After a Busy July, it's August Recess!

The House of Representatives recessed on Friday, July 30th, for the annual August Recess, which this year will extend until September 14th, except for a quick return on August 9th and 10th to vote on a bill providing funds to states for teacher pay and Medicaid. The Senate had passed that measure just before it recessed, but the House had already gone into its recess. The Senate recessed on August 5th and will return September 13th.

July was quite a breathless month, however. With the House in session for only three weeks, it managed to finalize action on the War Supplemental Appropriations bill, which included $5.1 billion to replenish the Disaster Relief Fund. The House considered and passed a Flood Insurance Reform Priorities Act and came very close to considering legislation to add wind coverage to the National Flood Insurance Program (NFIP). A Water Resources Development Act of 2010 (WRDA 2010) was marked up and reported out of committee. Two subcommittees of the Senate Homeland Security and Governmental Affairs Committee held a hearing on levee and flood map issues at which the ASFPM testified. Senate committees are working on separate draft legislation for flood insurance reform and WRDA. The Senate Appropriations Committee reported out its versions of Homeland Security and Energy Water Appropriations for FY 2011, along with seven other appropriations bills during July. Although the House Appropriations Committee has not acted at the full committee level, it has reported out the Homeland Security and Energy Water Appropriations bills at the subcommittee level and two bills were reported out of full committee in July and passed by the House.

Not surprisingly, appropriations bills are expected to dominate the legislative schedule when Congress returns in mid-September, since the new fiscal year begins October 1st. At this point, it is projected that the Congress will recess again on October 8th for election campaigning and that there will be a lame duck session after the early November elections.

Flood Insurance Reauthorization

Although Congress acted in June to reauthorize the NFIP until September 30th (retroactive to May 31st), that new expiration date will come up soon after the mid-September resumption of legislative activity. When the Senate Appropriations Committee reported out its version of the Homeland Security Appropriations bill for FY 2011, it included a one-year reauthorization of the NFIP. The House Subcommittee draft contains no similar provision. If Congress passes a Homeland Security Appropriations bill in September, it likely would include the NFIP reauthorization. If not, then any number of scenarios could unfold. The program could lapse again. Another
short-term reauthorization could be passed, presumably until the lame duck session could take further action. An authorization of undetermined length could be attached to some other legislative vehicle expected to readily pass both houses. The Senate could introduce and act on its version of flood insurance reform legislation, which would likely include a longer reauthorization. Obviously, the future is foggy.

**Flood Insurance Reform**

The House passed H.R. 5114, Flood Insurance Reform Priorities Act, on July 15th by a vote of 329 to 90. Because the bill came to the floor with little warning, there were only a few days to file amendments. More than 60 were filed and the Rules Committee did rule on 12 of them in order for consideration on the House floor. An amendment filed by Gene Taylor (D-M. S) to add wind coverage to the NFIP was determined not to be germane and ruled not in order. During floor debate, Taylor expressed his frustration that his amendment could not be considered and won agreement from the House leadership that his stand-alone bill adding wind coverage, H.R. 1264, could be considered the following week by the full House.

Indications are that the Senate Banking Committee is unlikely to take up the House-passed bill. Committee staff are engaged in developing a separate Senate bill that would probably have considerable similarity to the Senate-passed version of H.R. 3121 in the previous (110th) Congress. Whether a Senate version could be introduced and acted on during the remainder of this session is unclear.

H.R. 5114 (the House Bill) would reauthorize the NFIP for five years and would also reauthorize the Severe Repetitive Loss program for five years. The bill would delay for five years the implementation of the mandatory purchase requirement for areas newly mapped as floodplain. After that, actuarial rates would be phased in over another five-year period. The limit on annual premium increases would become 20% rather than the current 10%. It increases maximum coverage limits and requires phase-in of actuarial rates for commercial and non-primary residential pre-FIRM properties. The phase-in also applies to principal residences sold after enactment of the bill, but would not apply to multifamily rental properties or rentals that are primary residences. The measure adds optional coverage for additional living expenses and business interruption and increases the minimum annual deductibles for both pre-FIRM and post-FIRM properties.

The measure would establish an installment payment plan for low-income households and would direct FEMA to require landlords to inform tenants that they are located in a flood risk area and that flood insurance for contents is available.

The bill requires that state or locally funded flood control structures be treated the same as federally funded structures on flood maps when considering eligibility for the A99 zone. FEMA is directed not to implement the mandatory purchase requirement if the flood control system had met accreditation requirements, relying on information provided by a federal agency, but has since been determined not to meet FEMA’s accreditation standards.

A competitive grant program for outreach and education efforts to encourage purchase of flood insurance would be established and an extensive office of the Flood Insurance Advocate would be created in FEMA.

**Floor Amendments to H.R. 5114**

Several provisions were adopted when the bill was considered on the House floor. All except two passed by voice vote.

- **The Manager’s (or Chairman’s) amendment** included a number of provisions that would
- Phase out subsidized premiums for severe repetitive loss properties and properties where flood insurance was allowed to lapse;
Phase in actuarial rates for pre-FIRM properties sold after enactment of the bill;
• Make flood insurance available at the Preferred Risk Policy rate for those participating in the 5-year delay in mandatory purchase for areas newly mapped as floodplain;
• Provide access to the installment payment option for all policy holders;
• Clarify that the FEMA Administrator may work directly with repetitive loss property owners to make mitigation offers if the local government is unable or unwilling to do so;
• Allow swimming pools on commercial properties below the base flood elevation to be enclosed with breakaway walls;
• Require review of zone designation for surrounding properties after a successful appeal of flood hazard of a property in newly mapped areas;
• Clarify that demolish and rebuild is an eligible mitigation option; and
• Add several studies and technical improvements.

Other amendments were adopted that included these provisions:
• Requiring FEMA to submit a report to Congress annually on the effectiveness of grants awarded to local government agencies, the activities conducted, and the effect on retention or acquisition of flood insurance—Adam Putnam (R-FL);
• Requiring that FEMA reimburse property owners who have successfully obtained a Letter of Map Amendment (LOMA) for costs incurred in pursuing the LOMA—Steve Driehaus (D-OH);
• Prohibiting use of grant funds for earmarks—Jeff Flake (R-AZ);
• Preventing Write Your Own insurance companies from excluding wind damage coverage from their own regular homeowners’ policies only because of concurrent flood damage (anti-concurrent causation)—Gene Taylor (D-MS);
• Requiring the U.S. Government Accounting Office to study how the private insurance market can contribute to coverage of flood damage, what the effect would be on communities if they opt out of participation in the NFIP, and the feasibility of regionalizing the NFIP to avoid cross-subsidization—Candice Miller (R-MI);
• Attempting to ensure that occupants have relevant information on evacuation routes and to ensure that outreach efforts include info on how to obtain flood insurance—Leonard Boswell (D-IA);
• Adding to the functions of the Office of the Flood Insurance Advocate “identifying ways to assist communities in efforts to fund the accreditation of flood protection systems”—Baron Hill (D-IN);
• Requiring that notification of proposed flood elevation determinations be provided to local television & radio stations in addition to the current notification of local newspapers—David Loebsack (D-IA);
• Providing federal grants for education of local real estate agents about the NFIP and availability of coverage and establish coordination with Realtors® to facilitate purchase of flood insurance and increased awareness of the need for flood risk reduction—Michael E. McMahon (D-NY); and
• Requiring that all funds authorized by the legislation be expended in a manner consistent with the manual on Standards of Ethical Conduct for Employees of the Executive Branch.

Adding Wind Coverage to the NFIP

H.R. 1264, the Multi-Peril Insurance Act, was scheduled for floor action on July 22nd. No amendments were ruled in order by the Rules Committee. Meanwhile, many organizations and interests had sent letters and held meetings with Congressional offices to express opposition. These included a number of major insurance associations, re-insurance interests, several important environmental groups, consumer groups, taxpayer protection groups, and even the U.S. Chamber of Commerce. The National Association of Realtors®, the National Association of Home Builders, and the American Bankers Association expressed support for the measure.

The ASFPM sent a letter to all House offices expressing strong concern about any addition of wind coverage to the NFIP. The letter said in part, “We are very concerned about the impact of the new exposure to wind losses on the
future viability of the flood insurance program itself. Too many questions have not been addressed or answered. The ASFPM is firmly opposed to this bill because it would undermine the integrity of the NFIP, duplicate service already provided by the private insurance sector, and would only require that the F E M A  administrator ‘encourage’ mitigation of wind hazards.” The full text of the letter is posted on the ASFPM website.

At the last minute, after debate had begun on the bill, House leadership pulled the bill from further consideration. Speculation (unconfirmed) was that a vote count indicated the bill would not pass. Interestingly, when the floor schedule was announced for the following week (week of July 26th), it listed H.R. 1264 as “possible” for consideration.

The House recessed for the August break at the end of the week without taking up the bill. However, since the Rules Committee has already granted a rule for floor consideration, the measure could come up again at any time.

Homeowners’ Defense Act

This bill (H.R. 2555), which would provide a federal catastrophic loss backstop for state reinsurance funds, could also come to the House floor for consideration during the remainder of this Congressional session. Although it has not yet been scheduled for the floor and has not yet been considered by the Rules Committee, it has been favorably reported out of the House Financial Services Committee.

The measure is strongly opposed by the SmarterSafer Coalition, a group of reinsurance, insurance, and environmental associations and interests. It is supported by ProtectingAmerica.org and by a couple of major insurance companies. The ASFPM has expressed concern about the bill, primarily because of the likelihood that it would facilitate unwise development and has only very weak provision for mitigation, and thus can lead to massive financial exposure to federal taxpayers. Further, the private reinsurance industry has asserted its capability to provide the necessary reinsurance and its commitment to incentives for hazard mitigation. The ASFPM letter on H.R. 2555 is posted on the website.

Disaster Relief Fund Replenishment

After delays and bounces between the House and Senate, the so-called “War Supplemental” was finally passed and signed by the President on July 29th. The bill included a $5.1 billion replenishment of the Disaster Relief Fund (DRF), to cover costs of disasters already occurred. Because of the precariously low status of the DRF, most mitigation activities have been on “hold.” Among other items, the bill also included $49 million for the Economic Development Administration for expenses for disaster relief, long-term recovery, and restoration of infrastructure damaged during the storms and floods from March to May, 2010. The U.S. Army Corps of Engineers received $5.4 million for studies in states affected by severe storms and floods and $20 million for Flood Control and Coastal Emergencies. The measure is now Public Law 111-212.

Hearing on Levee Status and Relationship to Flood Maps

The ASFPM was asked to present testimony at a joint hearing of two Senate Homeland Security and Governmental Affairs subcommittees on July 28th. Mary Landrieu (D-LA), Chair of the Disaster Recovery Subcommittee and Mark Pryor (D-AR), Chair of the State, Local, and Private Sector Preparedness and Integration Subcommittee, presided. Susan Collins (R-ME), Ranking Minority Member of the full Committee, participated throughout the hearing as did Jon Tester (D-MT).

Sam Riley Medlock testified for the ASFPM. Her testimony made a strong statement about the importance of identifying and acknowledging risk. She also noted that the problems associated with levee decertification, new flood maps that update floodplain delineations, and affordability of flood insurance all present an opportunity to
develop wise and integrated policies to reduce flood losses. The ASFPM testimony, which was, as usual, reflective of contributions from a number of members, is posted on the website. Permission was given to submit additional material for the hearing record, and the ASFPM staff and others developed further comments.

**Water Resources Development Act Markup**

The full House Transportation and Infrastructure Committee marked up and reported favorably the Water Resources Development Act of 2010 on July 29th (H.R. 5892). Interestingly and somewhat surprisingly, the bill did not include a levee safety program component. According to Committee staff, the elements of a levee safety title were not ready for inclusion. It is expected that, when the measure comes to the House floor, a Chairman’s amendment will include a levee safety component.

The bill authorizes several new projects, including three relating to hurricane and storm damage reduction and ecosystem restoration. It includes provisions to increase the transparency of independent reviews and improve the effectiveness of mitigation that addresses impacts from Corps’ projects on the natural environment. Further, it authorizes the Corps to work with local communities in the assessment and evaluation of local flood control structures, including levees.

The ASFPM will continue to work with Committee staff to provide comments and any assistance requested as such language is developed. The ASFPM likely will recommend that, at the very least, the bill include language directing the Corps to extend its levee inventory to levees other than those built, operated, and maintained by the Corps so the nation knows the number of miles of levees and has a general knowledge about the extent of the levee problems and risk. The ASFPM recommends that levee-related activities be part of a broader flood risk management approach in the nation. The ASFPM is likely also to urge a significant increase in authorized funding for the Section 22 Planning Assistance to States program and Flood Plain Management Services program as a key element of expanding Corps technical assistance to communities in developing solutions (both structural and non-structural) to their flooding challenges.

**Progress on Appropriations for Fiscal Year 2011**

During July, there was considerable movement on appropriations bills for FY 2011. The House passed 2 of the 12 regular appropriations bills. While most of the subcommittees have marked up their bills, only 2 have been reported out of the full committee. Full committee consideration of the Homeland Security bill was scheduled and then postponed. The Senate has not passed any of its bills, but the full Appropriations Committee has reported out 9 of the 12 regular bills. Given the short time between the return of the Congress in mid-September and the end of the fiscal year on September 30th, it is likely that there will be a Continuing Resolution to cover funding for much of the government. How long a Continuing Resolution and other further steps remain to be determined.

Because the full House Appropriations Committee has not acted on most bills, the subcommittee bills and accompanying reports have not been released. A summary released by the Subcommittee on Homeland Security provides some information. The mapping program is provided $194 million, which is the same as the Administration budget request, but less than the $220 million appropriated for FY 2010. Pre-Disaster Mitigation (PDM) would receive $100 million, the same as the budget request and as FY 2010. About $25 million of that amount is earmarked for designated activities. Emergency Management Preparedness Grants (EMPG) would receive $345 million, which is the same as the budget request and $5 million more than FY 2010.

Nine Senate bills and reports (available online) have been reported out of full committee:
- Agriculture (S. 3606; S. Rept. 111-221);
- Commerce, Justice, Science (S. 3636; S. Rept. 111-229);
• Energy and Water (S. 3635; S. Rept. 111-228); and
• Homeland Security (S. 3907; S. Rept. 111-222).

The Senate Homeland Security bill would reauthorize the NFIP for one year, until September 30th, 2011. It also provides $194 million for mapping and $345 million for EMPG (the budget request), but only $75 million for PDM, $25 million below the request. The committee report indicates that this is due to concern about the pace of allocating funds and notes that $230 million of previously appropriated funds were unobligated as of April 30, 2010. The report also notes that the Administration budget request had not included funds for the Severe Repetitive Loss Program. Rather than eliminate funding, the Senate report directs FEMA to streamline the process and eligibility requirements “to ensure its most effective use.” Further, the Homeland Security report contains language similar to that in the report accompanying the War and Disaster Relief Supplemental Appropriations bill, directing FEMA to establish an interagency task force to include the Corps and the Office of Management and Budget “to track, address, and where possible, resolve concerns stemming from FEMA mapping in communities with issues related to flood control infrastructure protection, such as levees, drainage or dams.”

The Senate Energy and Water Appropriations bill increased funds for Flood Plain Management Services from the budget request of $8 million to $11 million. Of that amount, $4.3 million is earmarked. Funds were also increased for Planning Assistance to States from the budget request of $7 million to $9 million, of which $2.5 million is earmarked. The Senate Commerce, Justice, Science Appropriations bill increases funds for the National Oceanic and Atmospheric Administration by $805 million over FY 2010, but is consistent with the Administration’s budget request. Most of the increase will fund new satellites to observe weather, climate variations, and changes in sea levels.

Other Legislation— the Liveable Communities Act

Senate Banking Committee Chairman Christopher Dodd (D-CT) introduced a bill (S. 1619) to establish an Office of Sustainable Housing and Communities at the Department of Housing and Urban Development, to establish the Interagency Council on Sustainable Communities, to establish a comprehensive planning grant program, and to establish a sustainability challenge grant program. Having completed the Banking Committee’s commitment to major financial regulatory reform legislation, the Chairman announced that this legislation would be his next priority. The Committee held a hearing on June 9th and marked up and favorably reported the bill on August 3rd. Chairman Dodd said “There is great demand for the kind of integrated planning and location-efficient investments that the bill makes possible.” The Committee did adopt an amendment by David Vitter (R-LA), but softened by a substitute offered by Robert Menendez (D-NJ) making those in the country illegally ineligible for housing programs in the legislation.

A companion bill, H.R. 4690, has been introduced in the House by Ed Perlmutter (D-CO) but no action has been scheduled yet.

All referenced legislation can be reviewed by going to: http://thomas.loc.gov and typing in the bill number or title.