ASFPM comments on NFIP Reform 2008

SUGGESTIONS & COMMENTS ON S. 2284 PCS (version dated November 1, 2007)

Sec. 2 Findings.
The word “participation” usually is not used to refer to property owners who obtain flood insurance; the term is used to for local jurisdictions that adopt the map and ordinance in order to join (or participate in) the NFIP.

Page 3, line 24: CHANGE to “voluntary purchase of insurance from the National Flood Insurance . . . “

Sec. 6 Reform of Premium Rate Structure.
ASFPM supports phasing in actuarial rates for non-primary residences and non-residential properties. ASFPM opposes including several categories of structures included in the bill, and urges deletion of the following:

(B) severe repetitive loss properties (we urge allowing SRL grants to work first, where the consequence for declining an offer is escalating rate to actuarial);
(E)(ii) substantial damage exceeding 30% of fair market value (we note that this would be extremely difficult because nobody does anything based on 30% of FMV)

DELETE page 7, item (B) on line 5 and item (E)(ii) on line 19

ASFPM suggests modification of the provision that requires all new policies and lapsed policies to go to actuarial; ASFPM advocates that such movement to actuarial should be phased in for residential structures by increasing the premiums after a claim is made.

DELETE page 7, line 22 through page 8, line 12

Sec 7. Mandatory Coverage Areas
ASFPM recommends a technical change to clarify that the NFIP’s floodplain management requirements would not apply within the proposed areas subject to mandatory purchase, including residual risk areas.

ASFPM supports expanding areas shown on the NFIP maps to include residual risks as a reasonable effective means to inform the public of such risks, and to encourage or require the purchase of flood insurance. However, the requirement for FEMA to redefine the term “areas of special flood hazards” has dramatic and unintended consequences unless it is clarified that the intent is to require mandatory purchase of flood insurance in residual risk areas and not to impose land use criteria. The term “areas of special flood hazards” is used interchangeable with “special flood hazard areas” (SFHA), which is used throughout the NFIP, in more than 20,000 local ordinances, and by model building codes to refer to the area subject to flooding by the base flood (the 1%-annual chance flood).

Two options exist: (1) define “residual risk areas” and in 8 or 9 other locations throughout the statute that are specific to mandatory purchase, pair the term with “special flood hazard areas” or (2) clarify Sec. 7 to direct FEMA to address the distinction in regulation, either through revising the
current definition or by creating a new definition. The second option is preferred; the following
suggestion implements the second option (note that report language should emphasize that it is not
the intent of Congress that land use requirements apply in residual risk areas):

ADD page 9, line 7: “... Director shall issue final regulations establishing a revised
definition of areas of special flood hazards or a new definition for the purposes related
to mandatory purchase of coverage under of the National Flood Insurance Program.”

DELETE page 9, line 12 through line 15:

ADD page 9, after line 19, add a new item: (c) clarify that the revised definition or the
new definition shall apply only to those requirements of the National Flood Insurance
Program that relate to mandatory purchase of coverage.

Sec. 8. Premium Adjustment
The NFIP currently allows grandfathering, under which a building that is outside of the SFHA and
is covered by flood insurance retains its lower-rate policy as long as there is no interruption in
coverage (if a claim is filed or coverage interrupted, the building loses its grandfathered status). It
appears that the effect of this section is to eliminate grandfathering when an SFHA gets wider, by
requiring phase-in of actuarial over a 2-year period at the rate of 50% per year. Rather than tie
removal of grandfathering based on changes to the maps (which ignores the thousands of currently
grandfathered structures), ASFPM recommends that all grandfathered structure be re-rated when a
flood insurance claim is paid.

Page 10, line 14: CHANGE to read

(g) PREMIUM ADJUSTMENT UPON PAYMENT OF CLAIM TO REFLECT CURRENT
RISK OF FLOOD.—Notwithstanding subsection (f), and upon completion of the
updating of any flood insurance rate map under this Act, the Flood Disaster Protection
Act of 1973, or the Flood Insurance Reform and Modernization Act of 2007, any
property located in an area that is participating in the national flood insurance
program shall have the risk premium rate charged for flood insurance on such
property adjusted to accurately reflect the current risk of flood to such property upon
the payment of a claim for flood damage that is sustained after 12 months from the
date of enactment of this Act, subject to any other provision of this Act. Any increase
in the risk premium rate charged for flood insurance on any property that is covered
by a flood insurance policy on the date of completion of such updating or remapping
that is a result of such updating or remapping shall be phased in over a 2-year period
at the rate of 50 percent per year.

Sec. 9. State Chartered Financial Institutions.
A careful reading of the statue is necessary to figure out this provision, and it’s confusing because
4012(c) is amended and the new text refers to 4012a. The intent is to tell states that if they want to
participate in the NFIP (and thus make their communities eligible to participate in the NFIP) the
states must adopt regulations governing state chartered lending institutions to meet the mandatory
purchase requirements (which is in 4012a). States are given an extremely short period in which to
accomplish this entirely new regulation. ASFPM supports this provision, but advises that a period
of at least 2 years is necessary for the states to be able to respond, given standard due process for promulgating regulations. The following matches the 2-year period provided for in Sec 11 (page 14, line 11).

CHANGE Page 11, line 13, change period to two years after enactment.
(3) given satisfactory assurance that within 2 years of enactment of this Act by December 31, 2008, lending institutions chartered by a State, and not insured by the Federal Deposit Insurance Corporation.

Sec 15 Reserve Fund
ASFPM urges three changes and clarifications to the language to create the Reserve Fund:

Build Reserve Fund Over Longer Period: ASFPM urges that a longer period of time (e.g., 30 years) be provided to build the reserve fund of 1 percent of the total potential loss exposure, which currently is presumed to be the dollar value of “insurance in force”. As of 11/30/07, this amount is $1,118,263,685,400 (http://bsa.nfipstat.com/reports/1011.htm), thus it seems the anticipated ceiling for the reserve fund would be about $11 billion based on today’s exposure. The adverse impacts of a too-short period on the program as a whole, the existing policyholders, and future policyholders, have been described previously. Several independent reports note that rapid increases in the cost of insurance will lead to dropped policies and fewer people voluntarily purchasing coverage. ASFPM suggests that other measures in the bill will increase income and those measures will address a significant portion of future shortfalls due to large flood events. A longer period to build the reserve fund would reduce the annual amount to be put in the reserve to a manageable number for the fund – this can be accomplished by reducing the amount to be deposited in each fiscal year lower than the currently proposed 7.5 percent that would reflect the 30 year build up.

TO MAKE THE ABOVE RECOMMENDATIONS, CHANGE:

- page 20, line 24: replace “7.5 percent” with a lower percent in the phrase “not less than 7.5 percent of the reserve ratio”
- page 21, line 11: replace “7.5 percent” with a lower percent in the phrase “not less than 7.5 percent of the reserve ratio”

Specify Financial Management of Reserve Fund: The text does not address many questions about financial management of this fund nor when it will be tapped. ADD text similar to the financial management text in Sec 1310 (42 USC 4017) and also to address the following:

- Provide flexibility for the Director to direct income slated for the reserve fund to payment of claims in years that claims exceed income (i.e., payment of current claims takes priority over funding the reserve)
- Make clear that the a reserve fund shall only be used to pay claims on NFIP policies and associated expenses – it is vital that such a reserve, funded by only 5 million or
so policyholders, be expressly protected from any and all other uses. **CHANGE, at a minimum, on page 19, line 3, insert “(2) be available only for meeting the expected future obligations of the flood insurance program, and for no other purposes.”**

- Provide that the reserve fund may be invested and the interest earned shall be deposited in the reserve fund

**Payment of Claims, Administration, Borrowing Take Precedent:** It should be made clear that if the program is in borrowing (presumably that occurs only if the Reserve Fund is depleted), that payment of claims, administration, and repayment to the Treasury takes precedence over re-building the Reserve Fund.

**ADD on page 21, new subsection (f):**

(f) PRIORITIES.—At all times, the Director shall use income to the National Flood Insurance Fund in the following order—

1. payment of claims, administrative expenses, and mitigation activities;
2. repayment of funds borrowed by the Director under the authority established in Section 1309(a); and
3. deposits to the Reserve Fund.

**Sec. 30. Extension of Pilot Program for Mitigation of Severe Repetitive Loss Properties and other needed modifications:**

ASFPM agrees with extending this program, which FEMA has been slow to initiate (the guidance was published in late 2007). However, we have a number of recommendations for amendments to the SRL program that will facilitate implementation as intended, and also eliminate some serious obstacles. These recommendations are summarized here:

**Correct an Oversight in the Severe Repetitive Loss Program:** Modify SRL to allow funds to be used to address nonresidential properties that have the same number/value of claims (nonresidential make up a disproportionately large part of all SRL properties).

**ADD to Sec. 1361A (b) SEVERE REPETITIVE LOSS PROPERTY (3) NONRESIDENTIAL PROPERTIES.—In the case if a property that is not a single-family property or a multifamily property, such term means a property that otherwise meets the limitations in (1) above.**

**Simplify the Severe Repetitive Loss Program in Two Ways:**

1. Modify SRL to delete 1361A(g)(3)(A) and (B), thus the purchase price would be determined only by the higher of the fair market value immediately before the most recent flood or the current fair market value. It is complicated, confusing, and expensive to have to determine potential purchase price 4 ways (and the purpose of the grant is not to enrich those who unwisely paid more than a property’s market value or who borrowed more than the property is worth)

   **In Sec. 1361A(g)(3), DELETE (A) and (B) entirely**
2. Modify SRL to remove the requirement to provide comparable housing payment (1361A(g)(4)). To address environmental justice concerns as required in EO 12898 (including impacts on low income and minority populations), FEMA already allows a relocation payment of up to $22,500 that can be used toward the purchase price of a replacement home. With regard to the comparable housing provision that is in the SRL statute, experienced consultants advise that it will significantly increase both the cost of each home purchased (which will in turn mean many homes will not have a B:C of 1 or more and thus not be eligible for mitigation), but also the costs of administering the project.

DELETE Sec. 1361A(g)

Sec. 31. Flood Insurance Advocate
ASFPM urges the Senate to accept the House provisions for this section. While ASFPM supports improving customer service to policyholders, in the absence of an assessment of need it is unclear that the demand warrants the creation of an entirely new office and mechanism of the scope proposed. In addition, recent experience in Federal-State Joint Field Offices indicates that FEMA is providing insurance specialists who provide some assistance to consumers. Rather than mandate an Advocate Office (which could increase the number of the agency’s insurance-related staff positions by more than 30%), ASFPM suggests that an ombudsman position be designated and assigned to evaluate demand and the most effective approach. There’s also the question of cost, which must be borne by the policyholders; are the benefits sufficient to outweigh yet another factor that will increase the cost to policyholders? ASFPM submits that it is more efficient and cost-effective to be able to respond to demand on an as-needed basis rather than create permanent offices in every state.

DELETE the text of Sec. 31 entirely, and replace with language in HR 3121, Section 34.

Sec 32. Studies and Reports.
Page 65. ASFPM supports a study to look at increasing coverage limits. The average NFIP policy on structures is for less than $100,000; care must be taken that increasing the limit does not shift costs to the majority of policyholders who purchase less than the maximum amount. We are aware that there is private flood insurance that provides coverage in excess of the NFIP’s limits. Therefore, it is appropriate to look at what raising the NFIP limits might do to the private market for coverage in excess of the limit.

Page 70, line 10. ASFPM recommends that this study be done over a longer period of time (perhaps 4-5 years) in order to allow the premium adjustments called for in the bill to be implemented.
ADDITIONAL PROVISIONS URGED BY ASFPM

Priorities for NFIP-Funded Mitigation Grant Programs

Direct FEMA to develop a mechanism to recognize that mitigation of repetitive loss properties (of which SRLs are a subset), and that mitigation by acquisition, are priorities. The former helps reduce the drain represented by properties that receive repetitive claims; the latter is the only mitigation activity that permanently avoids future damage, while also providing benefits that are difficult if not impossible to quantify. There are examples where FEMA has denied funding for homes that have a computed benefit to cost ratio of 0.99. We appreciate that FEMA has been criticized in the past for its policy of approving buyouts for homes when the B:C is “close” to 1.0. This clarification would fulfill Congressional intent and make implementation easier and more consistent. It should also be clarified that mitigation projects that include repetitive loss properties and SRLs are, by definition, in the best interests of the NFIP and therefore FEMA should develop a mechanism to recognize this. Report language can suggest that FEMA use multipliers applied to the computed benefit-to-cost ratios as proxies.

The above needs to apply to the three NFIP-funded mitigation programs: FMA, SRL and RPC. This suggests that a separate section may be necessary. Alternatively, it could be done under each program (text shown would modify only FMA).

NEW SECTION:
Sec. 1366A. (a) PRIORITIES FOR MITIGATION ASSISTANCE.—In the administration of the mitigation assistance in Sec. 1323, Sec. 1361A, and Sec. 1366, and notwithstanding the provisions of those sections, the Director shall consider the following to be priorities and in the best interests of the National Flood Insurance Fund:

1. mitigation activities that include repetitive loss structures, as defined in Sec. 1370(a); and
2. mitigation activities that include severe repetitive loss structures, as defined in Sec. 1361A; and
3. mitigation activities that include substantially damaged properties, as defined in Sec. 1370(a); and
4. mitigation activities that include acquisition of properties with structures;
5. mitigation activities that include other such properties as the Director determines are in the best interests of the National Flood Insurance Fund.

(b) RECOGNIZING PRIORITIES.—The Director shall develop a mechanism to recognize explicitly that mitigation activities identified in paragraph (a) are priorities.

Make a Technical Correction to Additional Coverage for Compliance with Land Use and Control Measures (Increased Cost of Compliance) in Section 1304(b)

Correct Sec. 1304(b)(4)(B) to correctly reference authorized programs: (B) section 1368 (Repetitive Loss Priority Program and Individual Property Program) and section 1323 (Direct Grants for Mitigation of Severe Repetitive Loss Properties)
Direct FEMA to Implement the 2004 Reform Act Changes to Increased Cost of Compliance
[Suggest inclusion in report language or letter to FEMA]

ICC coverage (§1304(b)) was authorized by NFIRA94 and modified by the Reform Act of 2004 – see below for current text. ICC coverage has been part of all policies on buildings in mapped special flood hazard areas since about 1997. In recent years total income associated with ICC premiums is estimated to exceed $80 million a year (premium ranges from $6 to $75 per policy). Total payouts are far less than total income. FEMA recently reported that approximately $159 million in ICC claims have either been paid (about $130 million) or are pending (nearly $30 million). FEMA has adjusted the maximum coverage twice; currently, the coverage is capped at $30,000.

Clarify When Payments of Additional Coverage for Compliance with Land Use and Control Measures (ICC) are Made. FEMA has narrowly interpreted the statute to preclude payment of the ICC claim unless the damage that triggers “substantial damage” is solely due to flooding. Thus, homes that are damaged by both wind and flooding do not qualify for ICC unless the flood-related damage alone triggers the 50% rule. As modified in the Reform Act of 2004, the definition of “substantially damaged structure” at §1370(a)(15) does not support this position.

Direct FEMA to Implement Section 1304(b) Paragraph 3. This section authorizes FEMA to trigger payment of an ICC claim for properties that have sustained flood damage on multiple occasions if it is determined that it is cost-effective and in the best interests of the National Flood Insurance Fund to require the implementation of such measures. The original text was enacted in 1994 and amended in 2004. FEMA initially suggested that experience with ICC was necessary before implementing this provision – the agency now has 10 years experience.

Direct FEMA to Implement Sec. 105 of the 2004 Reform Act. Sec. 105 directed FEMA to pay increased cost of compliance claims when an offer of mitigation assistance is made under FEMA’s various mitigation grant programs. FEMA has not yet implemented this provision.

Increase Eligibility for ICC Payments When Used to Match Buyout Projects. ICC claim payments can be assigned by the policyholder to local jurisdictions so that the payment can be used as the non-federal cost-share of FEMA’s various mitigation grant programs. For floodplain acquisition projects, FEMA has narrowly constrained cost elements that can be used to determine the amount of the ICC claim payment. It is our understanding that the average ICC claim payment for buyouts is on the order of $7,000 – far below the maximum coverage of $30,000. Despite FEMA’s indication in 2004 of willingness to expand the cost elements of a buyout project that are used to determine the amount of the ICC claim payment, FEMA has yet to undertake such changes.
PROVISIONS IN H.R. 3121 SUPPORTED BY ASFPM
- Fix RFC to be “direct grants” and change from one claim to two
- Add demo/rebuild to FMA
- Clarify that FMA funds are to be “available until expended”
- Remove per state per community limitations on FMA
- Clarify that funds for FMA may derive from policy fee & premium income

H.R. 3121 – PROVISIONS NOT SUPPORTED BY ASFPM
- Adding wind coverage to the NFIP
- Phase in of actuarial rates for “recently purchased pre-FIRM”
- Sec. 22, paragraph (9), which suspends adjusting rates based on updated FIRMs until such maps are “completed for the entire district of the Corps of Engineers affected by the map”
- Sec 26 – extending to 6 months the deadline for filing proof of loss (FEMA already extends for big floods)

POSITION ON OTHER PENDING BILLS

S. 1890 (Lott) which would allow individuals to “opt-out” of the NFIP and build in total disregard of the identified flood hazards. ASFPM opposes S. 1890.

HR 3959 (Costello) which would move policies to actuarial rates at the point of sale. If the bill only applies to structures (excluding the value of land) with a value over $600,000, ASFPM has no position. If it would apply to all structures regardless of value, ASFPM would oppose it (see above position on phase-in based on claims)