S. HRG. 108–861

NATIONAL FLOOD INSURANCE REPETITIVE LOSSES

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC POLICY

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

CERTAIN MEASURES TO ADDRESS REPETITIVE LOSS PROPERTIES

MARCH 25, 2004

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NATIONAL FLOOD INSURANCE REPETITIVE LOSSES

THURSDAY, MARCH 25, 2004

U.S. SENATE,
SUBCOMMITTEE ON ECONOMIC POLICY,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee met at 10:03 a.m., in room SD–538, Dirksen Senate Office Building, Senator Jim Bunning (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF SENATOR JIM BUNNING

Senator BUNNING. I would like to welcome all of our witnesses to the hearing of the Economic Policy Subcommittee. I am very happy that we have a distinguished U.S. Senator and two of my former House colleagues. Three of my fellow Kentuckians and three very distinguished witnesses here for today.

For the last few years, we have continually passed one year reauthorizations of the National Flood Insurance Program. One year we were not able to pass the reauthorization until after it had expired. This situation has created an uneasiness in our housing markets. Our House colleagues have gone a long way toward eliminating that uneasiness. We hope to finish the job very soon.

We hope to hear from all of our witnesses on what they think about the House Bill 253. Specifically, do you think any improvements can be made and what those improvements would be? I think our House colleagues did a very good job and created a very good product. But we can make it a little better. I think we can tweak it here and there. I have been working with Chairman Shelby, Senator Sarbanes, Senator Hagel, Senator Dole, and other Senators to try to put a bill together, working off the House draft. I know they have been in touch with the staff of the House Financial Services Committee. I am hopeful that we will be introducing a bipartisan bill in the very near future. Hopefully, your testimony today will help us see what we are missing with our bill so we can continue to move this process forward.

It is very important that we both renew and reform this program. Renewal will bring stability but we should not waste the opportunity to reform. We have the opportunity to help a great deal of homeowners by giving them mitigation assistance, which will help save the taxpayers money by getting those homeowners off the repetitive loss list. This bill can be a great win-win for our country.

For too long we have repeatedly paid out claims at subsidized rates without helping homeowners shore up their properties to pro-

tect against future floods. This bill creates a program to do just that. If homeowners refuse the mitigation assistance, their rates will increase to reflect the greater risk that they are to the program. I believe this is a common sense approach to that problem.

I know my colleagues from Maryland are going to talk about their State's experience with Hurricane Isabel. I hope to work with you to see if we can fix some of the concerns you will raise. I think we can. We have had some major flooding problems also in Kentucky. A few years ago, one of my old towns in my old Congressional district, Falmouth, Kentucky, was almost completely wiped off the map. So, I am very sympathetic to the plight of victims or Hurricane Isabel.

Thank you all for coming and I look forward to your testimony.

Senator Sarbanes, would you like to make a statement?

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman. First, I want to thank you for scheduling this important and timely hearing. I want to welcome Congressmen Bereuter and Blumenauer before us today, and also commend them for moving a flood insurance reform bill through the House of Representatives.

I am also delighted that my colleague from Maryland, Senator Mikulski, is here with us this morning testifying. I appreciate the strong leadership and interest that she has shown on this issue. Actually, Senator Mikulski and I toured some of the areas affected by Hurricane Isabel, and that gave us obviously a very deep appreciation for the losses suffered by our constituents and the impact upon their lives.

The National Flood Insurance Program provides flood insurance to over 4.3 million properties throughout the country. It is an extremely important program helping to ensure that families devasted by floods can rebuild, replace, or relocate. Congressmen Bereuter and Blumenauer have addressed the important issue of repetitive loss properties, which every statistic shows is a matter of major concern, and I am pleased to hear you say how we look forward to taking the House bill and building upon it in order I think to add some additional dimensions which I would anticipate the Congressmen would be supportive of, and we are very appreciative to you for the very forthcoming way in which we have been able to work together to address some of the problems.

We had a devastating flood in Maryland last year. Many of the properties which were damaged by the floods were covered by the National Flood Insurance Program, which was established in 1967, in order to, and I quote now from the House and Senate Reports, "provide the necessary funds promptly to assure rehabilitation or restoration of damaged property to pre-flood status or to permit comparable investment elsewhere." That was the Congressional statement of what the flood insurance program was meant to accomplish.

Unfortunately, many flood victims in our State have been offered settlements that come nowhere near close to restoring pre-flood conditions or meeting contractor estimates for repair and rehabilitation. Furthermore, many flood victims have found the process of

trying to recover on their flood insurance policies to be time consuming, confusing, and frustrating.

I am very greatly concerned about how the flood insurance program is being administered and the adequacy of the coverage.

We have heard from numerous flood victims that they are not being adequately reimbursed. There are inaccurate guidelines for the price of repairs. FEMA rules or adjuster practices consistently lead to flood insurance payments significantly lower than what is needed to restore families to their pre-flood conditions.

People covered do not realize the limitations contained in their flood insurance policies, the exclusions that exist, which result in a significant gap between the coverage and their damages. These are not made clear to policyholders in FEMA publications or in the flood insurance policy itself. I know Chairman Bunning has been working closely with your staff to include provisions in the legislation to address toward these problems.

We have had a careful study done in one jurisdiction in our State, Baltimore County, by the former Maryland Insurance Commissioner, Steve Larsen, that goes through detailing the range of problems that exist in this area. It is not clear how to file claims. It is not clear what kind of training the adjusters have. Flood victims are under the pressure of a time limitation, so they sign off on claim forms when they do not really think that they should but they are afraid they are going to go beyond the deadline, and similar problems of that sort.

I am very frank to tell you I think FEMA needs to start down the path of comprehensive review of the adequacy of coverage provided under the standard flood insurance policy. That would address the future problems.

I think they should go back with the flood victims to make sure they have been treated fairly. FEMA should review their claims to determine whether they were based on inaccurate FEMA price guidelines or software that does not correspond with the real world in terms of the cost of repairs.

And I urge them to readjust the claims just as a matter of fairness. They should be able to go back and review the problems. We are going to have Director Lowe testify following this panel. I think he is scheduled next, and we intend to question him very closely about this matter. If it was all done properly, then there is no need to readjust the claims, but in many instances we are convinced that people have suffered an injustice, and I intend to press the Federal Insurance Administrator, Mr. Lowe, in the next panel.

I appreciate our witnesses being here before us. I certainly appreciate the leadership which Senator Mikulski has taken on this very important matter to our constituents. Again thank you, Mr. Chairman, for moving ahead on this matter.

Senator BUNNING. Senator Hagel, would you like to make your opening statement?

STATEMENT OF SENATOR CHUCK HAGEL

Senator HAGEL. I do not have an official statement, Mr. Chairman, other than to say thank you, Senator Sarbanes for your leadership on this issue. I am particularly pleased this morning to be on the panel to listen to our distinguished list of leaders on this

issue, and in particular, my distinguished colleague from Nebraska, who is wrapping up his 26th year in the House of Representatives and has said it is just about time I go get a real job.

[Laughter.]

He has announced his retirement and we are very proud of Doug Bereuter. This is just but one of many examples, as you know, Mr. Chairman, because you served with Doug in the House, of his leadership on so many issues in the House. I am very proud to be with you this morning, and with my colleagues, in particular Doug Bereuter, to move this further down the road to get to a resolution, as you have suggested. That is important for our country and every State represented here this morning. This is a critical issue for all of us. Thank you again for your leadership, and Senator Sarbanes, thank you.

Senator BUNNING. Thank you.

Senator Dole.

STATEMENT OF SENATOR ELIZABETH DOLE

Senator DOLE. Thank you, Mr. Chairman.

Each year, hundreds of thousands of families lose cherished possessions and oftentimes even their homes in flooding. Our Government stepped in to help these families several years ago with the founding of the National Flood Insurance Program. Today, this much needed program covers approximately 4.4 million homes in the United States, totalling $637 billion in coverage. Before the program was started in 1973, flood insurance was far more expensive than the average family could afford. In fact, most insurance companies did not even offer the coverage since families with a high risk of flooding were the ones most likely to purchase the coverage, and the companies found the risk to be unacceptable.

In the years since 1973, the National Flood Insurance Program has grown and provided security and relief to countless families across the Nation. This is particularly important in my home State of North Carolina, where flood losses are far too frequent. In the past 7 years, North Carolina has been hit by three different hurricanes, Fran in 1996, Floyd in 1999, and Isabel just a few months ago in 2003. In fact, Mr. Chairman, I was able to visit in Harlowe and Sealevel, North Carolina with victims of Hurricane Isabel. One man, Kurt Michel, told me how a wall of his home literally fell out as the water just came rushing and pouring in. He and his wife Jeannette swam out of the home with his daughter, Hannah, on his back. I met Brooke Stalnecker, whose home had been totally flattened. It looked like a war zone, and whose living room wall lay on the ground with the family photographs still attached.

The National Flood Insurance Program serves a critical role in North Carolina covering families like these, more than 100,000 families in fact, and it is designed to respond as soon as disaster strikes. It is a program we desperately need to retain and improve.

While we can point to countless positive stories about the program, in the last 6 months, since Hurricane Isabel hit North Carolina, like we have already heard, I have heard some real problems. I am told that 28 families just on Hatteras Island in North Carolina still have not received compensation for the damage 6 months ago. I have received a number of letters from people who complain

they believe they were low-balled on the repair estimates and made to feel that if they appealed they would get less. These reports are distressing. These letters mention that when previous hurricanes hit the coast homeowners reported they had been treated much better by the National Flood Insurance Program. It is my hope we can address these problems which have caused some North Carolinians very great distress.

In addition, I believe we can continue to make improvements to our mitigation efforts. In my time as the President of the American Red Cross, we took a leadership role and worked as a full partner in FEMA's efforts to develop and implement a National Mitigation Strategy. We co-sponsored FEMA's biennial National Mitigation Conferences. Mitigation not only prevents or greatly minimizes damage, but mitigation also saves lives.

This year, Congress has the responsibility to reauthorize and improve the National Flood Insurance Program. In this process, it is my hope that additional steps can be taken to reduce exposure to repetitive losses in a responsible way that will not harm the families who depend on the program. I want to thank all the witnesses who have taken time to join us here today to share their considerable knowledge with us. All have been leaders in efforts to reform the National Flood Insurance Program next year.

Let me just say, Congressman Bereuter, that we appreciate your service and we are certainly going to miss you when you leave the Congress. I have had the pleasure of working with you and traveling with you in the past when my husband was in the Congress.

Congressman Bereuter and Congressman Blumenauer, you have both put forward a thoughtful approach to reduce exposure to repetitive loss properties, which drain money and resources from the program. This proposal emphasizes the involvement of State and local agencies in mitigation efforts, and it has my full support.

I certainly want to recognize my good friend, Barbara Mikulski, for her strong interest in this issue. Both North Carolina and Maryland were hit hard, and you have been a tireless advocate, and we are so pleased that you are here today.

One issue which has been missing from the National Flood Insurance Program has been predictability. Folks in North Carolina have asked me to support a longer reauthorization than the current one year reauthorizations Congress has approved in recent years. This legislation contains a 5-year reauthorization, and this too has my strong support.

Mr. Chairman, I ask unanimous consent that four letters representing the kinds of complaints my office has been receiving be included in the record.

Senator BUNNING. Without objection.

Senator DOLE. Thank you.

Senator SARBANES. Mr. Chairman.

Senator BUNNING. Senator Sarbanes, go right ahead.

Senator SARBANES. I do not think I should allow the respect to pass that has been expressed for Congressman Bereuter's contributions. I want to make it bipartisan. I want to make it very clear that that respect exists on both sides of the aisle, and it has been a very distinguished record of service to our country, and we want to thank him and we want to wish him the very best.

Senator BUNNING. On our first panel today we have our good friend, Senator Barbara Mikulski from Maryland, the Ranking Member of the VA/HUD Subcommittee of the Appropriations Committee; and two of my former House colleagues, Congressman Doug Bereuter of Nebraska, who is moving on to bigger and better things next year.

Thank you for your service, Doug. You have done a great job, and I know when I first came to the Congress, we served together on the House Banking Committee, and I think you are still on the House Banking Committee.

Representative BEREUTER. I am.

[Laughter.]

Senator BUNNING. God bless you for 24 years at least of service on the House Banking Committee.

And of course, Congressman Earl Blumenauer of Oregon, thank you also for testifying.

When Senator Mikulski asked me to testify, I remember the old adage I learned when I first came to Congress, never, never say no to an appropriator.

[Laughter.]

Senator Mikulski is a good friend of all of us here, and we are glad to have you before this Subcommittee. Senator Mikulski, the floor is yours.

STATEMENT OF BARBARA A. MIKULSKI
A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Mr. Chairman, and of course to my colleagues, Senator Dole, who I worked with hands-on together when she was the head of the American Red Cross, to do an initial FEMA reform and now look forward to working together. I also look forward to working with Senator Hagel and Senator Sarbanes. He and I are working together to really bring to the Congress's attention the lessons that we in Maryland learned during Hurricane Isabel.

The National Flood Insurance Program does need to be reauthorized, and yes, for a longer time to provide predictability. But we not only have to reauthorize it, we not only have to review it, but we also really need to reform it because it is not working for the intent that it was provided, which is a safety net for those people who have been hit by terrible natural disasters.

On September 18, 2003, Maryland and other East Coast States were devastated by Hurricane Isabel. It was the worst natural disaster in Maryland's history. For the people who live along the Chesapeake Bay and the rivers leading into the Bay, it was a catastrophic event. People lost their homes and their possessions. They lost their livelihoods, whether it was in the crab houses or the oyster shucking houses. They had community names like Bowley's Quarters or Miller's Island, Bayside or North Beach, Kent Island, or Hooper's Island. This was not Gucci waterfront. This was blue collar waterfront. This was hard-scrabble, hard-working waterfront people who had worked and scrimped to save to buy these homes. Some people I had gone to school with, people who had worked along the water to earn a living for their communities. Now they are struggling with the legacy of Isabel. Wells continue to be pol-

luted. Some are living in trailers, but if you looked at those trailers, they are really temporary campers, and they are living with inadequate heat.

They are still trying to struggle to recover, and they feel that they were victimized by not only the disaster of the hurricane, but then they also feel that they have been undone by the National Flood Insurance Program that offered inadequate payments, no clear right of knowing how to appeal, and great disappointment.

We worked on a bipartisan basis in Maryland. Governor Ehrlich responded. Secretary Tom Ridge was on the job, touring with Senator Sarbanes and I to see the damage, to talk to the people, really work on a Federal-State bipartisan effort. When we looked at the damage, we said, "Your Government will be here to help you." We saw houses moved off of their foundations in North Beach. Walking the streets of Bayside and Bowley's Quarters, children's toys and personal items pushed into yards, a 78-year-old widow clinging to both me and Secretary Ridge, saying, "What am I going to do? What can we do?" Mud more than a foot deep. Business owners that have lost their businesses there.

We saw not only devastation, but we also saw the good ways that people do pull together. We were proud of the way the rescue workers came and rescued people. One senior citizen trying to rescue her possessions, fell, hit her head, and had to be carried out in a rowboat, brave acts, and FEMA did respond. But when the flood was over and they tried to get to their flood insurance, it really was not there the way it should have been.

Today, 6 months after Isabel has hit, my constituents are still trying to rebuild both their homes and rebuild their lives. They are struggling to get the money that they feel is owed to them. They are frustrated. They are confused, and quite frankly, Mr. Chairman and colleagues, they are fed up. They feel like the insurance that they paid for is not there when they need it the most. That is why I am here today, to tell their stories to this community. Thousands of Marylanders could be at this hearing to tell it.

I want to just encourage in the most heartfelt way, the way that we need to do, move on the lessons learned. What we learned from what the people are telling me is this. They do not understand what their flood insurance paid for. They thought that they were totally covered. They believed that between their homeowner's insurance and their flood insurance, they would be covered. Now they are finding out that it is not true. They found out that the compensation really does not deal with total repair or total rebuilding. They did not know that it did not cover the contents of their home. They did not know that it did not cover the basement belongings that were in their home. Then when they put in their claim, they find out that they are only going to get a portion of what it will cost to repair or rebuild.

When they ask their insurance agent to explain things to them, they cannot get a straight answer. That is because the insurance agents do not know what the policy covers. In Southern Maryland, some homeowners were able to get emergency advances, but in other parts of the State they could not do it. Different agents gave different answers. In some cases the same agent gave different answers on the same day.

I sat in a diner meeting with community leaders to hear what their experiences were. One of these was a Baltimore City detective. This wonderful woman's job is to get information and also get information from people who do not want to talk to her, and that is what she felt like when she was trying to get information from the National Flood Insurance. I asked them if they knew if they could appeal. They did not know that they had the right to appeal. No one told them. There was no fact sheet on the right of appeal. Nobody told them what they could do.

My office became the instigator of the appeal in cooperation with Senator Sarbanes. We became the clearinghouse on the appeal process. I was honored to do it. We organized community meetings. We organized the appeal hearings. We brought FEMA and the Flood Insurance Program right to the communities to hear those appeals. We do not think you can appeal on a 1–800 number or on the Internet. You need to know the context.

Mr. Chairman, what we really saw was that the appeals process did work when it finally worked, but we had to be the instigator of that. A criminal knows their right to appeal in court, but a flood insurance victim does not. We have to really get this straight.

Once Marylanders figured out their policies and finally figured out their paperwork, they saw that the payments that they were not getting were not adequate. The flood insurance adjusters do not use real-world estimates. In Bowley's Quarters, the adjuster gave such low estimates that the people went to an engineering firm in order to be able to get advice on how to file their paperwork. Once they did it, they were able to get a better deal.

Is that what we are supposed to do, where a whole community has to pool money to get an engineering firm in to get it? I do not think so. The people should not have to go through all this to get a fair appraisal or a fair reimbursement for the insurance that they paid for.

Mr. Chairman, part of the problem is with the adjusters. And this is no fault about these adjusters. They come in at a catastrophic time. They go into a hotel room, and the way we pay them is in a way that actually works against getting fair and adequate adjustments. They have to put out all of their expenses up front, and until a claimant signs a particular form, they will not get reimbursed. They put pressure on signing a form, rather than getting an adequate and fair appraisal. What we do is have drive-by assessments rather than real assessments.

I really want to urge in the very strongest way that, we move this reform package quickly. I want to have this done before tornado season comes again to some of our communities. I want to do it before flooding starts in our great midwestern areas when the waters start to rise, and I want reform done before hurricane season comes to Maryland and comes to our company again, and I believe we can do it.

Senator Sarbanes has taken the lead and we have been working together. We have four recommendations. One, full information and disclosure of flood insurance polices. Flood insurance must provide a clear understanding of what is covered. Second, better training for insurance agents who sell flood insurance, so they understand what they are selling and how to process claims. Number three, a

straightforward formal appeals process that must be clearly presented to policyholders. Number four, adequacy of payments and a reform of the adjustment system. Consumers need to know that the insurance they pay for will pay for real-world cost of repairing the damage, and at the same time we need to reform the adjusters' system so that they are adequately paid in a timely way, so that the emphasis then is on an adequate assessment to minimize the appeals process. Those are four straightforward reforms that I believe can be implemented very quickly.

I am going to submit to the Committee two reports, one at the request of the Baltimore County Executive. We went to Maryland's former Insurance Commissioner, Steve Larsen, to take a look at what had happened in Baltimore County. And the second, the Maryland Insurance Commissioner's review of this process, so you could have the benefit of their expertise.

Mr. Chairman, I really want to conclude by just saying that thousands of people who suffered so much in Maryland and other communities, would feel that in some way that what happened to them would be somewhat mitigated if out of all of our misery and all of the things that we had to live through, that there was a true reform of the National Flood Insurance Program, so the next time a natural disaster happens and somebody knocks on the door and says, "We are from the Government and we are here to help you," we really mean it.

Thank you very much, Mr. Chairman.

Senator BUNNING. Thank you, Senator.

Now we have my former colleague from the House of Representatives, and we are proud to have him here testifying.

Congressman Bereuter, the floor is yours.

STATEMENT OF DOUG BEREUTER
A U.S. REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEBRASKA

Representive BEREUTER. Thank you very much, Chairman Bunning, Senator Sarbanes, Senator Dole, and Senator Hagel, for your insightful and very positive remarks about the need for flood insurance and especially, I might say, your personal and very generous remarks to this Member.

I have been involved in introducing legislation I think each of the last six Congresses on flood insurance reform. The last several, I have had the benefit of working with Congressman Blumenauer, who has added dramatically to the expertise, the interest, and the energy related to reform.

And I might say that my seat-mate, the person I have sat next to for the last 10 years in the House, Richard Baker, has had a major role since Louisiana has the most repetitive law structures and the largest amount of area below sea level. And we worked in considerable detail with him to make sure that what we have attempted to accomplish is well-tuned to not only reduce repetitive losses and to increase the prospects for mitigation, but also to take into account those States that have the largest number of repetitive loss structures and the financial implications.

Now, I would say that what we heard from Senator Sarbanes, and particularly just now from Senator Mikulski and Senator Dole,

relates to the lack of clarity about the flood insurance policies, the procedural difficulties, the claims filing, and the timeliness of response to the claim filing. We did not attempt to address those issues. What we have done is focus on the structural reforms for the program, and I could well envision that you could have a separate title or two that you could add to deal with the issues that have been brought up here, and we could depend upon you, as far as the House is concerned, to take that approach and add it to a legislative effort that we have initiated here.

I would like to tell you, of course, that we have actually a very unusually broad, diverse group of organizations that support this flood insurance legislation, and you perhaps have had distributed to your desk a copy of the list, and that is not even, in fact, a complete list. I would briefly like to speak about three areas today, and then turn to my colleague, Mr. Blumenauer.

First, is the background on repetitive losses; second, the contents, including the new pilot program that we establish; and, third, as I mentioned, the diverse support.

On background. Repetitive loss properties cost the NFIP about $200 million annually. The properties, while comprising, we have approximately 1 percent of the currently insured properties are expected to account for 25 to 30 percent of claims paid. For example, I will cite one of many egregious examples, among a great many such examples, of costly abuses which could be discussed.

One home, valued at $114,000, has received $806,000 in flood insurance payments over 18 years. Furthermore, 25 percent of all current NFIP policies do not pay actuarial rates for their coverage and, thus, they are subsidized by the other 75 percent of people who do have flood insurance, and they are paying more than their fair share, in an actuarial sense.

Today, the vast majority of repetitive loss structures eligible for subsidized flood insurance are far below the actuarial risk rate they should be paying. This bill would at last move the NFIP toward a more free-market insurance model by requiring people living in flood-prone areas to reduce their risk of flooding, mitigation, with help from the Government—Federal, and in many cases State and local—or pay something closer to actuarial rates.

Now, as far as the contents are concerned, I will just hit the high points. The bill uses FEMA's existing FMA program to mitigate repetitive loss properties. The bill authorizes up to an additional $40 million a year to be transferred from the National Flood Insurance Fund into the FMA funds through 2008.

The pilot program—and this is the one that focuses on the repetitive loss structures—authorizes up to $40 million a year to be transferred from that same fund for mitigation assistance to reduce the problems of severe repetitive loss properties. This trial program, which I think cannot effectively be less than 5 years, will not have a fair examination of the process unless we have a significant length of time.

This trial program would address those properties in a simple, straightforward manner. The owner of severe repetitive loss structure properties will be charged a rate closer to the actuarial risk-based rate for their National Flood Insurance Program if two conditions prevail.

The first is that it is, indeed, by definition, a severe repetitive loss property. We had a long and difficult, but I think successful, process to revise what, in fact, is a severe repetitive loss, and it has to meet one of the following three definitions:

One, this is a property in which four or more separate flood insurance claims payments have been made prior to the date of enactment of this act, with the amount of each claim exceeding $5,000, and the cumulative amount of such claims payment exceeding $20,000 or, two, this is real property in which four or more separate claims payments have been made after the date of enactment of this act, with the amount of each claim exceeding $3,000, and with the cumulative amount of such payments exceeding $15,000 or, three, this is real property in which two or more separate NFIP claims payments have been made which cumulatively exceed the value of the insured property.

The second condition which would cause the applicability of the closer to actuarial rates to be applied is that the owner of the real property must have refused a mitigation measure from a State or locality such as the elevation of the structure or a buyout of the property, and it is important to note that the bill preserves State and local decisionmaking.

If both of these conditions have been met, rates for severe repetitive loss properties will be increased by 50 percent. Properties would be subject to an additional 50 percent for each subsequent flood event which claims payments exceed $1,500.

The repetitive loss structures are heavily concentrated in 6 States. Louisiana, Texas, New Jersey, Florida, North Carolina, and New York have more than 5 percent of the total repetitive loss structures. In order to provide some assistance to them, if they have done proper planning to reduce the number and severity of repetitive loss properties, the Federal share of reimbursement for mitigation or buyout could be increased from the standard 75 percent all the way up to 90 percent. That is meant to deal with the problems that some States have in this area. So this will also be helpful, of course, to the property owners themselves for the repetitive loss structures.

I think the definitions we have used with respect to reimbursement are fair. Those definitions will apply, if there is a buyout required and mitigation is impossible and the owner is not willing to participate in mitigation, we have tried to cover all bases so that, in fact, this property owner is going to be treated quite fairly, if it comes to that.

I would like to stop my testimony at this point, Mr. Chairman, and with your approval just let Mr. Blumenauer supplement my remarks, and then I will be happy, of course, to listen to questions from you.

Senator BUNNING. Congressman Blumenauer, go right ahead.

STATEMENT OF EARL BLUMENAUER
A U.S. REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OREGON

Representative BLUMENAUER. Thank you. One of the pleasures of working on this legislation, Mr. Chairman and Members of the Committee, for the last 6 years, is being associated with Mr. Bereu-

ter. As usual, his statement was comprehensive, and it makes my job a lot easier.

With your permission, I would like to focus on three points to supplement testimony that I have submitted for the record, and I too would be happy to answer questions if there are any. We really appreciate what has already occurred with your staff, I think, in terms of making real progress toward the goal that you mentioned, Mr. Chairman, not just to reauthorize, but really reform the program and make a substantive difference.

I think that it is critical that we go beyond simply the narrow dealings of flood insurance. The philosophy here is that the Federal Government can be a partner to help keep people out of harm's way and save money. I am thinking of Senator Dole's picture of little Hannah on her father's back as they are swimming away from this terrible flood experience.

We do no one a favor with an inefficient and poorly thought-out process of flood insurance if we continue to encourage them to live in harm's way, if we subsidize it, and if we make it hard for them to protect their families.

And I think with the work of Mr. Bereuter, he mentioned Mr. Baker and a number of people, we have made real progress toward this being a template for what we can do in other areas of disaster. Certainly, Senator Dole knows from her past experience with the Red Cross that we have, because of changing demographics and development patterns, we have put more and more Americans in harm's way.

And it looks like in the not-too-distant future, 75 percent of American households will be at direct risk for a natural disaster, whether it is flooding, which we are talking about here today, fire, earthquake, or mud slides. This is significant. And we have done a great job of starting to deal with people after the fact. Our response, both public and private, is really doing a pretty good job these days.

The problem is that we have not put enough attention to the front end to keep people out of harm's way in the first instance. This legislation is important because it will help move people out of harm's way, help protect them, and I think it can help set the tone for what the Federal Government can do in a noncoercive, very thoughtful approach.

I will not repeat what my colleague said about the substance of the legislation we brought forward, but I think you can help us, in with this Committee, deal with a couple of misconceptions.

Somehow that this is in any way punitive toward States that have high repetitive flood losses. It is not. In fact, the National Flood Insurance Program started with Representative Hale Boggs, from Louisiana, and then followed up with his widow who took his place, to help States like Louisiana. And, in fact, a number of States like Louisiana actually pay a high premium because they have a lot of repetitive flood loss, but they have far more property that pays higher premiums than are necessary if we eliminated the 10,000 or so repetitive flood cases. So they pay in far more to this process than they get back, even though they have lots of repetitive flood properties.

And your helping us advance this in a comprehensive way, we can make sure that these people understand that they are not being disadvantaged, that they are, in fact, being protected.

This is something that is also going to save huge sums of taxpayer money because it is not just the National Flood Insurance Program, which is basically actuarially sound, although we have to advance money every now and then because these premium increases do not always keep pace with the dramatically escalating costs of natural disasters.

But the other side of not moving people out of harm's way is that there are billions of dollars that are spent to deal with all of the other responses the Federal Government needs to make in terms of infrastructure, the civil defense response, the whole range of these. So it is a very expensive proposition that goes beyond the scope of the National Flood Insurance Program.

I deeply appreciate the experience that is being detailed here about the day-to-day administration. As Mr. Bereuter mentioned, we did not get into that. We were busy dealing with some of the other elements there. You can richly strengthen the program, but I would hope that it is also part of your Committee report, part of the message that you carry forward, that this is a theme we need to weave throughout Federal policy, generally, and you are in a perfect position to do this.

I deeply appreciate the opportunity to appear briefly. I have a full statement that I would like to put in the record.

Senator BUNNING. Without objection.

Representive BEREUTER. As I do, Mr. Chairman.

Senator BUNNING. Without objection.

Representative BLUMENAUER. I look forward to working with you to make a big difference for the 75 percent of American households that will be in harm's way for some disaster in the future.

Senator BUNNING. Unless there are any questions, I would thank you both for testifying. We appreciate all of the hard work you have done in getting your bill where it is, and we hope to be able to make it a little better.

Thank you very much.

Representative BLUMENAUER. Thank you, Mr. Chairman.

Senator SARBANES. Mr. Chairman.

Senator BUNNING. Go right ahead, Paul.

Senator SARBANES. I just want to make sure I am clear on one thing. The 1 percent that represent repetitive loss properties, that is 1 percent of all of the properties covered by flood insurance?

Representive BEREUTER. That is correct.

Senator SARBANES. They account for 25 to 30 percent of all of the payout; is that correct?

Representive BEREUTER. All of the claims by dollar amount.

Senator SARBANES. Yes, that is quite a staggering figure when you think about it, and it really I think dramatizes the problem.

Actually, we had a program working with FEMA in the Western part of my State. We had a river valley that was constantly being flooded, in the end, they did primarily buyouts, and we were able to work out terms for the buyouts that were I think quite fair. It is always a wrenching experience to move, but they were able to relocate in comparable or, indeed, in some instances, maybe even

better circumstances and then be freed of the apprehension of the constant flooding and so forth.

But of course in many areas you can mitigate. People can stay, but you can take precautionary measures that either avoid or significantly reduce the flood damage.

So thank you very much.

Representive BEREUTER. Senator, if I could put a point on your statement, it does mean that the overwhelming majority of policyholders—somewhere over 75 to 99 percent, theoretically—would have a relative and, in most cases, an absolute reduction in their premium as this mitigation and buyout takes place.

Representative BLUMENAUER. The number on that, just if I may, if we avoid one 10-percent rate increase, it saves ratepayers $175 million a year, every year, compounded forward.

Senator BUNNING. Thank you both. We appreciate it.

Representative BLUMENAUER. Thank you.

Representive BEREUTER. Thank you very much.

Senator BUNNING. Our second panel today, we have Anthony Lowe of FEMA and William Jenkins of the GAO. I thank you both for testifying. I would especially like to thank Mr. Lowe, who I knew had another commitment, but made time to be here today. Thank you both for testifying.

Because of the large number of witnesses we have today, I am strictly going to enforce the 5-minute rule. You may submit all your written testimony for the record, and it will be accepted, but when the 5 minutes are up, so are you.

[Laughter.]

Mr. Lowe, you may begin.

STATEMENT OF ANTHONY S. LOWE
ADMINISTRATOR, FEDERAL INSURANCE AND
DIRECTOR, MITIGATION DIVISION
FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. LOWE. Thank you very much, Chairman Bunning, Ranking Member, in his absence, Senator Dole.

My name is Anthony Lowe, Federal Insurance Administrator and Director of the Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

We are here to report to the Subcommittee that while the NFIP faces many challenges, and faced many challenges in 2003, the state of the NFIP is sound. Today, I will speak to you about the NFIP's response to Hurricane Isabel, our strategic plan to reduce the number of repetitive loss properties, and perhaps in my questioning, something about our Flood Map Modernization Program and the importance of reauthorization of this program.

Since its inception in 1968, the NFIP has met, and continues to meet, a vital need—the provision of flood insurance to those exposed to flood hazards across the country, coverage that is virtually unavailable from the private insurance market.

With Congress's guidance over the past 35 years, the program has grown to become the largest single-line property insurer in the Nation. We have over 4.4 million insurance policies, and we have over $663 billion in insurance coverage. While planning for the

years to come, the NFIP has also faced recent challenges, as Senator Mikulski raised. I would like to address some of those issues raised by Senator Mikulski in regard to Hurricane Isabel, which tested the NFIP when it caused extensive flood damage in six Mid-Atlantic States and the District of Columbia.

Our report card was mixed and we believe the lessons we learned from Isabel will, in fact, improve the NFIP. We paid over $385 million in claims. We expect to pay $450 million overall when all claims are paid, on a total of over 25,000 claims from Hurricane Isabel—known.

In comparison with other States hit by Hurricane Isabel, such as North Carolina, South Carolina, Virginia, West Virginia, Delaware, and the District of Columbia, the NFIP received a particularly large volume of complaints from Maryland policyholders. While these complaints may be partially explained by the fact that Maryland has not suffered a major flooding event since Hurricane Agnes in 1972, the number of complaints from Maryland demands that we initiate truly comprehensive review from top to bottom, so we can improve the program.

I am not here to defend the program. I am here to effect change because it is quite clear that there are some problems. There were far too many issues raised, there have been far too many recommendations brought up, there has been far too much suffering for anyone to think that there is not a problem.

From our initial review from Maryland Insurance Commissioner Redmer's report, the complaints point to three main problems. Those are similar to the problems Senator Mikulski also raise: Customer not understanding the policy provisions, lack of coordination in providing customer service, and agents and companies giving erroneous advice.

To address these concerns, on the front end, we are stepping up our outreach efforts to explain NFIP policy provisions and simplifying claims procedures. We are looking at ways to provide understandable, easy-to-read information to our customers. This is a risk communication issue for us, and we understand the key role that outreach plays in the success of our program, as the NFIP does not exist to simply react to disasters and pay claims. For example, after the recent California wildfires, we supplemented our outreach efforts in California to make certain that residents understood the increased flood risk and benefits of flood insurance that might arise from mud slides after the fires occurred there.

In addition, we are looking at technology to help through in our NextGen project, which is a total reformation of our processes around a paperless system that allows us to, in real time, connect to our insurance companies. We have 92 insurance companies, thousands of insurance agents working for those companies, and hundreds of adjusters who work under them. We have a very complex system of delivery for the National Flood Insurance Program.

NextGen offers the technology to allow us to adjust our metrics, see where problems are, and to very quickly adjust and confront problems very directly in the field.

Let me now address a little bit on repetitive flood loss.

Senator BUNNING. Your 5 minutes are up.

Mr. LOWE. All right.

Senator BUNNING. We will get you in questions.
Mr. Jenkins.

STATEMENT OF WILLIAM O. JENKINS, JR.
DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES
U.S. GENERAL ACCOUNTING OFFICE

Mr. JENKINS. I appreciate the opportunity today to discuss the National Flood Insurance Program. My statement focuses on repetitive loss properties and actions that FEMA and legislation have proposed to address those properties.*

Floods inflict more damage and economic losses on the Nation than any other natural disaster. Floods affect all 50 States and cause about $1 billion in property damage annually. During the 10 fiscal years from 1992 through 2001, floods resulted in about $55 billion in damages and 900 deaths. During that period, the Federal Government paid about $7.7 billion in Federal flood insurance claims financed primarily through the premiums policyholders paid for National Flood Insurance.

FEMA has taken a multifaceted approach to reducing flood-related losses. This includes a variety of grants for State and local flood mitigation planning and projects, before and after floods occur. The cornerstone of these efforts is the National Flood Insurance Program, in which FEMA identifies and maps those areas within participating communities that are the most flood prone, called "Special Flood Hazard Areas," the areas with at least a 1-percent chance of flooding in any given year.

In these areas, flood insurance purchase requirements and enhanced building standards apply. According to FEMA, buildings constructed in compliance with these standards suffer about 80 percent less damage annually than those who do not meet these standards. We plan to report soon on FEMA's ongoing effort to update the Nation's flood maps.

Repetitive loss properties represent a significant portion of annual flood insurance claims. FEMA defines repetitive loss properties as those that have flooded at least twice in a 10-year period and resulted in flood insurance payments of $1,000 or more for each claim. These properties represent about 1 percent of the 4.4 million properties insured by the National Flood Insurance Program, account for about $200 million annually in claims, and have accounted for about $4.6 billion or 38 percent of all flood insurance claim costs since 1978. About half of all repetitive loss property payments since 1978 have been in three States—Louisiana, Florida, and Texas—and almost 90 percent are in 15 States.

FEMA has developed a strategy to reduce the number of repetitive loss properties that target properties with the greatest losses. As of the end of November 2003, FEMA had identified about 11,000 currently insured properties for which at least four claims have been made since 1978, costing a total of about $1 billion. States or communities may sponsor projects to reduce flood losses to these properties, and FEMA encourages them to give these properties priority in their mitigation efforts.

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* Held in Committee files.

FEMA has also initiated a pilot program to allow States and communities with these properties to use a simplified methodology to more easily demonstrate the cost-effectiveness of projects designed to reduce future losses from these properties.

Members of Congress have also recognized the financial burden repetitive loss properties place on the program. Under H.R. 253, as passed by the House, owners of repetitive loss properties, as defined in the bill, could be charged full actuarial rates for flood insurance, rates that reflected the property's true risk of flooding and damage. These higher rates would be charged if, one, the owner refused a buyout, elevation, or other flood mitigation measures from FEMA or the Flood Insurance Program and, two, the owner subsequently made an insurance claim of more than $1,500.

In our prior work, we have noted that increasing policyholder premiums could cause some policyholders, particularly those with subsidized policies, to cancel their flood insurance. H.R. 253 includes a provision that provides FEMA the flexibility to increase the policyholder's deductible, rather than increase the premium rate. This may provide policyholders who refuse FEMA's mitigation offer a means of maintaining their flood insurance without a significant increase in their premium rate.

According to FEMA, about 49,000 currently insured properties have accounted for about $2.6 billion in losses since 1978. About 6,000—or 12 percent—of these properties accounted for about $792 million in total losses and would qualify for the pilot program under the criteria specified in H.R. 253.

Of the remaining 43,000 properties, 26,000 had cumulative claims greater than $20,000 and accounted for $1.6 billion in flood insurance claims, but these properties do not meet H.R. 253's criteria either because less than four claims had been filed or each claim did not exceed $5,000. My written statement includes more detailed State-by-State data on repetitive loss properties.

We have not fully analyzed the potential results of FEMA's repetitive loss strategy and the mitigation actions encompassed in H.R. 253. However, our preliminary assessments suggest that both have the potential to reduce the number and/or vulnerability of repetitive loss properties and, thus, reduce the Flood Insurance Program's cost in the long-run.

That concludes my statement, and I would be happy to answer any questions.

Senator BUNNING. That is marvelous. You had 3 seconds left. Thank you.

[Laughter.]

I will start the first round, and we will do a 7-minute round of questioning, if it is all right with my colleagues.

Mr. Lowe, what improvements would you make in the House bill?

Mr. LOWE. We think H.R. 253 is a good start in addressing the repetitive flood loss problem. I do believe that there are some improvements that can be made.

In short, we have provided the Subcommittee with some of those changes. But, for example, in funding, the bill addresses three different programs—two mitigation programs and of course the Na-

tional Flood Insurance Program itself. And so there needs to be consistency in terms of the way these programs are funded.

For example, we have no-year funding, as addressed in the bill, and for the Flood Mitigation Program, for example, we have funding on a 2-year cycle. So we probably need to standardize those cycles. We would prefer no-year funding to give more flexibility.

Also, the cost shares are different for each of the programs. An "in-kind" contribution is appropriate, and I think that needs to be also synchronized by one definition for what "in-kind" means. For one of our programs FMA requires that of the "in-kind" be cash. This may or may not be the best approach, if the priority is to give more flexibility.

Another piece of the bill that can be improved deals with administrative costs. There are no administrative costs that are covered for FMA or the other mitigation programs in any significant way for the effort that we are trying to undertake, and so some support in that regard would also be helpful.

I think the last thing that I would mention is, for some reason, commercial properties are not covered under H.R. 253. About 25 percent of the repetitive flood loss properties that are in our target list are, in fact, commercial properties, and so that is another area that I think the Committee should consider. Our staff is available to provide any technical assistance that you might require.

Senator BUNNING. Do you have a preference on the monetary level at which a homeowner would be eligible for mitigation assistance—in other words, a level in dollars?

Mr. LOWE. Well, I am not quite sure I understand your question but what you may be getting at is that it takes an average of about $59,000 to take a mitigation action, based on our figures from 1997 to 2003 for acquisitions, relocations, and elevations. Those are the figures that we are dealing with when we look at the costs of mitigating these structures.

I think you can multiply that out over 10,000 and figure out where that leads. Now, we in total have 48,000 properties that we call repetitive flood losses. It is just the most serious, the 10,000 that we are really talking about today, which are the costliest.

Senator BUNNING. I am concerned by one part of a proposed FEMA rule that directly affects the relationship between an insurance agent and a "Write Your Own" flood company. Currently, the private sector companies, agents, and brokers make the decision on what type of arrangements they want to solicit, sell, and service flood insurance. "Write Your Own" companies can use either agents or brokers.

Under a section of the FEMA proposal, the Federal Government would dictate that "Write Your Own" companies can only use a broker arrangement, not agents. Why does FEMA want to change the status quo?

Mr. LOWE. I understand that there was some discussion about that, and a rule is under consideration currently and the comment period has closed. But the idea, as I understood it, is to try to improve the quality of agents' education and the quality of their training that exists by having someone who is really looking over the agents. If there is a question in the field and you do not know the answer, you know you can call the broker to answer that ques-

tion. And so this may, in fact, not be the best approach to do that, but that is the idea here.

I think what we have heard today is that we have victims, who are out in the field and their agents cannot answer their question, and that is the first person they are probably going to call when they get their policy. And if the agent cannot answer the question, where does it go? In this case, what we saw is it went to the adjusters and then that did not particularly work out well in too many instances.

So again, what we are trying to do is improve the quality of the delivery of service. We have 92 insurance companies, and so we are trying to figure out what do we need to do to make sure that when people sign up for flood insurance, they really understand what it is, what is covered, and they can call somebody and get a straight answer. And so that is what it is designed to do.

Senator BUNNING. Mr. Jenkins, what, in your opinion, would do the most to get properties off the repetitive loss list?

Mr. JENKINS. I think the problem that you face with repetitive loss properties is that a lot of them are subsidized, that is, low-income people and they have some difficulties finding comparable housing. In other words, if you buy them, they have some difficulty finding comparable housing nearby that is comparable to what they have and this is one of the biggest single challenges. How do you deal with people of low income in terms of trying to get them out of harm's way? For many of them, they just do not have the wherewithal to move. I think that is the biggest single challenge in terms of trying to deal with repetitive loss properties for individuals.

Senator BUNNING. I move on. Senator Sarbanes, you may begin.

Senator SARBANES. Thank you very much, Mr. Chairman.

Administrator Lowe, I do not think it is an overstatement to say that the stress that was brought to bear on the FEMA system indicated it just wasn't up to the task, and we have a lot of problems as a consequence. I am very concerned about people who have either not had their claims yet resolved or have settled their claims but have done so under circumstances in which they feel very strongly that they have not been dealt with fairly.

There is a prevailing view that there were inaccurate price guidelines given to the adjusters, and I am going to pursue that issue with you in greater detail in a moment. There were partial denials of claims if homeowners had not taken remedial actions, even though they might have been told by their agents not to do so. They were in this situation of, well, do not do anything so adjusters can see all the damage in its full glory, and yet there is a requirement to try to ameliorate the consequences. That in particular deals with the issue of mold. Another problem is the significant lack of information given to flood victims.

The report that was done in Baltimore County by the former State Insurance Commissioner said,

> In all, the process utilized to settle claims of Isabel victims has resulted in many homeowners feeling that they were forced into settling claims under duress and against their best judgment.

It goes on to say,

> Most homeowners were not able to get bids from contractors that could restore the house to its pre-flood condition for the amount the adjuster was offering. Yet,

if the homeowner continued to fight or argue, it seemed to delay payment, and looming over them was the filing deadline.

It is my view that FEMA should go back and review the claims of the flood victims and readjust them in those instances in which they were inadequate, inaccurate price guidelines or software used to estimate the losses, people felt under some duress or coercion to settle the claim because they thought they were up against a filing deadline.

I mean, the Government's responsibility here is to do right by people and to be fair and just. No one should profit out of it. I do not think people are seeking to profit out of it. In fact, I have been tremendously impressed by the type of resilience and the decency of the people who have come under these difficulties. They want to get back on their feet. They want to restore their lives. They want to get equitable treatment. They are not looking to get some bonanza out of the flood, that is very clear.

Is there any inhibition to keep you from going back and in effect saying to people, well, look, the system was overloaded. We think we were using some inadequate guidelines and that is reflected in some of these cost estimates. We know there was a lot of pressure. We did not have a full program for training flood insurance adjusters. It is a particular segment out of the general insurance field. So we are going to come back in and we are prepared to work with people to review the claims and to make adjustments where that is called for. Would the agency undertake to do that?

Mr. LOWE. We have already begun that process. I personally went down to the Insurance Commissioner's office in Maryland and I asked him, prior to going, of course, for all of the complaints he had as well as all the inquiries he had that had anything to do with the National Flood Insurance Program. At that time, he gave me 80 complaints. We have had a preliminary review of all of these 80 complaints. The issues break down really across the board, but the commitment was made by me and all of my staff that we are going to fix it. If something is wrong, we are going to fix it. We have the ability to do that and are charged with doing that.

To be perfectly honest with you, I went Wednesday night to Maryland and we were actually in the capital in Maryland and I told the Insurance Commissioner, what I would like to do is meet with 10 of the people who are least satisfied with how the National Flood Insurance Program either handled or is handling their claims. And I wrote down on a list what I heard from them, and it really wasn't just what I heard, it was what I felt from listening to their stories.

There was a theme, and the first thing I wrote after I heard about the first person, and we literally went around the room and I just listened, is I thought to myself, this is not the way this program is supposed to work, and I told them so.

The other thing I noticed is that everybody was fighting. They were fighting the system. They were fighting with their agent. They were fighting with their adjuster. They were fighting with the company, and on down the line, trying to get some resolution after 6 or 3 months, however long it took them to get it done. Again, and Senator Mikulski is correct, after they had already been through a

disaster. And again, I said to myself, this is not the way this program is supposed to work. Clearly, the process took too long.

I heard about low-balling of estimates. I heard about misinterpretation of eligibility of coverage, unequal treatment, incomplete explanations of decisions on settlements, perceptions that they had, in fact, been threatened because they were told they had to file that proof of loss. All of those indicate to me that there are some problems that we have to take a serious look at.

As you may already know, today and tomorrow we are holding a Mid-Atlantic Flood Summit. The purpose of the Flood Summit is to have the companies there, the agents there, the national software companies there, as well as insurance——

Senator SARBANES. No, no. I am getting at a different point.

Mr. LOWE. Please.

Senator SARBANES. The session you had, I think was highly relevant as you think of, well, how can we correct our operations so we do not have these problems in the future. But I do not think that the number of people with problems, whether their claims got fairly adjusted in Maryland, is 80.

Mr. LOWE. Of course not, sir.

Senator SARBANES. I think it is very substantially in excess of that, and I think FEMA should undertake, and has a responsibility to go back to these communities and say, there have been problems. We are here now with an open door. It is going to make some work for you, but that is the only way to get the fairness and justice in these instances and allow people to come back and revisit with you and work back through the process.

A lot of these people have never gone to the State Insurance Commissioner about their problems. You need to reach out and give these people an opportunity to get equity.

If they have gotten equity, then that is the judgment you will make and that is what should be said to people. They may differ with you, they may not. As I indicated, I think people are pretty reasonable in the circumstance. But it is very clear to me from what we are hearing and what we are seeing that there has been a breakdown in the workings of the system and I think FEMA has a responsibility, or the Flood Insurance Program people have a responsibility, in effect, to go in and straighten this situation out. It is not a situation that affects only Maryland. It is generally, I think, characteristic of the problems in States hit by Isabel.

The dimensions of Isabel and the catastrophic impact of it were sufficient, I think, to demonstrate that under great stress, the system that FEMA had was inadequate to the task. One conclusion out of that is that we have to correct it for the future, but another, it seems to me also reasonable conclusion, is that you need to redo what has been done with respect to this natural catastrophe in order to make sure that fairness and equity is prevailing. That should be your prime objective.

Senator BUNNING. Thank you, Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Senator BUNNING. Senator Dole, go right ahead.

Senator DOLE. Thank you, and I would just underscore what my friend, Senator Sarbanes, has said, and I appreciate your response to him on your work with the Maryland Insurance Commissioner.

I am wondering if you are doing the same thing with the North Carolina Insurance Commissioner.

Mr. LOWE. They will be in attendance this afternoon, as well, and so we will do the exact same thing. In fact, we are going through all the claims and the question for us is trying to prioritize. We need to accurately identify what the issue is. Is the issue the difference between the adjuster and the contractor? Is that what we need to be looking at? Is there, in fact, a fundamental standard software issue that we need to be looking at? So we have to look first at all those claims that were handled to get a good sense of the problem.

We have gone through 24,000 claims as you know, a number of them in North Carolina, so they are definitely something we are looking at, as well.

Senator DOLE. I mentioned earlier all of the letters that I have had, the significant number of people who have still not received compensation for their damages and it is 6 months ago. Can you tell me how long FEMA expects that it is going to take to settle these claims?

Mr. LOWE. Yes. We understand that about 8 percent of the claims are still open. I am told actually that it might be down to 6 percent as of today, of the claims that are outstanding from the 25,000 that we expected. We believe that we will be able to get those closed within the next 60 days. Since these claims do not come into FEMA, closing these files involves us reaching out to the insurance companies and making sure that we push them along a little bit and help resolve any issues that are out there.

Senator DOLE. I speak to people in North Carolina about improvement of the National Flood Insurance Program. Most note the continued need for more mapping modernization. According to the GAO, in 2001, approximately 63 percent of the Nation's 100,000 flood maps were at least 10 years old. Can you update that statistic for us now that the map modernization initiative is underway?

Mr. LOWE. Yes, I can.

Senator DOLE. How far along are we?

Mr. LOWE. Unfortunately, we actually have regressed a little bit. Of course, as the years move forward, the age of the map goes the opposite direction. About 70 percent of our maps are currently 10 years or older. We believe that 7 years of implementation, including 5 years of the program, we will be able to modernize and provide digital flood maps, new flood maps for the entire country. And we are looking forward to that. We have a very aggressive, results-oriented, performance-managed program that is very sophisticated, and uses a significant amount of technology. We are very excited.

As you know, North Carolina is the model for the rest of the country in the field of map modernization. They have done an outstanding job with geospatial information systems and this fits well with the vision of what we are trying to do.

Senator DOLE. Mr. Lowe, in your testimony, you mentioned that FEMA has targeted 10,000 repetitive loss properties as the highest priority for mitigation in your repetitive loss strategy. You state that the program has paid out close to $1 billion in flood insurance claims over the last 21 years to these 10,000 extreme cases. Do you

have any cost estimates of what mitigation efforts to address these 10,000 properties might cost?

Mr. LOWE. Yes, I do have some estimates. I believe, again, we are looking back at the average cost figure of about $59,000 to mitigate each structure. Under the current program, the way it is structured, we are talking about almost $800 million to mitigate all those properties. If we look under the bill, H.R. 253, the cost is in the neighborhood of about $400 million to mitigate those properties using a variety of approaches. Some may be buy-outs, some may be relocations, elevations, and other floodproofing measures.

Senator DOLE. In your testimony, you mentioned that FEMA has set up a special direct facility for selling and servicing flood insurance on these repetitive loss properties to better coordinate claims handling for them. Was claims handling a problem in the past for them, and how does this address the problem of repetitive losses? Does the facility provide better oversight?

Mr. LOWE. There were no problems, but we do believe that it is better for oversight and it gives us the opportunity to track what is occurring with those specific properties. As you know, those are properties that are repeatedly flooding, and so claims are coming in, almost to the extent that you can have one on top of the other fairly quickly. So we want to be able to identify those properties, understand where they are and always know what is occurring with them.

Senator DOLE. Mr. Jenkins, in 2000, GAO testified that the National Flood Insurance Program standards for new construction saves an estimated $1 billion annually in flood damage avoided. Is that estimate still current, or does GAO believe that this estimated savings may have changed?

Mr. JENKINS. That was an estimate that we got through FEMA, as well, and since that estimate, we have not done any work since then to see what the current status of that estimate is. I do not know whether that estimate is lower or higher than it was a couple years ago.

Senator DOLE. Thank you.

Thank you, Mr. Chairman.

Senator BUNNING. Senator Sarbanes, would you like to have a second round? Go right ahead. I am finished.

Senator SARBANES. Mr. Lowe, I have here in front of me the Maryland price guideline used by the adjusters to determine losses after Hurricane Isabel. According to FEMA staff, these guidelines are taken from the National Construction Estimator and distributed to adjusters at FEMA-sponsored trainings and are used then by the adjusters to estimate losses after a flood.

We got in touch with the publisher of the National Construction Estimator with respect to these guidelines and we learned the following. He says,

> costs in the labor column are for normal conditions, experienced craftsmen working on reasonably well-planned and managed new construction,

"new" underlined, emphasis applied.

> Add 30 to 50 percent on small jobs where fitting and matching of materials is required, adjacent surfaces have to be protected, and the job site is occupied during construction. Add 25 to 50 percent for work done following a major flood, fire, earthquake, hurricane, or tornado when skilled tradesmen are not readily available. Material costs may also be higher after a major disaster.

And then he goes on to point out some of the higher costs that apply when you are not doing new construction, access is often limited in repair work.

It is easy to solve and weld PVC pipe and fittings unless that pipe is installed in an 18-inch crawl space under existing floor joints.

The problem of sequence of construction—in new construction, you do it in a logical order. When you do repairs, you often cannot do that. Repair work nearly always requires demolition, a task not easy to estimate before work begins. It has to be done carefully to avoid additional damage.

Now, it seems to me these guidelines you are giving the adjusters do not come near to adequately reflecting real-life costs. What is your response to this?

Mr. LOWE. I think two things. First, this is something we are looking into very seriously, because we have heard a number of complaints like that. We are going to make sure we identify where we are going wrong and whether we have a systematic problem. Clearly, when you look down the list of what is covered and we look against the price guide, by and large, our figures are higher across the board, but yet we still have people who are not able to rebuild their houses with the claim settlements that they are receiving.

Senator SARBANES. Your figures are higher than what?

Mr. LOWE. Than the price guide. You quoted the National Construction Estimator.

Senator SARBANES. This is what you give the adjusters, as I understand it.

Mr. LOWE. Right, and what I am suggesting is that is higher than the National Construction Estimator, which is one of the seminal systems out there, as well as the "Get-A-Quote," which is, a national system online.

I am not suggesting to you, frankly, that our figures are the best figures or the right figures because it is something we are looking at. What I am trying to suggest is they are not artificially low as they stand now.

Nevertheless, I am particularly concerned about the point that you raised that I think is a very, very serious issue whether or not the adjuster realized and calculated that the cost of replacement is, in fact, higher than the cost for new construction. As you well know, many of the complaints we received are of pre-FIRM properties that were along the Chesapeake. Some are only 300 feet from the shore and have been there for many years. That is pre-FIRM construction and so it is going to take a lot to be able to rebuild those.

So that is specifically one of the areas we are looking into to say, okay, do we specifically need look at all pre-FIRM policies that were settled or are outstanding of because maybe we do.

Senator SARBANES. No, no, wait a second. I mean, it seems very clear to me that the briefing material that you were giving the adjusters that was to guide them in making their calculations were inadequate. They did not really comport with the real-life problem, which only underscores a point I was trying to make in our previous discussion of the necessity to go back and reexamine these claims and the settlements that have been made. People have

closed on claims under pressure. I mean, what are they to do? These are not wealthy people who can carry the problem until they get it all worked out. Senator Mikulski made that point, I thought very effectively, in her opening statement.

They are in an absolute quandary. How are they going to move their life forward? So they end up, they think there is a time deadline to settle. This is what they are being offered, although the contractor is telling them, look, to get you back to where you were is going to cost you a lot more than that. The statement in the flood insurance legislative history is that we were intending to get them back to where they were.

Mr. LOWE. And we will, sir.

Senator SARBANES. I think it just emphasizes the necessity to go back and review this with people.

Mr. LOWE. I agree, sir.

Senator SARBANES. I have got a real problem. I appreciate your focusing on changes for the future. You need to change the system. That is quite obvious. But you also need to do something so those who were caught in the system in this instance get fair treatment, and we intend to follow that closely with you.

My time is going to run out. Let me ask you one other question. There is a story in this morning's *Baltimore Sun* paper about the problem of how the adjusters are compensated and the fact that the way they are compensated may result in the adjusters putting pressure on flood victims in order to get these claims settled. They say the adjusters come in. They are out of all of these out-of-pocket expenses, but they do not start getting any payment until they start settling claims.

If that is the case, the adjusters are going to be motivated to push people pretty hard to sign the claim forms. Otherwise, they are laying out all of this money out-of-pocket and are not getting reimbursed. Is there not a different way to handle the compensation of the adjusters so they are not in the posture of pressuring the people to sign the claims because that is the only way they can get paid?

Mr. LOWE. Yes, sir, I agree with you. I believe that is correct. We need to look at the incentive structure and to figure out, is it leading to low-balling? Is it leading to rushed decisions? Is it leading to creating unnecessary, undue, and unreasonable pressure on people that just should not occur in this program. I agree with you.

Senator SARBANES. Well, that goes back again to my first point. You have a situation here. I mean, we have now talked about that the price guidelines being inadequate, and the way you compensate the adjusters. You admit yourself you need to look at this and reexamine it, but in this instance, the consequence of the way they were being compensated was that, in effect, they ended up putting pressure on people to sign claim forms. Otherwise, they are laying out all this money for room and board and all other expenses and they are not getting recompensed for that.

Again, I urge you to go back, and we intend to continue to follow up on this with the agency, but we need to be sure that the people that were affected by Isabel are getting fair treatment.

Thank you.

Senator BUNNING. Thank you, Senator Sarbanes.

We will look into the additional things that we are going to put into our legislation to make sure that this will not occur again in the future, to make sure that there is a reasonableness by the adjusters and by those agents that are writing this type of insurance, to make sure that they are adequately paid for and not only after the fact that they get a paper signed, but they are also taken care of in a normal way so that the pressure is not on the one who has had the loss but it is on someone else.

I thank you for your testimony. We appreciate you being here. We know you had other engagements, so thank you very much.

Senator BUNNING. The third panel consists of Chad Berginnis of the Association of Floodplain Managers and three Kentuckians, William Stiglitz, III, Hyland, Block, Hyland Insurance Company, Louisville, Kentucky; Greg Kosse, Associate General Counsel, Kentucky Farm Bureau Mutual Insurance Company from Louisville; and Steve Feldmann, Director of Community Affairs, the Fischer Group, Crestview Hills, Kentucky.

Thank you all for testifying, but because of the large amount of witnesses, I am going to strictly enforce the five-minute rule. So please restrict your oral testimony to 5 minutes and we will accept any written testimony for the record in its entirety.

Mr. Berginnis, you may begin.

STATEMENT OF CHAD BERGINNIS
CHAIR, ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

Mr. BERGINNIS. Thank you. Kentucky and Ohio have a common border, the Ohio River, and its floodplain. In late 1997, we also shared a common threat, flooding that in some areas was the historical flood of record. Mr. Chairman, as you well know, that particular flood resulted in a lot of devastation in Falmouth, Kentucky, as well as a lot of areas in Southern Ohio.

Research conducted after the flood showed that one significant reason that families did not mitigate against risk of flooding through the purchase of flood insurance was the fact that the policy cost too much. Likewise, in Ohio, we, too, encountered the same issue.

Mr. Chairman, distinguished Members of the Subcommittee, I am grateful for the opportunity to testify before you this morning. My name is Chad Berginnis and I am supervisor in the Ohio State Floodplain Management Office and Chair of the Association of State Floodplain Managers. Our organization represents over 6,500 people, mostly State and local officials who work daily with the National Flood Insurance Program, mitigation planning, and flood recovery.

I will use the balance of my time and my experience as both a local and State Floodplain Manager to discuss the issues pertaining to repetitive flood losses, repetitive loss legislation, and a couple comments and concerns about FEMA and the Department of Homeland Security.

What, then, is the relationship between repetitive loss properties and the cost of a flood insurance policy? Almost all of these properties were constructed before the creation of the National Flood Insurance Program and consequently have not been required to be built to flood safety standards of the community. Unlike most

forms of insurance, flood insurance under the NFIP, rates do not change as a result of repetitive flood losses. Instead, all of the Nation's 4.4 million policyholders must bear the cost of these repetitive loss properties, resulting in a cross-subsidy within the NFIP. I would again just like to note that these are not taxpayer dollars, as common misconceived.

Thus, solving the conundrum of repetitive loss properties will result in cost containment for the NFIP and benefit all of the Nation's flood insurance policyholders. This is why ever State really needs to pay attention to this important reform legislation.

A framework for addressing repetitive loss properties must include basic provisions to ensure that solutions are cost-effective and in the best interests of the NFIP. Solutions must be technically feasible and they must allow flexibility that address a variety of communities' mitigation and economic and development goals. Also, we must ensure that low-income property owners are fairly addressed. We must then recognize that repetitive loss properties are residential and nonresidential structures and include provisions to address both of those types.

Representatives Bereuter and Blumenauer are to be congratulated for their hard work on the passage of H.R. 253, and this bill contains a sensible framework for addressing repetitive loss properties. The ASFPM supports H.R. 253. However, we think that there could be some improvements.

Specifically, we think that H.R. 253 could integrate existing mitigation insurance mechanism called ICC and also, we can make some alterations to clarify definitions, procedures, and other provisions. The ASFPM proposes using the H.R. 253 framework that we include such changes.

Integration of ICC, the existing mitigation insurance coverage, into the repetitive loss program is key to its success. One concern that all of us share, and it was expressed during the House debates and the House hearings, is the cost to property owners that would be participating in these programs.

If ICC can be integrated as the ASFPM would propose, in most instances, the local cost share could be met, resulting in little or no out-of-pocket expense, which is especially critical in some of the other mitigation alternatives, such as elevation and floodproofing.

Also, despite, and it was brought up earlier and I think it was a great point, despite the myth—there seems to be a bit of a myth in terms of H.R. 253 that it solely focuses on acquisition. Again, H.R. 253 really does portray a broad range of mitigation options.

I would like to close by simply saying that we would urge the Committee to maintain regular contact with FEMA and DHS to ensure short-term and long-term benefits to the NFIP are realized in the coming years. Thank you very much.

Senator BUNNING. Good timing. Very good.

Mr. Stiglitz.

**STATEMENT OF WILLIAM STIGLITZ, III
INDEPENDENT INSURANCE AGENT, HYLAND, BLOCK, AND HYLAND INSURANCE, LOUISVILLE, KENTUCKY
ON BEHALF OF
THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA AND THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS**

Mr. STIGLITZ. Good morning, Chairman Bunning. My name is Bill Stiglitz and I am pleased to have the opportunity to give you the views of the Independent Insurance Agents and Brokers of America, IIABA, and the National Association of Professional Insurance Agents, PIA, on the National Flood Insurance Program. I am an Independent Insurance Agent with Hyland, Block, and Hyland Insurance of Louisville, Kentucky, and I am an elected officer of the IIABA.

Let me begin by stating clearly that IIABA supports the NFIP. Our members, independent agents and brokers, play a vital role in the delivery system for flood insurance. The majority of the $370 billion in flood policies are sold by the more than 110,000 insurance agents participating in NFIP's "Write Your Own" program. This system operates well and does not need revision.

The NFIP provides an important service to people and places that have been hit by a natural disaster. The private insurance industry has been and continues to be almost entirely unwilling to underwrite flood insurance because of the catastrophic nature of these disasters. Therefore, NFIP is virtually the only way for people to protect against the loss of their home or business.

While we support the NFIP, we recognize there is a need for reform to make the program actuarially sound. We believe that if reforms are made to the program, certain areas must be addressed. I would like to briefly explain the five principles that we believe should be followed to strengthen the program and avoid any unintended negative effects on the NFIP.

First, we need to strengthen NFIP building regulations. Building regulations help communities better manage their floodplains. These regulations require communities to ensure that any new construction or new improvements to existing buildings in floodplains include safeguards against flood damage. It is clear that building regulations work. In fact, only 4 percent of repetitive loss properties were built after 1974.

Second, increase compliance with the mandatory purchase requirement. Sanctions for, and enforcement of, the NFIP mandatory purchase requirement need to be improved so that the program can collect additional premium to enhance the financial position of the program. IIABA also proposes that insurance companies be made to inform their customers that flood insurance is not covered in their standard homeowners' policy, and if they are in a flood zone, it is mandatory that they must purchase such coverage.

Third, NFIP should have additional resources for mitigation. The NFIP should take action to prevent future losses. There are two basic ways to do this. The first is to move people out of the floodplain through buying their homes or the businesses of property owners in the most flood-prone areas.

The second way is through providing grant funds to owners of existing properties so that they can make improvements, such as raising their structures, that decrease the risk of flood loss. These preventative measures will decrease the number of repetitive claims and save the program money. In fact, former FEMA Director James Lee Witt has estimated that there will be a $2 return on every $1 spent on buy-outs of repetitive loss properties.

Fourth, we need to stop abuse of the program through multiple claims, and I think that has pretty well been covered this morning.

Fifth, we require mandatory disclosures of flood information. One of the best ways to avoid these future problems with the NFIP is to give people information about the flood risk. Reform of the NFIP needs to include mandatory disclosures of the flood history of the property so that buyers can make an informed choice in their purchases and they can properly value the home.

As important as any reform, we also believe the Congress needs to create certainty in the NFIP by reauthorizing the program for 5 years. In 2002, Congress adjourned without reauthorizing the NFIP program. This put the program in limbo and left the industry, and more importantly consumers, not knowing when or if the program would be reauthorized and wondering how they should proceed in the meantime. We strongly recommend that Congress change the reauthorization period to 5 years in order to create market stability.

Before I conclude, I would like to address a pressing issue that greatly concerns agents who sell and service policies under the program. I am troubled by recent developments by FEMA which has proposed a rule that would harm the position of insurance agents participating in the "Write Your Own" program and ultimately be detrimental to the NFIP. The proposed rule would change current standard practice by designating producers as agents of insureds for the purposes of selling and servicing NFIP policies. Currently, the status of an insurance producer as an agent or broker is a contractual issue determined by the producer and insurer.

FEMA's proposed rule, by dictating that an agent is essentially a broker for purposes of NFIP, undermines the agent's ability to establish such a contractual relationship and, therefore, alters the rights and responsibilities provided for in such contracts. This will increase the liability exposure of agents and exacerbate the already difficult task of securing errors and omissions coverage for their businesses.

To date, we are still unclear why FEMA is making these changes and all the lines of insurance or producer status is always determined through contractual negotiations. I believe FEMA's number one job is to help administer this program and protect consumers. I am still unclear how this move will in any way help this program or the people it serves.

Thank you for giving me the opportunity to express the views of the Nation's insurance agents on this important program. IIABA looks forward to working with the Committee on this issue, and I will be happy to take any questions you may have.

Senator BUNNING. Thank you very much.

Mr. Kosse.

STATEMENT OF GREG KOSSE
ASSOCIATE GENERAL COUNSEL, KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY
ON BEHALF OF
THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Mr. KOSSE. Thank you. Mr. Chairman, my name is Greg Kosse. I am Associate General Counsel and spokesperson of Kentucky Farm Bureau Mutual Insurance Company, the largest property and casualty insurance company in Kentucky. We very much appreciate the opportunity to testify on the importance of a long-term reauthorization of the National Flood Insurance Program.

Kentucky Farm Bureau is a member of the Property Casualty Insurers Association of America, which represents nearly 40 percent of the property and casualty market. As a Farm Bureau insurer, we are reflective of much of PCI's membership across the country that offer insurance services to consumers in only one or a handful of States. Kentucky Farm Bureau is a member service of the Kentucky Farm Bureau Federation, an organization of families across Kentucky.

The Farm Bureau represents over 440,000 households in Kentucky, or nearly 25 percent. If you drive down a road in Kentucky, any road in Kentucky, one out of four mailboxes that you see we are touching. From our humble beginnings in the 1940's of selling insurance from a card table in a feed store, we are now the largest property casualty insurer in Kentucky.

Why is the National Flood Insurance Program important to an organization like Kentucky Farm Bureau Insurance? There are three basic reasons.

One, it allows for available and affordable coverage for consumers for catastrophic and widespread flood losses. It partners with the insurance industry to distribute and serve the program, and by working with communities and lending institutions, the program encourages mitigation of future flood losses. Let me touch on each of those just briefly.

The availability and affordability—the Federal Government realized after widespread and terrible flood losses in the 1960's that the private market could not sustain flood losses without it being prohibitively expensive for insurers and for policyholders, and if it is too expensive, people will not buy the product. As strong as Kentucky Farm Bureau is in the Kentucky market, a one-State operation could not adequately spread the risk of loss across the State. We could not absorb the loss without one of two things happening, premiums becoming excessively high or we simply would not write the product, and therefore, that is where the Federal Government stepped in as the underwriter.

That leads to the second reason, the second half of the partnership, which is the practical and effective distribution and servicing network. Kentucky Farm Bureau has agents in every county in Kentucky. We have adjusters that visit every county in Kentucky every week. People like to buy a product from someone that they have a relationship and with whom they trust. Therefore, we have the distribution network to sell and service the product. This is something that, quite frankly, the Federal Government does not

have. The NFIP in this partnership assures that families across Kentucky and across America have available and affordable insurance coverage.

And finally, the after-loss mitigation efforts that have been discussed at great length today. The National Flood Insurance Program partners with communities and lending institutions to protect investments. Local communities must adopt sound land use and floodplain management ordinances. It also encourages policyholders to buy flood insurance. If you have a federally backed loan and live in a floodplain, you will need flood insurance. We support the mitigation efforts as they alleviate repetitive loss issues.

In closing, my primary purpose today is in support of a long-term reauthorization of the National Flood Insurance Program. Simply, it works. It allows for available and affordable coverage for a natural disaster through a unique partnership between the Federal Government and private insurers.

On behalf of Kentucky Farm Bureau Mutual Insurance Company and the Property Casualty Insurers Association of America, I appreciate the opportunity to comment on the importance of the NFIP and encourage you to reauthorize the program. Thank you.

Senator BUNNING. Thank you very much.

Mr. Feldmann.

STATEMENT OF STEVEN M. FELDMANN
DIRECTOR OF COMMUNITY AFFAIRS,
THE FISCHER GROUP, CRESTVIEW HILLS, KENTUCKY
ON BEHALF OF
THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. FELDMANN. Good morning, Senator Bunning. I am pleased to appear before you today on behalf of the 215,000 member firms of the National Association of Home Builders to share our views concerning the repetitive losses and the National Flood Insurance Program and the Congressional efforts to reauthorize that program.

I am Steve Feldmann. I am the Director of Community Affairs for Fischer Homes, one of the largest home builders in the Nation. We are focused exclusively in your home region, northern Kentucky, and greater Cincinnati.

Home builders believe that the Federal Emergency Management Agency's National Flood Insurance Program is vital because it enables its 4.4 million policyowners to protect their properties and investments against flood losses while living in a home of their choice in a location of their choice. In order for our members to continue to provide safe, decent, affordable housing to consumers, the home building industry depends on a strong National Flood Insurance Program that is annually predictable, universally available, and fiscally viable.

Unfortunately, the solvency and stability of the NFIP is threatened by a small percentage of properties that have suffered multiple costly flood damages. Approximately 48,000 currently insured properties have incurred two or more floods within a 10-year period. This makes up only 1 percent of the current policies and costs the NFIP approximately $200 million annually and accounts for approximately 25 to 30 percent of the claims paid by the program. These repetitive loss properties significantly impact the National

Flood Insurance Program, drives up the cost of premiums for all policyholders, and allows the system to teeter on an unstable actuarial foundation.

With this said, I would like to turn to some of our thoughts on the current legislation. First, although Congress recently extended FEMA's statutory authority to issue flood insurance policies until June 3 of this year, a lapse in authority after that date will have severe repercussions for a vast number of land owners. Allowing FEMA's authority to limp from one short-term authorization to the next does not provide consistency for policyholders, future homebuyers, and industries that depend on a viable National Flood Insurance Program. Congress should reauthorize the NFIP for a full 5 years.

Second, the NAHB recognizes the need to address repetitive loss properties in order to ensure the long-term viability of the NFIP. However, these properties must be allowed to remain eligible for flood insurance. Further, any reauthorization legislation must narrowly define repetitive loss properties to only include those properties that pose the most severe flooding risk.

Third, the NAHB has been a proponent of the House-passed reauthorization legislation. However, we believe that the thresholds for severe repetitive loss properties proposed in the House bill are too low and do not truly reflect the cost of flood damage in many areas. In many instances, minor flooding can produce claims that exceed the thresholds established by the House bill. The NAHB believes that only the most severe properties should be targeted.

Fourth, Congress should encourage FEMA, with the participation of State and local governments, to facilitate the redevelopment of properties according to FEMA standards. After FEMA purchases a flood-damaged property, that property is ineligible for redevelopment. This means that for every home purchased via the NFIP, a formerly buildable lot has been taken out of production. If these properties are allowed to be redeveloped to current floodplain standards, local governments can satisfy their local housing needs while ensuring that the properties are less prone to floods.

Fifth, additionally, in cases where FEMA makes an offer to buy a property, the property owner must be paid fair market value for the land and the structure.

Sixth, FEMA should be granted the authority to charge a higher premium for those repetitive loss properties for which reasonable mitigation offers were refused. Through such a mechanism, property owners will be encouraged to accept an offer of mitigation and, therefore, reduce the repetitive claims in the NFIP.

Finally, the NAHB believes that any reauthorization legislation should include a provision to require FEMA to notify all policyholders of changes to the program. It would be unfair to the 4.4 million policyholders, especially the approximately 46,000 repetitive loss property owners, to be caught unaware by changes to the NFIP without the opportunity to read and understand the policy changes.

Mr. Chairman, thank you for this opportunity to share the views of the National Association of Home Builders on this important issue. We look forward to continuing to work with you and your colleagues and we urge you to fully consider how the NFIP enables

the home-building industry to deliver safe, decent, affordable housing to consumers.

Senator BUNNING. Thank you very much.

Senator BUNNING. Let me just try to bring you up to date on where we are heading. We look to mark up a bill probably next week or the following week. It is our intention to have no lapses, and I know that is important, and that we do it for a 5-year period. I think that those are some of the basic tenets of the bill that we are approaching.

We are going to try to address some of the problems that occurred in Maryland and North Carolina with language that will suit that, but I appreciate all your information, and if we need more, we will call on you. Thank you very much for being here.

We are adjourned.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR PAUL S. SARBANES

I want to thank Senator Bunning for scheduling this important and timely hearing and want to welcome Congressmen Blumenauer and Bereuter before us today and to commend them for moving a flood insurance reform bill through House.

I am also delighted that my colleague from Maryland, Senator Mikulski, is here and for her leadership and interest on this issue. Senator Mikulski and I toured some of the areas affected by Hurricane Isabel, and that gave us a deep appreciation for the losses suffered by our constituents and the impact upon their lives.

The National Flood Insurance Program provides flood insurance to over 4.3 million properties throughout the country. It is an extremely important program, helping to ensure that families devastated by floods can rebuild, replace, or relocate. The Federal Government plays a critical role in requiring and providing flood insurance coverage and encouraging communities to adopt policies that decrease the chances of flood losses.

Congressmen Blumenauer and Bereuter have addressed the important issues of repetitive loss properties, which every statistic shows is a matter of major concern.

We had a devastating impact in Maryland from Hurricane Isabel. Many of the properties which were damaged by the floods were covered by the National Flood Insurance Program (NFIP), which was established in 1967 in order to "provide the necessary funds promptly to assure rehabilitation or restoration of damaged property to pre-flood status or to permit comparable investment elsewhere." (House and Senate Reports)

Unfortunately, many flood victims in Maryland have been offered settlements that come nowhere near close to restoring pre-flood conditions and meeting contractor estimates for repair and rehabilitation. Furthermore, many flood victims have found the process of trying to recover on their flood insurance policies to be time-consuming, confusing, and frustrating.

I am very greatly concerned about how the Flood Insurance Program is being administered and the adequacy of the coverage. We have heard from numerous flood victims that they are not being adequately reimbursed for flood losses; there are inaccurate guidelines for the price of repairs; FEMA rules, or adjuster practices, have consistently lead to flood insurance payments significantly lower than what is needed to restore families to their pre-flood conditions.

People covered did not realize the limitations contained in their flood insurance policy or that exclusions existed creating a significant gap between their coverage and their damages. These exclusions are not made clear to policyholders in FEMA publications or in the flood insurance policy itself.

We had a careful study done in one of our jurisdictions in the State—Baltimore County by Steve Larsen, the former Maryland Insurance Commissioner that goes through detailing a wide range of problems that exist in this area.

I am very frank to tell you that I believe that FEMA should start down the path by conducting a comprehensive review of the adequacy of coverage provided under the standard flood insurance policy. This would address the future problem.

But in the short-term, they should go back to the flood victims to make sure they have been treated fairly. They should review their claims and determine whether they were based on inaccurate FEMA price guidelines or software that does not correspond with the real world prices in terms of the costs of repairs.

And I then urge FEMA to readjust those claims just as a matter of fairness. They should be able to go back and review those problems. I will explore this issue more fully with Mr. Lowe, the Federal Insurance Administrator at FEMA, and hope that he will agree to revisit these claims. If it was all done properly then there is no need to adjust. But in many instances we are convinced that people have suffered an injustice.

PREPARED STATEMENT OF SENATOR JON S. CORZINE

Thank you, Mr. Chairman, for holding this hearing on the Flood Insurance Reform Act, and I would like to join you in welcoming our distinguished colleagues and witnesses.

Mr. Chairman, floods are a serious threat to people in my State, and because of that they are very concerned about flood insurance. The most recent data from FEMA shows that New Jersey has over 180,000 people who have flood insurance, and they pay more than $95 million a year in premiums. Both of these numbers are in the Top 5 for the Nation. The National Flood Insurance Program has been very important for people in my State, providing over $575 million in the past 25 years to help people rebound after a devastating flood. I am very pleased that we

are taking a good hard look at this program, and I look forward to making sure we get a full extension out of Committee as soon as possible.

Of course, one of the reasons we are here today is to hear about repetitive loss properties, and this is also something that we are no strangers to in New Jersey. We have roughly the 3rd highest number of repetitive loss properties in the country, and I hope that we tackle this issue thoughtfully and carefully, taking into account both the people who live in houses that are continually getting flooded, and those people who are subsidizing them through higher premiums. The Association of State Floodplain Managers estimates that New Jersey policyholders could save almost $10 million a year if we take steps to address repetitive loss properties, and I would certainly like to see them keep their money if at all possible.

I am pleased to see our distinguished colleagues from the House here this afternoon. This bill passed the House last year with an overwhelming bipartisan majority, and I hope we can continue in that spirit over on this side, and work together to enact some necessary improvements to our flood insurance system.

Thank you for holding this hearing, and I look forward to hearing from our witnesses.

PREPARED STATEMENT OF BARBARA A. MIKULSKI

A U.S. SENATOR FROM THE STATE OF MARYLAND

MARCH 25, 2004

Chairman Bunning, Ranking Member Schumer, Senator Sarbanes and my other colleagues, I am pleased to have the opportunity this morning to testify before your Committee on the experiences of my constituents with the National Flood Insurance Program following Hurricane Isabel.

I appreciate the work you are doing to review and reauthorize the National Flood Insurance Program. I especially want to thank Senator Sarbanes, my colleague from Maryland, and a member of this committee. Senator Sarbanes and I are working together on this issue to help the people of our state and to share lessons learned.

Hurricane Isabel

Today, I would like to share with you the experiences of my constituents in the aftermath of Hurricane Isabel. In September 2003, my State of Maryland was devastated by Hurricane Isabel. This was the worst natural disaster in Maryland history. The people who live on the Chesapeake Bay and the many rivers leading into the Bay lost their homes, their possessions, and many lost their livelihoods. Some of the communities that were hit particularly hard were Bowley's Quarters, Miller's Island, Bayside Beach, North Beach, Kent Island, and Hooper's Island

The people who live in these communities are hard-working people. Many of those affected are retirees who scrimped and saved to buy these homes. I went to school with some of the people whose homes and businesses were devastated in the Hurricane. These communities are still struggling with the legacy of Hurricane Isabel. Many people still have polluted wells. Too many of those affected spent the winter living in trailers that are really campers with inadequate heat.

Partnership

Right after Isabel, Senator Sarbanes and I went with Governor Ehrlich and Secretary Ridge to see the damage, to talk to the people, and to find out how we could work together to help Marylanders put their lives back together. When disaster strikes, we are Team Maryland and Team America—Federal and State officials—Democrat and Republican. I am so proud of how we worked together and how these communities pulled together.

Impact of Hurricane Isabel

During our statewide tour of Maryland to see first-hand the devastation caused by the storm, we saw houses moved off their foundations in North Beach. We walked the streets of Bayside Beach and Bowley's Quarters where children's toys and personal items were pushed into yards by 3 feet of flood waters. We saw mud more than foot deep or more three blocks away from the water. We talked to a business owner on Kent Island who lost her restaurant only 6 months after she bought it. I was incredibly moved by what I saw. Not only was I moved by the scope and scale of the devastation, but also the way these people were pulling together.

We heard about daring rescues by our intrepid first responders. We heard how churches opened their doors to provide food and shelter. All over Maryland, we saw that neighbor was helping neighbor.

I promised them, their Federal Government would help them. I am so proud of FEMA and how they responded. FEMA quickly set up local offices and worked with local officials to get help to those who needed it.

National Flood Insurance Program

Unfortunately, the National Flood Insurance Program did not respond as quickly as FEMA. Today, nearly 5 months after Hurricane Isabel hit, my constituents are still struggling to rebuild. They are struggling to get the money that is owed to them. They are frustrated. They are confused. And frankly, many are fed up. They feel like insurance they paid for did not provide coverage when they need it most.

Today, I want to share with you their experiences and tell their stories to this Committee. I respectfully ask that you consider what is happening in Maryland as you focus on reauthorization of the National Flood Insurance Program.

Experiences of Marylanders

LACK OF INFORMATION

One of comments I have heard consistently from my constituents is that they were not provided with adequate information regarding their flood insurance policies. From the communities in Anne Arundel County to the Eastern Shore, people are telling me that they do not understand what their flood insurance pays for. They thought they were covered for damages related to flooding. They believed that because they often had both homeowners insurance and flood insurance, they thought they had purchased adequate coverage.

Now, they are finding out that is not true. The limitations of their coverage were not explained to them when they bought these policies. For example, many did not know that the contents of their home are not covered without a separate policy. They thought that if they had $200,000 worth of coverage on a home they bought for $50,000 their flood insurance would pay to replace the home. Now, when they put in their claim, they are finding out that they will get only a portion of what it will cost to make repairs or rebuild.

INSURANCE AGENTS TRAINING

When my constituents asked their insurance agents to explain things to them, they often could not get a straight answer. I want to know if this is because the insurance agents do not know what these policies cover or how they really work.

In Southern Maryland, some homeowners were able to get emergency advances in order to make urgent repairs so they could stay in their homes. Others were told that there was no way to get advances on their claims. Different agents gave different answers. In some cases, the same agent would give a different answer depending on the day. That is unacceptable.

APPEALS

When I heard stories about claims denied or shortchanged, I asked my constituents if they could appeal. Many told me they did not know. When they filed their claims, no one told them how to appeal or even if an appeal was possible.

My office became a clearinghouse for appeals. We asked the National Flood Insurance Program and FEMA for a fact sheet or instructions on filing an appeal that we could give to constituents coming to our office for answers. There wasn't one.

So, I organized community meetings and appeals hearings. I brought FEMA and the National Flood Insurance Program to Baltimore, Anne Arundel, and Dorchester Counties to explain to Marylanders what they needed to do to get a fair hearing.

ADEQUACY OF PAYMENTS

Once Marylanders figured out what their policy covered and filed their paperwork, the payments they are getting were not adequate to repair the damages. The flood insurance adjusters were not using real world estimates for how much it would cost to repair the damages or to replace what had been lost.

For example, in Bowley's Quarters, one insurance adjuster was giving unrealistically low estimates for people's repairs. So the community association asked a local contractor to come in for a second opinion. The local contractor's estimate provided an accurate assessment of what it was going to cost to repair the damage. It was also significantly higher than the estimate from the insurance adjuster. The community leaders then talked to the insurance adjusters working with NFIP and asked them to provide more accurate assessments and to review prior claims.

In the end, Marylanders received more accurate cost estimates to repair the damages from Hurricane Isabel. Claims were paid and repairs are underway. Today, the people of Bowley's Quarters are getting what they need; but, no one should have to go through all this to get a fair appraisal and a fair reimbursement from insurance that they paid for.

Senators Sarbanes and Mikulski Recommendations

Based on these experiences, Senator Sarbanes and I have four recommendations to improve the National Flood Insurance Program. Senator Sarbanes has been instrumental in developing these recommendations and is working with the Committee to develop legislation.

I want to commend the work of my senior Senator who shares with me such grave concern for the plight of Marylanders affected by Hurricane Isabel.

FOUR RECOMMENDATIONS

Full Information and Disclosure of Flood Insurance Policies

The National Flood Insurance Program must provide a clear and understandable outline of policies so policyholders understand what is covered and what is not.

Better Training for Insurance Agents

Agents who sell flood insurance must understand what they are selling and how claims are processed so consumers do not get the run-around instead of answers.

A Straightforward Formal Appeals Process

There must be a clear way for policyholders to appeal their claims awards or appraisals of loss.

Adequacy of Payments

Consumers need assurance that the insurance they pay for will pay the real world cost of repairing the damage and replacing their loss.

Reports Based on Maryland's Experiences

Finally, I respectfully submit to this Committee 2 reports:

REPORT TO THE COUNTY EXECUTIVE OF BALTIMORE COUNTY MARYLAND ON THE RESPONSE TO FLOOD VICTIMS OF HURRICANE ISABEL BY INSURANCE COMPANIES AND AGENCIES OF THE STATE AND FEDERAL GOVERNMENT

This report was prepared at the request of the Baltimore County Executive, Jim Smith. Following Isabel, he asked Maryland's former Insurance Commissioner, Steve Larsen to examine the experiences of Baltimore County residents and make findings and recommendations.

A REPORT TO THE MARYLAND CONGRESSIONAL DELEGATION ON HURRICANE ISABEL

This report was report prepared by the Maryland Insurance Administration and was lead by Alfred Redmer—the current Insurance Commissioner for Maryland.

I believe the Committee and your staff will find these report very useful as you conduct your review of the National Flood Insurance Program. Many the findings in these two reports are similar to what Senator Sarbanes and I have heard directly from our constituents. I would also like to offer assistance if the Committee staff would like to talk to any local Maryland representatives about these reports or our experiences following Hurricane Isabel. My office would be happy to facilitate such a meeting.

Again, I would like to thank Senator Bunning and Senator Schumer and the Members of the Subcommittee for providing me the chance to discuss these important issues with you today. I know that you also have constituents who have been hard hit by natural disasters like Hurricane Isabel. Every member has had experience with hurricanes, tornadoes, floods, or fires in their State. When disasters strike, people need to know that their government is on their side. That is why the work you are doing is so important. I hope that by working together, we can improve the National Flood Insurance Program so that no American is delayed in getting the help they need following a natural disaster. This concludes my prepared remarks. Thank you.

EXECUTIVE SUMMARY

The authors were are engaged by the County Executive for Baltimore County to evaluate the responses of private insurers, and state and federal agencies, to the victims of Hurricane Isabel in Baltimore County. The report was based on the following sources of information:

- Reponses to the questionnaires by 89 residents
- Interviews with 23 residents
- Review of email correspondence among residents
- Review of proofs of loss prepared by flood insurance adjusters
- Review of correspondence from state and federal agencies, and insurers, supplied by homeowners
- Interviews with officials from the National Flood Insurance Program (NFIP)
- Review of materials on the FEMA and NFIP websites, including:
    - NFIP Flood Insurance Manual
    - NFIP Adjusters Manual
    - NFIP Control Plan for WYO Companies
    - NFIP Bulletins and Tip Sheets
    - Standard Flood Insurance Policy (SIP)
    - NFIP Claims Guidelines for Policyholders
    - The Financial Assistance/ Subsidy Arrangement with WYO carriers.
- Information from the website on the Maryland Insurance Administration (MIA), and material the MIA distributed to victims regarding Hurricane Losses and the NFIP
- Review of Maryland Insurance Law
- Review of the Federal law governing the Federal Flood Insurance Program, including statutes, regulations and case law.
- Review of FEMA Flood Zone Maps.

HURRICANE ISABEL

Hurricane Isabel had a particularly devastating effect on Baltimore County. The storm surge exceeded records established in 1933, and in some cases exceeded the 500 year flood boundary. The homes of over 250 residents were declared "substantially damaged," meaning damage exceeded 50% of the assessed value of the home.

SUMMARY OF SURVEY RESPONSES

We received 89 surveys from County residents. While not all residents responded to all questions, clear patterns emerged from the responses:

- 94% lived within 300 feet of the water.
    - Of those that lived within 300 feet of the water, 57% did not have flood coverage for contents.

- By contrast, 16% of those close to the water did not have flood coverage on their dwelling.

- 53% sustained damage greater than 50% of the assessed value of the house and had not lived in the house since the hurricane.
- 97% of those who answered responded that the amount offered by their flood insurer to settle their flood claims was inadequate to compensate them for the damages they had sustained.
- Of those responding to the questions of whether the respondent received: "sufficient information from your agent and/ or insurer about the types of damage your homeowner's policy covers, whether you needed flood insurance, the type of damage this is covered under a flood insurance policy, and how much coverage you needed"
  - 85% answered no.
- 72% of those who responded to the question of whether coordination was good or not good among federal, state and county officials said it was not good.
- 75% who offered an opinion on whether their agent was helpful indicated the agent was not helpful in making a flood claim or obtaining information about coverage.

Our findings and recommendations are set out below.

FINDING: Even if full and fair payments were made under NFIP flood insurance policies, most homeowners with such policies were not fully reimbursed for flood losses because of limitations in the NFIP policies.
Recommendations: Congress or the NFIP should consider revisiting the scope of coverage for flood policies, and the financial impact fuller coverage would have on premiums and the costs to NFIP. At a minimum, the public and insurance professionals must be better educated on the significant limitations of the flood policies.

FINDING: The majority of homeowners affected by Isabel had flood insurance covering their primary dwelling, but a substantial minority lacked coverage for contents in the dwelling and for other property, resulting in significant uninsured losses.
Recommendations: The NFIP should consider requiring the purchase of contents coverage when dwelling coverage is purchased, or in the alternative, require a signed, yearly waiver if it is not purchased. Under current federal law, lenders are supposed to ensure that mortgages covering property in flood zones have flood policies . This requirement applies to dwelling coverage only. This requirement has had the desired effect of increasing the number of flood-prone homes that have coverage. To the extent that more homeowners who purchase dwelling coverage also purchase contents coverage, the expense of contents coverage may come down to a more affordable level as costs are spread.

FINDING: Insurance agents and the WYO companies were not viewed as being helpful to flood victims or knowledgeable about the flood insurance policies.

Recommendations: The NFIP should develop more rigorous requirements that specify the level of training for agent and company personnel in the WYO program. These standards should be enforced through the Control Plan and its oversight by NFIP. WYO carriers should not be allowed to participate in the program and benefit financially unless they are willing to educate the agents who sell the policies and earn commissions, and company personnel, regarding the details of the program. The Maryland Insurance Administration should adopt educational standards that apply to agents that sell flood insurance. Only those agents that satisfy the standards should be permitted to sell and service flood insurance policies.

FINDING: Homeowners were not familiar with and/or did not understand the exclusions and limits of their flood insurance coverage prior to, or even after, the flood.
Recommendations: NFIP, with the assistance of professionals inside and outside the insurance industry, must develop: 1) a policy form that is more readable than the current form; 2) an extensive education and disclosure program for insureds, including signed acknowledgement forms, so insureds do not learn the limits of their coverage only after a disaster occurs. Accountability standards should be imposed on WYO carriers that measure the level of success WYO carriers have in educating their insureds about the flood policy, its coverage and limitations. Financial incentives or disincentives should be built into the program based on the success of the WYO companies have in educating their insureds.

FINDING: Homeowners have been provided conflicting, incorrect or incomplete information about their flood claims, allowed amounts, coverages, and rights, and in some cases this incomplete information may have prejudiced their rights to full and fair compensation.
Recommendations: NFIP must develop a "claims handbook" for all victims of flooding who have flood insurance. This handbook, written in plain English must set out, step by step, the process, rules and forms for making claims. *The current claims settlement process for homeowners is opaque, and it must be made transparent to flood victims.*

FINDING: The coordination among federal agencies in responding to the flood aftermath was widely viewed as poor.
Recommendations: One of the most important steps that can be taken in the future to address the problems identified here is to create an integrated flooding response program. While the pieces of the program exist, homeowners are in some cases cast adrift in the bureaucratic seas.

FINDING: The evidence shows that the current process for settling damage claims may result in significant losses to property that should be, but will not be, covered under the applicable flood policies.
Recommendations: Maryland should establish a relief fund or program for Isabel victims who have experienced uncompensated losses from Isabel. The mortgage assistance program proposed in House Bill 3 can serve to address the inadequate reimbursement many homeowners may receive, provided its provisions can be implemented in a timely and expeditious manner. House Bill 3 will not address the needs

of all Isabel victims, and additional consideration should be given to expanded assistance to those not eligible for the program proposed in House Bill 3.

Congress, through the GAO or other agency, should undertake a review of the appropriateness of the methods NFIP adjusters use to settle claims based on the findings above. While it is important to preserve and protect federal funds, it is also appropriate to ensure that policyholders who pay premiums receive their contractual right to full replacement cost coverage. It is unlikely such a review could be completed so as to assist the current victims of Isabel.

FINDING: The issue of whether WYO companies issuing NFIP flood policies are subject to state insurance laws and the jurisdiction of state insurance regulators must be clarified. There are strong arguments to be made that some or all of the regulatory jurisdiction of the Maryland Insurance Administration over WYO companies is not preempted. If, however, it is determined that state law does not apply, Congress should either establish standards for settling NFIP insurance claims comparable to state law, and create some independent oversight for compliance with those standards, or expressly authorize states to enforce state law.
Recommendations: Clarification must be obtained regarding the jurisdiction of the state over private companies that write flood policies. If the state has jurisdiction, then the state should undertake a review of those complaints to determine compliance with state laws.

FINDING: Many homeowners have experienced significant delays in settling their claims. In some cases this has lead to additional damage in the form of mold damage.
Recommendations: The NFIP should immediately conduct an inventory of unsettled claims for homeowners in Baltimore County and report on any reasons for delays. It should further insist, in those cases in which the homeowner has not requested or caused the delay, that the WYO adjusters comply with the requirements in the adjuster's manual.

FINDING: Some homeowners' insurers have offered blanket denials for all damage their insured may have sustained, claiming it was all flood related.
Recommendations: While many homeowners report that their non-flood claims were paid, many others report the opposite. Homeowners should be advised that claims not involving flood damage, such as wind, sewer and water back-up, and driven rain, are subject to state laws and the jurisdiction of the Maryland Insurance Administration.

FINDING: In some cases financial institutions have contributed to the difficulties homeowners have experienced. There were several instances where banks had failed to keep up flood insurance payments from escrow and insureds were left without coverage.
Recommendations: State law should be clarified so that lenders doing business in the state are responsible for damages incurred by flood victims if, through the lender's failure to pay flood premiums from escrow accounts, insureds are left without coverage. Insureds should not be required to incur the expense of protracted litigation if the lender had responsibility to pay premiums out of the escrow account.

A REPORT TO

THE MARYLAND CONGRESSIONAL DELEGATION

ON HURRICANE ISABEL

MARYLAND INSURANCE ADMINISTRATION

MARCH 4, 2004

Alfred W. Redmer, Jr.
Insurance Commissioner
State of Maryland

Introduction

The devastation Maryland experienced on September 18 and 19, 2003 as a result of Hurricane Isabel included unprecedented damage to property along the waters of the Chesapeake Bay. We have seen first-hand the loss of homes, cars, personal possessions and commercial properties. And, we have heard and shared the frustration of those whose attempts to rebuild their lives have been made even more challenging because of difficulties in dealing with their insurance companies -- and with the National Flood Insurance Program (NFIP).

The Maryland Insurance Administration (MIA)'s role in the case of an emergency that involves insurance is to help citizens by informing them of their rights and coverages under their insurance policies and to assist them when they have problems with their claims.

In the weeks and months following the storm, the MIA's outreach efforts focused on staffing each of the 15 Disaster Recovery Centers (DRC) that opened around the State and coordinating and co-sponsoring nine public meetings within affected communities. In order to speed up the existing formal Complaints process, which can take months to achieve a resolution, an Intake system was created. As a result of that effort, MIA staff opened Intake files on 1,321 storm victims they met face-to-face at the DRCs, at community meetings or when they called into the MIA. Policyholder's insurance company were immediately called by a member of the MIA staff in an effort to resolve the insured's concerns. In some cases, claimants' questions and concerns were satisfied with a couple of telephone calls. In other cases, resolution took longer and was more involved. Out of the total 1,321 Intakes, only 280 became formal Complaints and of those, 195 were closed by February 28.

Closing such a high number of Intakes before they became formal Complaints shows how successful the Intake process was. Putting these numbers into perspective, in 2003 there were 20,000 complaints for other Property and Casualty issues. Each Complaint could take several weeks to several months to investigate. Being able to intercede before the Isabel problems became formal Complaints and being able to deal with those problems so quickly, meant that literally hundreds of people were assisted in a very short time.

While many of the issues raised by citizens in the Intake process centered on homeowners insurance questions, the vast majority of problems concerned the NFIP policies and coverage.

To put Hurricane Isabel into perspective with other Federal flood claims from Maryland in the past 25 years, flood claims usually totaled fewer than 500. There were more than 1,000 claims in only two of those years (1979 with 1,067 claims and in 1996 there were 1,370 claims). Total claims pay-outs topped $1 million in only in eight of those 25 years (1979-$8.9 million, 1984- $2.89 million, 1985- $5.75 million, 1989-$1.45 million, 1992-$4.57 million, 1996-$12 million, 1998-$2.6 million, 1999-$4.6 million). In 2003, a total of 6,323 claims have so far topped $102,258,000 in payments to policyholders. Hurricane Isabel claims account for just about one-half of all claims to the Federal flood program since 1975, (6,323 for Isabel, 13,009 total claims since 1975).

The NFIP and the Jurisdictional Issue

Congress established the National Flood Insurance Program (NFIP) under the National Flood Insurance Act of 1968 in order to make flood insurance available, on reasonable terms and conditions, to those in need of such protection in any part of the United States. As a Federal program, it is under the jurisdiction of Congress and regulations promulgated by the Federal Emergency Management Agency (FEMA).

Both in response to complaints filed in 1999 after Hurricane Floyd and to complaints filed in 2003 after Hurricane Isabel, the MIA has consistently taken the position that it does not have jurisdiction over claims submitted by Maryland policyholders under policies issued under the NFIP's Write Your Own (WYO) program.

First, Federal statutory law and regulation, as well as Federal case law, expressly provides that Federal law governs Federal flood insurance policies. Thus, all actions on such policies must be brought in Federal courts, which apply Federal law to the construction of policy terms and conditions. Second, it is well recognized that Federal law preempts the application of any state law or action against a WYO carrier in connection with the handling or payment of a Federal flood claim. FEMA actually revised its regulations effective December 31, 2000 in order to clarify that any matters "relating to and arising out of claims handling" are "governed exclusively by Federal law."

An exception to the general preemption rule does exist with regard to misrepresentation. The MIA may take regulatory action against insurance producers and insurance carriers with regard to misrepresentations made at the time that the policy was sold. Such cases, however, are very difficult to prove, particularly when the policy was sold many years before and documents may no longer be available or memory may be unclear.

Recognizing that the MIA's knowledge of the Federal program was limited, Commissioner Redmer scheduled a training session for key members of his staff 10 days after the Hurricane. The NFIP Regional III Manager led the training session on a Sunday afternoon to review the program, explaining what it covers and what it does not. The Commissioner was clear from the outset that the MIA would be the entry point for any insurance questions or concerns, whether or not the MIA had authority to regulate the handling and payment of the claims.

In addition, MIA employees from various internal Units voluntarily "transferred" to the Consumer Complaints Unit to help staff the Agency's response growing out of the storm. Some employees worked at the 15 DRCs (sites were open seven days a week for an extended period of time) and some filled positions internally for those who were out in the field. In all, more than 70 people out of a total Agency population of 300 directly participated in the effort to assist Maryland citizens. Everyone who worked at a DRC was trained in the Federal program so they would be able to help citizens sort out their insurance problems.

Although hampered in its ability to step in to help solve NFIP claims issues directly because of Federal preemption, the MIA still went out of its way to develop a relationship with NFIP staff to help facilitate closure of claims for Maryland citizens. This new relationship has meant repeat appraisals for some policyholders and increased insurance pay-outs for others. The MIA is appreciative of the response of the NFIP in these cases.

What Needs to Happen Next

Maryland's recent experience has shown that greater attention by both the State and Federal government needs to be shown to the flood insurance program -- how it is marketed and sold, what training the sellers should have before being able to sell the product, what coverage should be provided by the policy, how the claims process is handled, and what recourse policyholders have if they are dissatisfied with the outcome.

Moreover, the issue of NFIP policy compliance in relation to mortgage loans must be addressed. In as much as Congress has declared that everyone in a floodplain has to have flood insurance, it is not acceptable for there to be even one Isabel-damaged property that should have had flood insurance and did not. Nor should there be a homeowner without an adequate amount of coverage because the mortgage company didn't know what was required. Unfortunately, there were many of both. Greater lender education and involvement is critical to the success of the program and to the insurance security concerns of Marylanders.

In order to also cover property owners who, for one reason or another, have no mortgage, there needs to be a requirement that property owners in a floodplain are notified of the flood insurance requirement. Notification could be handled at the local level through tax assessment notices, but the Federal program should required that this happen.

In addition, when FEMA changes a flood zone, all property owners in affected zones need to be notified by certified letter from FEMA. Currently, the burden falls on the property owner to know if the property is in a flood zone. If at the time of sale of the property the site is not in a flood zone, but subsequently FEMA places it in a flood zone, the owner has no way of knowing. FEMA could notify local jurisdictions who would then be required to send the status change with property tax bills. Also, this information must be readily available at the time of a title search.

The MIA recommends that Federal officials work more closely with the Banking and Mortgage industry concerning the amount of flood insurance required in relation to the amount of the mortgage. Specifically, while mortgage lenders require flood insurance to cover the value of the mortgage, which includes the value of the structure AND the land, the NFIP policy only covers damage to the structure. So, although a policyholder may be required to pay for an insurance policy based on the full value of a mortgage, that policyholder can never recover the full value of the policy because some of it covers the value of land which is not covered under the policy. In the case of Hurricane Isabel, we have discovered that some people were "over insured" and paying for an amount of coverage they could never recover under any circumstances.

The Maryland Insurance Administration has, and will continue, to work with storm victims to help resolve their individual problems with their insurance companies, FEMA, and the NFIP. While the MIA can act as an advocate on behalf of individuals in their specific cases, this experience has revealed that there are broader, systemic problems that must be addressed in order to protect our citizens in the event of future disasters.

Given our current experience with the NFIP, a list of recommendations has been developed.

The Maryland Insurance Administration suggests FEMA, through the NFIP should:

At the time of the sale of the policy,

- Require Write Your Own (WYO) companies to audit policies at the time they are purchased to make certain appropriate rating and classification criteria (such as flood zone designation) have been applied and appropriate premium has been charged. Failure to perform the audit would preclude the company from charging additional premium at the time a claim is made.

- Assure that there is full disclosure of the difference between contents and structural coverage by requiring the signature of the insured on the application or other documents that explain and waive contents coverage.

- Assure that consumers understand how the Increased Cost of Compliance (ICC) coverage works. At the time of sale, there needs to be a written document given to the purchaser that explains what ICC includes (whether it includes stairs, garage doors, flood vents, steel beams, etc.), that the ICC payments will be paid out in increments not all at once if there is a claim, that the ICC coverage is not a flat $30,000 guaranteed payment for compliance costs but could be deemed to be less, etc.

- Provide to policyholders at time of sale, a Frequently Asked Questions ("FAQ") booklet or another easy to understand document that explains what is and what is not covered by the flood policy and how claims will be handled and paid under the policy. There should be a place on the document the purchaser signs where there is also a sign-off that the FAQ and ICC materials were given.

- Explain that a 30-day underwriting waiting period exists before the coverage becomes effective, unless the property is newly purchased and the policy must be procured in accordance with federal lending requirements.

- Assure that policyholders understand how the depreciation system works, i.e. that full replacement cost will not be paid until repair or rebuilding work is completed. This could cause a cash flow problem for the policyholder if damage is incurred.

In addressing the coverage currently provided by the policy,

- Conduct an exhaustive review of the terms and conditions of the policy in light of the types of properties located in the flood zones, (i.e. those with oil tanks located on the outside of the dwelling), the value of the properties and the coverage provided (i.e. no coverage for contents in basement or lowest level). The review should include an analysis of the items that are currently covered and excluded.

- Reassess the requirement that in order to get a Small Business Administration (SBA) loan, an NFIP policyholder who did not previously have contents coverage may be required to purchase a contents policy even if the structure is not currently inhabitable and there is no contents to insure at that point.

- Conduct a review of the policy provision that allows the insurance company to delay the settlement of a claim relating to the loss of contents pending the resolution of a claim relating to damage to the insured structure.

- Add in the cost of the sales tax required to pay for items when determining the total payment. Currently, the policy only pays for the actual cash value of replacement materials. When the policyholder or contractor purchase materials to rebuild, they have to pay the sales tax over and above what payment the policyholder has been given. This is a critical difference for people who are already strapped for cash.

- Consider amending the portion of the policy which states that repair or rebuilding of damaged or lost property will be made with material of "like kind and quality or its functional equivalent" by deleting the "functional equivalent" statement. It is unreasonable to expect that when people make an investment to upgrade their property and are paying added insurance to cover the value of that upgrade (and more of a mortgage), that they will not be compensated accordingly if there is a loss. An example is a kitchen with granite countertops which is valued by the appraiser for the value of Formica countertops. Both are functional equivalents, but while they may be "like kind," they are certainly not "like quality."

In review of the claims process,

- Establish a time deadline for inspection of damage and for the settlement of claims. The MIA received numerous inquiries and complaints because of the time it took adjusters to conduct initial inspections of properties, the time it took for adjusters to return with a proof of loss statement, the time it took for an offer of settlement to be made, and the time it has taken for a final check to be issued.

- Require the Single Adjuster Program to prevent consumers' confusion in dealing with multiple adjusters and to assure consistency in the claims handling process.

- Require that, when a claim is made, companies immediately provide the claimant with a document that explains in clear and simple language the claims adjustment process, including how the claimant can challenge the decision of the original adjuster.

- Create a formal appeals process for policyholders. Tell policyholders *in all printed materials* that they are entitled to ask for a General Adjuster to review the insurance company's adjuster's decision. Currently there is NO formal appeals process for policyholders who do not agree with the decision of the insurance company adjuster. There is no way for citizens to voice their dissatisfaction with the process, no way to see if their claim was received, no way to find out at where in the adjudication process their claim is, or no way to determine when they can expect to get an answer on the claim. In fact, the NFIP policy itself has neither a telephone number to call nor address to write directly to NFIP for inquiries.

- Require that claim denial letters give clear and specific explanations of the basis for the denial and include instructions for contesting the denial.

- Consider changing the depreciation portion of the policy so the policyholder is not caught short because payment for replacement value is a depreciated amount. In most cases, policyholders cannot pay contractors the difference (replacement cost minus depreciation cost) as they wait for their work to be completed and NFIP to pay the depreciation amount that has been held back.

- Consider changing the Proof of Loss timeframes. There also needs to be greater detail given concerning the parameters of the limits and the procedure for getting extensions of those limits.

  - Currently, a victim has 60 days from the time an offer of settlement is made to sign a Proof of Loss statement. Depending on the time of the year, the location of the property, the volume of damaged properties in an area, etc., a policyholder may not be able to get a contractor to come out and give an estimate of the cost of repair or replacement of a structure within 60 days. Given the rural setting of some of the Hurricane Isabel damaged properties, the 60-day limitation was impossible.

  - Currently, a victim has 180 days to get reimbursed by NFIP on "recoverable depreciation" (for work that has been completed). Again, depending on time of year, location, etc., work may not be completed in 180 days. People need to be told up-front that they can get an extension and how to do so.

- Require that people be told that even after they sign the proof of loss statement, they can reopen their claim if material and building costs go up. Policyholders can ask for a variance (with receipts for proof), even after construction has been completed, but many do not know this.

- Require that either the proof of loss statement or additional printed materials tell people to make copies of all paperwork before sending it back to NFIP or the insurance company. While it may seem like common sense to make copies of paperwork, people suffering the effects of a disaster may not be thinking clearly enough to do a seemingly simple thing such as this.

- Require the company to secure, at its own expense, an inspection of the property by a structural engineer when ICC coverage is at issue.

In review of the education requirements for sellers and buyers,

- Require that minimum educational standards be established for producers and adjusters working for all WYO companies participating in the program.

- Require that consumer education be provided by the producer at the inception of the policy, and Question and Answer documents, newsletters, etc. should be sent at renewal to the consumer. Flood damage mitigation and prevention tips should also be provided.

The MIA acknowledges that subsequent to the Hurricane, at the request of Commissioner Redmer, NFIP staff held five free training sessions for insurance producers at four locations around Maryland. At those training sessions, 182 producers completed the course. Additional sessions will be planned by NFIP and supported by the MIA.

In the body of the policy or on a printed attachment to the policy,

- Require specific instructions that explain what a policyholder's appeals rights are, including what legal action can and cannot be taken against the WYO, FEMA, or NFIP. While FEMA may believe the National Flood Insurance Act made clear that Congress intended lawsuits only on a disallowance of a claim and that by creating the WYO program they did not intend to expand the areas in which policyholders could bring suit, insureds do not understand the narrow interpretation of sovereign immunity in these cases.

- Require contact information, including a telephone number and email address that policyholders can use if they have questions concerning coverage or the appeals process. The lack of any contact information forces the policyholders to turn to their local regulators who don't have jurisdiction or the WYO companies who may or may not know how to answer their questions.

Other FEMA/NFIP/SBA Observations

Because MIA personnel were at every location of the DRCs for every hour they were open, certain observations were made about the FEMA and the Small Business Administration (SBA) response. While we are grateful for the time the FEMA, NFIP, and SBA employees spent in our State trying to help citizens in this most critical time, inconsistencies in their messages only confuse people and may, in the long run, not get the right help to those who need it most.

The following are some of these observations, both positive and negative.

- In one DRC, the FEMA manager turned people away who had not yet called the toll-free telephone number to get a FEMA registration number. He would not let anyone use the telephone there. This was particularly difficult for those who had no home to call from and no cell phone to use. In another DRC, the FEMA manager let people use the telephone to call the toll-free telephone number and get registered.

- In one DRC, the FEMA manager held daily meetings at 8:30 a.m. (before the Center opened) for all of the participating staff, so everyone could share information with each other. In that way, each agency or program represented learned what the others were doing and how they would be able to help victims. The MIA staff person at that DRC thought it was very helpful.

- Some FEMA mitigation personnel volunteered information to victims about mold remediation, bringing it up even if the homeowner did not, while others did not seem to go out of their way to stress what help and information was available.

- At one DRC, the SBA representative was not aware of a program available to help people recover lost wages. A paper on the wall at the FEMA manager's desk explained what was available, the deadline, and where to call. The SBA representative said people had asked, but she hadn't known there was a program to tell them about. This was four weeks after the storm, after many victims had already been through the Center, and after many people had asked her for help which she was not able to give.

- There was no full-time NFIP representation at the DRCs. So, NFIP information and guidance was often provided by other FEMA representatives who may not have had any flood insurance training. Given the nature of this event, specific, consistent NFIP information was critical to the victims.

- Several of the NFIP representatives at the DRCs were knowledgeable, but somewhat defensive, in their conversations with victims. They could quote regulations supporting an NFIP decision without explaining why those regulations were in place. In this sort of event, people need to understand why certain decisions are made, not be lectured to about regulations.

- There was a misunderstanding about qualifying for, applying for, and getting ICC funds through NFIP. Victims were told they had to get "substantial damage" certifications from their County governments. Unfortunately, few were told or knew where in County government to go to get what they needed. In this sort of event, FEMA should coordinate information with the local jurisdictions, so the FEMA personnel know where to direct victims.

- Victims have recognized that people who had flood insurance are getting less monetary assistance from FEMA than those people without flood insurance. People without flood insurance are getting up to $5,000 for their lost possessions, while those with flood insurance and no contents coverage are getting nothing.

- Victims have recognized that no one is receiving the full $25,000 amount FEMA representatives told them was available at public meetings and at the DRCs. Most victims in Baltimore County say they are getting no more than $13,000 in assistance.

- SBA subtracts whatever amount a victim has been paid from FEMA. Those early payments went to cover daily living expenses, etc., but are being subtracted from the eventual rebuilding and rehabilitation loans. People need the full amount of the loans to cover their costs.

- The locations and times the DRCs were open were not sufficiently advertised after their initial opening announcements. Weeks after the storm, people were saying they didn't know where to go or that there was even a place to go to get help.

- Sometimes, there was not enough coordination and communication between the Disaster Field Office (DFO) and the DRCs. In one instance, two mini-DRCs opened in lower Dorchester County on a Saturday and the FEMA manager at the main Dorchester DRC didn't know until late that afternoon that they had opened. No other information, including location, was available.

Comments from the Insurance Industry

In addition, the MIA has received the comments listed below which are recommendations from the insurance industry. These comments should be explored with representatives from industry and the NFIP to determine whether these changes would benefit the policyholders.

- NFIP education for claim adjusters and agents needs to be tailored to the different skill levels, abilities and experience of adjusters and agents. Current educational programming is general and does not serve the needs of all agents and adjusters. At a minimum, there should be two levels of claims adjuster training classes: a basic class covering policy fundamentals and an advanced class incorporating complex claim handling, litigation issues, and file examination & exception trends. The materials need to be updated and maintained as changes are made to the Flood Program. Simple job aids should also be created.

- NFIP should expand the Preliminary Report completed by the claims adjuster to capture more of the critical rating factors relevant to the damaged property to ensure consistency in property description (such as dimensions, elevation, number of vents, etc.).

- NFIP should increase its allowance for expenses (such as cost for photographs) to validate property descriptions at the time of initial policy underwriting/issuance.

- To assist insurers in the deployment of claim adjusters for large catastrophic events, NFIP should assemble and distribute actual industry and NFIP data regarding the location and severity of loss at the onset of a large event, rather than relying on computer models.

- Increase initial claims capacity by encouraging and coordinating the development of inside (telephone) claims handling (education of techniques, development of best practices, and establishing clear method of inspection limits).

- The approval process for payment of SALAE (supplemental allocated loss adjustment expense) should be more mechanized and timely.

- NFIP should work with the insurance industry to develop a process for electronic filing and storage of claim files and supporting documentation.

- NFIP response time to WYO company and flood vendor inquiries, whether via e-mail, mail, or phone, should be quicker.

- All flood program requirements, clarifications and expansions must be in writing.

- Flood program changes are often not provided with sufficient advance notice for insurers to comply; new rating information should be sent via a rate file rather than PDF.

- Communications from NFIP should be electronic, rather than regular mail.

- When flood zones change, insurers should be provided with a file identifying all policies for which the zones have changed. This will allow WYO companies to mechanically update policies at the following renewal.

- All flood program Rules/Requirements should be reviewed in their entirety and simplified where the complexity is not warranted.

- It is recommended that NFIP assess whether there is a continuing need for Submit for Rating.

- Agents should be required to be certified to write flood policies.

Conclusion

The MIA has a rather unique perspective on the workings of the DRCs, because it staffed all of the DRCs at all times. It was MIA staff who gathered information at various locations about available programs and services, and then reported back to the MIA Associate Commissioner for Complaints in Baltimore. She then distributed the information, much of it not insurance related, back out to all of the MIA staff in the field. What became very clear early on, was that if the MIA didn't coordinate and distribute these messages to each of its staff members, important information would not have gotten to the people who needed help.

Because the FEMA employees work at one disaster after another around the country, it might be helpful if they received an orientation as a group when they are assigned to a new disaster location to help assure that their messages are uniform and appropriate for that disaster and jurisdiction. One would think the communication by FEMA/NFIP/SBA personnel would be consistent, but it was obvious that the level of training provided to such personnel (and thus the scope and accuracy of the information they could provide) varied greatly.

This report makes several suggestions that are intended to improve the Federal Emergency Management Agency's National Flood Insurance Program and its relationship with policyholders, producers, and the insurance companies that sell the Federal flood insurance product. The Maryland Insurance Administration stands ready to work with FEMA, the NFIP, and the Maryland Congressional Delegation to accomplish these goals. These policyholders and producers are our constituents. If this experience has taught us anything, it is that we must raise the awareness and understanding of flood zone property owners and educate the insurance industry on the policy and claims process.

Respectfully submitted,
Alfred W. Redmer, Jr., Maryland Insurance Commissioner
March 4, 2004

PREPARED STATEMENT OF DOUG BEREUTER

A U.S. REPRESENATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

MARCH 25, 2004

Good morning. Thank you very much Chairman Bunning for holding this Subcommittee hearing on the subject of National Flood Insurance Program (NFIP) repetitive losses. As you undoubtedly know, on November 20, 2003, the House passed the Flood Insurance Reform Act of 2003 (H.R. 253) by a vote of 352 to 67. This bill both authorizes the NFIP through September 30, 2008, and makes essential changes to the program as it relates to the mitigation of repetitive loss properties. The authorization of the NFIP is set to expire on June 30, 2004. This legislation represents a continuation of my long-term interest and my past efforts in the House to reduce the extraordinary costs of repetitive losses from the NFIP as administered by Federal Emergency Management Agency (FEMA).

First, this Member would like to thank Chairman Mike Oxley (R–OH) of the House Financial Services Committee, and Ranking Member Barney Frank (D–MA) for their support of this legislation. I would also like to thank Representative Earl Blumenauer (D–OR), who is both an original cosponsor of this legislation and a tireless advocate for reform of the NFIP. Representative Richard Baker (R–LA) also deserves credit for his significant contributions to and support of this legislation. I would also note that FEMA has been involved in both the drafting and revising of this legislation.

Today, I would like to briefly speak about the following points:

- background on repetitive loss properties;
- contents of H.R. 253 including the existing Flood Mitigation Assistance (FMA) program and the new pilot program; and
- the diverse groups who are supporting H.R. 253.

Background on Repetitive Loss Properties

Repetitive loss properties cost the NFIP about $200 million annually. These properties while comprising approximately 1 percent of the currently insured properties, are expected to account for 25 percent to 30 percent of claims paid. For example, I will cite one of many egregious examples among a great many such examples of costly abuse which could be discussed. One home, valued at $114,480, has received $806,591 in flood insurance payments over 18 years.

Furthermore, 25 percent of all current NFIP policies do not pay actuarial rate for their coverage and thus are subsidized by the 75 percent of other policyholders. Today, the vast majority of repetitive loss properties are eligible for subsidized flood insurance far below the actuarial risk rate they should be paying. This bill, H.R. 253, would at last move the NFIP toward a more free-market insurance model by requiring people living in flood prone areas to reduce their risk of flooding.

Contents of H.R. 253

This legislation, H.R. 253, authorizes funds for the existing FMA program and then authorizes a new pilot program to address severe repetitive loss properties. At the outset, it is important to note that no property owner under this bill is ever denied Federal flood insurance except for fraudulent claims.

FMA Program

This bill uses FEMA's existing FMA program to mitigate repetitive loss properties. The bill authorizes an additional $40 million a year to be transferred from the National Flood Insurance Fund into the FMA fund through fiscal year 2008.

Pilot Program

The pilot program authorizes up to $40 million a year to be transferred from the National Flood Insurance Fund for mitigation assistance to reduce the problem of severe repetitive loss properties. This trial pilot program, which would expire on September 30, 2008, addresses these properties in a simple, straightforward manner; the owner of a severe repetitive loss property will be charged a rate closer to the actuarial, risk-based rates for their national flood insurance policy if two conditions prevail.

The first condition is that it is indeed by definition a "severe repetitive loss property." Under this legislation, a severe repetitive loss property must at least meet one of the following three definitions:

(A) this is real property on which four or more separate flood insurance claims payments have been made prior to the date of the enactment of this Act, with the amount of each such claims exceeding $5,000 and with the cumulative amount of such claims payments exceeding $20,000; or

(B) this is real property on which four or more separate claims payments have been made after the date of enactment of this Act, with the amount of each such claims exceeding $3,000 and with the cumulative amount of such claims payments exceeding $15,000; or

(C) this is real property on which 2 or more separate NFIP claims payments have been made which cumulatively exceed the value of the insured property.

The second condition which would cause the applicability of closer to actuarial rates to be applied is that the owner of the real property must have refused a mitigation measure from a State or locality, such as the elevation of the structure or a buy-out of the property. (It is important to note that this bill preserves State and local decisionmaking.)

If both of these conditions have been met, rates for severe repetitive loss properties will be increased by 50 percent. Properties will be subject to additional 50 percent increases for each subsequent flood event where claims payments exceed $1,500; however, flood insurance rates applied cannot be higher than the actuarial-based NFIP rates.

Mr. Chairman, Members of the Subcommittee, it is also important to note that this pilot program to be authorized in H.R. 253 would also reduce the non-Federal cost share for mitigation offers in certain States which qualify in order to help those States that have a high number of severe repetitive loss properties. Under current law, FEMA pays for 75 percent of the cost of mitigation. There is a 25 percent non-Federal match which is composed of State, local, and homeowner contributions. However, a provision in the pilot program would allow the Director of FEMA to reduce the non-Federal cost share under the pilot program from 25 percent to as low as 10 percent for any State, and for the communities located in that State, with respect to that year, if the following two criteria are met:

(A) 5 percent or more of the total number of severe loss properties in the United States are located in that State (For 2002, the following States would have qualified: Louisiana, Texas, New Jersey, Florida, North Carolina, and New York); and

(B) the State submits a plan to FEMA as to how they would address the problem by reducing the number and severity of severe repetitive loss properties.

The pilot program also creates an appeal process. Under H.R. 253, any owner of a severe repetitive loss property may appeal an increase to an actuarial rate of insurance to an independent third party. One of the grounds for appeal is that the owner of the property would not be able to purchase a replacement primary residence of comparable value which is functionally equivalent to their current residence. Thus this provision helps to assure that the legislation is homeownership-friendly and humanely judicious.

With respect to the legislation as a whole, a section-by-section of H.R. 253 has been circulated to the desks of each of the Senators on the Subcommittee. A summary of the important provisions of the bill are found in this section-by-section.

Groups Which Support the Flood Insurance Reform Act of 2003

Last, Mr. Chairman and Members of this Subcommittee, it is important to note that the unusually broad coalition of diverse groups which supported our legislation when it passed the House: the National Association of REALTORS®; the American Banker's Association; America's Community Bankers; American Planning Association; the National Association of Professional Insurance Agents; the Independent Insurance Agents and Brokers of America; the Mortgage Banker's Association; the Association of Floodplain Managers; the National Wildlife Federation; the National Association of Homebuilders; Taxpayer's for Common Sense; U.S. Public Interest Research Group; the National Taxpayer's Union; Citizens Against Government Waste; Heritage Foundation; Coast Alliance; Friends of the Earth; American Rivers; and the Ocean Conservancy.

I believe that it is important that one final public policy point be made. Under the NFIP, a very large regional cross-shifting of the cost of flood insurance is occurring among States and within States; the policyholders in nonrepetitive loss areas of the country by their higher than appropriate premiums are subsidizing the policyholders in repetitive loss areas of the country. This bill will give FEMA the needed tools to gradually reduce the number of repetitive loss properties and to substantially reduce the dramatic cases of this cost-shifting to other NFIP policyholders.

In conclusion, I would posit that Congress finally needs to act to stop the very expensive treading through the water of repetitive loss after repetitive loss. I would encourage the Senate to pass H.R. 253, the Flood Insurance Reform Act, as it is the right thing to do at the right time. Congress has delayed far too long in making the obvious reforms needed in the NFIP.

Thank you for your consideration of my remarks and this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION AS IT PASSED THE HOUSE

Section 1. Short Title

This section establishes the short title of the bill, the "Flood Insurance Reform Act of 2003."

Section 2. Congressional Findings

Section 3. Extension of Program and Consolidation of Authorizations.

This section amends the National Flood Insurance Act of 1968 by extending the National Flood Insurance Program (NFIP) from June 30, 2004 through September 30, 2008

Section 4. Establishment of Pilot Program for Mitigation of Severe Repetitive Loss Properties

This section amends the National Flood Insurance Act of 1968 by adding a new Section 1362 which would establish a Pilot Program for the mitigation of severe repetitive loss properties. Under this section, the Director of FEMA may provide financial assistance to States and communities for the mitigation of severe repetitive loss properties.

Severe repetitive loss properties are defined as:

(A) For which four or more separate NFIP flood insurance claims payments have been made prior to the date of the enactment of this Act, with the amount of each such claim exceeding $5,000 with the cumulative amount of such claims payments exceeding $20,000;

(B) For which four or more separate NFIP claims payments have been made after the date of enactment of this Act, with the amount of each such claim exceeding $3,000 with the cumulative amount of such claims payments exceeding $15,000; or

(C) For which 2 or more separate NFIP claims payments cumulatively exceed the value of the insured property.

The Director of FEMA shall provide mitigation offers for properties under the Pilot Program in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time. Mitigation activities include elevation, relocation, demolition, floodproofing of structures, minor physical localized flood control projects, and buyouts.

If an offer for mitigation under the pilot program is refused and any appeal is unsuccessful, rates for severe repetitive loss properties will be increased by 50%. Properties will be subject to additional 50% increases for each subsequent flood event where claims payments exceed $1500. Flood insurance rates cannot be higher than the actuarial based NFIP rates. The Director is

authorized to offer the policyholder a higher deductible for the flood insurance policy which would result in a lower premium payment if mitigation is refused.

Any owner of a severe repetitive loss property may appeal an increase to an actuarial rate of insurance to an independent third party. One of the grounds for appeal is that the owner of the property will not be able to purchase a replacement primary residence of comparable value that is functionally equivalent to their current residence.

Up to an additional $40 million for fiscal years 2004, 2005, 2006, 2007, and 2008 can be transferred from the National Flood Insurance Fund to the National Flood Mitigation Fund for severe repetitive loss properties and shall remain available until expended. The policyholders shall not be subject to higher premium rates for flood insurance coverage because of this transfer from the insurance fund into the mitigation fund. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 5. Flood Mitigation Assistance (FMA) Program

This section amends Section 1366 of the National Flood Insurance Act of 1968 by directing FEMA to offer mitigation assistance under the existing FMA program in a manner consistent with the best interests of the NFIP.

Funding for the FMA Program - Up to an additional $40 million shall be transferred from the insurance fund into the FMA fund for fiscal years 2004, 2005, 2006, 2007, and 2008.

Section 6. FEMA Authority to Fund Mitigation Activities for Individual Repetitive Claims Properties

This section creates a new Section 1323 of the National Flood Insurance Act of 1968 by authorizing the Director to provide funding for mitigation actions for individual properties for which one or more claims payments for losses have been made if such activities are in the best interest of the National Flood Insurance Fund and such activities cannot be funded under the Flood Mitigation Assistance Program because of either of the following:

(1) the requirements of the Flood Mitigation Assistance Program are not being met by the State or community in which the property is located; or
(2) the State or community does not have the capacity to manage such activities.

Up to an additional $10 million shall be transferred from the National Flood Insurance Fund into the National Mitigation Fund for any fiscal year for these individual repetitive claims properties. The policyholders shall not be subject to offsetting collections through premium rates for flood insurance coverage. As a matter of clarification, the policy service fee charged by FEMA for each policy shall also not be increased because of this transfer.

Section 7. Actuarial Rate Properties

This section amends Section 1308 of the National Flood Insurance Act of 1968 by charging actuarial based NFIP rates immediately for Federally leased properties located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall, or other coastal flood control structure. These actuarial rates are not conditioned upon any other factor.

Section 8. Electronic Database of Repetitive Claims Properties

This section adds a new subsection to Section 1364 of the National Flood Insurance Act of 1968. Under this section, the Director may, if the Director determines feasible, establish and maintain a database identifying by location and address all repetitive loss properties and severe repetitive loss properties. If established, the Director shall make the database available to the public in a format that may be searched electronically.

Section 9. Replacement of Mobile Homes on Original Sites

This section adds a new Section 1315 to the National Flood Insurance Act of 1968 which states that the replacement of mobile homes on any sites shall not affect the eligibility of any community to participate in the flood insurance program if the following occurs: such mobile home was previously located on such site; such mobile home was relocated from such site because of flooding that threatened or affected such site; and such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

Section 10. Reiteration of FEMA Responsibility to Map Mudslides

This section states that, as directed in section 1360(b) of the National Flood Insurance Act, the Director of FEMA is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas in order to make known the degree of hazard within each such zone at the earliest possible date.

PREPARED STATEMENT OF EARL BLUMENAUER

A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

MARCH 25, 2004

My goal in Congress is to make the Federal Government a better partner in the livability of our communities—ensuring that our families are safe, healthy, and economically secure. The National Flood Insurance Program (NFIP) is crucial to the lives of many people across the country, and is a good example of how the Federal Government can work with local communities to lessen the impact that disasters have on people's lives and property. It provides benefits for the economy, the environment, and for individual property values.

The NFIP was started in 1968, after private insurance companies experienced such high losses from floods in the first half of the century that they stopped offering coverage for flood damage. The NFIP has been successful in helping homeowners deal with flood losses as well as giving communities tools to prevent future flood damage. It is estimated that the program has lowered flood damage by about 25 percent below the level that would have occurred without the program. However, as we look toward reauthorization, it is time for the Federal Government to provide better incentives for individuals, communities, and States to act responsibly.

Unfortunately, our national disaster policy—including the dominant structural model for floodplain and flood management—has a number of problems. Flooding has historically been the most expensive natural hazard—as well as the leading cause of death from natural hazards. Between 1975 and 1998, flood losses averaged more than $4.4 billion per year. This problem is going to get worse: As more retirees and other Americans flock to coastal States, the number who live in hurricane alleys is expected to double. It is estimated that by 2025, 75 percent of our Nation's population will live in or near coastal communities. Natural forces will continue to confound our best engineering efforts.

In some cases, Federal flood control policy actually encourages floodplain development by financing the construction and repair of levees and underwriting the risk of flooding. As both environmental and taxpayer watchdog organizations have argued for years, one major unintended impact of the NFIP has been to encourage construction and reconstruction in high-risk floodplains and coastal areas. Development density in many high-risk coastal areas has increased by more than 60 percent over the last 10 years, and studies have shown that some of this growth can be attributed to the NFIP. By reducing the economic risks of living near the water, the Federal Government has stimulated development there.

The Federal Emergency Management Agency, under both the Clinton and Bush Administrations, has recognized the problems of the NFIP. Representative Bereuter and I worked with former FEMA Administrator James Lee Witt to develop our legislation, and FEMA has been a key partner in our efforts this year as well. The Office of Management and Budget has pointed out that in too many years the program has expenses greater than its revenue from insurance premiums which prevents building long-term reserves to handle the costs of flood insurance. About 25 percent of the policyholders pay substantially subsidized premiums, with the Federal Treasury and other policyholders paying the difference. This inefficiency means that the losers in the NFIP are the people who live in areas that require flood insurance, even though they do not have their property flood often, nonetheless pay dramatically high rates. It also results in a premium shortfall of about $700 million annually. The program is currently self supporting from premium income. However, in the 1980's Federal taxpayers had to make up a shortfall of $1.2 billion when the income from the low premiums was not enough to cover the flood claims. The chances of this happening again are high.

Repetitively flooded properties are a significant strain on the NFIP. FEMA reports that just 1 percent of the properties account for 25 percent of NFIP flood loss dollars. Many of these properties have received more in flood insurance claims payments than the building's value.

Subsidizing people to live in repetitively flooded areas does not make sense. It is bad for the Federal taxpayer, bad for the environment, and bad for the families that are continually placed in harm's way. The majority of these repetitively flooded properties are primary residences. These property owners are often trapped in a dangerous and expensive cycle. We do flood victims no favors by rebuilding their homes in harm's way.

To deal with these problems, Representative Doug Bereuter and I introduced legislation during the last three Congresses to reform the NFIP. The strategy was to avoid many of the injuries, deaths, and damages before they occur, and give property owners the option of moving to a less hazardous area. The bill, H.R. 253, passed

the House on November 20, 2003 under the title "The Flood Insurance Reform Act of 2003."

Our approach helps build disaster resistant communities and safe homes by providing mitigation assistance to communities; there is currently more demand for this type of mitigation than FEMA and local governments can provide. The bill authorizes a pilot program that provides funding for communities to help relocate or elevate properties that have sustained repeated flood damage. A property owner is eligible for a mitigation offer if he or she has received four or more separate flood insurance claims payments each exceeding $5,000 with the cumulative amount of such claims payments exceeding $20,000 or 2 or more separate NFIP claims payments that cumulatively exceed the value of the insured property. Those who refuse mitigation funding could see their flood insurance rates increase to better reflect the actuarial cost of continuing to live in harm's way. This Act does not deny national flood insurance coverage to any interested owner, renter, or occupant of a property.

This bill has a number of benefits:

- Most importantly, it will move people out of harm's way and discourage newcomers from moving there. This bill will save lives by moving people to higher ground.
- Often overlooked is that the reforms in this bill will save the Federal Government millions of dollars in avoided flood damages. FEMA reports that mitigation and building standards already in place have resulted in over $1 billion annually in reduced flood losses. Our bill will significantly increase these savings by increasing funding for the mitigation grant assistance program.
- These reforms will also present significant potential savings to ratepayers in the National Flood Insurance Program. Mitigating repetitively flooded properties will reduce the pressure to raise flood insurance rates. The Association of State Floodplain Managers estimates that avoiding just one 10 percent rate increase could save the 4.4 million policyholders $175 million each year.
- Finally, this bill will significantly benefit the environment.
  - If property-owners choose to relocate, the land will convert to open-space.
  - Non-structural approaches to flood control, such as voluntary buyouts and restoration of natural floodplains, are often much more effective in controlling floods than structural approaches.
  - Natural floodplains also prevent pollution problems from flooding.

The change in title of this bill to the "National Flood Insurance Reform Act of 2003" represents a substantive change in the approach to dealing with repetitively flooded properties. As the legislation went through the House Financial Services Committee and to the Floor, we had the opportunity to work with Members from coastal areas to make the reforms more sensitive to the plight of their constituents. I especially appreciated the constructive work of Representative Baker from Louisiana and Representative Gene Green from Texas. As a result of input from these and other stakeholders, more resources in the bill now go to the heavily flooded States; more flexibility is given to FEMA and local governments in the mitigation process; and the bill more sensitive to the problems of families who are continually flood victims.

I respectfully urge the Senate to pass H.R. 253, the "Flood Insurance Reform Act of 2003." This is one of the best fiscal and environmental opportunities for Congress this year.

PREPARED STATEMENT OF ANTHONY S. LOWE

ADMINISTRATOR, FEDERAL INSURANCE AND DIRECTOR, MITIGATION DIVISION
FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

MARCH 25, 2004

Chairman Bunning, Ranking Member Schumer, and Members of the Subcommittee, I am Anthony S. Lowe, Federal Insurance Administrator and Director of the Mitigation Division of the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security. On behalf of the National Flood Insurance Program (NFIP), we welcome and appreciate the invitation to appear today before the Economic Policy Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee.

We are pleased to report to the Subcommittee that the state of the NFIP is sound. The NFIP is implementing a number of results-oriented initiatives to build upon the

program's past successes and current strengths while making the necessary adjustments for the future.

It has now been over 35 years since Congress first authorized the NFIP.

Since 1968, the NFIP has met and continues to meet an important property insurance need: To offer flood insurance to those exposed to flood hazards across the country—coverage that is virtually unavailable from the private insurance market.

The series of devastating hurricanes and storms in the early to mid-1960's underscored the need for this coverage. However, two features of the original design significantly hindered the NFIP from becoming broadly successful. The program was voluntary both for the local community and for the individual property owner. Flood-prone communities faced no economic consequences for not joining the program. Property owners at risk were not required to buy flood insurance. As a result, the NFIP remained underutilized, with 5,500 participating communities and only 273,000 flood insurance policies at the end of 1973.

When a series of severe floods in the early 1970's revealed that very few of the flood victims had flood insurance, Congress passed legislation to address these shortcomings. The Flood Disaster Protection Act of 1973 placed requirements on both the local community and the property owner. First, the Act encourages community participation by offering identified flood-prone communities with a clear choice: Either join the NFIP or face the loss of Federal financial assistance in their high-risk flood areas. Second, the 1973 Act places requirements on individual owners of property located in flood hazard areas. These individuals must purchase flood insurance to either be eligible for federally related mortgages or to receive other Federal assistance, including Federal disaster assistance. As a result of these changes, participation in the NFIP greatly increased over the following 20 years. By 1994, there were over 18,000 participating communities and 2.8 million policies.

But the Midwest Flood of 1993 revealed that participation in the NFIP still needed to be greater. It became clear that the program needed reforms to ensure compliance by lenders with the flood insurance purchase and retention requirements of the 1973 Act. Lenders were given those tools through the passage of The National Flood Insurance Reform Act of 1994. This Act has enabled the program to grow, and today there about 4.4 million policies totaling about $650 billion in coverage.

A major benefit is that claim payments for flood damage under the NFIP reduce the burden on taxpayers for Federal disaster relief. These claims payments have exceeded $12 billion in the history of the NFIP.

The NFIP now stands as the largest, single-line property insurance writer in the United States.

But the success of the NFIP is not measured only in the number of policies issued and the flood damages that have been paid but also in losses avoided. Today, the nearly 20,000 participating communities across America have adopted and are enforcing the program's mitigation standards to protect new buildings from flood hazards. The floodplain management standards these communities are implementing are part of an overall strategy. The strategy benefits the entire floodplain, and, in a number of cases, holds the line altogether on new construction in the flood hazard areas. The mitigation standards of the program to elevate or flood-proof new construction are reducing America's flood damages by an estimated $1 billion each year.

Mr. Chairman, besides the obvious successes the program is enjoying, I am also happy to report that the NFIP is once again debt-free.

As you know, the program does not receive appropriations to pay for its operations. It is self-supporting through premium income from our policyholders enabling us to pay losses which are have averaged approximately $750 million per year. However, flood losses for a specific year can vary significantly from this average. When flood losses exceed NFIP reserves, we have the authority to borrow funds from the U.S. Treasury to pay for those losses. Whenever we have to borrow from the Treasury to pay for historically high losses, we must repay with interest what we borrowed. Since 1986, when the program received its last appropriation, we have borrowed and repaid approximately $2.7 billion.

In June 2001, for example, Tropical Storm Allison battered the Gulf Coast and East Coast States. After final losses were tallied, Allison became, sadly, the program's first billion-dollar storm. The NFIP had to borrow $660 million from the Treasury. We repaid that debt—with interest—as of October 2002. So once again the NFIP is operating debt-free, and the program continues to stand on solid financial ground.

More recently, in September 2003, Hurricane Isabel caused extensive flood damage in six Mid-Atlantic States and the District of Columbia. To date we have paid $263 million on 16,776 flood insurance claims to insured victims of that event. We expect to pay out approximately $450 million on the total 24,725 flood insurance

claims from Hurricane Isabel. We will not need to borrow any funds from the U.S. Treasury to pay Hurricane Isabel claims.

The NFIP however, does not just react to disasters and pay claims. In the past year, the NFIP began major outreach campaigns to inform the public about the importance of flood insurance. For example, the NFIP recently entered into an agreement with a major advertising firm to build a flood insurance marketing strategy, which will include a comprehensive multimedia campaign. After the California wildfires, we also supplemented our flood insurance marketing in California to make certain that residents understood the increased flood risk and benefits of flood insurance. The NFIP is also working to assure that our customers and industry partners understand flood insurance restrictions in Coastal Barrier Resource Systems, and to this end we are collaborating with the Fish and Wildlife Service on a comprehensive CBRA outreach strategy. These outreach tools raise public awareness of flood hazards and the role of flood insurance, and are designed to increase NFIP policy growth by 5 percent annually.

I am also pleased to report that we are maximizing the program's insurance mechanism to achieve mitigation. We have increased the benefits under our Standard Flood Insurance Policy to help property owners pay for mitigation measures necessary to comply with State and local ordinances after substantial or repetitive flood losses. These mitigation measures include assistance with elevations, buyouts, and relocation of flood-prone properties. An increase in benefits from $20,000 to $30,000 became effective on May 1, 2003. We consider this coverage an important mitigation tool that enables our policyholders to protect their properties after a substantial flood loss and break the cycle of flood damage and repair. This is an example of how FEMA is using flood insurance protection to reduce costs to taxpayers and provide a bridge to mitigation that prevents future losses.

But the NFIP is not without challenges or issues of concern.

Before addressing the need for the reauthorization of the NFIP, I want to particularly thank the Banking Subcommittee for its leadership in reauthorizing the program for 2003 and the first quarter of 2004. For the first 13 days of 2003 the program's authorization lapsed. Through the Committee's efforts we were able to maintain operations and service to the 4.4 million policyholders as well as to the lending and real estate industries that rely on the program for protection against flood losses. The temporary disruption to the NFIP underscored the importance of flood insurance to the American economy.

The NFIP is currently reauthorized annually and has several distinct authorities that must be changed during each reauthorization. We believe that it would be beneficial if the NFIP were reauthorized on a 5-year basis. Of course, it would be our pleasure to work with the Subcommittee on appropriate changes.

Let me now address the issue of repetitive flood loss. It is a national problem, and a problem with both a human impact and an economic impact. The majority of the repetitive flood loss buildings are primary residences, meaning that many families find themselves in a flood-rebuild-flood cycle. The 48,000 repetitive flood loss buildings account for about 25 percent, or $200 million, of the flood claims payments each year. By itself, our Repetitive Loss Target Group, which is a subset of the 10,000 worst repetitive loss properties, accounts for $80 million in annual losses. These losses increase pressure each year to raise rates for other policyholders and, when combined with a higher than average loss year, make it more likely that the program will have to borrow from the U.S. Treasury.

Paying claims for the same properties time and again is not good public policy, not sound business practice, and not prudent stewardship. We are spending far too much money on just a handful of properties—a costly drain on the NFIP and its policyholders. Reducing the number of repetitive loss properties is one of our top priorities.

The problem of repetitive flood losses is largely a vestige of the past. Congress structured the NFIP as an agreement between the Federal Government and local communities.

To participate in the NFIP, communities must adopt and enforce flood mitigation standards for new construction in their high-risk flood areas. In return, flood insurance is made available to all properties built before the availability of detailed flood maps at premium rates that do not fully reflect the true risk. Congress directed discounted premium rates for such existing properties so as not to penalize those who bought or built in the floodplain without full knowledge of the flood hazard. As such, these property owners are permitted to pay subsidized premiums for flood coverage.

We call these properties "Pre-Flood Insurance Rate Map" or "Pre-FIRM" properties. Repetitive flood loss properties are for the most part a subset of these Pre-FIRM structures, with Pre-FIRM properties accounting for close to 90 percent of all repetitive loss properties nationwide.

There were good public policy reasons for providing insurance to these older properties at less than full-risk premiums. However, properties that flood over and over again lock their owners into a dismal cycle of damage and repair—with diminishing property values.

Today, the Department of Homeland Security has mitigation programs that can, and are, being used to reduce the Nation's repetitive flood loss problem. However, the participation in our mitigation programs is voluntary. We have not always had the needed leverage or incentives for repetitive flood loss property owners to accept grant offers intended to reduce or eliminate the flood risk.

FEMA is making strategic changes to focus on our repetitive loss problem. We have targeted about 10,000 repetitive flood loss properties as the highest priority for mitigation in our repetitive loss strategy. These 10,000 high-priority properties, which are currently insured under the NFIP, have had four or more flood losses, or two or three losses that cumulatively exceed the value of the building. These 10,000 are the "extreme cases," ones that we have paid close to $1 billion in flood insurance claims over the last 25 years. This small set of properties now cost the NFIP about $80 million in claims each year. We are targeting these properties for mitigation actions that will remove them altogether from the floodplains, elevate them above the reach of floodwaters, or apply other mitigation measures to significantly reduce their exposure to flood risk.

We are now building a consensus on the best practices and latest technologies to use to mitigate repetitive loss properties. For example, we recently gathered some of the Nation's leading experts in the repetitive loss problem for a 3-day workshop to discuss their experiences in addressing this issue. The result of this workshop is a *Repetitive Loss Action Plan,* which is being finalized. We will use this action plan to guide our efforts in the coming months and years.

With this current grant cycle we are emphasizing the importance of addressing repetitive loss properties to States and communities. For fiscal year 2004, we will direct all funding for the Flood Mitigation Assistance program toward mitigating repetitive loss properties. We will place a national priority on the Pre-Disaster Mitigation applications addressing the mitigation of repetitive loss properties.

We are also undertaking additional steps to address the repetitive loss problem. The policies on these properties are serviced separately to better coordinate claims handling. We are reviewing all of our repetitive flood loss databases and making accurate flood loss data available to State and local governments for mitigation projects. We are also offering incentives under our Community Rating System, or CRS, program to communities to address this issue locally. CRS provides premium discounts of up to 45 percent for local mitigation actions.

The steps we have taken to date have only partially addressed the repetitive loss problem. Even with our proposed increased emphasis in the grant programs, we will make limited progress in addressing this serious problem. To aggressively address this problem, we will need additional tools.

We commend the House Committee on Financial Services on the passage of H.R. 253, the Flood Insurance Reform Act of 2003, which reauthorizes the NFIP for 5 years and provides resources and a structure to reduce repetitive flood losses. We would be pleased to work with this Committee on furthering these efforts.

Mitigation projects are most successful when State and local governments are involved in their development and execution. Certainly where there is a non-Federal cost share requirement, State and local governments have a stake in the process and outcome. However, there will be instances in the interest of protecting lives and property, where we will need the authority to address individual properties that are not part of any larger mitigation effort.

A broad effort that has the flexibility to recognize individual circumstances will give us the means to address the repetitive loss problem in ways that can be refined based on what we learn about these properties. We can achieve results that are good for the community, the individual property owner, and the National Flood Insurance Program.

These measures I have described will strengthen our ability to remove the costliest risks from the NFIP and help people end the devastating cycle of damage-repair-damage.

Mitigating the highest risks, which include repetitive flood loss properties, also requires accurate risk assessment. This is why our Flood Map Modernization initiative is critical to our efforts to reduce the exposure of people and property to flood hazards. Congress appropriated $150 million in fiscal year 2003, and $200 million in 2004, for flood map modernization. This will be added to the approximately $50 million in funding from NFIP fees that contribute annually to the mapping program. This combination of funds enables us to continue a multi-year effort that will cost approximately $1 billion.

We approach this multi-year effort with the certainty that to be successful we must leverage all of our partnerships—State, local, and regional entities, as well as other Federal agencies and the private sector.

Managing our flood map modernization and hazard mitigation efforts will also help build a foundation for the Department of Homeland Security to safeguard the Nation from the full range of hazards, natural and manmade, including repetitive flood loss properties.

How we fully address the repetitive loss problem still needs to be resolved, but we are all in agreement that we need to address the problem. This problem affects both individual property owners and entire communities that flood time and again.

Again, we appreciate the help of this Committee in re-authorizing the NFIP through the end of March. As you face the upcoming task of renewing our authorization, we strongly believe that a multi-year authorization—preferably 5 years—will best serve the policyholders and the real estate and lending industries.

In closing, I appreciate the opportunity to represent the Department of Homeland Security before the Economic Policy Subcommittee. I am pleased to answer any questions you may have.

PREPARED STATEMENT OF CHAD BERGINNIS

CHAIR, ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

MARCH 25, 2004

Introduction

The Association of State Floodplain Managers, Inc., and its 18 State chapters represent over 6,500 State and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance. All are concerned with working to reduce our Nation's flood-related losses. Our State and local officials are the Federal Government's partners in implementing programs and working to achieve effectiveness in meeting our shared objectives. Many of our members are designated by their governors to coordinate the National Flood Insurance Program (NFIP). For more information on the Association, please visit *http://www.floods.org*.

The ASFPM is enthusiastic that the Committee has put consideration of NFIP reforms high on its agenda for the 108th Congress. We are appreciative of the time and attention that Representatives Bereuter, Blumenauer, and Baker have collectively paid to the issue of repetitive claims against the NFIP and how measures to reduce those claims can be put into place. We would also like to recognize the time and resources that FEMA has dedicated to the issue of repetitive loss properties, and commend their prioritization of repetitive loss properties as a significant issue.

Thank you for inviting us to offer our views on the repetitive loss property issue and recent actions taken by the Congress and FEMA to mitigate repetitive losses. The following testimony addresses:

- The Nation's 4.4 Million Policyholders Benefit by Addressing Repetitive Loss Properties;
- An Effective Approach to Mitigating Repetitive Losses in the Nation;
- Reform of Existing Mitigation Insurance Will Strengthen the Repetitive Loss Legislation;
- FEMA's Repetitive Loss Strategy;
- Matters Related to Reauthorization of the NFIP;
- The NFIP and the Department of Homeland Security;
- FEMA's Map Modernization Initiative;
- The Effectiveness and Value of the National Flood Insurance Program and FEMA's Flood Mitigation Programs.

The Nation's 4.4 Million Policyholders Benefit by Addressing Repetitive Loss Properties

It is important to put the repetitive loss problem in context. While the exact number is not known, it is estimated that between 9 and 11 million buildings are in the areas we call special flood hazard areas that are shown on FEMA's Flood Insurance Rate Maps. About 4.4 million buildings both in and out of the floodplain are insured today (up from only 2 million just 9 years ago). Of those, about 40,000 are on FEMA's list of repetitively flooded properties. Nearly 10,000 have experienced four or more losses, or two or more losses which combine to exceed the building's value as reported on the flood insurance policy (FEMA uses this definition for the

"Target Group). This means that initially we are focusing attention on one-quarter of 1 percent of the insured buildings. But the impact is huge, since that small fraction accounts for over 25 percent of the NFIP's losses since 1978.

Why, then should everybody be concerned? All current and future NFIP policyholders will benefit from addressing repetitive loss properties because the pressure to raise the rates will be significantly diminished. FEMA reports that, as a larger group, all properties that have received multiple insurance claim payments account for an average of $200 million in claims each year. This contributes significantly to the pressure to raise the rates on all types of policies and accounts for a significant factor affecting the stability of the National Flood Insurance Fund.

Although it is a simplistic assessment, if just one rate increase can be avoided, 4.4 million policies holders throughout the Nation could be able to keep in their pockets as much as $175 million (FEMA cannot raise rates more than 10 percent at any time, although the typical increase is 4–8 percent). Estimated savings for the 10 States with largest number of priority repetitive loss properties are shown in the following table. To estimate savings for other States, see the NFIP policy statistics that are online at: *http://www.fema.gov/nfip/pcstat.shtm.*

FEMA's "Rep Loss Target Group" (for comparison purposes only; this Target Group is based on FEMA's current working definition, not HR 253)				
State	Estimated number of RLTG (and % of total RLTG)	Total number of policies (12/02)	Total premium collected	Savings per year for **ONE** avoided rate increase of 10%
LA	3,000 (25%)	375,630	$155 mil	$15.5 mil
TX	1,500 (13%)	459,462	$166.8 mil	$16.7 mil
NJ	1,000 (8%)	181,463	$95 mil	$9.5 mil
FL	1,000 (8%)	1,800,047	$586.2 mil	$58.6 mil
NC	750 (6%)	101,216	$42.2 mil	$4.2 mil
NY	500 (4%)	96,164	$58.8 mil	$5.9 mil
MO	500 (4%)	22,133	$12.3 mil	$1.2 mil
MS	300 (3%)	42,063	$17.5 mil	$1.8 mil
MA	300 (3%)	39,331	$26.7 mil	$2.7 mil
CA	300 (3%)	270,856	$132.3 mil	$13.2 mil
Total Top 10 States	9,150 (77%)	3,388,365	$1,197.8 mil	$119.8 mil
Total ALL States	**12,000±**	**4,406,664**	**$1,755 mil**	**$175.5 mil**

A repetitive loss strategy should be viewed as a cost containment initiative for the NFIP that will benefit every current and future policyholder. It makes sense for the policyholders to invest in cost effective measures that will, in short order, reduce the pressure to raise the rates.

An Effective Approach to Mitigating Repetitive Losses in the Nation

General Comments on Repetitive Loss Strategies

It must be clear that any repetitive loss strategy should fund only mitigation measures for specific properties that achieve results that are *cost effective and in the best interests of the NFIP.* For mitigation projects, benefits are defined as "damages avoided if the project is implemented." Under this requirement, a building that has sustained several low-dollar value claims will rarely have a cost-effective solution, and thus an offer of mitigation assistance will not be made. If there is a cost effective mitigation measure, such as elevation-in-place, a property owner should be encouraged to participate. If the owner declines an offer, the rest of the policyholders should not have to bear the continued claims against the Fund.

It must also be clear that only projects that are *technically feasible* will be funded. There will be properties for which the typical approaches (acquisition or elevation) will not be possible, in which case an offer for such measures will not be made. For example there are many situations where low-cost measures can have significant

benefits, such as relocating utilities out of a basement. For nonresidential structures, of which there are many near the top of FEMA's list of repetitive loss properties, a range of retrofit floodproofing options may yield significant benefits.

When a specific property cannot be mitigated in a manner that is both technically feasible and cost effective to the NFIP, then the best mitigation is continued subsidized insurance, as anticipated by Congress when the NFIP was created in 1968. While the NFIP policy base as a whole would continue to subsidize the risk (which is the fundamental premise of insurance), at least the owners will continue to purchase flood insurance and contributes their own recovery, thus not burdening the U.S. taxpayer. The cross subsidy for these particular structures will be comparatively small.

FEMA's other mitigation programs and tools can be brought to bear to support mitigation of repetitive losses. Any new initiative can and should be designed to work in concert with existing programs to maximize effectiveness. These existing programs and tools include:

- Mitigation insurance (Increased Cost of Compliance) which is described below and is ripe for revisions;
- The Flood Mitigation Assistance Program authorized by Congress as part of the NFIP Reform Act of 1994 as Section 1366;
- The Nationwide Pre-Disaster Competitive Mitigation Program, authorized in 2000 and funded in fiscal year 2003 and fiscal year 2004 to create a nationwide competitive grant program; and
- The post-disaster Hazard Mitigation Grant Program authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act—but this vital funding source was proposed to be zeroed in the fiscal year 2003 and fiscal year 2004 budget and we expect that pressure to continue (see Section H, below).

Objectives of a Repetitive Loss Strategy

In addition to cost containment for the NFIP and its policyholders, an effective repetitive loss strategy will, without a doubt, *reduce Federal disaster assistance,* although it may take longer to see the effects. When we relieve the pressure to raise the rates, more people will see that flood insurance is a "good buy" as the cost comes more in line with their perceived risk. This is the single most significant way to reduce that part of the Federal disaster dollar that supports uninsured individuals, families, and businesses after the President declares a flood disaster. For flood-related disasters declared between 1989 and 1998, FEMA paid over $3 billion for Individual and Family Grants (does not include SBA and other agencies, or the effects of the casualty loss deduction on tax income). For this reason, ASFPM believes it is appropriate for a repetitive loss strategy to increase funding for the basic Flood Mitigation Assistance Program and to modify the insurance mechanism called Increased Cost of Compliance. ASFPM's proposal has been submitted to the Subcommittee.

An effective repetitive loss strategy will not place an unnecessary burden on *low-income homeowners and renters* that occupy houses in the Nation's repetitive loss areas. Often the low-income occupant simply does not have the financial ability to move elsewhere or to pay for mitigation measures. It is far too simplistic to assume that every owner is able to make a rational choice based on cost alone. In those instances where grants or offers are made to low-income homeowners and renters, we are concerned that it be done in a carefully crafted manner that networks with existing housing programs. Further, we propose that "comparable housing" be included when communities extend buyout offers to these owners.

National Repetitive Flood Loss Mitigation Legislation

On November 20, 2003, the House of Representatives passed the Flood Insurance Reform Act of 2003 (H.R. 253). We commend the House sponsors for their efforts, and believe the bill contains a number of important provisions, including:

- A framework for mitigating repetitive loss properties through a community/State-oriented program and a direct property owner program (when the State or community is unable to manage such a grant);
- A consequence that moves flood insurance policies toward actuarial rate in the event a property owner rejects an offer of mitigation;
- The flexibility to use many different types of mitigation options; and
- An appeals process.

For these reasons, the ASFPM supported the passage of H.R. 253 in the House. However, the ASFPM remains concerned with certain aspects of the bill and urge your consideration of revisions to address these matters. We believe the bill:

- Contains definitions, procedures, and provisions that are either too cumbersome or inconsistent with existing mitigation programs which could result in delays, confusion, and unintended consequences during implementation;
- Does not adequately integrate into the existing mitigation insurance mechanism (which could alleviate nearly all concerns about the cost share requirements for communities and property owners); and
- Modifies the basic Flood Mitigation Assistance Program which has had demonstrated success providing mitigation opportunities in many communities and which must continue unchanged.

The ASFPM feels that certain adjustments must be in the House bill to ensure that the resulting national repetitive loss mitigation legislation will be effectively implemented by FEMA, States, and communities to address our goals and objectives while also supporting community needs. The ASFPM offers the following suggestions.

- **Preserve Basic Flood Mitigation Assistance Program (FMA),** while making some Modifications to Improve Effectiveness. It is important to maintain the existing FMA as the basis on which the focus on repetitive losses is built. The basic program works well and needs to continue after expiration of any new authority. However, there are some modifications that can be made to build on its effectiveness, such as: (1) Specifying that the valuation for acquisition should be based on Fair Market Value (current FMV is usually selected when flooding occurred some time in the past and homes have been repaired or appreciated in value). When a flood has just occurred, we use pre-flood FMV, but then are required to subtract certain disaster assistance payments and insurance claim payments (to avoid Duplication of Benefits). Many communities select post-flood FMV and then owners are allowed retain any disaster assistance and their insurance payments (which are determined as an estimate of cost to restore the home to pre-flood condition); (2) Eliminate the limitations on amounts to States and communities for project grants; and (3) Eliminate the requirement that in-kind contributions shall not exceed one-half the amount of the non-Federal funds.
- **Define the Focus of New Programs for Priority Repetitive Loss Properties.** We recommend that the bill define "priority properties" as a subset of NFIP-insured properties that, based on available data, appear to represent opportunities to mitigate unreasonable burdens on the National Flood Insurance Fund due to multiple insurance claim payments. It is this subset of properties that will then be examined to determine whether there are reasonable, feasible, and cost-effective mitigation measures. Any property that does not have such a measure should be removed from the subset and should no longer be identified as a "priority property."
- Authorize the **Repetitive Loss Priority Program** as a grant program to be administered as an adjunct to the Basic FMA to achieve mitigation of "priority properties." Eligible grantees and eligible activities should the same as those for Basic FMA, provided they address "priority properties." The ASFPM recommends that this part of the new program be funded in the amount of $50 million per year for 6 years, to be transferred to the National Flood Mitigation Fund from the National Flood Insurance Fund, and made available until expended; FEMA should be specifically directed not adjust rates/fees for offsetting income (due to the rapid cost savings expected by focusing on the top-tier of repetitive loss properties). For acquisitions, valuation should be as defined for Basic FMA, and restrictions on ownership and use of cleared land should be consistent with FEMA's other grant programs. Finally, the program should specify that mitigation offers are valid until the State or community indicates closure of the grant (although individual properties would continue to remain eligible under the Individual Priority Property Program (next item), so an owner who initially declines an offer may yet be extended another offer).
- Authorize the **Individual Priority Property Program** to give FEMA the authority to make grants directly to property owners, but only if States and communities do not have the capacity to manage grants. Again, eligible activities should be those defined for Basic FMA, although it is notable that FEMA is not able to take title to land and thus acquisition is not a viable option under this program. Authorized funding for the Individual Property Program should be in the amount of $20 million per year for 6 years and $10 million per year thereafter, such amounts to be available until expended; such amounts to be transferred to the National Flood Mitigation Fund from the National Flood Insurance Fund; FEMA should be directed specifically not adjust rates/fees for offsetting income.
- **Authorize a consequence** for owners of "priority properties" who decline mitigation offers under the Repetitive Loss Priority Program and the Individual Prop-

erty Program. The consequence should be the imposition of actuarial rates (whether all at once or in a stepped process). Additionally, the consequence should be attached to the property and FEMA should create a process to formally notify owners of the consequence and their right to appeal the consequences of declining an offer of financial assistance to implement a feasible and cost-effective mitigation measure.

- **Allow Increased Cost of Compliance (ICC)** to be used as part of the local match for the Repetitive Loss Priority Program and the Individual Property Program (please see discussion in Section C, below).
- Require that **Privately Owned Buildings on Leased Federal Lands** be charged full actuarial rates of flood insurance unless the Federal landowner agency preserves the *quid pro quo* of the NFIP by implementing a system to review structural development and require it to be compliant with minimum NFIP standards, thereupon the structures would be charged flood insurance rates consistent with those charged in communities in good standing with the NFIP.

Reform of Existing Mitigation Insurance will Strengthen the Repetitive Loss Legislation

The 1994 NFIP Reform Act authorized mitigation coverage as part of the standard flood insurance policy. Called ICC or "Increased Cost of Compliance," it was touted by FEMA—and expected by others—to be one of the best tools to bring about post-flood mitigation, in part because it is funded by a surcharge on flood insurance policies. Although FEMA increased the benefit under ICC to $30,000 (effective May 1, 2003), in actuality, as currently administered this increase does very little to increase funding of eligible mitigation activities. The average ICC payment to support an acquisition project is on the order of $7,000. For elevation projects the average is around $16,000. While we appreciate that initially the agency had no experience on which to base its interpretations, much has been learned in the last 5 years. Currently ICC collects over $80 million in premiums, yet not even 2 percent of that money is spent annually to pay ICC claims.

Every flood insurance policy on property within a mapped floodplain—even post-FIRM policies, pays something for ICC. The cost ranges from $6 to $75 per year (capped by statute). The upper limit is paid on pre-FIRM buildings and V Zone buildings (where open coast where wave energies and erosion are greatest). It is notable that post-FIRM buildings (built in compliance with the rules) pay for this coverage even though the chances of ever qualifying are slim. This is because Congress recognized the long-term benefits: If ICC works correctly, then every policyholder will enjoy the benefits of reduced pressure to raise the rates.

ICC is a claim, paid only if damage is triggered by a flood event and only if the damage is sufficient to meet one of three triggers. Every community in the NFIP administers what is commonly referred to as "the 50 percent rule" or substantial damage. If the cost to repair a damaged building to its predamage condition exceeds 50 percent of its market value, then the community's rules require the owner to bring it into compliance. Most commonly, this means the existing building is lifted off its foundation and raised on a new, higher foundation. This substantial damage rule has been in place since early in the program; until ICC was authorized, the owner had to bear the entire cost. The second trigger is a variation of substantial damage called "cumulative substantial damage." The statute defines this as two or more claims in a 10-year period, each of which is at least 25 percent of the market value of the building. However, because the statute specifically states that *compliance* is required, FEMA's implementation requires the community to have an ordinance that mirrors that trigger. Very few communities have adopted that ordinance language.

The third trigger is one that has not been implemented by FEMA. That trigger explicitly authorizes the FEMA Director to pursue mitigation offers for properties for which it is determined that it is cost-effective and in the best interests of the NFIP to achieve compliance. It is our understanding that FEMA's reluctance is based, at least in part, on the statutory constraint that "compliance" is required. FEMA does not impose compliance—that is the purview of the local regulatory authority.

The ASFPM believes that ICC must be integrated into the new repetitive flood loss program, and has offered some recommended changes to Sec. 1304(b). These changes will assure that it achieves the originally intended objectives. We also urge the Committee to consider a fourth trigger to explicitly requiring that an ICC claim be allowed and counted as local matching funds when an offer of mitigation is made under the new Repetitive Priority Program, the new Individual Loss Property Program, and FEMA's other mitigation assistance programs.

This amendment is essential because it substantially decreases or, in many cases, would likely eliminate the community's (or property owner's) burden of coming up with the local cost share. It is important to note that ICC funds are collected from policyholders and are not Federal funds. Because of the amount collected since ICC was authorized (approximately $400 million of which less than $20 million has been used), we believe that FEMA's likely concerns about how our proposals would impact the pricing of the coverage should be blunted.

FEMA's Repetitive Loss Strategy

FEMA has been looking at numerous ways to bring about mitigation of repetitive loss properties and recently hosted a discussion session with stakeholders, including the ASFPM. FEMA has made some adjustments to existing grant programs, but the agency is limited in what it can do without changes to FMA and ICC that we are recommending. We would like to commend FEMA for their utilization of resources and an open, collaborative process involving stakeholders to create its repetitive loss strategy.

Matters Related to the Reauthorization of the NFIP

The ASFPM does not consider the NFIP's periodic sunset provision to be an explicit expression of Congressional intent that the program may actually be terminated. It is a convenient mechanism to require periodic attention to the needs of the program. The consequences of short-term lapses have been outlined by others, in particular, the insurance and lending industries that are especially sensitive to this issue. We submit that it is reasonable to reauthorize the NFIP on a 3-year basis, which will preserve the opportunity for oversight on a regular basis. This timeframe is important for two reasons: (1) to allow for consideration of the success and progress of the proposed new repetitive loss programs, and (2) because the results of the NFIP's first objective and comprehensive evaluation will become available within the next year or so.

The NFIP and the Department of Homeland Security

The NFIP is only one of FEMA's many responsibilities that are now transferred into the Department of Homeland Security (DHS). The ASFPM is very concerned that the NFIP's mission—and FEMA as a whole—will get overwhelmed by the forces driving DHS. Millions of homes and businesses are located within the Nation's floodplains and development pressures continue. These people are located in areas that, with reasonable scientific certainty, we can say are exposed to a 1 percent or greater chance of flooding in any given year. Every year, areas in nearly every State are flooded, often damaging critical local infrastructure and forcing thousands of people out of their homes. This is a risk that we cannot allow to fall victim just because FEMA is in a new agency.

We appreciate Secretary Tom Ridge's statement made before the House Appropriations Homeland Security Subcommittee last spring that FEMA's mission "will not be jeopardized in any way, shape or form." We are particularly encouraged that he specifically mentioned the importance of mitigation in that mission. However, we are greatly concerned that the Initial Draft of the National Response Plan, which, under Presidential Directive, is to be created by DHS, eliminates "mitigation" as a term and concept. Since the National Response Plan is to supercede the Federal Response Plan (which has mitigation as a foundation of the Nation's overall response strategy), we question the true future of mitigation under DHS.

A major part of FEMA's mission is disaster loss mitigation. Millions of people, buildings, and public infrastructure facilities are at risk due to natural hazards. Development of mitigation policies and programs is absolutely essential to controlling the huge costs of natural disasters and will contribute to saving lives and property. Such policies are an important corollary to FEMA's response and recovery capabilities. In fact, mitigation often is accomplished in the immediate aftermath and rebuilding phase following a natural disaster when people's awareness of their risks is high and local and State commitments leverage Federal dollars.

States and local jurisdictions know FEMA for its disaster response functions. They also know FEMA for its role in establishing long-term policies that influence new development and redevelopment in high risk areas. FEMA establishes minimum flood hazard area development regulations, provides Federal flood insurance, prepares and issues flood hazard maps, and coordinates technical assistance through the States to help communities and land owners manage flood hazards in ways that minimize damage. FEMA works with building code organizations to incorporate reasonable and cost effective mitigation measures into building codes, and to encourage States and local jurisdictions to adopt those codes in order to remain economically and socially viable by reducing flood losses. FEMA's partnerships, and more than 30 years of experience in administering the NFIP and mitigation pro-

grams are important to the Nation's efforts to prepare for, respond to, recover from, and mitigate against the perils of natural hazards.

It is important for us to agree that a Federal flood insurance program is a vital component in the economic well-being of the Nation. Without the NFIP, trying to bear the rising costs of flood disasters would have catastrophic financial implications for millions of families and businesses and about 19,600 counties, cities, towns, and villages across the country. Once we agree on the NFIP's importance, then we can pursue what is needed to strengthen the program in a variety of ways.

We urge the Committee to maintain regular contact with DHS to ensure that the short-term and long-term benefits of the NFIP are realized in the coming years. To that end, we suggest that the Committee monitor FEMA's budget to ensure that adequate funds are requested and spent to accomplish the goals set forth in statutes under the Committee's jurisdiction, and to express your desire that the NFIP and hazard mitigation remain high on DHS's priorities.

FEMA's Map Modernization Initiative

The importance of modernizing and updating flood hazard maps is now widely understood, and based on the fiscal year 2003 and fiscal year 2004 budgets, funding is being provided. The initiative will span at least 5 years, and the end products will be better quality, converted to modern technology that will facilitate administering programs to reduce flood losses in nearly 20,000 communities, and lower long-term costs to maintain the maps.

The ASFPM is concerned that bureaucratic hurdles may adversely impact implementation of the flood map modernization program. For example, a new contract with the "National Service Provider" contractor that will have significant responsibilities in the implementation of map modernization is not yet signed. There have been delays created due to the extra layer of review and approval as a result of FEMA being an entity within DHS.

The Effectiveness and Value of the National Flood Insurance Program and FEMA's Flood Mitigation Programs

The National Flood Insurance Program is the Nation's oldest flood mitigation program. It is a unique arrangement with many stakeholders: (1) the Federal Government establishes regulatory standards, issues Flood Insurance Rate Maps, and provides the insurance; (2) the private insurance sector sells insurance and the private engineering community performs engineering and planning studies; (3) the States coordinate the program and provide technical assistance to communities; local jurisdictions adopt, administer, and enforce floodplain regulations; and (4) homeowners and business owners buy flood insurance. This arrangement contributes to the program's effectiveness.

FEMA has estimated that over $1 billion in damages are avoided each year due to the fact that States and communities administer floodplain regulations to recognize flood hazards in their development decisions. These savings accrue in part to the U.S. taxpayer because compliant construction is much less likely to sustain damage and because insured property owners are unlikely to qualify for disaster assistance.

FEMA's mitigation grant programs require communities to plan in a systematic way to reduce flood risk. The planning process leads to greater overall disaster resistance and sustainability. In addition to the obvious benefits to owners of structures that are mitigated, there are multiple benefits to the community. Although often more difficult to quantify in strict benefit:cost models, these multiple benefits are critical to individual quality of life and a community's economic vitality.

One of FEMA's most successful mitigation grant programs, the Hazard Mitigation Grant Program (HMGP), continues to be jeopardized. Using these post-disaster funds, States and communities have implemented projects that reduce the damage potential for over 25,000 buildings. Examples of successes abound. The ASFPM has published several "Success Stories" publications illustrating examples from all over the Nation (available online at *http://www.floods.org/Publications/free.asp).*

For the past 3 years the Administration's budget has attempted to eliminate HMGP. It is notable that through the fiscal year 2003 budget process, the amount of mitigation funding that is made available in the post-disaster period was halved. This program is formula-based, resulting in funds for mitigation as a function of certain categories of FEMA's disaster assistance expenditures. It provides funding at the most opportune time, after a federally declared disaster. Although FEMA has created a nationwide Pre-Disaster Mitigation program, it will never be as successful as HMGP because it does not take advantage of the post-disaster period when communities and victims are most aware of their risk and are willing to participate and leverage other funds. The ASFPM urges the Members of this Committee to learn

about successful post-disaster mitigation efforts in your home States and to support continuation of HMGP and to restore it to the 15 percent level.

Conclusion

We appreciate that in the past Congress has provided an array of flood mitigation tools which increase the prospects that communities, States, and businesses and families can be truly resistant to future flood disasters. This Committee's consideration and action on new authorities and funding to allow us to mitigate repetitive loss properties are vital next steps.

Thank you for the opportunity to provide our thoughts on these important issues. The ASFPM and its members look forward to working with you as we move toward a common goal of reducing flood losses.

PREPARED STATEMENT OF WILLIAM STIGLITZ, III

INDEPENDENT INSURANCE AGENT, HYLAND, BLOCK, HYLAND INSURANCE, LOUISVILE, KENTUCKY

ON BEHALF OF

THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA AND THE NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

MARCH 25, 2004

Good afternoon Chairman Bunningy, Ranking Member Schumer, and Members of the Subcommittee. My name is Bill Stiglitz and I am pleased to have the opportunity to give you the views of the Independent Insurance Agents and Brokers of America (IIABA) and the National Association of Professional Insurance Agents (PIA) on the National Flood Insurance Program (NFIP or the Program). I am an Independent Insurance Agent with Hyland, Block, Hyland Insurance of Louisville, Kentucky, and a member of the Executive Committee of the IIABA.

IIABA is the Nation's oldest and largest national trade association of independent insurance agents, and represents a network of more than 300,000 agents and agency employees nationwide. IIABA members are small businesses that offer customers a choice of policies from a variety of insurance companies. Independent agents offer all lines of insurance—property, casualty, life, health, employee benefit plans, and retirement products.

PIA, founded in 1931, is a national trade association that represents member insurance agents and their employees in all 50 States, the District of Columbia, and Puerto Rico. PIA members sell and service all lines of insurance, specializing in coverage of automobiles, homes, and businesses. PIA represents its members' interests in State capitals and in Washington, DC to ensure that policymakers understand the perspectives and concerns of insurance agents.

Introduction

Let me begin by stating clearly that IIABA and PIA support the NFIP. NFIP provides an important service to people and places that have been hit by a natural disaster. The private insurance industry has been, and continues to be, almost entirely unwilling to underwrite flood insurance because of the catastrophic nature of these disasters. Therefore, NFIP is virtually the only way for people to protect against the loss of their home or business. Prior to the introduction of the program in 1968, the Federal Government spent increasing sums of money on disaster assistance to flood victims. Since then, NFIP has saved disaster assistance money and provided a more reliable system of payments for people whose properties have suffered flood damage. It is my understanding that since 1986, no taxpayer money has been used to support the NFIP, rather the NFIP has been able to support itself using the funds from the premiums it collects ever year. We want the program to continue and we hope it will get stronger.

Our members—independent insurance agents and brokers—play a vital role in the delivery system for flood insurance. The NFIP has about three and one-half million policies in force with over $370 billion in coverage. The majority of these policies are sold by the more than 110,000 insurance agents participating in NFIP's "Write Your Own" program. This system operates well and this aspect of NFIP does not need revision. In fact, IIABA and PIA are greatly concerned about FEMA efforts to change the WYO program as it applies to insurance agents. I will address that issue briefly at the close of my remarks.

It is clear, however, that reforms of the NFIP are necessary to address operating losses and make the NFIP actuarially sound. The premium structure is not suffi-

cient to allow the Program to build up reserves to cover long-term expected losses. According to the General Accounting Office, multiple loss properties (defined as those with two or more losses over $1,000 each in a 10-year period) account for about $200 million in claims per year and about 36 percent of all claims paid on a historical basis.

What I would like to do this afternoon is explain the five principles that IIABA and PIA believe must animate any NFIP reform efforts to both improve the program and avoid any unintended negative effects of reform:

- Strengthen NFIP building regulations.
- Increase compliance with the mandatory purchase requirement.
- Provide additional resources for flood loss mitigation efforts.
- Stop abuse of the program through multiple claims.
- Require mandatory disclosures of flood information.

Strengthen NFIP Building Regulations.

The first principle that we believe should be part of any reform of the NFIP is strengthened NFIP building regulations. The building regulations help communities better manage their floodplains in two ways. First, the regulations require communities to ensure that any new construction in floodplains includes safeguards against flood damage such as building new homes above the flood elevation on pilings. Second, the regulations require that any substantial improvements made to existing buildings in the floodplain incorporate safeguards similar to those required for new construction.

Experience with the program demonstrates that the building regulations work. The majority of flood losses are caused by damage to older homes. In fact, only 4 percent of repetitive loss properties were built after 1974. In 1999, the Federal Insurance Administration estimated that the program's construction standards were saving $1 billion per year. Structures that are built to the program's standards are three and one-half to four times less likely to suffer flood losses. In addition, the damages to structures built to these standards are 40 percent less per claim than the damages to older structures.

For example a client of mine with a home on the Ohio River suffered a total loss of $250,000 in the flood of 1997. In order to rebuild he was required to raise his home above the hundred year floodplain and comply with all lower level standards set by the NFIP. My client now has a magnificent home in total compliance with NFIP requirements and is paying a reasonable premium to continue his flood coverage.

In light of this success, building requirements should be tightened to ensure that properties are built to minimize potential flood damage and to discourage unwise construction in floodplains.

Increase Compliance with the Mandatory Purchase Requirement

NFIP would receive additional premiums and improve its financial condition if there were a better rate of compliance with the mandatory flood insurance purchase requirement. In 1973, the purchase of flood insurance became mandatory for any property in a floodplain having a 1 percent or greater chance of flood occurrence in a given year. The purchase requirement takes effect when a loan is made, increased, extended or renewed on the property. The Federal Emergency Management Agency (FEMA) has found that fewer than twenty 5 percent of buildings in areas covered by the mandatory purchase requirement are actually covered by flood insurance. And compliance rates vary dramatically. Based on past disasters, coverage has ranged from less than 10 percent to seventy 5 percent of eligible properties. In fact I have seen that many insured's do not renew their mandatory coverage after the first year due to the cost of the policy and the lack of an enforcement mechanism on the part of lenders.

Sanctions for and enforcement of the mandatory purchase requirement need to be improved so that the program can collect additional premium to help balance its books, and fund the payment of future losses with a reduced likelihood of having to borrow from the Federal treasury.

NFIP Should Have Additional Resources for Mitigation

NFIP should take action to prevent future losses. There are two basic ways to do this. The first is through buying the homes and businesses of property owners in the most flood-prone areas so that those individuals can move out of the floodplain. The second is through providing grant funds to owners of existing properties so that they can make improvements (such as raising their structures) that decrease the risk of flood loss. These preventative measures will decrease the number of repetitive claims and save the program money.

Repetitive loss properties are clearly a drain on the financial resources of the NFIP. In fact, one-quarter of 1 percent of the properties in the program are responsible for 10 percent of the losses. Multiple loss properties account for $200 million per year in claims. As of 1999, GAO reported that the cost of multiple claims had reached $2 billion over the life of the NFIP. GAO also noted that about 40,000 properties that had made multiple claims were still insured by the program. Reduction in the number of repetitive loss properties, which would save the program millions of dollars, can be accomplished through grants to buy-out property owners or to modify structures to come into compliance with NFIP standards.

A perfect example of the proper use of mitigation funds is the town of English, Indiana. Formerly located on the Blue River, a tributary of the Ohio River, this town was continually inundated by flood waters. Finally, after devastating losses in the early 1990's this small city was moved in it's entirety to higher ground. The citizens of English now enjoy a very nice new town as well as the recreational land along the river which is available for public use.

Buy-outs allow residents to relocate outside the floodplain and prevent future losses. Of course, we must be sensitive to the needs of residents when using buy-outs. Many residents bought their homes before we had full information about the floodplains. The value of many of these homes also may not be sufficient to allow homeowners to relocate to a comparable home. We should avoid creating a new problem by pushing residents out of their homes without sufficient resources to relocate.

As long as the program is sensitive to the potential dangers, buy-outs can be beneficial tools to improve the financial state of the NFIP. Former FEMA Director James Lee Witt has estimated that there will be a $2 return on every $1 spent on buy-outs of repetitive loss properties. That is an impressive return on investment that we should maximize by putting more money into the program for buy-outs. Past efforts have proved that mitigation works. Damage to towns along the Mississippi River following the 1993 floods were huge—$67 million in Wisconsin, $251 million in Iowa, and $253 million in Illinois. Last year's flood carried about as much water in some areas as in 1993, but, according to the *Washington Post,* damage estimates in those three States was only $30 million total. Overall damage from the 1993 flood was more than $10 billion, but last year was a fraction of that. While some of those savings are attributable to differences in the floods, a lot of it is because people and towns were bought out and moved.

NFIP also should have additional resources for structural modification of properties to prevent losses. Many residents do not want to move and should not be forced to do so. Experience with the NFIP building standards has shown that many owners can elevate their homes or businesses and effectively reduce flood risks. In some cases, modifying the current property is less expensive and equally (or almost as) effective as a buy-out. And this option can help preserve communities to the fullest extent possible. NFIP needs the authority and resources to help property owners improve their properties before the program suffers additional losses.

Stop Abuse of the Program Through Multiple Claims

We need to do more to stop the abuses of the program. Some individuals have bought in flood zones in order to take advantage of repeat payments from the NFIP. While the people in this category are a small minority of all property owners, they are an expensive minority. There must be some mechanism to either remove these individuals from the program or make them pay the full, unsubsidized premium based on sound actuarial standards. This approach would be similar to the limitations put on the crop insurance program in which farmers who file numerous, repetitive claims again are put in a special "high risk, nonclassified" system with increased rates and less than full guarantees. Simply reducing abuse of the system will be an important boost to the financial soundness of NFIP.

We also need to recognize that not all repeat claimants are abusing the system. The majority of these people are the victims of natural disasters and bought their homes or businesses without any desire at all to make a claim for flood damage. These are difficult events in people's lives and they should not be punished for them. Many bought without full knowledge of the flood risk to their property and many more do not have the resources to elevate their properties or move. And many of these individuals cannot sell their homes for a reasonable price because they have suffered repeat flood damage—these people are stuck in the program through no fault of their own. They need to be given mitigation options to enable them to escape this nightmarish cycle.

Require Mandatory Disclosures of Flood Information

One of the best ways to avoid future problems with the NFIP is to give people information about flood risks. As I said before, many people originally bought their properties without knowledge of the risk of flood. Reform of the NFIP needs to include mandatory disclosures of the flood history of the property so that buyers can make an informed choice in their purchases and they can properly value the home. To make mandatory disclosure effective, we should create an accessible electronic database of flood losses. Disclosure of flood information will help ensure that when a tragedy strikes in the future NFIP does not have to pay for an artificially overvalued property. The disclosure also should bring more people into the program by giving them the information about their risks.

Finally, IIABA and PIA support the provision of the House-passed bill, H.R. 253, that lengthens the program reauthorization period from 1 year to 5 years. In 2002, Congress adjourned without reauthorizing the NFIP program. This put the program in limbo, and left the industry and more importantly consumers not knowing when or if the program would be reauthorized and wondering how they should proceed in the meantime. Thankfully, Congress reacted swiftly and passed a reauthorization bill the first week they returned from recess. Those 2 weeks of uncertainty, however, caused a great deal of panic in the market and had the potential to freeze the entire real estate market because consumers need flood insurance to be able to close on a mortgage. We strongly support the provisions in H.R. 253 that change the reauthorization period to 5 years and change the expiration day from the end of the year to another time, as to avoid having the program expire at the same time as Congress is adjourned.

Proposed FEMA Regulations Would Harm Agents and NFIP

Before I conclude, I would like to address a pressing issue that greatly concerns agents who sell and service policies under the program. As I mentioned at the beginning of my testimony, the Federal Emergency Management Agency (FEMA) has proposed a rule that would harm the position of insurance agents participating in the WYO program and, ultimately, be detrimental to NFIP. The proposed rule, published in the *Federal Register* on October 14, 2003, would amend the Federal Insurance Administration, Financial Assistance/Subsidy Arrangement. Paragraph 61.5(f) of the FEMA proposed rule would change current standard practice by designating independent property and casualty agents as "agents" of insureds, not agents of private Write Your Own insurers, for the purposes of selling and servicing NFIP policies. Currently, the status of an insurance producer as an agent or broker is a contractual issue determined by the producer and insurer.

The regulatory intervention by FEMA into private contractual relationships between insurers and their agents is a sea change in the way NFIP has functioned since 1983 when private insurers were brought into the program and, more broadly, in the relationship between insurers and their agents. The contractual relationship between the insurance producer and insurance company is the defining element in the determination of the status of a producer as "agent" as opposed to "broker." FEMA's proposed rule, by dictating that an agent is, essentially, a broker for purposes of NFIP, undermines the agent's ability to establish such a contractual relationship and, therefore, alters the rights and responsibilities provided for in such contracts.

It is currently standard practice to include cross-indemnification provisions in agency contracts. Thus, agents are required to indemnify insurers in instances where the carrier is held liable for an agent mistake. Similarly, companies are required to indemnify agents for company mistakes. By restructuring the agent-company relationship, FEMA's proposed rule would effectively do away with agency agreements, including these cross-indemnification provisions. In essence, this change would shield private insurers from liability for their own errors, leaving agents fully responsible for errors which may not be their fault. This will increase the liability exposure of agents and exacerbate the already-difficult task of securing errors and omissions coverage for their businesses. Loss of such coverage could force agents to drop out of NFIP or leave the insurance business entirely.

Finally, the FEMA proposed rule's effective elimination of agents from NFIP would violate the National Flood Insurance Act. It has been clear since Congress passed the Act that the law and rules promulgated thereunder define the relationships between the Federal Government and the private parties with which the Government deals directly under NFIP. To date, however, the Act and rules have not attempted to define the relationships of private parties with each other. The proposed rule is the first time FEMA has attempted to interfere with private parties in this manner. Although we recognize that FEMA can and does define its relationship with agents that sell and service policies for FEMA directly, there is no statu-

tory or regulatory authority for interfering in the relationship between agents and the WYO insurers for whom they are selling flood coverage.

For these reasons, we urge you to take action to prevent FEMA from adopting the proposed rule, which FEMA intends to make effective May 1 of this year.

Thank you for giving me the opportunity to express the views of the Nation's insurance agents on this important program. The IIABA and PIA look forward to working with the Committee on this issue and I will be happy to take any questions you may have for me.

PREPARED STATEMENT OF GREG KOSSE

ASSOCIATE GENERAL COUNSEL
KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY
ON BEHALF OF
THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

MARCH 25, 2004

Chairman Bunning, Ranking Member Schumer, and other Subcommittee Members, Kentucky Farm Bureau Mutual Insurance Company (KFB Insurance) on behalf of the Property Casualty Insurers Association of America (PCI) appreciates the opportunity to testify before the Senate Banking Subcommittee on Economic Policy regarding the National Flood Insurance Program. KFB Insurance and PCI strongly support a multiyear reauthorization of the Federal flood insurance program.

PCI, an association formed in January with the merger of the National Association of Independent Insurers and the Alliance of American Insurers, represents over 1,000 member companies that write over $154 billion in direct annual premium, almost 40 percent of the U.S. property and casualty market. KFB Insurance, a mutual insurance company owned by its policyholders, is representative of much of PCI's membership. We welcome the opportunity to comment and hope that the comments that follow help to explain the importance of the National Flood Insurance Program to your constituents across America.

Kentucky Farm Bureau Mutual Insurance Company

Kentucky Farm Bureau Mutual Insurance Company is a member service of the Kentucky Farm Bureau Federation, an organization of families across Kentucky, both rural and urban. The Kentucky Farm Bureau Federation has over 440,000 members in Kentucky. In the 1940's, the Kentucky Farm Bureau recognized the need for affordable insurance with prompt and fair claim service for its members; hence the birth of the Kentucky Farm Bureau Mutual Insurance Company. From our humble beginnings of providing insurance needs from a card table in a feed store, KFB Insurance has grown to be the largest property and casualty insurance company based in Kentucky.

- We are the largest in total premiums written in Kentucky.
- We are the largest in property insurance premiums written in Kentucky. We insure more residential property—homes, farms, mobile homes, and apartments—in Kentucky than any other insurer. We have nearly 304,000 personal property policies.
- We insure more cars in Kentucky than any other insurer. We write nearly 700,000 automobile insurance policies.
- We are the largest volume insurer of farm property in Kentucky.
- We are the second largest volume homeowner insurer in Kentucky.
- We are the fifth largest commercial writer of business in Kentucky, specializing in small businesses and family businesses.
- In 2002, we serviced nearly 158,000 claims.

KFB Insurance only writes business in the Commonwealth of Kentucky. We are representative of many of the Farm Bureaus across America that offer insurance services to consumers in only one State or a few States. Our strength lies in our relationships with and presence in the local communities across Kentucky. We firmly believe that consumers want to deal with professional insurance agents and claimspersons, who are members of their communities, whether that community is a rural county or an urban neighborhood. Customers desire to deal with people with whom they have relationships.

Kentucky also has a very diverse and competitive insurance market. We have over 200 companies authorized to write property and casualty business in Kentucky, ranging from the strong national companies, such as Allstate, to the smaller local

niche companies like Kentucky Growers. We believe strong marketplace competition serves consumers' best interests. KFB is a single State writer and serves a critical need in the insurance market. Because of our knowledge of the Kentucky market and our presence throughout Kentucky, we assist in keeping the Kentucky insurance marketplace available and affordable. Reauthorizing the NFIP plays an important role in maintaining this effective marketplace.

The Importance of the National Flood Insurance Program

The National Flood Insurance Program (NFIP or program) was created in 1968 because of severe and catastrophic losses resulting from floods. Flood insurance is offered through the Federal Emergency Management Agency (FEMA), now part of the U.S. Homeland Security Department. The program is significant, both for consumers and insurers, such as KFB Insurance. The NFIP allows for available and affordable coverage for consumers for catastrophic and widespread flood losses. The program partners with the insurance industry to distribute and service the program. Finally, after losses, by partnering with communities and lending institutions, the program enforces and encourages mitigation of future flood losses.

Available and Affordable Flood Coverage

The program was originally established because the Federal Government and private insurers recognized the widespread catastrophic loss potential of floods. The Federal Government recognized that private insurance companies lacked the resources to identify all the flood-hazard areas (the mapping) and were unable to measure the potential loss. Furthermore, these catastrophic losses could not be sustained by private industry alone without becoming prohibitively expensive or simply unavailable for consumers.

The Federal Government undertook the job of classifying flood-hazard areas. Mapping the entire United States for flood zones took roughly 6 years. Most flood insurance rating maps (pre-FIRM) dates are 1974. Many maps have been updated or revised in the 30+ years the program has been in existence, and the NFIP is currently undertaking a 7-year project to remap, using more sophisticated techniques (such as geo-coding), the entire United States. While mapping may have helped make floods more predictable and measurable, fully 25 percent of all the flood losses (according to the NFIP) occur in areas outside of the existing 100-year mapped floodplains. This fact reinforces the widespread nature of this type of catastrophic loss and reinforces the need to continue the remapping project underway.

The NFIP serves a critical function for an insurance carrier such as KFB Insurance. If no Federal program existed and flood insurance became a private sector responsibility, flood insurance would either be unavailable or unaffordable for consumers. Insurers base their rates on predictability of risk. Insurers distribute the propensity for loss among many policyholders making the coverage affordable for all. For example, when a KFB insured has a loss due to a hailstorm or tornado, all KFB insureds pay for the loss. However, while such events as hailstorms or tornados are unpredictable, they typically will not result in widespread catastrophic loss. Floods, on the other hand, are typically more catastrophic and more regionally predictable. For example, history teaches us that floods will likely occur in Kentucky, from the mountains of eastern Kentucky to the great Ohio and Mississippi Rivers in the north and west. Running water abounds in Kentucky, and it is likely that flooding will occur and be catastrophic in nature affecting many consumers.

Private insurers, like KFB Insurance, are an integral part of the competitive markets in each State; however, a one-State operation like ourselves could not adequately spread the risk of loss from these potential floods to policyholders nor absorb the losses when they occur. The NFIP, on the other hand, spreads this risk across the entire country based on floodplain exposure levels, making the product more affordable for all. If the flood program were shifted to the private sector, to insurers such as KFB Insurance, one of two things would happen:

- Insurers would need to charge extremely high premiums to cover the flood exposure making flood coverage unaffordable, thereby making consumers uninsured for flood losses.
- The risk would be prohibitive, so insurers would not write and flood coverage, thereby making consumers uninsured for flood losses.

A Practical and Effective Distribution and Service Network

Another advantage of the NFIP as set-up today is that the Federal Government partners with carriers like KFB Insurance to sell flood insurance when a customer is purchasing all of their insurance needs. In other words, the Federal Government assumes the premiums and losses of the program, yet the distribution and servicing network of the program is through the local companies and their agents and adjust-

ers. This fits well within the KFB Insurance framework, policyholders purchasing needed affordable coverage through persons in their community with whom they trust and have a relationship. Simply, more consumers purchase the needed coverage, thereby allowing society to rebuild after catastrophic losses.

After Loss Partnering to Rebuild and Mitigate Future Loss

The program also encourages mitigation efforts to reduce future losses, while partnering with the financial lending sector to rebuild after losses. We, as a society, value the amenities, business opportunities, and lifestyle of property close to water. The NFIP helps building efforts near water, but requires that rebuilding efforts be done with an eye toward mitigating flood losses in the future. The NFIP helps to strike the balance between our desire as a society to be close to water and the practical necessity of ensuring that flood losses are minimized.

Local communities must adopt sound land use policies or floodplain management ordinances. If these local municipalities do not adopt such plans and submit these plans to the Government for approval, the municipality cannot participate in the NFIP. If they cannot participate in the NFIP, they simply lack the resources to rebuild.

The existence of the NFIP has allowed communities to develop the land in some flood-prone areas (with the buildings properly elevated). This would not have been possible in the private insurance marketplace as the risk of loss would have been too great and without some incentive, buildings would have been put, even more than they already are, in harm's way.

The NFIP also encourages more property owners in floodplains to purchase and pay for flood insurance. Since 1973, any federally backed mortgage (for example through FHA, VA, SBA, Freddie Mac, or Fannie Mae) on a property in a floodplain (an area located in the 100-year floodplain), must purchase and maintain flood insurance. Mortgage lenders are required to make sure the insurance is purchased and maintained on the property. This furthers society's desire to have buildings near water, but requires those individuals to pay premiums to insure that property.

The U.S. economy is just now getting back into a growth mode; however, the housing market has remained very strong, even through the recent downturn. Long-term reauthorization of this well-established program is vital to the U.S. economy, new and existing home purchasers, mortgage lenders, and the insurance industry.

Program Improvement—Repetitive Loss

There are several ways the program could be improved. We would support, because of the high-cost of continually repairing or replacing repetitive loss structures, an expansion of the FEMA program that purchases these properties (at a fair-market cost) to reduce the costs to the program. We would also support charging these repetitive loss properties the true "risk-based" premium, based on sound actuarial principles, if the property owner or the community is not willing to relocate or sell the property. Repetitive losses account for almost 30 percent of all losses paid by the NFIP on an annual basis while the most costly of these repetitive losses (those where the loss has exceeded the building value in a 10-year period—10,000 properties), amount to over half of 1 percent of the 4.4 million flood insurance policies.

In addition, we support including language clarifying Federal court jurisdiction over lawsuits arising out of NFIP in comprehensive legislation affecting the program.

We would be happy to discuss repetitive loss or jurisdictional issues with any of the Committee Members or their staff; however, support of the reauthorization is the primary purpose of my appearance here today.

Summary

There is a delicate balance between the Federal Government and the private insurance industry on several insurance-related programs that must be preserved. Programs such as Federal Crop and Crop-Hail Insurance, Terrorism Reinsurance, the Price-Anderson Act for Nuclear Liability, Federal Deposit Insurance, and the NFIP, exist because of the truly immeasurable (from both a frequency and severity viewpoint) risks associated with these types of losses. We believe only the Federal Government has the resources to address these risks.

As evidenced by letters sent last year on behalf of the industry, this program is vital to a diverse and competitive property and casualty insurance market. We understand that the current program will end June 30, 2004, without reauthorization. This is the beginning of the hurricane season (June 1) and the height of the real estate season, thus, we would strongly encourage Congress to act and extend this program for a minimum of 5 years (if not permanently). We would also recommend that Congress provide the authority to modify existing regulatory provisions and

coverages to address legal and consumer issues. Finally, we would encourage Congress to fund a pilot program for repetitive losses.

Again, on behalf of the Kentucky Farm Bureau Mutual Insurance Company and PCI, we appreciate the opportunity to comment on the importance of the National Flood Insurance Program.

PREPARED STATEMENT OF STEVEN M. FELDMANN

DIRECTOR OF COMMUNITY AFFAIRS
THE FISCHER GROUP, CRESENTVIEW HILLS, KENTUCKY
ON BEHALF OF
THE NATIONAL ASSOCIATION OF HOME BUILDERS

MARCH 25, 2004

Chairman Bunning, Ranking Member Schumer, and Members of the Economic Policy Subcommittee, I am pleased to appear before you today on behalf of the National Association of Home Builders (NAHB) to share our views concerning repetitive losses in the National Flood Insurance Program and Congressional efforts to reauthorize the program. We appreciate the invitation to appear before the Subcommittee on this important issue.

My name is Steve Feldmann and I am the Director of Community Affairs for The Fischer Group. The Fischer Group is one of the largest home builders in the Nation and focused exclusively in the Northern Kentucky and Greater Cincinnati Region. The Fischer Group has been providing high-quality, affordable housing, and the joys of homeownership, for over 20 years.

Mr. Chairman, NAHB represents more than 215,000 member firms involved in home building, remodeling, multifamily construction, property management, housing finance, building product manufacturing, and other aspects of residential and light commercial construction. The Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) plays a critical role in directing the use of flood-prone areas and managing the risk of flooding for residential properties. The availability and the affordability of flood insurance gives homebuyers and homeowners the opportunity to live in a home of their choice in a location of their choice, even when the home lies within a floodplain. The home building industry depends upon the NFIP to be annually predictable, universally available, and fiscally viable.

A strong, viable national flood insurance program enables the members of the housing industry to continue to provide safe, decent, affordable housing to consumers, in a design of their choice and in a location of their choice. The choices American consumers make when they are buying homes are some of the most critical aspects of the homebuying process. Through decisions about where to live, where to shop, and how to get around town, consumers apply the power of the marketplace to shape the Nation's communities. The NFIP, by enabling the choice of purchasing a home in a floodplain, allows consumer preferences to shape towns and cities into communities that maximize quality of life and economic development.

Without the NFIP, many communities would be unable to provide affordable housing to many of their citizens. Despite a decade of unprecedented prosperity, many communities are seeing a growing gap between the supply and demand for housing. Families across the economic spectrum are finding it increasingly difficult to find a home that meets their needs. One of the leading causes of the housing affordability problem is the shortage of buildable land. By guaranteeing affordable flood insurance, the NFIP allows communities to use land that would otherwise be too costly due to high flood insurance premiums. Through the NFIP, flood insurance policies remain available and affordable and residential structures can be constructed in floodplains as long as they are built to withstand flooding. Therefore, the NFIP provides the means by which communities can address housing needs by making homeownership in areas prone to flooding safe, affordable, and practical.

The NFIP provides flood insurance to approximately 4.4 million policyholders, enabling them to protect their properties and investments against flood losses while living in a home of their choice, in a location of their choice. Further, the NFIP creates a strong partnership with State and local governments by requiring them to enact and enforce floodplain management measures, including building requirements that are designed to ensure occupant safety and reduce future flood damage. This partnership, which depends upon the availability of comprehensive, up-to-date flood maps, ensures that State and local governments can create policies that reflect

the needs of local communities, enabling them to direct development where it best suits the needs of their constituents and consumers.

Unfortunately, the solvency and stability of the NFIP is threatened by an extremely small percentage of properties that have suffered multiple, costly flood damage. Approximately 48,000 currently insured properties, deemed "severe repetitive loss properties", have incurred two or more floods within a 10-year period. An even smaller subset of the severe repetitive loss properties, which number approximately 10,000, have had four or more claims that cumulatively exceed the value of the property. These properties, which make up only 1 percent of the current policies, cost the NFIP approximately $200 million annually and account for approximately 25 percent to 30 percent of the claims paid by the program. The vast majority of severe repetitive loss properties were built before implementation of floodplain management standards and are eligible for subsidized flood insurance that is below the actuarial risk rate.

These severe repetitive loss properties significantly impact the national flood insurance program, drive up the cost of premiums for all policyholders, and allow the system to teeter on an unstable actuarial foundation. Because of the frequency and expense of the claims on these severe repetitive loss properties, FEMA oftentimes does not have funds to keep the NFIP solvent. Insolvency threatens the future of the NFIP and the ability of the program to provide affordable flood insurance and service its 4.4 million policyholders. The Nation cannot afford to have this program collapse. By focusing on improving and mitigating potential damage to these severe repetitive loss properties, FEMA can ensure a viable, long-term program.

As this Subcommittee, and the Congress as a whole considers legislation to reauthorize the NFIP, NAHB urges you to fully weigh the following principles:

Five-Year Reauthorization of the NFIP

NAHB recognizes the importance of the NFIP in enabling consumer choice by protecting life and property in flood-prone areas. Although Congress recently extended FEMA's statutory authority to issue flood insurance policies until March 31, 2004, a lapse in authority after that date, as experienced in early 2003, will have severe repercussions for a vast number of landowners. Allowing FEMA's authority to limp from one short-term authorization to the next does not instill confidence or consistency for policyholders, future homebuyers, or industries that depend on a viable national flood insurance program. Congress should reauthorize the NFIP for a full 5 years. The uninterrupted availability of affordable flood insurance is vital to allowing the home building industry to continue to deliver safe, decent, affordable housing to consumers in a location of their choice.

All Properties must Remain Eligible for Flood Insurance

Congress must ensure that all properties located within a FEMA-designated floodplain, including severe repetitive loss properties, remain eligible for flood insurance. NAHB recognizes the need to address the problem that severe repetitive loss properties pose to the long-term health of the NFIP. However, these properties must be allowed to remain eligible for flood insurance. H.R. 253, the Flood Insurance Reform Act of 2003, as passed by the House of Representatives during the last session of Congress, in attempting to address severe repetitive loss properties, ensures that, at a minimum, severe repetitive loss properties are allowed to remain eligible for flood insurance. NAHB soundly agrees with this policy.

Narrowly Define Severe Repetitive Loss Properties

Severe repetitive loss properties, which represent a disproportionate number of claims to the NFIP, must be addressed in order to ensure the long-term viability of the NFIP. NAHB believes that the NFIP reauthorization legislation, however, must narrowly define severe repetitive loss properties to only include those that pose the most severe flooding risks. By narrowing the scope of targeted properties, FEMA is directed to address the most problematic properties first, which will quickly lead to significant savings to the NFIP.

Unfortunately, the definition of severe repetitive loss properties in H.R. 253 contains a threshold that is too low and does not truly reflect the cost of flood damage in many areas. In such instances, minor flooding can produce claims that exceed the threshold simply because the carpet or electrical systems were damaged by an inch of water. These are not the properties that we believe should be targeted.

At a minimum, severe repetitive loss properties should be defined according to existing law, which states that,

> The term "repetitive loss structure" means a structure covered by a contract for flood insurance . . . that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a

second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event. (42 U.S.C. 4121(a)(7))

If an authorization bill is to target the most severe properties, that universe, by definition, should be smaller than the pool established by current law. Therefore, the current definition, as stated above, should serve as the baseline for the definition of "severe repetitive loss properties."

Encourage the Redevelopment of Affected Properties

The Congress should encourage FEMA, with the participation of State and local governments, to facilitate and provide funding for the redevelopment of affected properties in accordance with FEMA standards. Oftentimes, FEMA proposes to a property owner an offer to buy-out a severe repetitive loss property. The offer serves two purposes: (1) the buy-out allows the landowner an opportunity to relocate to an area with reduced or zero flooding risks and (2) it allows FEMA the ability to remove a repetitive claim, high cost property from the flood insurance roles. Given that the vast majority of these properties were built before implementation of floodplain management standards, many of these properties are not sufficiently floodproof. It makes good policy sense for FEMA to mitigate (that is elevate, relocate, demolish, flood proof, and/or construct small flood control projects) or purchase these properties to reduce their flood risk or remove them from the insurance roles.

However, after a buy-out, these properties are ineligible for redevelopment because they fall under clause i and ii of Section 404(b)(2)(B) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (the Stafford Act) (42 U.S.C. 5170c(b)(2)(B)). Under the Act, any property acquired by FEMA with disaster assistance funds only can be used as open space, a recreational area, or for wetlands management. This means that for every home purchased via the NFIP, a formerly buildable lot has been taken out of production.

In order to facilitate the responsible redevelopment of these properties, NAHB encourages FEMA to work with the affected State and local governments prior to offering buy-outs to plan for the redevelopment of these properties so that they meet local floodplain codes and regulations, as do newly constructed homes. If these properties are allowed to be redeveloped to current floodplain standards, local governments can satisfy local housing needs while ensuring that the properties are less prone to future floods and costly insurance claims. Further, local governments, not FEMA, should be allowed to make the decision as to whether or not the properties should be redeveloped. NAHB believes that local communities are the best arbiters for land use decisions, not the Federal Government.

Ensure Properties are Purchased at Fair Market Value

In cases where FEMA makes an offer to buy a property, the property owner must be paid fair market value for both the land and the structure. Any reauthorization proposal must honor the 5th Amendment to the U.S. Constitution, which states that no "private property be taken for public use without just compensation." This principle is a long-held core belief of the members of NAHB. To that end, we are pleased that H.R. 253 adheres to this principle.

Higher Premiums for Severe Repetitive Loss Properties

In its efforts to address severe repetitive loss properties, FEMA, through the NFIP, should be granted the authority to charge a higher premium for those severe repetitive loss properties for which reasonable mitigation offers were refused. As stated earlier, the drain on the NFIP from severe repetitive loss properties demands that the owners of these properties, in coordination with FEMA and local governments, take action to decrease the instances of flood damage. To that end, NAHB supports the provision in H.R. 253 that authorizes FEMA to increase the flood insurance rates for severe repetitive loss property owners that refuse mitigation.

As set forth in H.R. 253, FEMA would have the authority to offer mitigation assistance (that is elevation, relocation, demolition, flood proofing of structures, and minor physical localized flood control projects or purchase) to the owners of severe repetitive loss properties. Under H.R. 253, if an owner of such a property refuses an offer of mitigation, and is ineligible for a waiver, FEMA may begin to charge higher flood insurance rates, up to the sound actuarial rates for that property. It is NAHB's hope that this provision will reduce Federal expenditures for flood control and disaster assistance by encouraging severe repetitive loss property owners to agree to the mitigation offer and rehabilitate their properties so that flood damage is reduced.

Notification of All Current Policyholders

Given the sweeping changes to the NFIP that are being considered by this Subcommittee, NAHB believes that any reauthorization legislation include a provision to require FEMA to notify all current policyholders of the changes to the program. It would be unfair to the 4.4 million policyholders, especially the approximately 46,000 severe repetitive loss property owners, to be caught unaware by changes to the NFIP without the opportunity to read and understand the policy changes. Unfortunately, H.R. 253 is silent on this issue.

Mr. Chairman, thank you for this opportunity to share the views of the National Association of Home Builders on this important issue. We look forward to continuing to work with you and your colleagues as you contemplate changes to the National Flood Insurance Program. We urge you to fully consider NAHB's position on the issue and how this program enables the home building industry to deliver safe, decent, affordable housing to consumers. I look forward to any questions you or other Members of the Subcommittee may have for me.

City of North Platte

211 West Third Street
North Platte, Nebraska 69101
(308) 535-6724
Fax: (308) 535-6720

March 3, 2004

U.S. Senator Chuck Hagel
Nebraska, United States Senate
346 Russell Senate Office Building
Washington, DC 20510-2705

RE: Support for Federal Legislation to lessen financial impact on insurance ratepayers in low flood prone areas

Dear Senator Hagel:

Thank you, Senator Hagel, for your continued assistance in lessening the financial impact from high flood insurance costs, particularly for our home owners in North Platte that have paid years of premiums with little or no claims since entering into the flood insurance program in 1979.

Our local newspaper, the *North Platte Telegraph*, reminds our citizens regularly that they are paying $1.2 million a year in premiums for $251 million in coverage, which has netted our rate payers $26,797 in settlements. Obviously one can suspect our rate payers are paying high premiums for those individuals who live in high flood prone areas that file repeated claims.

Mayor Whitaker and I met with your Nebraska State Director Bill Protexter February 12th to discuss this continued dilemma and were pleased to receive a call from Mary Crawford of your Scottsbluff office that you are introducing a bill March 11th to address this disparity. We thank you for an invitation to testify at the hearing; however, neither Mayor Whitaker nor I can make it so please feel free to read this letter into the record.

Interestingly, besides the high premiums, low claims, both are regularly identified as reasons to build new homes two to three miles outside the City, many on prime agricultural lands. These leap frog subdivisions are several miles from city services, several miles away from any flood plain area, and contain little public infrastructure. It is not smart growth, and the County Commissioners are already considering policy not to accept any new rural subdivision streets because of its inability to maintain the new county subdivision streets. The number of new housing starts in the city and county verify little, and the future cost of these one to five acre rural sprawl subdivisions will prove very costly to future city taxpayers.

Again, thank you for your continued pursuit to solve this increasing disparity in flood insurance rate/claim issue. If we can provide additional information, please feel free to contact Mayor James D. Whitaker or me at (308) 535-6724 ext. 215 or 225 respectively.

Sincerely,

Fredric H. Alley
Director of Development

mw

Mayor's Office

211 West Third Street
North Platte, Nebraska 69101
(308) 535-6724
Fax: (308) 535-6720

March 3, 2004

U.S. Senator Chuck Hagel
Nebraska, United States Senate
346 Russell Senate Office Building
Washington, DC 20510-2705

RE: Support for Legislation to lessen flood insurance cost in lower flood prone areas

Dear Senator Hagel:

First, thank you for your continued support and effort in pursuing legislation that will lessen the flood insurance rates paid by flood insurance rate payers in low flood prone areas, like North Platte, compared to much higher flood hazard areas, many will repeat floods.

Almost every week the local news media announces the fact that the North Platte rate payers pay about $1.2 million a year in premiums for $251 million in coverage, with only $26,797 in settlements in 24 years. The City has been in the flood insurance program since 1979, has paid extensive premiums, and obviously received few claims during that same period. Additionally, FEMA, the State of Nebraska Natural Resources Commission and the City have joined together to prepare a Flood Plain Mitigation Study to refine our Flood Plain Map/Data to further lessen the economic impact of flood insurance. This mitigation study also resulted in discussions/ agreements with the City, the local Home Builders Association and FEMA to lessen limited below grade construction requirements and lessen to some degree a different insurance rate between basement and limited crawl space construction.

The City strongly supports any federal legislation that will place more of a rate burden on high flood prone areas, particularly for repeat cases, and reduce the cost to rate payers in low flood prone areas with very low claim history such as North Platte. In addition, as addressed on a separate letter by our City Development Director, the City is experiencing a significant increase in the number of homes being built in the county two to three miles outside our service boundaries, and at least a mile outside the closest flood plain area, at considerable future expense to future taxpayers, an unfortunate example of rural sprawl on prime agricultural lands. The high cost of flood insurance is the most common reason given as a reason to justify the leapfrog development.

Unfortunately we cannot make the hearing on your Bill; however, please feel free to read this letter and the accompanying letter into the hearing record.

Again, thanks for your continued support and assistance.

Sincerely,

James D. Whitaker

James D. Whitaker
Mayor

mw

Jeffrey K. Aiken
Janet W. Aiken
[redacted]
Hatteras, NC 27943

November 26, 2003

Janet Bradbury
Eastern Representative
Office of Senator Elizabeth Dole

Dear Janet,

Good day! Beth Midgett of Midgett Realty has suggested that I write to your office and that you may be able to provide some assistance to the many property owners affected by Hurricane Isabel. The following will summarize the events and issues related to our flood damage from the storm.

Construction Background

Our rental/investment property "Lighthouse Landing" is located at 57090 Lighthouse Ct. in Hatteras, NC. We were completing our third year of seasonal rentals when Isabel visited Hatteras.

Flood insurance was required during and after the construction phase and was purchased. All premiums have been paid in timely fashion. After much consideration we chose to have BD&A Construction to design and build our home due to their much respected and qualified reputation.

This "one back" home sits approximately 100 yards from the ocean and there are two vacant lots on the oceanfront across the road. Typical to many rental homes in Dare County, all floors are built above base flood elevation and the structural support pilings are bedded at least 8' deep into the ground. These same pilings extend upward to support the first band upon which the 2nd floor is constructed. BD&A, quite impressively, also utilized a 10x30 steel I-beam supported by a series of pilings that further strengthen the structure. The center pilings are further stabilized by installing steel re-bar through them and a 3'x 3'x 12" thick concrete pier around this assembly. A 4" thick concrete slab with 8" footing is then poured interconnecting all pilings and forming the 1st floor level. First floor exterior walls are framed out at 10" thick enclosing the pilings inside the wall. This construction method is very strong and survived Isabel's wrath with no movement of the structure. The first floor plan includes a large game room with a small kitchen, a large bunkroom, a full bathroom, laundry room, an elevator landing and several storage closets accessible from the outside carport. This home has never had an "enclosure" as interpreted by NFIP and our blueprints will establish that beyond any doubt.

We can, upon request, provide those blueprints and photographs demonstrating the strength of this construction method. Perhaps the most revealing photo would be of the houses across the street. Both homes meet the construction requirements of NFIP for full coverage yet one is structurally compromised and the other has been completely washed off of its pilings and is resting on the sand awaiting demolition.

Hurricane Damage

As you know, Hatteras Village suffered severe damage and even became separated from the rest of the island by three new inlets or breaches just north of our property. The dune line eroded from the breach south as the storm raged rendering the ocean side and village properties defenseless. My wife, son, three adults and myself elected to ride out the storm at Lighthouse Landing and thus had first hand experience with the severity of the storm. We also have video shot before, during and after the event.

As the ocean enveloped the neighborhood it was debris from the oceanfront homes across the street that caused most of the damage to our home. Our front staircase and bunkroom window were pounded by debris pushed along in 4 to 7 foot of raging seawater and eventually some debris ended up inside our first floor recreation room. The side entry door was also breached and destroyed by floating debris. At this juncture I waded down and opened the rear sliding door allowing the seawater to flow through. The water level rose to 4 feet before subsiding but it splashed and blew high enough to damage the walls 9' up. The ceiling in the front room needed replacement also. On the exterior, all lattice, pool walls, stands and mechanicals (HVAC, Pool equipment, Hot tub, etc.) were simply gone. Siding was removed up to 9' on the ocean side of the house.

Structurally, the house withstood the test showing no evidence of any movement at all. No cracking of drywall joints occurred on any level. Had the pilings been installed like the house (fully covered) across the street I am sure that we would have had severe structural damage.

Flood Insurance Claim Process

I reported our claim to Vogedes Insurance on 9/22/2003 and was acknowledged of the same by mail. On 10/03/2003 Jim Valentine (adjuster with "30 years experience") met with Matt Hall (BD&A builder) and myself and developed the first of three Building Estimates outlining the scope of damages at Lighthouse Landing. At that meeting and through our last conversation in November Mr. Valentine has maintained that our home is a non-elevated, three story home. Mr. Valentine further emphatically stated to Mr. Hall and myself that he would not close this claim until I was fully made whole and completely satisfied.

Mr. Valentine was directly involved to the degree that he directed the demolition process that was ongoing during his visit. He instructed us to include the ceiling replacement in the bunkroom as well as the removal of all wallboard, doors, cabinets, fixtures and trim. He also indicated that we would be compensated for sand removal and for pumping sand

to reinforce the slab. The details of his scope of damage report(s) are readily available. Before leaving the site Mr. Valentine stated that I needed to sign a document in order to receive and advance payment for repairs and contents. I complied and on 10/8/2003 the flood insurance provider, Service Insurance Company issued a check for $20,000.00 (Building Payment) and another for $5000.00 (Contents Payment). These checks were properly endorsed and deposited upon receipt.

Mr. Valentine revisited with Mr. Hall and I at a later date and made adjustments to the original estimates. A third upward adjustment was also made but I only have copies of the first two.

I am, at this writing, uncertain as to the exact date on which the following occurred. On or about the afternoon of 10/15/2003, I was working at the house when a vehicle driven by Tim Midgett, local builder, stopped in front. In the car were several builders and two fellows from NFIP. I spoke to them about an issue concerning coverage of the attached pool walls. I was told that the pool walls would not be covered and then Mr. Rodney Cross (NFIP) asked if he could look at and take pictures of our home. I granted him access and welcomed him to do so. Before leaving he attempted to explain to me why my house would not likely be fully covered.

I have actively pursued a final word on this claim since that day but have yet to receive any written correspondence from my agent, the carrier, or the NFIP. As of this writing we are still in the dark as to the disposition of this matter.

Accountability

As this debacle unfolds it appears to me that the primary question is that of accountability.

1. The county administrates the flood insurance program locally and establishes BFE for our area yet our building inspector and county attorney were just as frustrated as the property owners over this issue. Are they accountable?
2. FEMA and the NFIP obviously have yet to consider the construction methods practiced on the Outer Banks. Their website and handbook has no reference for this type of construction and they are seemingly refuting claims based on an interpretation that deserves further consideration. Are they accountable?
3. The local insurance agents are as equally uninformed as the customers they are paid to serve. Is their obligation to the owners and the lien holders being appropriately carried out? Are they accountable?
4. Has the insurance carrier failed in some way by not educating the agents that sell their product and the adjusters that represent them and their claimants? Are they accountable?
5. In my case in particular, how can an adjuster with 30 years of flood experience be so wrong while expressing such confidence as to create additional expenses for claimants? Is he accountable?

We have applied for SBA disaster loans as a means to afford the repairs costs estimated by BD&A at $107,649.00. I have pasted the following excerpt from the FEMA website:

Flood insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. Flood damage is reduced by nearly $1 billion a year through communities implementing sound floodplain management requirements and property owners purchasing of flood insurance. Additionally, buildings constructed in compliance with NFIP building standards suffer approximately 80 percent less damage annually than those not built in compliance. And, every $3 paid in flood insurance claims saves $1 in disaster assistance payments

I ask you, will the consumer, the paying customer, be held accountable for this miscarriage of insurance coverage? Will we pay our premiums to the government and then pay them interest on our own tax monies because they are not held accountable? Do we not deserve some consideration for grants?

We need the help of our elected officials. Hatteras and Dare county have taken a huge hit to their economy already. Please help us expedite the reconstruction of our lives and our tax base.

The following information is submitted and any additional requests will be promptly addressed.

Insurance Agent – Vogedes Insurance, Kitty Hawk, NC [redacted]

Flood Insurance Carrier – Service Insurance Company, National Flood Services, Kalispell MT

Flood Policy #[redacted]

Flood Claim #[redacted]

Janet and I greatly appreciate your time and effort in looking into these issues. Please inform us of any progress made toward resolution of the same.

Sincerely,

Jeffrey K. Aiken

March 12, 2004

For: Senator Elizabeth Dole
United States Senate
Committee on Banking, Housing and Urban Affairs
534 Dirksen Building
Washington, DC 20510

RE: Subcommittee Hearing on the National Flood Insurance Program

Dear Senator Dole:

It would be greatly appreciated if the following information regarding difficulties that homeowners of properties on Hatteras Island in North Carolina have been experiencing while attempting to be paid for flood damages as a result of hurricane "Isabel" could be submitted at the upcoming committee hearing on the NFIP.

Janet Bradbury, an aide to Senator Dole has been working to try to resolve some of these issues for us for several months. Last week I contacted Ms. Bradbury to be sure that Senator Dole was aware that, 5 1/2 months after the devastating flooding of "Isabel", I still have at least 28 confirmed homeowners that are having problems receiving the coverage they paid for. With many others...the checks that finally are coming (4 1/2- 5 months after the event) are not, in many cases, of an amount sufficient to cover actual damages.....in most cases, adjusters never offered advance payment to help assist while the claim was processed. Therefore, when the homeowner finally gets the payment, if the home is mortgaged, the payment has to go the mortgage bank and be doled out in draws. The insured property owner can only receive payment after the bank sends an inspector to make sure work is being done.

PLEASE, let's do all we can to make sure that we not only get these folks taken care of, but, more importantly, try to solve the problems with the standard policy clarity and claims processes so that NO ONE in a disaster *having the realistic expectation from his or her government that Flood losses will be covered* EVER has to go through this again!

Many of the problems that insured homeowners on Hatteras Island have faced are outlined in the document I have attached, but there is one overall problem that gets to the heart of the issue. The National Flood Insurance Program through its chosen carriers is treating consumers in an appalling and unacceptable manner and there seems to be no free and clear authority to which the insured may appeal.

The Standard Flood Insurance Policy mandates that the Federal Courts will address any disputes arising over the handling of any claim under the policy. Many of the unfair practices of the NFIP that we have experienced would have been halted by our state insurance commission if they were any other insurance entity doing business in our state.

Unfortunately, the fear and enormity of having to take on the "Federal Government" has the desired effect of making the wronged insured and any compassionate state regulatory authority reluctant to pursue normal avenues allowed when a customer has been mistreated. The consumer must either hire a public adjuster to obtain the coverage they had already paid for or hire an attorney that works for a percentage of any payment awarded. I'm frightened to imagine how many of the insured gave in and accepted payments for less than what they will need to repair their damages. Many victims, when faced with a choice of a long awaited but low claim offer will take it just to get closure and move on. An elderly person on a fixed income or a working family man that has been un-employed for months due to the storm, would choose to take anything offered to help relieve their financial burdens. Where is the justice in that?

The real disaster that occurred was not the hurricane, but the way the paying customers of a self-sufficient insurance program have been treated. The administrators of this program have behaved in a callous and arrogant way for the most part. Among the responses by NFIP officials to concerns have been the condescending "they should have read their policy" and my favorite, "there are a lot of people who are never satisfied with what you want to give them". "Give them?" these customers paid the premiums asked, for years in many cases, and unfortunately through no fault of their own suffered a flood loss. Please keep in mind, *these are people that responsibly purchased a policy that was to cover damages due to flooding so as not to burden other taxpayers by asking for free grants or other assistance so readily available after a disaster.*

Also offensive, is the statement to the victims in Maryland that "you just haven't experienced a flood in a long time". Well, unfortunately, on Hatteras Island, we have suffered two "hundred year" storms in the past decade. We can definitely attest to the fact that we were treated in a much more compassionate and fair manner after hurricane "Emily" than in the aftermath of this storm. We must get to the bottom of what has made the claims process in this disaster so markedly different. What policies and procedures changed that made the insured's experience so unacceptable?

The arrogance displayed, in my experience, is a clear indicator of the absolute surety that the administrators have in the fact that they cannot be touched and they are unaccountable to anyone else but themselves. This attitude is even more offensive when you realize that the only people that would be asking for their services and assistance are people who have just experienced a disaster and are living through the trauma of its aftermath. The NFIP uses the integrity of the United States Government to "sell" their program. As citizens, we trust (perhaps blindly) that a government-endorsed policy is looking out for our best interests.

The NFIP is currently attempting to shift focus to the carriers that write the policy, the agents that sell the policy, or the adjusters that write the claims for damages so that no blame for failure falls at their feet. However, it has become evident that the NFIP controls what carrier gets to sell the policy and the NFIP also audits to ensure that their own guidelines are used to adjust the claims the carrier processes. The widespread reports of the same complaints, crossing the borders of states, multiple insurance companies, and various adjusters, are clearly indicative of a systemic problem. NFIP needs to face the problems we have experienced, except accountability, and *show visible and meaningful progress towards producing the changes needed.*

We survived the devastation of the storm. We have learned to cope with the loss of homes, community buildings, belongings, and even the very landscape we were accustomed to. To then be treated in the manner that insured homeowners have been by what is perceived to be their own trusted government, has been more hurtful then you can imagine. Some of us still believe that our government always looks out for our best interests or, at a minimum, will live up to the promises of the Flood Insurnce Program.

There are those that feel we should not live on the coast and that we should have expected a catastrophic flooding event. We mindfully build our homes as directed by our floodplain management and carefully secure them for storms in a way that shows our respect for the power of the sea. No one could have prepared or expected what happened to our village on September 18, 2004. It was unbelievable. The fact that we lost not one life shows that we were both blessed and also acted prudently on our own behalf during the emergency.

If the rightful payment or repair of our damages is too much for the NFIP to absorb then the managers of the plan did not charge the needed premiums to build a sufficient reserve for losses. We should not be punished for their mistakes. To use "loopholes" and "gray areas" in the policy or to "stonewall" the insured in order to lessen the amount paid for damages incurred during a real and substantial event, are unacceptable practices for any insurance company or underwriter.

Thank you for your consideration in this matter. I trust in our elected officials and I trust that fairness and honesty will prevail.

Beth Midgett
Property Manager Midgett Realty
Citizen of Hatteras Village, NC [redacted]

F. Douglas Salvia
[redacted]
Richmond, Virginia, 23237

March 19, 2004

The Honorable Elizabeth Dole
United States Senate
534 Dirksen Building
Washington. DC 20510

Re: Hurricane Damage in the Outer Banks

Dear Senator Dole:

In January of 2004 my wife and I purchased an ocean front house located in Hatteras, North Carolina. The house that we purchased was built on slab, allowing for ease of access by handicapped guests. At the time of initial inspection we questioned our 'Buyer's Agent' about the area building codes and insurance coverage for a house with a slab foundation. I was assured by the agent, Mercedes Tabano, that the house was constructed above the flood plain level, was constructed in accordance with state and county building codes, the that the house was fully insurable under the National Flood Insurance Program.

With the assurance of our 'Buyer's Agent' that the house construction met all federal, state and county requirements; we placed a down payment on the house with closing subject to issuance of a NFIP policy and loan approval by our bank. We had pre-purchase inspections performed on the building and sought out insurance adequate to meet our personal loss requirements and those of the financing institution. We purchased policies from State Farm and North Carolina Insurance Underwriters Association (NCIUA), from the Don Myers Insurance Agency. During the entire pre-purchase process, not one single firm or individual alerted us in any way to the possibility that a loss suffered during a flood incident would not be covered by the required flood insurance policy that we purchased.

In the spring of 2003 we retained a local construction firm to purchase plywood and to store the plywood in their warehouse in the eventuality of a hurricane. Approximately 4 days prior to Isabel's arrival, our Contractor boarded over the windows on the front 3 floors of the house. Two days prior to the arrival of the hurricane my wife and I traveled to Hatteras to further secure the property.

On September 18, 2003, hurricane Isabel literally arrived at our doorstep. Following the storm the local officials would not let Non-Resident Property Owners onto the island. The Property Rental Agencies and Non-Resident Property Owners implored the officials to permit us onto the island in order to allow us to mitigate the damages to our property. After approximately 10 days, the officials acquiesced and allowed Non-Resident Property Owners onto the island during the daylight hours. For those Owners, like myself, who live within an 8 to 10 hour driving radius; we were able to commute over the next couple of weeks to secure the services of disaster mitigation firms to remove saturated furniture, fixtures and sheetrock from our residences.

The dunes breached directly in front of our house, tearing out the rear fence and covering the entire property with approximately 4 feet sand. The 1st floor of the residence was flooded to a water height of approximately 2 feet. Other than saturation of the sheetrock, furniture, cabinets and wall paneling; we took no structural damage or glass breakage to the building. The installation of the plywood on the 1st floor level prevented the 1st floor windows from breaking and held out the sand from the interior of the house.

Within 4 weeks of the hurricane I met with Mrs. Judith Palmer of State Farm Insurance. Mrs. Palmer politely disclosed to me that of the approximate $110,000.00 in damage to the 1st floor level of our house, only $10,000.00 was covered by our policy. Mrs. Palmer also explained to me that only the 2nd and 3rd floors would be covered for the cost of plywood protection. The 1st floor would not be covered under our flood insurance policy for the plywood protection which protected the house against structural damage and certainly protected the house against significant further damage.

As of the January of 2004 I have gone out and spent another $1,600.00 +/- in hurricane coverage to meet the requirements of the governing authorities and the bank. I feel that I have been defrauded of the funds, as I have essentially purchased a worthless policy. As I'm sure you are aware, insurance coverage is provided to dwellings prior to bank loan closing, but the actual policy is not provided to the purchaser for several weeks to months after the purchase of the property. Therefore the purchaser of the property does not know the actual terms and conditions of a policy that they have purchased until after they own the property

My questions to your committee are as follows:

1. How is it that a house that meets all Federal, State and County building codes, one that is elevated above the flood plain, and is issued a flood insurance policy is then excluded from coverage?
2. How is it that pre-storm mitigation efforts, undertaken to protect the dwelling against damage is also excluded from coverage?
3. How does an Owner of a property that is now proven to be excluded from 1st floor flood coverage then able to sell the property to another prospective purchaser, unless they are willing to defraud the purchaser by failing to disclose a material defect (insufficient insurance coverage)?

4. Shouldn't the purchaser of real estate be able to reasonably expect their government to provide them with disclosure of the risks of non-coverage prior to the purchase of the property at risk?
5. Shouldn't the builder, property seller, insurance agent, real estate agent, and bank be responsible to notify a prospective purchaser of the fact that the insurance coverage purchased is insufficient to cover the entire risk of loss?

I am not a novice to the purchase or real estate. However, in this instance I was assured by all supposedly knowledgeable persons involved in the transaction, that my purchase of a flood insurance policy would protect my investment against the risk of hurricane damage.

What then makes the entire episode even more confusing is that my immediate next door neighbor, with an identical house, at the same elevation, built by the same builder, and suffering the same damage as mine, has received coverage for the interior damage suffered to his property by his insurance company. Something is very wrong with the NFIP. Either there is or is not coverage, there should not be selective settlements.

In conclusion, I ask that your committee take appropriate investigative action to resolve the confusion and discrepancies in the issuance, disclosures and interpretation of the insurance policies that are issued. Further, that those property owners who purchased property in good faith be equitably compensated for their losses.

Should a member of your committee desire to speak further with me, I can be reached as follows: Office (804) 232-8027, Home (804) 748-9070.

Respectfully,

F. Douglas Salvia

March 5, 2004

Ms. Jennifer Fogel-Bublick
United States Senate
Committee on Banking, Housing and Urban Affairs
534 Dirksen Building
Washington, DC 20510

RE: Subcommittee Hearing on the National Flood Insurance Program

Dear Ms. Fogel-Bublick:

It would be greatly appreciated if the following questions and information regarding the flood claim on my North Carolina property from Hurricane Isabel could be submitted at the upcoming committee hearing on the NFIP. Complete information regarding my claim is contained in the attached letter to Ms. Janet Bradbury from Senator Elizabeth Dole's office who has attempted to get some of my issues resolved. Many concerns have never been addressed to my satisfaction and I would appreciate them being addressed at the hearing.

1. I was initially told by the claims adjuster that I my loss was covered. He confirmed this with local NFIP officials who were in the area after the hurricane. When the claim was submitted, it was rejected based on the construction of my home. I was offered a settlement based on limited coverage of $16,377 for a loss of over $75,000. An investigation was requested by Senator Dole's office which resulted in an inspection by Mr. Rodney Cross who represented himself as the investigator from the NFIP. This investigation confirmed that the coverage and the settlement were correct. I have recently been made aware that Mr. Cross is an employee of Computer Sciences, the company that is contracted by the NFIP for claims processing. What was presented as the NFIP investigating the claims adjuster is really Computer Sciences investigating itself. Where is the oversight? Where is the independence?
2. The NFIP response to Senator Dole was a letter from Mr. Anthony Lowe, confirming the investigation of Mr. Cross and stating that the property would qualify for a LOMA and could be taken out of the floodplain, and then the claim could be resubmitted based on the LOMA approval. If this is the correct method of dealing with these properties, why isn't this publicly known by all of the trained officials in the area -- building inspectors, insurance agents, surveyors, and contractors?
3. As I understand the process, the LOMA, if approved, can be overridden by any revision to the floodplain maps. Since new maps are supposed to be released this year, this may essentially be a very temporary solution to what is for myself and others, a very long term problem. My concern is that many of us on the Outer Banks, are building houses using what is considered a superior construction method for the coastal environment, but the Flood Policies exclude coverage on this type of construction because we elect to carry the pilings to the second floor of the structure. If these houses are built to NC Building Code, pass all flood inspections, and are proven to suffer less damage in coastal storms, why are they not covered by the NFIP?
4. As my home as well as many others cater to a rental market that primarily consists of family vacations and reunions, many of us homeowners have recognized the need for handicap accessible homes, providing elevators and handicap accessible bathrooms in our properties. As my elevator was severely damaged in the storm, I was informed that NFIP specifically excludes coverage for elevators. Why would a federally mandated program such as the NFIP exclude elevators in direct contradiction to the Americans with Disabilities Act?
5. I had many issues with the failure of my Independent Insurance Agent to disclose any limitations of coverage of Flood Insurance. My agent actually sold me a $50,000 content policy after discussing the contents of my first floor that would need to be covered. I actually do not qualify for content coverage on that floor because the floor is not covered and my agent was fully aware of this. Mr. Lowe's letter to Senator Dole actually absolves the agent from this responsibility and states that "it is the responsibility of the named insured to read the SFIP to become familiar with the coverages and exclusions." Why isn't the agent responsible for this? This is like the IRS telling the taxpayer that it's their responsibility to read and understand the tax code.

I thank you in advance for your consideration in having these issues addressed at the subcommittee hearing. I have attached copies of my correspondence with Senator Dole's office as well as the letter from Mr. Lowe. If you have any questions, I may be reached at any time at (860) 428-9297.

Sincerely,

Christopher C. Swenson
Property Address:
[redacted]

Residence Address:
[redacted]

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS®

MARCH 25, 2004

Thank you for the opportunity to submit this statement for the record presenting the views of The National Association of REALTORS® (NAR) on the National Flood Insurance Program (NFIP) and the issue of repetitive flood loss. The one million members of NAR—including its institutes, societies, and councils—commend Chairman Bunning for holding this hearing on a subject that is of great importance to REALTORS®.

It is often said that REALTORS® do not sell homes, we sell communities. The members of The National Association of REALTORS® are concerned and active members of our communities. We recognize and support the important role the National Flood Insurance Program plays in managing the risk of flooding that affects so many of our citizens.

The NFIP is a unique partnership between our three levels of government. It enables property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages. As a result, Federal expenditures for disaster assistance and flood control are reduced.

Flood insurance is required in order to secure financing to buy, build, or improve structures in Special Flood Hazard Areas (SFHA's). Federally regulated or federally insured lending institutions must determine if a structure is located in a SFHA and must provide written notice requiring flood insurance. Flood insurance is available to the owner of any property located in a community participating in the NFIP.

The program partners with nearly 20,000 communities nationwide and holds 4.4 million policies representing $623 billion in insurance coverage. It provides over 90 percent of all flood insurance nationwide and close to 100 percent of flood insurance coverage for individually owned properties and small- to mid-size commercial properties. Ninety-one insurance companies write flood insurance, either under the Write Your Own program or through direct sales. In fiscal year 2002, the program generated $1.4 billion in written premiums, with an average premium of $393, average coverage of $142,204, and an average payout of $24,551. By providing affordable flood insurance that is unavailable in the private market, the NFIP helps our citizens achieve the American Dream of homeownership.

Unfortunately, the program is currently burdened by the cost of repetitive loss properties. Approximately 48,000 insured properties nationwide have incurred two or more flood losses over a 10-year period, each of which exceeds $1,000. These properties cost the flood insurance program over $200 million annually. The top 10,000 structures alone cost the program over $65 million annually. Repetitive loss properties comprise approximately 1 percent of insured properties but account for approximately 25–30 percent of claims losses. By not paying premiums that adequately reflect their exposure to the risk of flooding, these properties threaten the flood insurance program's actuarial foundation.

As a consequence, the NFIP faces continuing pressure to increase premiums for all policyholders nationwide. To do so would have a serious negative impact on the real estate industry and our Nation's economy. Directly and indirectly, the housing sector has played a critical role in keeping the overall national economy afloat. With over 6.1 million existing home sales, 2003 was a record-setting year. The over 1 million new home sales in 2003 was also an all-time high. However, continued progress is threatened when costs in the form of higher insurance premiums are added to the home transaction and potential homebuyers are shut out of the market.

NAR believes that Congress must address the repetitive loss issue in order to place the flood insurance program on firmer financial ground. We support an approach that has three main components: (1) repetitive loss properties remain eligible for Federal flood insurance; (2) flood mitigation measures are offered to the worst repetitive loss properties; and (3) if a mitigation offer is refused, the owner of a repetitive loss property will be required to pay a higher insurance premium. This win-win approach ensures that insurance payouts will be reduced by properly mitigating the worst repetitive loss properties. At the same time, it allows the property owner to remain in the program, while paying a premium that adequately reflects the property's flood risk.

We feel that H.R. 253, the repetitive loss bill approved late last year by the House of Representatives, is a constructive and viable bi-partisan effort to address the repetitive loss problem. It is designed to improve the financial soundness of the NFIP by shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage. The bill focuses on the most severe repetitive loss properties, and it provides an appeals process to prevent unfairness and injustice.

We must make one final point on this issue. It is critical that flood insurance remain accessible and equitable for all individuals who own property in a floodplain. NAR opposes a phase-out of subsidized flood insurance for second homes and rental properties. Non-primary residences should be given the same consideration as primary residences. These properties face a flooding risk which is identical to that of adjacent primary residences. For reasons of fundamental fairness, they should not be charged full risk premiums unless they fall under the definition of repetitive loss properties.

Furthermore, charging full risk premiums for second homes and rental properties would significantly increase their insurance costs. Consequently, the purchase price of homes in resort and coastal areas would increase, their affordability and marketability would decrease, and local economies would suffer. Owners of rental properties would be forced to pass on the increased costs of flood insurance through rent increases to their tenants, placing additional strain on the budgets of low- and fixed-income renters.

At the same time that Congress works to improve the financial soundness of the NFIP, it is important that you maintain the program's continuous authority to provide flood insurance coverage. Two year's ago, the 107th Congress adjourned without extending FEMA's statutory authority to issue flood insurance policies beyond the end of the year. Thakfully, Congress and the President acted quickly in the early days of this Congress to pass and sign retroactive reauthorization. In the interim, FEMA and a coalition of public and private sector organizations worked hard to provide guidance to private industry and the public and prevent disruptions in the real estate, insurance, and lending industries.

Although disruptions were largely averted, such a lapse of authority could have severe repercussions for an industry that continues to be one of the few bright spots in our Nation's economy. An absence of authorization raises compliance and legal questions for lenders and insurers. In such an uncertain climate, home purchases and insurance policy renewals are jeopardized. For prospective homebuyers, this can mean an opportunity delayed . . . or possibly lost entirely. FEMA estimates that a short lapse in authority could affect approximately 400,000 households seeking to obtain or maintain flood insurance.

This situation should not be allowed to happen again. We encourage Congress to enact a multiyear reauthorization, as is provided in H.R. 253, in order to ensure program continuity.

Thank you for allowing the National Association of REALTORS® an opportunity to share our views on important issues involving the National Flood Insurance Program. We urge the Subcommittee and Committee to undertake a bi-partisan effort and pursue improvements that will strengthen the NFIP and make it more effective for policyholders nationwide. We look forward to working with you in support of this effort.