM Washington Liaison at *merrie.inderfurth@gmail.com* (703 732-6070).