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THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2007, H.R. 1682

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2007, H.R. 1682

Tuesday, June 12, 2007

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:17 a.m., in room 2118, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Present: Representatives Waters, Cleaver, Green, Clay, Maloney; Biggert, Pearce, Shays, Garrett, and Neugebauer.

Ex officio present: Representative Bachus.

Also present: Representatives Hinojosa and Taylor.

Chairwoman WATERS. Good morning. This hearing of the Subcommittee on Housing and Community Opportunity will come to order.

Good morning, ladies and gentlemen. I'd like to thank the ranking member, Ms. Judy Biggert, and each of the members of the Subcommittee on Housing and Community Opportunity for joining me for today's hearing on the Flood Insurance Reform and Modernization Act of 2007, H.R. 1682.

I would like to start by noting that without objection, we will allow Mr. Ruben Hinojosa and Mr. Gene Taylor to be considered members of the subcommittee for the duration of this hearing. Also without objection, all members' opening statements will be made a part of the record.

I'm looking forward to hearing from today's witnesses about H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007, which was introduced by Chairman Frank, and co-sponsored by a number of members, including the ranking member, Ms. Biggert, and myself.

Last year, the House passed the Flood Insurance Reform and Modernization Act of 2006, H.R. 4973, although the Senate did not consider flood insurance reform legislation.

The bipartisan effort in the House last year to pass major flood insurance program reform legislation will be welcome again this year, because the issues related to flood insurance reform and modernization, as well as funding, and the National Flood Insurance Program that prompted the House to take action last year, have not disappeared.

The National Flood Insurance Act of 1968 established the National Flood Insurance Program (NFIP).

The National Flood Insurance Program provides flood insurance to approximately 5.1 million homeowners, renters, and business owners in some 20,118 communities, generating $2.3 billion in revenue. The purpose of the Act is to provide insurance for individuals living in areas of the country susceptible to flooding.

The NFIP has two objectives: One, to promote land use decision-making; and two, to reduce the cost to government of recovery costs related to flooding.

The purpose of today's hearing is to focus on H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007.

H.R. 1682 will reform the NFIP administered by the Federal Emergency Management Agency—FEMA—of the U.S. Department of Homeland Security.

The bill will significantly reform the NFIP to ensure its continued viability by encouraging broader participation, increasing accountability, eliminating unnecessary Federal subsidies, and updating the Nation's flood insurance program so that it is consistent with the needs of the 21st century.

H.R. 1682 is born of necessity after the catastrophic hurricanes of 2005, Katrina and Rita. The number of claims, 257,539, post-Katrina and Rita was unprecedented in the history of the NFIP.

Many of the weaknesses of the NFIP became self-evident after the hurricanes.

In an effort to make the program more actuarially sound, the bill would phase out subsidized rates on vacation homes and second homes.

Also, business owners would be eligible to purchase business interruption coverage at actuarial rates to better prepare them to meet payroll and other obligations in the event of major storms.

The bill also updates maximum insurance coverage limits for residential and non-residential properties for the first time since 1994.

The bill requires accountability and financial responsibility at the NFIP. FEMA would be required to report to Congress on the financial status of the NFIP and conduct reviews of the Nation's flood maps. Many people contend that the Nation's flood maps are outdated—I think everybody knows that—technologically, and of little use to FEMA.

Disclosure is another important feature of the bill. The bill would require that disclosures are made to owners about changes in the flood insurance program.

The bill caps the amount FEMA can raise insurance premiums from 10 percent to 15 percent in any given year.

Most critical is a provision in the bill that increases fines on lenders who do not enforce the mandatory flood insurance program requirements for those living in a floodplain who hold a federally backed mortgage. This will ensure that those who should have flood insurance are actually able to obtain the insurance.

In addition to the major reforms in the bill, the borrowing authority for the NFIP is increased to ensure that all outstanding claims and Federal obligations under the program are met.

The current borrowing authority of the NFIP was last increased in March 2006 to $20.775 billion from $18.5 billion in November 2005.

The NFIP must remain solvent in the years to come. The total flood insurance claim payouts alone from the 2005 hurricane insurance are estimated to be around $23 billion.

I look forward to hearing the testimony of the witnesses on H.R. 1682, and I would now like to recognize Ranking Member Biggert for her opening statement.

Mrs. BIGGERT. Thank you, Chairwoman Waters, and thank you for convening this hearing on H.R. 1682, the FIRM Act, which Chairman Frank and I introduced on March 26, 2007.

During the last two Congresses, this committee held a number of hearings and markups on flood insurance and the flood insurance program.

In the last Congress, the committee considered H.R. 4973, the Flood Insurance Reform and Modernization Act of 2006 which the House passed by a vote of 416 to 4 on June 27, 2006. The Senate, not surprisingly, did not consider that bill, which brings us back to the drawing board today.

Considering that last year's flood modernization bill enjoyed broad bipartisan support, I am pleased that we introduced an almost identical bill this year, and that the committee is considering it again.

20,000 communities across the Nation, including 800 communities in my home State of Illinois, participate in the NFIP.

Later this morning, we'll hear from Paul Osman, the certified floodplain programs manager for the State of Illinois, who will give us the lay of the land with regard to Illinois' leadership in the area of floodplain management and flood mitigation.

For example, in my congressional district, the residents and leaders of the village of Tinley Park recently proved that a proactive approach to flood management can help both the community and homeowners.

Following remapping in the 1990's, 550 homes in Tinley Park were placed in the floodplain and homeowners would have been forced to pay an extra $1,000 per year for flood insurance. However, instead of paying higher insurance rates and leaving homes vulnerable to floods, the residents of Tinley Park took action. They worked on a flood mitigation project, received a revised FEMA approved floodplain map in April of this year, and avoided paying higher insurance premiums.

For the majority of its 39-year history, the NFIP has been a self-funded program. However, flood insurance claims for the 2005 hurricane season have grown to at least $17.6 billion, a total greater than all claims from all other year combined. Unless the NFIP is reformed soon, the program will face insolvency.

The FIRM Act would require great accountability and financial responsibility from the NFIP. It increases insurance coverage limits and the authority of the NFIP to pay claims largely incurred as a result of the 2005 hurricane season.

Maximum coverage limits for residents and contents would increase from $250/$100,000 to $305/$135,000, so businesses and churches would see increased coverage limits from $500,000 to $670,000.

The FIRM Act also directs FEMA to develop more comprehensive and updated flood maps to reflect more accurately the risk to

homeowners, submit annual financial reports on the NFIP to Congress, and phase out subsidies over time for vacation homes, second homes, and non-residential properties.

It would require that property owners be notified of the availability of flood insurance and escrow for flood insurance.

The bill also authorizes the NFIP to provide additional living expense coverage for temporary housing immediately after a flood, and increases fines on lenders who do not enforce the mandatory flood insurance policy for federally backed mortgages in the 100-year floodplain.

On March 11, 2007, the Chicago Tribune reported in an article titled, quote, "Debate swirls around flood policy," that—and again, I quote—"This could be the year Congress makes some major changes to the National Flood Insurance Program or not." I'm hoping for the former.

I'm confident that this bill will again move through the House with bipartisan support, and I'm very hopeful that our Senate colleagues will act on it during this Congress, especially given that the 2007 Atlantic hurricane season is predicted to be very active and the NFIP expires in 2008. NFIP reform is needed now.

I look forward to working with my colleagues on this bill. I also look forward to hearing from our witnesses about ways to strengthen the FIRM Act so that it's good for American communities, taxpayers, and homeowners. I yield back the balance of my time.

Mr. GREEN. [presiding] I thank the gentlelady, and will now recognize Mr. Hinojosa from Texas for 3 minutes.

Mr. HINOJOSA. Thank you, Mr. Chairman, and Ranking Member Biggert.

I want to thank Chairwoman Waters and Ranking Member Biggert for holding this very important and timely hearing on an issue that is very important to me and to all the constituents in my district, as well as a quarter of a million people in the Rio Grande Valley of South Texas, where I come from.

I look forward to working with the two of you as the committee moves forward with consideration of H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007, introduced by Chairman Frank and Ranking Member Biggert earlier this year.

I commend the two of you for all the work that you have done to date to improve housing conditions for many, many residents in the United States. I especially want to thank the two of you, again, for moving forward with my two rural housing bills on the Housing Assistance Council and the Rural Housing and Economic Development program. I am very grateful for that.

At this point, I ask unanimous consent to submit my entire statement for the record, as well as two documents from the Management Association for Private Photogrammetric Surveyors. I have them here in my hands, and I think that they would add to the record.

Mr. GREEN. Without objection, it will be done.

Mr. HINOJOSA. Thank you.

In light of the devastation caused by Hurricanes Katrina, Rita, and Wilma, this committee has held numerous hearings on ways to address the massive flooding and wind and surge damage done

to homes and other structures along the coast of the Gulf of Mexico, including Texas, Louisiana, Mississippi, and Florida.

We have tried to find ways to ensure that the massive flooding that occurred in New Orleans does not recur, and that we are able to get our dams and levees up to code to certify that they protect those living behind them.

I realize that H.R. 1682 intended to address a number of weaknesses in the National Flood Insurance Program that were exposed by the unprecedented 2005 hurricane season, and I support many of the provisions included in the bill. However, I must stress that there are several provisions in the bill with which I find fault, and several provisions that have been left out of the bill that I now wish to propose for your consideration.

My main concern is that FEMA and the Army Corps of Engineers might not be creating very accurate maps. If the mapping is being done now, I am concerned that those maps might not be taking into account the fact that some areas will eventually have dams and levees that are up to code, including those in my district and all along the U.S. border with Mexico.

I am also concerned that they might not be using the appropriate methodology or the most advanced technology to draw those floodplain maps.

Along those lines, I am very pleased that the Management Association for Private Photogrammetric Surveyors, MAPPS, are testifying here today.

I agree with them that Section 21 of H.R. 1682 omits language regarding map accuracy and the use of modern geospatial technologies and FEMA standards and requirements. I also agree with MAPPS that we should consider providing mapping by watershed. It would result possibly in much more accurate and less politically motivated floodplain maps.

Madam Chairwoman, while you were gone, I said that I would like for the entire statement that I have be included as part of the record.

Chairwoman WATERS. Without objection, such is the order.

Mr. HINOJOSA. And I will simply close by saying that I would hate for us to lose homes because we failed to pass legislation containing requirements that the maps be made using the most up-to-date and thorough technology and that we provide—

Chairwoman WATERS. I thank the gentleman.

I now recognize Mr. Bachus for 5 minutes.

Mr. BACHUS. I thank the chairwoman.

First of all, let me welcome Congressman Gene Taylor to our hearing today. Congressman Taylor has dealt firsthand with this wind versus water issue: how do we determine whether it is wind or water? His constituents have been dealing with this. Also, I know he has legislation which will allow citizens along the coast to purchase a policy that covers both wind and water.

I do believe that Katrina has sort of brought this thing into focus about where there is an area where you're exposed to both of those conditions, that there ought to be a more efficient way and a fairer way for homeowners.

One of the questions I think this committee has, and this afternoon, the Oversight and Investigations Subcommittee of the Finan-

cial Services Committee, and the Management, Investigations, and Oversight Subcommittee of the Homeland Security Committee are addressing this. They're going to have a hearing on wind and water.

And, if we're to have a comprehensive reform, we're going to have to make—that's going to be part of the debate, and if we have, or offer coverage, if coverage is offered for both of these, is it going to be under the National Flood Insurance Program or is it going to be privately offered?

You know, presently, flood insurance is subsidized in many cases, is not actuarially sound.

If we go to a multi-peril policy, where are we going to put the rates? The flood insurance program is recovering, but if we have another hurricane this year, what happens to rates?

I know all of these questions about how fast you raise the rates to reflect the true cost: if you raise them too fast it causes economic hardship in many areas; if you don't raise them fast enough, you underfund the program—all of these things come into play.

I know the GAO is doing two reports; they've been asked for this.

But I do believe, long-term, because as the chairwoman has said, and as Mrs. Biggert has said, many people in Mississippi, particularly, and in New Orleans, were in areas where flood insurance wasn't available, yet their homes were flooded.

In fact, that's probably one of the primary reasons that the losses have been so staggering, because there were uninsured losses, and for many of those people, flood insurance was not available, yet their homes were flooded.

They had wind insurance, so they had the wrong kind of insurance, or there were determinations made that it was water and not wind—we've all seen those headlines.

And I do believe that this Congress, before it finally solves this whole issue, is going to have to make a determination, at least in some areas, whether we offer coverage, as Congressman Taylor said, whether we offer coverage—and I won't speak for him. In fact, I would at this time ask unanimous consent to the chairwoman that he be allowed to participate in this hearing and ask questions.

Chairwoman WATERS. That has already been done.

Mr. BACHUS. Thank you.

Chairwoman WATERS. Thank you very much.

Mr. BACHUS. Thank you.

But I think that this is something that we have to do, as we move forward, probably before we do a comprehensive reform of this program, that has to be part of it, and without it, I think it's an imperfect reform.

I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

And at this time, the gentleman that Mr. Bachus was referring to, Mr. Gene Taylor, is recognized for 5 minutes.

Mr. TAYLOR. Thank you, Madam Chairwoman. Thank you very much for having this hearing, and I thank Mr. Bachus for his kind words.

Madam Chairwoman, I very much appreciate your willingness to improve on the National Flood Insurance Program.

South Mississippi was devastated by Hurricane Katrina, but one thing I want our fellow citizens to know is, although I had thousands of complaints about private insurance companies failing to pay their claims, there was not a single instance in South Mississippi where citizens said that their Federal flood insurance didn't pay, and that's something I think is representative of the people's government and the people's Nation that we ought to be proud of, that it did pay their claims. But I do appreciate your willingness to look into raising the amount of coverage that is available.

As I'm learning firsthand, a quarter of a million dollars doesn't go nearly as far as people thought it would have a few years ago, and so raising the rates is important.

It's extremely important that the national mapping, to let people know of the dangers of flooding, be improved. It's now, what, 22 months since the storm and the flood maps have not been released. I think that's unconscionable. I think that our Nation, with the technology that's available, such as mapping from space, it should have been done long ago.

Your concerns that the lending industry should have been warning people that they needed flood insurance are right on the mark. There were any number of instances in South Mississippi where bankers told people, "Yes, flood insurance is available, but you don't need it, you're 20 feet above sea level," only for that person to find out that they took 6 feet of water in Hurricane Katrina and that their homeowners policy wouldn't cover it.

And although we'll always be grateful for my fellow Members of Congress for the money they came up with to help out those people who had homeowners insurance, who did flood, and thus the grant program came along to help those people up to the amount of $150,000 or the amount of the insurance, whichever is less, if we, if the Federal flood insurance maps were better, if the program was better, maybe we wouldn't have had to come up with those grants at all. Maybe that money would have been available through the normal course of business.

And lastly, I would really hope that this committee and the other committees would look into the national write your own program, where we hire the private sector to sell the policy. I don't have a problem with that. It saves our Nation administrative costs.

The conflict of interest comes in when that same company representative is sent out to look at the damage after a hurricane and decide whether it was water, which means the taxpayer flood policy will pay for it, or it was wind, which means his company, that he might own stock in, that he's probably hoping for a Christmas bonus from, that he's probably hoping for his next promotion, is going to pay the claim.

That is a built-in conflict of interest. I suspected it was, and now in Louisiana, there's actually a lawsuit under the Fraudulent Claims Act where people are claiming that billions of dollars of costs that should have been attributed to the private sector insurance companies were paid by the National Flood Insurance Program, and these people have introduced a lawsuit hoping to get one-third of what is recovered, of funds that should not have been spent by our Nation in the first place.

So again, I very much appreciate your willingness to look into this. I also appreciate your willingness to look into an all-perils insurance policy, so that people don't have to stay through the eye of the storm with a video camera to determine whether their home was destroyed by wind or water.

If you've built it the way you should have, if you've paid your policy, you should not have to stick around for the hurricane, to be an eyewitness to see how your house was destroyed. If you've done what you should have done and paid your premiums, if your house is gone, if your house is substantially damaged, our Nation will pay that policy.

So thank you very much, Madam Chairwoman, for letting me—

Chairwoman WATERS. Thank you very much, Mr. Taylor. I will now recognize the gentleman from New Jersey, Mr. Garrett, for 2 minutes.

Mr. GARRETT. Thank you, Madam Chairwoman, and thank you also to Chairman Frank and all the others who have worked so hard at putting together this important piece of legislation.

You know, in 1968, when Congress created the National Flood Insurance Program, the NFIP, the intent was providing homeowners who live in floodplains an opportunity to purchase flood insurance from the Federal Government, but at that time, there really wasn't any other private sector availability for them.

When it was created after many homeowners had already built their homes in flood-prone areas, and before any comprehensive maps existed, it was because of this that Congress allowed the owners of these properties, otherwise known as pre-FIRM properties, to purchase flood insurance at subsidized rates.

Over the last 20 years, the NFIP had been largely self-sufficient. Obviously, since Katrina, there have been some problems with that.

So in recognition of the need to bolster the NFIP and allow it to better offer affordable flood insurance, the chairman has now introduced this legislation.

This bill, I do believe, marks significant reform to the existing program by further updating flood maps, and by increasing the phase-in of actuarial rates on vacation homes, and on second homes, and on non-residential properties that have in the past been subsidized by the program since its inception.

But even with these significant reforms, there still are a number of people on both sides of the debate that feel that other changes are necessary. Some people have advocated for a total and immediate withdrawal of the subsidies for all pre-FIRM homes, regardless of when they were purchased. Others believe that is not fair to force someone who bought their home assuming one flood insurance rate and then have that rate changed in the middle of their mortgage.

So in an effort to find a compromise between these two sides of the spectrum, last year I offered what I called a common-sense middle ground amendment, and it passed on the House Floor and it passed with Chairman Frank's support at that time.

The amendment I offered provided additional resources to the flood insurance program in a fair way, and it did not subject cur-

rent homeowners of pre-FIRM homes to unanticipated or unplanned increases in their premiums.

The amendment simply required any purchaser of a pre-FIRM primary residential home to pay a phased-in actuary flood insurance pricing using the same phase-in structure that non-residential and non-primary homes are currently subject to in this bill and last year's bill, as well.

So in essence, I believe it was a common-sense approach, a practical approach, and a fair way to bolster the National Flood Insurance Program to provide the citizens the appropriate coverage to prepare for future disasters.

And so, quite frankly, I look forward once again to working closely, as I did last year with Chairman Frank and the ranking members, as well, to move this idea along and this bill, as it moves through the process.

And with that, I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

I'll recognize the gentleman from Texas, Mr. Al Green, for 2 minutes.

Mr. GREEN. Thank you, Madam Chairwoman, and I also thank the ranking member.

Madam Chairwoman, I will be concerned about the premium increase. That causes me concern because it looks like it may be substantial in some cases, and we do have low- to moderate-income people who live in areas that have been devastated, and of course we don't want to find ourselves having persons who cannot afford the flood insurance still remain in areas where they desire to live but cannot afford to live there because of lack of insurance.

I'm also concerned about the number of disputes and claims that have not been resolved. My understanding is that a high percentage may have been resolved, but when we look at the empirical data, the raw numbers may still be large. So I'd like to know more about the number of claims that haven't been resolved.

And finally, the role of mediation in the process is important. I'm concerned and would like to know how that process is functioning.

Is the functionality of it such that it is fine as is or do we need to tweak it so that we can better serve the persons who eventually participate in the process?

Thank you again, Madam Chairwoman, And I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

I recognize the gentleman from Texas, Mr. Neugebauer.

Mr. NEUGEBAUER. I thank you, Madam Chairwoman.

I just want to make a few comments. One is that certainly we need to make sure that this fund is actuarially sound and that the premiums are based on actuarial data, and I don't think that should just be for second homes and for vacation homes. I think that should be for all homes.

Because basically, we now have a fund that is busted, and we're going to make some improvements to this, and we're going to raise the premiums, but in fact, it owes a debt it probably cannot pay, and in fact, that puts the taxpayers in the position of subsidizing people who live in some of these flood areas because they are not paying premiums that are actuarially sound, and if, long-term,

we're going to have a flood insurance program, I think it needs to be one that makes sense and that the premiums are charged based on the potential laws.

I think the second piece of information, and Mr. Taylor keeps bringing this to our attention, but homeowners need to know what their coverage is. They need to know that when they buy a policy, what they're covered for, and they don't need to be then caught in the middle of whether this was water or wind.

And so I look forward to working with the industry, of coming up with ways, innovative ways, and I know that the industry is capable of delivering that, of some ways that we can integrate possibly some of the coverage for flood insurance with some of the other existing homeowner policies to deliver a better product so that people understand what they're buying and what they're getting, and so the day they have a loss, they're not calling their lawyer, they're calling their insurance agent. So I think we need to work in that direction.

And certainly, as we move forward with this process, I think we need to then determine what we're going to do with the fund in its current financial condition, because we've now raised the limit on it to $20 billion. We're at the front end of the hurricane season.

It will take a while for some of these premium increases to be put in place, and certainly I think the American taxpayers need to know exactly how we plan to deal with this fund and long-term make sure that we're on a track to make it more financially stable.

And with that, I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

Having exhausted the opening statements of the members of the committee, I would like to introduce our first witness.

Mr. Edward L. Connor is the Deputy Assistant Administrator for Insurance for the Federal Emergency Management Agency.

Mr. Connor, thank you for appearing before the subcommittee today, and without objection, your written statement will be made a part of the record.

You will now be recognized for a 5-minute summary of your testimony.

STATEMENT OF EDWARD L. CONNOR, DEPUTY ASSISTANT ADMINISTRATOR FOR INSURANCE, MITIGATION DIRECTORATE, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

Mr. CONNOR. Good morning, Chairwoman Waters, Ranking Member Biggert, and members of the subcommittee.

I do appreciate your opening comments, and there are many things that you said today that I certainly do understand and appreciate and the program itself recognizes those needs and those desires, and we'll work toward addressing them.

I'm Ed Connor, Deputy Assistant Administrator for Insurance for the Federal Emergency Management Agency, and I certainly do appreciate the opportunity to appear today before this subcommittee to discuss the National Flood Insurance Program.

This morning, I'll illustrate how the National Flood Insurance Program has moved forward since the 2005 hurricane season, by addressing three specific areas: first, the NFIP's financial status;

second, how the NFIP has operated effectively since enactment of the 2004 Flood Insurance Reform Act; and third, opportunities to fundamentally strengthen the NFIP's financial underpinnings.

The NFIP makes affordable flood insurance available in communities that adopt and enforce measures to reduce vulnerability to flooding. From 1968 through 2004, the National Flood Insurance Program paid out $15 billion to cover over 1.3 million claims.

Hurricane Katrina resulted in claims totalling over $16.3 billion, and it's likely that the 2005 flood insurance costs will be around $19.9 billion. That includes interest already paid on borrowing from the Treasury.

Congress has increased the borrowing authority 3 times since Katrina to the present limit of 20.775, and that's been recognized by many of you already.

We've borrowed from the Treasury 11 times since Katrina, allowing over 98 percent of 2000 flood claims to be paid, and that translates into more than 180,000 Gulf Coast residents on the road to recovery.

That's partly due to our partnership with our write your own insurance companies, as well as our claims adjusters and our agents, who fulfilled their responsibility to help the NFIP policyholders begin rebuilding their lives.

With over 5.4 million policies insuring more than $1 trillion in assets, the NFIP collects more than $2 billion annually. Yet we expect interest on our borrowed funds to reach $720 million this year.

If future claims meet non-catastrophic historical averages, the program will need new loans every 6 months to cover its semi-annual interest payments.

Needless to say, under current loan arrangements, it's unlikely that the NFIP will ever be able to retire its debt.

Financial matters aside, the NFIP has excelled, particularly since the enactment of the 2004 Flood Insurance Reform Act, which was instrumental in our ability to help Gulf Coast policyholders when they needed it most.

The NFIP's summary of coverage and the flood insurance claims handbook helped them through the claims process and these documents continue playing a major role in the NFIP's ability to close claims quickly and fairly, and the Reform Act continues to be a catalyst for programmatic success and improvement.

Since the Reform Act agent training requirements were published in September of 2005, 40 States and the District of Columbia have made flood insurance training mandatory for agents who sell NFIP coverage. Also, FEMA's flood insurance claims appeals rule, which was adopted, augments the NFIP's historically high success rate of resolving over 99 percent of its claims without litigation. And we're reforming and we're using the Reform Act funding authorization to address repetitive loss properties, as well.

The repetitive flood claims program is considering 41 property acquisition proposals which will use all of 2007 program funds.

In fiscal 2006, the first year of the program, $9.8 million was awarded for property acquisitions.

Also, the Flood Mitigation Assistance Program is being effectively carried out by FEMA's 10 regional offices throughout the Nation.

And finally, our severe repetitive loss pilot program is in its final states of development, and we expect to open the first application period this summer.

These mitigation tools are critical components of our efforts to reduce at-risk structures and eliminate the troublesome and costly flood/rebuild/flood cycle that residents in the Nation's flood-prone areas have become so familiar with, but we must continue to strengthen the program by: one, protecting the program's integrity; two, increasing NFIP participation; three, improving citizens' understanding of flood risk; and four, reducing risk with proven mitigation practices.

We should enhance these principles by eliminating discounts on pre-FIRM structures, strengthening mandatory purchase requirements, increasing the annual limitation on premium increases, and improving the data on flood maps.

My written testimony offers details and suggestions along with particulars on program enhancements related to the 2004 Reform Act, and I look forward to considering these matters with you.

However, there is no quick solution that will allow the program to absorb catastrophic loss years like 2005. And we're concerned with more than financial matters.

Increasing risk awareness among homeowners is one of the NFIP's basic principles. FEMA, through Flood Smart, an aggressive education and outreach campaign, continuously designs and upgrades informational strategies to increase the public's awareness of flood risks and to keep our policyholders informed.

As our citizens learn more about the risks they face, they do more to reduce those risks, and they'll want to protect their investments, making the Nation's—

Chairwoman WATERS. Mr. Connor, we've given you an additional 2 minutes. I'm sorry, you're going to have to discontinue your testimony at this time so that the panel can get to their questioning.

[The prepared statement of Mr. Connor can be found on page 54 of the appendix.]

Chairwoman WATERS. With that, I'd like to thank you for your testimony, and I'd like to begin the question period with several issues that I did not hear you discuss.

Did you read the bill?

Mr. CONNOR. I did.

Chairwoman WATERS. So you know what we are attempting to do in all aspects of the bill?

Mr. CONNOR. I do.

Chairwoman WATERS. You did not reference much of what the bill is intended to do.

Let me just kind of gear in on, what do you think about that portion of the bill that increases fines on lenders who do not enforce the mandatory flood insurance policy requirements for those living in a floodplain who hold a federally backed mortgage?

Mr. CONNOR. Well, we support that proposal.

To the extent that we do get tougher compliance for mandatory purchase, and that's going to ensure that property owners who should have flood insurance, who have federally backed mortgages, will have it; therefore, the flood insurance policies will increase,

and that lends itself to strengthening the financial status of the program.

Chairwoman WATERS. All right. I was pleased to hear that the 7-year comprehensive evaluation of the National Flood Insurance Program has been completed, and I understand it was just released.

What do you think are the key findings of and recommendations of the evaluation?

Mr. CONNOR. Well, we're very excited to look into that, Madam Chairwoman.

Where we are with it right now is we've gone through the analysis itself, we've come out with over 190 recommendations for the program, we're in the process now of prioritizing those particular recommendations and we are building that, incorporating that into our planning process so that we can move forward with them.

There are a number of recommendations in all areas of our program—risk insurance, floodplain management, and mapping—that we think have merit, and we intend to move forward on those items.

Chairwoman WATERS. Now, you identified 190 recommendations. Do you intend to move forward on all of those?

Mr. CONNOR. We are prioritizing them now. There are some obviously that a decision will be made that we won't do anything with. There are others that we may have already started moving on already, and so we may want to just speed that process up. And there are some, obviously, that we need to move on very quickly.

Chairwoman WATERS. One of the studies in the evaluation is called, "Assessing the Adequacy of the National Flood Insurance Program's 1 Percent Flood Standard." I assume that is the same as what is often referred to as the 100-year flood?

Mr. CONNOR. That's correct.

Chairwoman WATERS. Would you tell me what you think about what the study said on this topic and is that something that's included in your 190 recommendations? Do you have a recommendation on this?

Mr. CONNOR. I do not have a recommendation at this point, but I would like to provide testimony for the record once we get around to looking at the details of that particular recommendation.

Chairwoman WATERS. Given the predictions of more frequent and more damaging storms, will this standard for flood damage reduction programs remain useful?

Mr. CONNOR. I'm sorry, could you repeat your question?

Chairwoman WATERS. I just talked about the—one of the studies of the evaluation program called, "Assessing the Adequacy of the National Flood Insurance Program's 1 Percent Flood Standard."

Mr. CONNOR. Yes.

Chairwoman WATERS. And we agree that is what is referred to as the 100-year flood.

We talked a little bit about, I wanted to know what you thought about what the study had to say, and given the predictions of more frequent and more damaging storms, will this standard for flood damage reduction programs remain useful?

Mr. CONNOR. Again, that's something that I'd like to submit for testimony for the record after having reviewed—because of the de-

tail and to be sure that I'm accurate in my comment, I would prefer to submit testimony for the record.

Chairwoman WATERS. Another study in the evaluation is entitled, "The Role of Actuarial Soundness in the NFIP."

Since this subcommittee is considering legislation which would again raise the cap on the borrowing authority for the NFIP, and since the program is about $100 billion in debt requiring annual interest payments to the Treasury of about $800 million, I'm very interested in what the evaluation has to say about the role of actuarial soundness.

I know the program has been actuarially sound during most of its history, paying back any Treasury borrowing with interest, except for one brief period that was in the mid-1980's.

Does this part of the evaluation really address the problem of huge catastrophic losses as they affect actuarial soundness?

Mr. CONNOR. I think that part of the study will point to the fact that we need to, to the extent possible, get the policies actuarially rated, and how we do that is a matter of discussion today.

But clearly, to the extent that we are able to get the full risk premium for the policies that we write, it will certainly bring stability, financial stability to the program, that I think that we're all looking for.

But again, I will say to you, Madam Chairwoman, that because I have not gone through the details of all the recommendations, I'd like to be able to provide testimony for the record on those particular issues.

Chairwoman WATERS. Thank you very much.

I will now recognize our ranking member, Mrs. Biggert, for 5 minutes for questioning.

Mrs. BIGGERT. Thank you, Madam Chairwoman.

Mr. Connor, in your written statement, you state that one of the fundamental mitigation and insurance principles that the mitigation directorate and the NFIP have outlined since the 2005 hurricane season is to increase the NFIP's participation incentives and improve enforcement of the mandatory participation in the program.

What is FEMA doing to provide incentives to communities and potential policyholders to participate in the NFIP?

Mr. CONNOR. Well, that's a two-part question.

With regard to what we are doing for policyholders, to the extent that we can make people understand their perception of risk and that they are vulnerable to flooding, we have a very aggressive marketing campaign which is going out, reaching the Nation, reaching property owners, making them understand that just because you may not necessarily be next to a river or a creek, that you are still vulnerable to flooding.

So to the extent that we can get that message out—

Mrs. BIGGERT. How do you get the message out? Is it through advertising?

Mr. CONNOR. It's through an advertising campaign. There are print ads, there are television advertisings, and so forth, that are coming right into the property owners' living room continuously, through magazines, print ads, and so forth.

With regard to the communities, there are a number of things that we have in place.

The community rating system, which is an incentive program, which basically, to the extent that communities join the program and they put in a number of mitigation projects and programs, they offer discounts to every policyholder who happens to live in that particular community.

And so to the extent that we can also make people aware that, from a community perspective, there are incentives available to lower your rates, that's where we get community involvement, and that's how the communities can communicate this to the various property owners.

Mrs. BIGGERT. Do you have any way to check to see if these are working? Is this something that you—

Mr. CONNOR. Well, with regard to getting the word out to the policyholders, the property owners, we have experienced over 35 continuous months of growth in the program, 22 percent. That translates into over 1 million policies that have come on the books since 2004.

At the same time, we have retained more than 92 percent of those policies, so that's a pretty good indication that the program is growing in that regard.

With regard to the communities that are joining the program, last year we celebrated. Up to 21,000 communities are now part of the National Flood Insurance Program, and for years and years and years, those numbers have been down somewhere around 19,000 or 20,000.

So we do feel like we're getting traction on that, that the word is getting out, and that people understand: one, the perception of risk; and two, what they need to do from the standpoint of getting discounts and trying to protect their investments.

Mrs. BIGGERT. Do you think that part of it is, or the recent growth is due to your advertising or due to the fact that there were the Gulf hurricanes?

Mr. CONNOR. That's a fair question.

I think that when we talk about the growth in the program, you really can't point to any one thing.

Obviously, the hurricanes from 2004–2005 had a lot to do with people understanding that we better do something to protect ourselves, but at the same time, our effort and the efforts to went into Flood Smart and the advertising campaign also, I think, connected the dots.

So I think that when you look at it in combination, there are a number of things that drove that, but I think the important element, when we talk about growth in the program, is not just how many new policies come on the books, but we also need to look at the back end. How many are actually staying on the books?

And that's a very, very important number, and as I said, that number continues to get better at 92 percent.

Mrs. BIGGERT. And just another question.

In this bill, we've increased the penalties for federally regulated lending institutions that don't comply with their mandatory purchase, regulatory responsibilities, which you also outline in your testimony.

Is this enough? What is FEMA doing to improve enforcement of the mandatory participation?

Mr. CONNOR. Well, we don't really have a lot of authority over that, other than the fact that we meet regularly with the Federal regulators to make sure that they understand the provisions and the nuances of the National Flood Insurance Program. We communicate with them, and essentially, to the extent we can exchange data as well.

So if we have policies that drop off the books, and we can identify who the regulatory agency is, we can submit that data to them for them to follow up.

But to answer the first part of your question, I think that anything that we can do relative to making the penalties a little stronger, would increase the compliance on the part of the lending community to require flood insurance where required.

Mrs. BIGGERT. Have all of the regulations been written for this?

Mr. CONNOR. For?

Mrs. BIGGERT. For enforcement by the regulators?

Mr. CONNOR. The regulations were written starting back in 1994. That's when it first—the teeth really went into the National Flood Insurance Reform Act, so they've been out there for a while.

Mrs. BIGGERT. Okay. All right. Thank you very much. I yield back.

Chairwoman WATERS. Thank you very much.

I recognize the gentleman from Texas, Mr. Green, for 5 minutes for questioning.

Mr. GREEN. Thank you, Madam Chairwoman.

Mr. Connor, welcome, and thank you for coming today.

Sir, you indicate that 99 percent of the claims are processed without litigation.

Mr. CONNOR. That's correct.

Mr. GREEN. What percent of that 99 percent was resolved by way of mediation?

Mr. CONNOR. Well, when you say mediation, are you referring to the State proposed mediation that—

Mr. GREEN. Yes.

Mr. CONNOR. Well, none of it has.

All of that has—all of those 99 percent claims that have been resolved have been resolved within the National Flood Insurance Program, either through our natural process—if there's a question or an appeal, it can be reviewed by higher-ups, or, you know, there could be some appeal process with the individual—

Mr. GREEN. Then you agree that mediation has a role that it can play in this process?

Mr. CONNOR. I don't agree to that, no. If you're referring to the mediation that's being proposed in the legislation—

Mr. GREEN. Yes.

Mr. CONNOR. —no, I don't think that plays a role, by virtue of what you initially said, that 99 percent of our claims do close without litigation.

To the extent that mediation gets involved in the process and particularly because it's going to be non-binding mediation, from our perspective, that would slow down the process in terms of getting claims settled quicker.

The other thing that would occur as a result of that is there are cost implications that are associated with that, because now you're going to have to get a staff of folks to be at a particular place and time whenever there's a major hurricane or storm to go through this mediation process.

Then thirdly—

Mr. GREEN. Let me ask this question.

If we have 99 percent resolved, in raw numbers, how many are not resolved?

Mr. CONNOR. Right now, we have, for Rita, 93 that are unresolved; for Katrina, 2,699.

Mr. GREEN. 2,699 for Katrina?

And these that are not resolved, in terms of dollar amounts in dispute, do you have that data? What is the amount in dispute with these, especially as it relates to Katrina?

Mr. CONNOR. I don't have that number, sir, but I would like to provide testimony for the record on that particular question.

Mr. GREEN. And in these disputes, it is your opinion that mediation would not be helpful, with the 2,699?

Mr. CONNOR. It is our opinion that is the case.

I'm not sure that these are even in dispute as much as these may be cases that involve another kind of coverage, which is increased ICC coverage, increased compliance coverage, which probably doesn't kick in until later on in the rebuilding process.

So I'm not even absolutely certain that these numbers that we're talking about now are necessarily in dispute, but that's something that we can look into.

Mr. GREEN. Many members of the judiciary find that mediation just prior to litigation is a helpful tool. You don't view it that way, I take it?

Mr. CONNOR. We pretty much feel that with regard to any kind of mediation, it's better to get that done up front as opposed to later on in the process.

Mr. GREEN. Let's talk about the increase in premiums.

We have provided for a 10 to 15 percent increase, and my belief is that you spoke of a 35 percent increase; is that correct?

Mr. CONNOR. A 35 percent increase?

Mr. GREEN. Yes, sir.

Mr. CONNOR. No.

Mr. GREEN. What increase would you recommend?

Mr. CONNOR. I'm not sure what you're asking me now. In total, or just for subsidized, or—

Mr. GREEN. Our bill provides for a 10 percent increase in the policy rates for any given year.

Do you have a recommendation?

Mr. CONNOR. Our recommendation is whatever you can give us, sir. Right now, the 10 percent cap pretty much has us locked in, in terms of anything that we can do to raise the rates.

If you're proposing 15 percent, we would certainly accept that, but the bottom line is that to the extent that, if nothing else happens, and if us trying to get the program to be financially sound, 15 percent increase, most of those premiums are going to go toward paying off the debt, paying other program expenses, as well as trying to bill—

Mr. GREEN. I yield back, Madam Chairwoman. Thank you.

Chairwoman WATERS. Thank you.

Mr. Neugebauer.

Mr. NEUGEBAUER. Thank you very much.

Mr. Connor, what kind of analysis has your agency done to address this issue of you have a fund that, you know, is nearly $20 billion out of the money; you're struggling—I think what you—did you say the interest was going to be about $700 million a year?

Mr. CONNOR. That's correct.

Mr. NEUGEBAUER. And so what's the plan?

Mr. CONNOR. Well, the plan right now, since Katrina, there are a number of things we've been doing to try to address the financial situation that we have.

One would be, what we were just discussing, is we recognize that there's a 10 percent cap on premium increases, so to the maximum extent possible, we're raising the rates as high as we can, based on the ceiling that's there. That's one thing we're doing.

The other thing that we're doing is we're remaining very, very aggressive with respect to trying to increase or grow the book of business.

So the program that I talked about before, where we are going out and through Flood Smart we're writing more business, we have that 22 percent growth, we have over a million policies, and that we're retaining those policies, to the extent that we remain aggressive, try to get more policies on the book, try to get those policies to remain on the book, then those are some of the things that we're doing to get premium revenues in the door and keep it in the door.

The third thing that we're doing is we certainly recognized, as we looked over the numbers over the last couple of years in terms of our expenses and our costs, that there are some elements in the way that we compensate the companies with respect to claim handling that we need to tighten up.

There are certain startup costs that companies incur, and as a result of that, when you get high flood or mega-catastrophes like you did with Katrina, Rita, and Wilma, then there's an opportunity that those expenses are going to go higher and higher and higher.

That is something that we need to—we've identified and that is something that we need to address, and we intend to address that with the upcoming arrangement that we have to write your own company.

So that, in and of itself, I think is going to—those three things in combination are things that we're doing now to try to address the financial situation in the program.

But that withstanding, when we're talking about the kind of debt we're talking about here, those are noble efforts, and we will continue to try to do these things, but again, it will be quite a while before we can do anything significant in terms of reducing that debt.

Mr. NEUGEBAUER. You know, in fact, the taxpayers are probably on the hook for $20 billion and if another event happened, because of our premiums not being actuarially based, there's another contingent liability out there, so it's not just that this is an existing problem, but it's a potential future problem.

Just because of the caps that are on the increases, what would you say, if we passed a bill today that said let's make all premiums, vacations homes, primary homes, let's make them actuarially based, what would be the percentage of increase that most people would be experiencing?

Mr. CONNOR. You know, what I'd like to do is to provide that testimony for the record, because I'd like to go back and just do an analysis on that.

I wouldn't want to give a number here or a percentage that wouldn't be accurate.

Mr. NEUGEBAUER. I would look forward to that, and I think this committee would, too.

I think we really need to know exactly what kind of subsidization is going on here for the people who live in those flood-prone areas, because, you know, I live in an area that is subject to high winds and tornadoes, and so my insurance costs more than for people who live in areas that are not subject to those, and so to me, it's not fair that people who live in an area, because they choose to live there, should be subsidized in a way that's—in other words, not only am I subsidizing, I'm paying a higher premium for being in the area I'm in, but I'm also subsidizing, as an American taxpayer, the ability for folks to live in a—I want to move quickly to how do you feel like, on mapping, and I know we're going to hear some testimony on mapping, how do you feel like we're coming on identifying areas that should be—people should be encouraged to carry flood insurance?

With the technology and the mapping technology we have today, are we moving rapidly enough or do we need to move more quickly?

Mr. CONNOR. Well, you know, based on the reports that I've seen, it seems to me that we're right on target in terms of when our plan was to get the maps out by the end of the funding period.

When you talk about areas where people need to have insurance but don't, the first thing that comes to mind with me are residual risks, and those are properties that are behind levees and manmade structures, which clearly, because it is not considered what we would call today a mandatory purchase requirement, to have insurance in those particular areas, it is something that we would certainly encourage, even without legislation, and the reason we would do that is when you look at FEMA as an Agency, one of the things that we are supposed to be doing is making folks aware of the risks that they may be facing, and to the extent that we all know now what the dangers are behind levees and other manmade structures, to the extent that folks can understand that you are certainly vulnerable to flooding, we are certainly encouraging that. We encourage folks to purchase flood insurance, even though it's not a requirement at this time.

Chairwoman WATERS. Thank you very much.

I recognize the gentleman from Missouri, Mr. Clay, for 5 minutes, for questioning.

Mr. CLAY. Thank you, Madam Chairwoman. I want to thank you for conducting this hearing.

Mr. Connor, I represent St. Louis, Missouri, which is the confluence of America's two largest rivers, the Missouri and the Mississippi River.

The mapping provisions of the bill are extremely important, especially when one thinks of the disastrously outdated and inaccurate floodplain maps that have been used as standards.

We have concerns expressed by some on the second panel that requiring FEMA to map the 500-year floodplain may delay completion of the 100-year floodplain map update.

Additionally, concerns are expressed that the digital mapping updates are not necessarily the most accurate updates, and that accuracy should be considered the most important result of the changes.

What is FEMA's position on the concern of mapping the 500-year floodplain before completion of the 100-year floodplain?

Mr. CONNOR. Sir, I'd like to again provide testimony for the record on that, because I think that we need to take a look at where we are and the resources available and I'd like to provide that data to you that way.

It will be detailed data. I'd like to be accurate with it, so I'd like to provide testimony for the record.

Mr. CLAY. Can you shed a little light on whether FEMA agrees with the mapping provisions of H.R. 1682 or does FEMA have concerns? Can you shed a little light on that?

Mr. CONNOR. Again, I would go back to providing the testimony for the record, and the reason for that is because there are some provisions we like and there are some provisions we don't, and so it's easier to provide it to you through that means of testimony as opposed to try to try to articulate it now.

Mr. CLAY. You don't care to elaborate on it now?

Mr. CONNOR. I prefer not to, sir.

Mr. CLAY. I thank you, and Madam Chairwoman, I yield back. Thank you.

Chairwoman WATERS. Thank you very much.

I recognize Congressman Pearce for 5 minutes for questioning.

Mr. PEARCE. Thank you, Madam Chairwoman.

Mr. Connor, recently FEMA has released flood maps in Las Cruces—my largest county in Southern New Mexico. As many as 9,000 properties are going to be added to the floodplain there. They recently had an open meeting, which was attended with a lot of discussion as to whether or not those maps were accurate.

One of the problems appears to be that some of the levees in the surrounding area are partially certified and partially uncertified, and it's my understanding that FEMA won't allow the properties in the certified pieces to have lower insurance rates.

Can you tell me a little bit about your process and a little bit about the circumstance, as much as you might know, or similar circumstances?

Mr. CONNOR. I would like to again submit that to you through testimony for the record, sir, because there are details involved in that whole process that is better explained that way.

Mr. PEARCE. Is it possible to change designations as parts of the levees are certified in the area? In other words, this is a process that ought to be well-known to your Agency.

Mr. CONNOR. Yes, sir.

Mr. PEARCE. That is possible?

Mr. CONNOR. Yes, sir.

Mr. PEARCE. So it's possible that we might get some relief there.

Generally, what drives the redrawing of maps that have been pretty stable?

Mr. CONNOR. Changes in climate, changes in the physical landscape, topography, and the methods.

Mr. PEARCE. Now, as you look at the Nation as a whole, how many times have you reissued floodplain maps and found those to be inaccurate?

Of the two circumstances that we've looked at, Carlsbad, New Mexico, and also Alamagordo, New Mexico, we have found inaccuracies in the FEMA work, and they have gone back and redone it for a third time.

Is that unusual or is there a high rate of reaccomplishing, redrawing of maps after an attempt like this one?

Mr. CONNOR. I think that's one of the things we need to go back and get some data on and provide that to you, through testimony for the record, sir.

Mr. PEARCE. In the underlying bill, on Page 3, there is a description of a low-priced premium, a $112 premium, for places that are low to moderate risk.

How many places in New Mexico would qualify as low to moderate risk?

Mr. CONNOR. I don't know off the top of my head, but I can surely get that information for you.

What we're talking about is a preferred risk policy that we normally would write in areas that are not considered high risk areas, but again, I can get that information to you, provide it for the record.

Mr. PEARCE. We were talking about the 500-year floodplain. What's the Agency's internal position on that, the 500-year floodplain to help draw in?

I was listening, and I may have missed it, but I did not hear you include that suggestion in your increased revenues. Mr. Neugebauer was asking how you're going to solve the problem of $21 billion worth of—basically about $1 billion a year in premiums.

Mr. CONNOR. Yes. I think again this is one of the responses I would like to provide as testimony for the record because again, there are varying opinions in terms of how we approach that, sir.

Mr. PEARCE. Just for the record, I would tell you that the position of those who would increase to a 500-year floodplain, that would include almost everyone in New Mexico, they have an average income of about $25,000 a year. So everybody in New Mexico would be paying for those $335,000 houses on the Gulf that get torn up time after time.

Those are second homes, they are vacation homes. It is particularly egregious that we would consider the 500-year floodplain to cure a problem with a fund that does not appear to be functioning properly, and to come and tag heavy burdens on people who will never have those $300,000 houses, they will never live on the coast, they will never have the benefits, and yet they are paying for those people who are, just is something that really should be thought about quite a lot, in my opinion.

I see my time has about elapsed. I'll yield back.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

I'm going to call on Mr. Shays next.

Mr. Connor, did you not anticipate some of these questions before coming over here to this committee?

Mr. CONNOR. I did anticipate some of them, Madam Chairwoman. It's just that on some of these questions that are being asked, they are detail oriented, and I want to make sure that I give an accurate response.

Chairwoman WATERS. Well, I know, and I appreciate that, but I think our members on both sides of the aisle have been pressing about the 500-year floodplain issue, and the cost to, you know, our constituents, and I keep hearing it coming up over and over again.

I sure wish I could get at least a feel from you about what you think about that. What does your Agency think about that?

Mr. Shays, 5 minutes for questioning.

Mr. SHAYS. Thank you for appearing before us.

I wrestle with this issue; 7 of my 17 towns are on the coast.

In principle, I don't think taxpayers should be subsidizing people who build in places they shouldn't build, but what I wrestle with is that there are some areas where you have continual flooding, and then you have some areas that are on the coast and they're on a floodplain, and they don't have continual flooding. They may have not had it for decades and decades.

How do we sort out the difference between people who are just simply in the line of fire, every few years they seem to have to rebuild a home, and those who are not in the line of fire?

Mr. CONNOR. Well, this is something that we're dealing with through the severe repetitive loss program, whereby we are identifying some of these properties that have repeated losses, and to the extent possible, we're trying to identify these properties and through acquisition programs either purchase those homes or suggest mitigation projects that would lessen their ability to be damaged.

And this is all handled through a special program, through our direct program. It's not handled through the write your own program at all. We've taken it from the write your own program. It's all handled through a contractor that we're using to manage that entire process.

Mr. SHAYS. Some of my constituents have jumbo loans, but they're only able to ensure up to a certain amount, and yet again, they are not in an area where there has been hardly any flooding. Maybe I believe 1930, there was something.

How do we address that issue?

Mr. CONNOR. For people who want more coverage, is that what your question is?

Mr. SHAYS. They have jumbo loans. They have very large loans, and they're only insured up to a certain amount that doesn't come close to covering the potential loss.

The way that you get around that is, the maximum that we would offer those particular property owners is $350,000, but in the private sector, there is what would be called an excess policy.

Could you address the last issue that I'd like to ask, and that is the transferring of costs by insurance companies from the area where they were liable to flood, insurance where we're liable, and then, you know, soak the government?

Mr. CONNOR. You're talking about claims? Are you speaking about claims?

Mr. SHAYS. I'm talking about wind versus water.

Mr. CONNOR. Yes.

There have been a number of discussions on that particular issue, and I feel pretty confident that the claims adjusters that we're using through the write your own program are basically placing the liability where it ought to be, and that's with the write your own companies.

Now, that leads to, well how do you know that?

There are a number of very rigorous oversight processes that we have in place to make sure that the companies are performing as they should. These processes include a number of different audits.

There are reinspection audits that take place immediately after a flooding event, where these general adjusters will, from the National Flood Insurance Program, will go on site and they will take random samples of adjusting or claims to make sure that they're being adjusted correctly.

There are also operational reviews that occur every 3 years with all the write your own companies where staff of FEMA will actually go on site to the companies, pull the files, look at them, look at the documentation, to ensure that—

Mr. SHAYS. Let me just quickly interrupt you, because I get the gist of it.

Mr. CONNOR. Yes, sir.

Mr. SHAYS. Just walk me through one last point.

If people down South are having huge flooding, how is that impacting people up North who may not be?

Mr. CONNOR. How are they affecting people up North?

Mr. SHAYS. Right. Do the rates up North go up as well?

Mr. CONNOR. No.

Mr. SHAYS. Okay.

Mr. CONNOR. No. This is—the rates for the National Flood Insurance Program are universal rates, so in other words, it's not like in the normal insurance industry where—

Mr. SHAYS. So they do? In other words if you're trying to capture more down South, everybody up North is having to pay for it? Correct?

Mr. CONNOR. That's correct.

Mr. SHAYS. So it's not based on conditions district-wide. Thank you.

Mr. CONNOR. It's based on the mapping, sir, not on necessarily the territory or experience.

Chairwoman WATERS. Thank you very much.

I'm going to call on the gentleman from Mississippi, Mr. Taylor, and I would hope Mr. Taylor, in your line of questioning, the problem or the concerns about the private insurance companies—you've talked to me a lot about that. You might want to, if you have time—

Mr. TAYLOR. Sure. Thank you, Madam Chairwoman.

Mr. Connor, I'm very much interested in subpoenaing the records of a conversation held between Mr. Maurstad and, according to the Times-Picayune New Orleans paper today, 300 insurance company representatives, insurance agents and Gulf Coast insurance com-

missioners on September 7, 2005, at which point he, in speaking to these people, mentioned that he had already had conference calls with the largest insurance companies in the flooded areas.

The reason I would like that, Madam Chairwoman, is because I think if we go back to testimony of about a month ago when Mr. Maurstad came before this committee, he said something to the effect of, "Well, I told them if there was wind and water, go ahead and pay the flood," which leads to a problem with the United States Federal Code, because under the national write your own policy, the primary relationship between the write your own company, private industry, and the Federal Government will be one of a fiduciary nature, i.e., to ensure that any taxpayer funds are accounted for and appropriately expended.

To quote, "The entire responsibility of providing a proper adjustment for both combined wind and water claims and flood alone claims is the responsibility of the write your own company."

Now, that's out of the U.S. Code 44 CFR 62.23.

What's interesting is that on September 13th, apparently based on this conversation with Mr. Maurstad, State Farm Insurance Company sent out, and I'm quoting, "Where wind acts concurrently with flooding to cause damage to the insured property, coverage for the loss exists only under the flood coverage."

So here we have the United States Code calling for a proper adjustment of the claim, letting State Farm say go out and this much was wind, they pay that much, if this much is water, you pay that much over here. But State Farm apparently, based on a conversation with Mr. Maurstad, turns around and says, if there's wind and water, stick it all to the taxpayers.

So I understand your concerns, but I'd also remind you that in my case, I've been a resident of that home for 28 years, with never a drop of water. Within 200 yards of me was a 200-year-old brick mansion that had been there for 200 years. The day after Katrina, it was a pile of bricks.

The third thing I would like the gentleman to comment on is that I'm having trouble believing that you've done a proper following up of adjudicating these claims, and I'm particularly troubled by one report that says that your Agency really only has about 40 employees, that you've actually turned around to an outfit called Computer Science Corporation and hired about 170 of them on a contract basis, and so you are in effect hiring contractors to see if the contractors that you have hired to adjudicate the claim have been fair with you.

And I don't think, again, going back to these gentlemen's concerns that the taxpayers are being bilked, that you guys are doing that very well, the oversight on behalf of the taxpayer.

Lastly, I would like to submit for the record a series of articles that have appeared in the Times-Picayune, the New Orleans paper, within the past month, pointing out very serious allegations where the citizens were asked to pay claims that should have been paid for by a private insurance company.

In one instance, a couple submitted a $38,000 bill for the contents of their home, only to be compensated to the tune of about $139,000 for their home, and it turns out that Allstate actually

padded the bill by $100,000. It was not in the couple's handwriting; it was a typed memo from Allstate.

There are instances, again, published reports in the Times-Picayune, where properties received $95,000 checks, $200,000 checks on properties that never flooded, where there was just wind damage.

And so I do share the gentlemen's concern, number one, because I believe in the flood insurance program. I know how important it is. But if it's not properly run, then you do play into the hands of those people who would like to do away with it.

I recognize that 52 percent of all Americans live in coastal America, that 52 percent of all Americans, whether it's Connecticut, New Jersey, Mississippi, or California are at risk of some type of ocean or rain or flood event. I got here and helped pay for the Iowa floods and didn't bat an eye when it came to that bailout. So we do help all of the people in this country.

But your important program is in jeopardy if it's not properly managed, so I would like the gentleman—

Chairwoman WATERS. Without objection, the articles will be submitted for the record.

And we will now let—

Mr. NEUGEBAUER. Madam Chairwoman, I ask unanimous consent to grant the gentleman an additional 2 minutes.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. TAYLOR. I thank the gentleman.

Mr. Connor, I've laid some challenges at you. I'd like to hear your response.

Mr. CONNOR. Well, first of all, I appreciate you bringing those to our attention, and we certainly are aware of the newspaper articles and the examples that you have presented, and we're looking into each one of those to find out what exactly did happen.

But one of the things that I need to assure you of in this subcommittee is this.

To the extent that—we do have oversight, and I'll get to that in a second. But to the extent that we do determine that there has been a lack of proper performance on the part of a write your own company in terms of this claims process, there are things that we will do to fix it.

Mr. TAYLOR. Can I back up?

Was there a meeting on September 7th between Director Maurstad and over 100 people from the insurance industry?

Mr. CONNOR. I would have to check to see on that, and I'll provide that for the record.

Mr. TAYLOR. Second question.

How many employees do you have and how many people that run this important program are contract employees from CSC?

Mr. CONNOR. We have, in claims, we have about maybe no more than 15 or 20, but we also hire CSC, which is a contractor that we've hired for years, that also helps us, supports us with regard to dealing with the write your own and flood insurance matters.

Mr. TAYLOR. So you really do have contractors checking to see if other contractors are defrauding our country?

Mr. CONNOR. I don't know about the last part of that, and I need to check on that part, but we do use a contractor, CSC, as a support for our program, because we do have such small staff.

Mr. TAYLOR. Last point.

Our Nation was very kind to the people of Mississippi with the homeowner grants for people who had homeowners insurance but who flooded and didn't get paid.

One of the provisions of that, though, was that in order for you to be compensated, those folks had to buy flood insurance from now on.

Mr. CONNOR. Right.

Mr. TAYLOR. What steps are being taken to follow up to see that is actually happening, that someone just doesn't buy a policy for 1 year and let it lapse, and get the best of both worlds? Because again, I understand these gentlemen's concerns. We don't want people gaming the system.

Mr. CONNOR. Well, based on the 1994 Reform Act where it was required that in order to get disaster assistance, the prerequisite is that you have to purchase flood insurance, what generally happens is, I don't think there's anything in place to make sure they maintain it until, of course, there's another flooding event in that particular area, and that flood policy was not maintained, then they would be denied additional disaster assistance. That's pretty much the check on that.

But there is nothing that we have internally to ensure that those people who got flood insurance as a result of disaster assistance maintain it.

The only way that I am aware that it comes to the forefront—

Mr. TAYLOR. Mr. Connor, I really think you need to fix that. A deal is a deal. If we're going to help these people out, then they need to keep their end of the bargain.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

The gentleman mentioned that CSC is it, your contractor you've had for years, is this a competitive bid?

Mr. CONNOR. Yes.

Chairwoman WATERS. And they win every time?

Mr. CONNOR. For the last few years, yes.

Chairwoman WATERS. How many years?

Mr. CONNOR. I'd have to check on how many years.

[Mr. Connor did not provide any further information for the record.]

Chairwoman WATERS. Okay. The Chair notes that some members may have additional questions for this gentleman, which they may wish to submit in writing.

Without objection, the hearing record will remain open for 30 days for members to submit written questions to the witness and to place their responses in the record.

This panel is now dismissed, and you have mentioned today that you would respond to many of the questions that have been asked.

Mr. TAYLOR. Madam Chairwoman?

Chairwoman WATERS. Yes.

Mr. TAYLOR. Again, I appreciate your generosity.

I would request that the committee subpoena the records of that meeting between Director Maurstad and the insurance industry that occurred on September the 7, 2005, and any additional phone calls that occurred between the director and the heads of the large insurance corporations, either immediately prior or immediately after that.

Chairwoman WATERS. Thank you. The Chair will take that into consideration.

Thank you very much.

I will now call the second panel.

I think that we have a special guest that our ranking member would like to introduce.

Mrs. BIGGERT. Thank you, Madam Chairwoman.

It's my pleasure to introduce Paul Osman, who is the floodplain programs manager for the Illinois Department of Natural Resources, Office of Water Resources.

He coordinates the Federal, State, and local floodplain development regulations as well as the National Flood Insurance Program for over 1,000 Illinois communities. He also assists with the coordination of floodplain mapping, flood disaster response, and flood mitigation activities in Illinois.

And prior to joining IDNR, Mr. Osman was a resource conservationist with the Soil Conservation Service and served 3 years with the U.S. Peace Corps in Kenya. So we're happy to welcome him today.

Chairwoman WATERS. Thank you very much.

Our second witness is Mr. David Maune, Ph.D., CP, CFM, on behalf of the Management Association for Private Photogrammetric Surveyors.

Our third witness is Mr. Curt Sumner, executive director, American Congress on Surveying and Mapping.

Our fourth witness is Mr. Mark Davey, president and CEO, Fidelity National Insurance Company, on behalf of the Property and Casualty Insurers Association of America.

Our fifth witness is Mr. Thomas Minkler, president of the Clark-Mortenson Agency, Incorporated, on behalf of the Independent Insurance Agents & Brokers of America, Incorporated.

And our final witness is Mr. Vince Malta, president, Malta & Company, Incorporated, on behalf of the National Association of Realtors.

Without objection, your written statements will be made part of the record.

You will now be recognized for a 5-minute summary of your testimony.

We'll start with Mr. Paul Osman.

STATEMENT OF PAUL A. OSMAN, CMF, ASFPM CO-CHAIR, INSURANCE COMMITTEE, FLOODPLAIN PROGRAMS MANAGER, STATE OF ILLINOIS, ON BEHALF OF THE ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

Mr. OSMAN. Thank you.

I'd like to thank Chairwoman Waters and Ranking Member Biggert for inviting the Association of State Floodplain Managers to testify today.

It's an honor for me to represent the Association of State Floodplain Managers and over 11,000 of my colleagues from all 50 States in the Nation who work day out and day in to reduce flood losses.

My name is Paul Osman, and I'm the floodplain program managers for the State of Illinois. For nearly 20 years, I've worked alongside thousands of local officials to reduce flood losses.

I'd like to take just a minute to briefly tell you about floodplain management in Representative Biggert's and my State. Illinois has the largest inland system of rivers, lakes, and streams in the entire Nation. Our borders are formed by major rivers. We have the Mississippi on the west, the Ohio on the south, the and Wabash on the east. We also have the Illinois River. We also lay claim to Mr. Clay's Missouri River, because the confluence is just across the State line.

Over two-thirds of the water in the Nation drains through Illinois, so if it snows hard in Saskatchewan, or rains heavily in Pittsburgh, we know that at a certain point, Illinois is going to flood. Despite these challenges, I'm proud to say that Illinois is a national leader in floodplain management. We have very strong State and local regulations to prevent new flood-prone development. Only appropriate open space uses, such as baseball fields and soccer fields and such are allowed in the most flood-prone areas.

We also have a heavy reliance on FEMA and State mitigation programs to reduce or eliminate those existing flood-prone properties. We've purchased nearly 5,000 flood-prone properties.

Prior to the 1993 flood, Illinois was ranked number 5 in the Nation for flood losses. Today, we're ranked number 20, and we continue to drop further on that list every year. We take floodplain management very seriously in Illinois.

State and local officials rely on the National Flood Insurance Program's three-leg stool of mapping, regulations, and insurance to reduce flood losses.

State and local officials are the Federal Government's partners in implementing flood reduction programs and coordinating the National Flood Insurance Program.

We're the first on site during a flood. We see the tears and broken hearts after the flood. And we work tirelessly to enforce floodplain regulations, to encourage the purchase of flood insurance, and to make sure that future flooding will not cause increased damages.

The time has come, however, to allow State and local officials to take on more responsibility for floodplain management.

The NFIP should be a program that enables State and locals, rather than one that shifts the responsibility for floodplain management back up to the Federal Government.

Therefore, we support any effort to enable State and local governments to take a leadership role in their own flood reduction destiny.

H.R. 1682 includes a number of provisions that will help State and local officials reduce flood losses. We support this legislation that will, over time, improve the financial stability of the NFIP, although we have a few recommended changes for your consideration.

The ASFPM supports providing the NFIP with sufficient borrowing authority to meet its current needs.

First and foremost, we urge the committee to forgive the debt.

We feel it's important to ensure that flood insurance premiums on primary residences remain affordable to allow greater coverage and to reduce any reliance on taxpayer funded disaster assistance.

However, we also strongly support the movement toward actuarial rates and the phase-in of actuarial rates on non-primary residences and non-residential structures.

ASFPM supports imposing mandatory purchase on flood insurance in areas that are subject to what we call residual risk. These are areas behind levees, floodwalls, flood control dams, those sorts of things. I only need mention the word New Orleans.

Rather than yet another study, we urge that mandatory purchase be implemented directly and that State and local entities work together with FEMA to identify these residual risk areas.

Just last week, I was at a community on the Ohio River that was protected by a certified levee. This entire community lies 10 feet below the flood elevation, yet the floodplain maps show absolutely no flood risk whatsoever.

When I checked that community, only three people in this community carried a flood insurance policy, and that's despite the fact that this levee had 10 years of successive failed inspection reports. The levee was in deplorable condition.

These residual risk areas need to be identified. Residents need to know that the flood risk exists, and insurance coverage needs to be made mandatory in these areas to better protect the residents.

As a followup, we support the bill's outreach grant proposal. However, again, this should not be a federally led effort, but rather federally encouraged and supported.

Outreach efforts should be the responsibility of State and local officials who have a far greater awareness of specific needs.

The proposed language in H.R. 1682 bypasses the State officials who are responsible for floodplain management.

ASFPM strongly agrees that flood mapping must have continued long-term support. Flood mapping is one of the primary components of this bill.

The funding level increase and the time extension provided by the bill will allow for continued flood mapping and risk identification at a very basic level. We are particularly pleased to see the proposal to re-establish the technical mapping advisory council.

Nearly 3 years ago, new grant programs aimed at repetitive loss properties were authorized by the Federal Reform Act of 2004. Unfortunately, we're still awaiting regulations for the program to be released by the Department of Homeland Security.

ASFPM endorses extending the program and allowing them to operate for the full 5 years as originally envisioned.

Lastly, with your busy schedules, many of you may not have noticed, but just 2 weeks ago, a record flood took place on the Missouri River. Most of the media coverage was limited to a few column inches on the back page of local newspapers. A major flood passed almost without notice.

There's a reason for that. In 1993, FEMA-supported mitigation projects bought out many of the most flood-prone areas along the Missouri River. The remaining residents bought flood insurance.

Strict floodplain regulations have kept new development from going back into those areas. Now when flooding occurs in properties that are properly regulated, they become non-events.

When the NFIP and local floodplain management officials are working together as envisioned, we don't hear a word about it. It doesn't make the news.

The NFIP is working, but it needs your help to keep it working correctly.

With a few minor improvements, this bill will help it work better.

Thank you.

[The prepared statement of Mr. Osman can be found on page 93 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. David Maune.

STATEMENT OF DAVID F. MAUNE ON BEHALF OF MANAGEMENT ASSOCIATION FOR PRIVATE PHOTOGRAMMETRIC SURVEYORS (MAPPS)

Mr. MAUNE. Madam Chairwoman, and members of the subcommittee, my name is Dave Maune and I am testifying today on behalf of MAPPS, a national trade and professional association of over 160 of the Nation's leading mapping firms.

We appreciate this opinion to comment on H.R. 1682 and other issues related to the flood mapping and the National Flood Insurance Program. We believe H.R. 1682 is a good start in addressing reforms within the NFIP.

In addition, MAPPS recommends a series of additional reforms we believe will help make the program run more efficiently, and more importantly, will ensure accurate mapping data reaches those entities and individuals impacted every day.

First, where needed, FEMA should collect accurate ground elevation data using the best technology to meet accuracy requirements in FEMA's guidelines and specifications.

FEMA routinely uses LiDar data whenever such data are available. In many cases, the FEMA lead determines that the best use of FEMA's budget is to focus on the hydrologic and hydraulic modeling and production of flood hazard maps, so FEMA usually uses the best available elevation data provided by the U.S. Geological Survey, NOAA, the Army Corps of Engineers, individual States, or others, but that data sometimes does not meet FEMA's own accuracy guidelines.

To address this issue, MAPPS endorses the National Academy's proposal of elevation for the Nation, which is needed by virtually every Federal agency and State, and not just FEMA.

Elevation for the Nation also has many major advantages in helping homeowners to recognize their true flood risk based on the elevation of their homes rather than their location within or outside special flood hazard areas.

We also recommend the inclusion of private sector topographic mapping professionals in the re-established technical mapping ad-

visory council so that commercial, professional expertise is brought to the table.

We support legislation to provide FEMA with access to the Census Bureau's master address file, the MAF, so that maps are available with important address information when street networks are obliterated as they were in New Orleans during Katrina.

We believe there is a need for FEMA to place new emphasis on flood risk based on the variable elevations of houses, and thus we recommend a national structures inventory.

Katrina has also exposed a need for a national levee inventory and mapping of areas vulnerable to flooding if a levee or other flood control structure fails, and we support a goal of eliminating paper products by 2010.

In my written testimony, I have included other recommendations that a task force of MAPPS has developed. We commend them all to the committee's attention.

Let me close on one note. Current, accurate elevation data is not only needed by FEMA, but by dozens of Federal, State, and local agencies. Elevation data is not solely a FEMA need, and it should not be solely a FEMA solution.

FEMA is but one of many whose needs are not fully satisfied by the best available topographic data, and FEMA's map modernization funding was never intended to solve this portion of a nationwide problem.

FEMA effectively uses the best available topographic data, but it does not have the mission or funding to provide base mapping for our country.

Part of the problem is the budget process at OMB, but it is also a challenge due to the authorizing committee and appropriations committee structure here in Congress.

It is neither practical nor feasible to fund the entire elevation for the Nation requirement through the FEMA map modernization program.

We have a difficult fact to accept, that either FEMA will sometimes produce flood risk maps that are not as accurate as they could or should be, or we provide additional funding to FEMA beyond the $400 million annual authorization of appropriations and other Federal agencies for the acquisition of new topographic data for selected floodplains when existing data are inaccurate or out of date.

OMB must develop a plan, approved and funded by Congress, so that FEMA, U.S. Geological Survey, and other map production and geospatial data user agencies receive the resources needed to assure that the Nation has the current accurate mapping that is needed to protect property, enhance our environment, save tax dollars, and ensure sustained economic growth.

This concludes my testimony. I'll be happy to answer any questions when the time comes.

[The prepared statement of Mr. Maune can be found on page 81 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Curt Sumner.

STATEMENT OF CURTIS SUMNER, EXECUTIVE DIRECTOR, AMERICAN CONGRESS ON SURVEYING AND MAPPING

Mr. SUMNER. Chairwoman Waters, and members of the committee, thank you for the opportunity to speak today.

My name is Curt Sumner, and I am the executive director of the American Congress on Surveying and Mapping.

We are a nonprofit professional association comprised of geodesists, surveyors, cartographers, and other geospatial practitioners. We have affiliates in all 50 States.

Since prior to World War II, the diversity of our membership has been used by Congress and Federal agencies to seek advice on areas within our expertise.

We're comprised of educators in colleges and universities, as well as people in varying levels of government service, and professionals who are licensed to help their fellow citizens do things they can't do for themselves, and that puts us directly in line with people who are affected by flood maps.

One of the things that we've done recently is work with FEMA to develop something called a certified floodplain surveyor program, through which we assist those who believe there may be mistakes in determining them to be within the flood zones, to file letters of map amendment or letters of map amendment related to fill.

ACSM supports the intent of H.R. 1682, and we believe that there are a few areas about which we might like to speak that are within our areas of expertise.

We also welcome the opportunity to work with staff to address these issues, as you further your findings.

Section 21 calls for updating the maps and maintaining the maps. We would like to propose that updating not simply be digitizing. Digitizing outdated maps is of no benefit. In fact, it could be detrimental, by allowing people to misunderstand the data they are getting.

Sometimes digitized data is given more value than mapped data or old map data, and if it is wrong information, it certainly can be harmful.

The bill also has language which would require new mapping. We believe the mapping should be geo-referenced, it should be created using technological advancements that are available to us, and a minimum set of standards that would ensure consistency of the mapping across jurisdictional lines.

Sometimes when mapping is to be done in a particular jurisdiction, the local jurisdiction may have influence on the mapping in terms of the elevation data that is used, and not use uniform data which has been accepted by all the Federal agencies.

The bill shouldn't prohibit local government from moving forward to do mapping that they deem to be appropriate nor should it prohibit the local government from not mapping areas that are likely to be undeveloped, such as swamplands, State and national forests, or other preserved areas.

Again, we believe the bill should have express language which establishes and authorizes a maintenance program. Timely maintenance of the updated maps is very important.

Another stipulation in the bill is a requirement to show the 500-year floodline. We think the language should be included in the bill

that would allow local jurisdictions to map to something called, "future conditions."

Future conditions takes into account proposed or anticipated development that may occur over time, and can oftentimes provide a better picture of what may occur and wherein property could be in harm's way in terms of flooding.

We, too, applaud the reestablishment of the technical mapping advisory council.

We feel that it's impact in its former state was very important in getting to where we are today with flood mapping, and we believe the reinstatement should be permanent, and clearly it should have representation from the mapping and surveying community.

We also believe that the cooperating technical partners program, which was begun after the TMAC ended, should have representation.

This particular program establishes partnerships with State, local, and regional organizations toward the development of modernized maps and plays an important role.

In conclusion, I'd like to thank the committee again for allowing me to speak and I will be happy to answer questions that you may have for me.

[The prepared statement of Mr. Sumner can be found on page 100 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Mark Davey.

STATEMENT OF MARK DAVEY, PRESIDENT AND CEO, FIDELITY NATIONAL INSURANCE COMPANY, ON BEHALF OF FIDELITY NATIONAL INSURANCE COMPANY AND THE PROPERTY & CASUALTY INSURERS ASSOCIATION OF AMERICA

Mr. DAVEY. Chairwoman Waters, Ranking Member Biggert, and members of the subcommittee, my name is Mark Davey and I am president and CEO of Fidelity National Insurance Company.

Fidelity National is a write your own flood insurance partner with the National Flood Insurance Program. We are the largest writer of flood insurance, facilitating the purchasing and servicing of approximately one out of every five policies sold through the program.

Fidelity National is also a member of the Property and Casualty Insurers Association of America, a trade association representing over 1,000 insurers. PCI member companies represent more than 40 percent of all property and casualty insurance underwritten in the United States.

Thank you for the opportunity to appear before you today.

As events of 2004 and 2005 have shown, the devastation caused by hurricanes and floods can impact millions of lives. Even today, those hardest hit continue to recover from past events.

Scientists and meteorologists tell us we will continue to see more frequent and severe storms for at least another decade.

The NFIP is a necessary public policy response to the uninsurable peril of flood and should be continued.

As currently structured, the program does not provide the level of protection needed by consumers. It has not achieved the breadth of participation needed for the program to achieve its ultimate ben-

efit. In order to better prepare for future catastrophes, program reforms are required.

Fidelity National and the PCI support proposals intended to achieve these goals, many of which are contained in H.R. 1682. We believe this bill is important to property owners, insurers, the government, and our Nation. We support its passage, with some suggested changes.

We believe there are several key issues which must be addressed to make the NFIP more responsive to purchasers, and more fiscally responsible, as well as to ensure that the properties built or rebuilt are protected against future loss.

There are 12 key reforms that should be part of any legislation to change the program, and thanks to the authors of the bill, we are pleased to see most of them are contained in H.R. 1682.

We encourage Congress to forgive the outstanding debt incurred by the NFIP resulting from Hurricane Katrina and other recent events.

Just to service the current debt levels, the NFIP will need new loans approximately every 6 months to cover the annual interest alone. It is unlikely that the NFIP will ever be able to retire this debt.

We need to ensure that the NFIP has the ability to access funds when needed without constantly coming back to Congress to increase its borrowing authority, as was necessary in 2005 and 2006. This needlessly slows the claims paying process at a time when flood victims need it most.

The current program expires on September 30, 2008. The program should be reauthorized on a long-term basis.

In order to reduce litigation, which significantly raises operational costs for all stakeholders, including the Federal Government, Congress should affirm Federal court jurisdiction over all disputes relating to procurement of a policy and adjustment of claims under the NFIP.

The program should include revised and enhanced mitigation efforts, such as adoption of a strong, statewide minimum building code. These new codes must contemplate all types of loss, not just flooding.

Legislation reforming the program should provide additional Federal funds to expedite completion of the map modernization initiative.

The program should expand the mandatory purchase requirement to include additional properties at risk

In addition to those properties currently defined as residing in special flood hazard areas, properties which have sustained a flood loss, are located behind a levee or other protective barrier, or are located within a specified distance from major bodies of water should be required to purchase flood insurance.

The maximum coverage limits should be increased above the current $250,000/$200,000 limit for residential property to accommodate increasing construction costs.

The program should include some provision for additional living expenses and business interruption.

The standard residential flood insurance policy should be revised to make it more consistent with standard homeowners policy forms.

The non-residential coverage forms should more closely emulate traditional property insurance.

FEMA should modify its disaster assistance procedures to ensure that those with flood insurance who are seeking disaster assistance are prioritized ahead of those who have elected not to purchase flood insurance.

The program should encourage lenders to establish facilities for escrowing flood insurance premiums outside special flood hazard areas.

The program should continue to provide educational materials and resources such as those provided by floodsmart.gov.

We are pleased to see that the majority of these reforms are addressed, at least in some way, in H.R. 1682, being discussed by this subcommittee.

We commend the chairwoman and the members of this subcommittee for holding this hearing to move this program forward.

It has been mentioned in the past, but it should be reinforced. The National Flood Insurance Program provides important catastrophic protection for our Nation's property owners.

While it needs reform and modernization, we are encouraged by the direction of this legislation. We stand ready and willing to work with Chairwoman Waters, Ranking Member Biggert, this subcommittee, and Congress to refine and obtain passage of this bill during the 110th Congress.

Thank you.

[The prepared statement of Mr. Davey can be found on page 64 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Minkler.

STATEMENT OF THOMAS MINKLER, PRESIDENT, CLARK-MORTENSON AGENCY, INC., ON BEHALF OF THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA, INC.

Mr. MINKLER. Thank you, and good afternoon, Chairwoman Waters, Ranking Member Biggert, and members of the subcommittee.

My name is Tom Minkler, and I'm pleased to be here today on behalf of the Independent Insurance Agents & Brokers of America to present our association's perspective on efforts to reform the National Flood Insurance Program.

I'm the president of the Clark-Mortenson Agency, headquartered in Keene, New Hampshire, a regional insurance agency with 8 locations and 55 employees in New Hampshire and Vermont. I also serve as the chairman of IIABA's government affairs committee.

As the sales force of the NFIP and the conduits between the program, the companies, and the consumers, IIABA is uniquely positioned to see the vast benefits that the NFIP provides to people and places that have been hit by a natural disaster.

With the private insurance industry largely unable to underwrite flood insurance because of the catastrophic nature of these disasters, the NFIP is virtually the only way for people to protect against the loss of their home or business due to floods.

Since 1968, the NFIP has saved disaster assistance money and provided a more reliable system of payments for people whose properties have suffered from flood damage.

It's also important to note that for almost 2 decades, up until the 2005 hurricane season, no taxpayer money had been used to support the NFIP. Rather, the NFIP was able to support itself using funds from premiums it collected every year.

Despite the historical success of the NFIP, the 2005 hurricane season and the recent weather patterns across the country have proven no program is perfect.

In my home State of New Hampshire, there have been 8 federally declared disasters from flooding in the last 10 years. This increased flooding activity in such a short period of time has highlighted some of the deficiencies of the program and has strained government resources.

For this reason, the IIABA strongly supports Chairman Frank and Representative Biggert's legislation, H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007.

In particular, the Big I is especially supportive of efforts to modernize the NFIP by increasing maximum coverage limits and by including, at the option of the consumer, the purchase of business interruption coverage, additional living expense, replacement cost coverage for contents, and basement coverage.

The modernization of coverages will hopefully have three positive effects on the NFIP as a whole.

First, it will allow consumers to more adequately insure their properties and valuables against the true risks. This will in turn make the NFIP a more attractive product for consumers, thereby increasing participation in the program, and finally, as optional coverages that are sold at actuarial rates, the modernization will result in an NFIP that is closer to being on an actuarially sound footing.

The inclusion of optional business income interruption insurance coverage is particularly crucial to Big I members and the commercial customers. For property insurance policies, business interruption coverage provides protection against the loss of profits and continued fixed expenses resulting from an interruption in commercial activities.

Optional business interruption coverage will provide stability to small businesses and to the local economies in the areas affected by the flood damage.

Another provision in the legislation which we strongly support is the inclusion of the option to purchase additional living expenses.

This provision will provide consumers with greater security during the often bewildering post-flood period and will do so on an actuarial basis as opposed to relying solely on FEMA grants and assistance.

Also among our recommendations, and present in the legislation, is the proposed increase in the maximum coverage limits.

The NFIP maximum coverage limits have not been increased since 1994. The current maximum limits are caught in time, and they do not provide reasonable financial relief for policyholders facing a complete rebuilding process.

An increase in the maximum coverage limits will better allow both individuals and commercial businesses to insure against the damages that massive flooding can cause and we're grateful that this increase was included.

Finally, the increase in the NFIP's borrowing authority has been an important issue for independent insurance agents and brokers. Despite the three borrowing authority increases passed by the 109th Congress, the NFIP likely will not have enough funds to pay all outstanding claims without another increase.

The increasing of borrowing authority to $21.5 billion, as proposed by this legislation, is vital to ensure the continued payout of promised monies to consumers and the IIABA applauds the committee for its efforts to ensure that the U.S. Government delivers on its promise.

Additionally, we ask that the committee consider whether it may be appropriate to eliminate the incurred NFIP debt resulting from Hurricane Katrina. It's estimated that the NFIP will need to pay as much as $900 million a year to the U.S. Treasury in interest payments alone, which represents nearly half of the annual premium.

The long-term survival of this program may require Congress to consider eliminating this debt and the resulting interest payments.

In conclusion, the IIABA firmly believes that the Flood Insurance Reform and Modernization Act of 2007 is critical towards ensuring long-term stability of the NFIP and toward making it more actuarially sound, to the benefit of consumers and taxpayers.

In particular, we strongly support your efforts to increase the maximum coverage limits and to provide the optional coverages of business interruption insurance and additional living expenses.

I thank the committee for giving me the opportunity to express the views of the IIABA on this important program.

[The prepared statement of Mr. Minkler can be found on page 89 of the appendix.]

Chairwoman WATERS. Thank you very much.

Our final witness will be Mr. Vince Malta.

STATEMENT OF VINCE MALTA, PRESIDENT, MALTA AND COMPANY, ON BEHALF OF THE NATIONAL ASSOCIATION OF REALTORS

Mr. MALTA. Thank you, Chairwoman Waters, Ranking Member Biggert, and members of the subcommittee, for your invitation to present the views of the National Association of Realtors on H.R. 1682.

My name is Vince Malta, and I'm a Realtor from San Francisco, California, where I'm the owner of Malta & Company. Our firm handles real property sales and manages over 300 residential rental units.

I was the 2006 president of the California Association of Realtors and I currently serve as vice chair of NAR's public policy coordinating committee.

As the leading advocate for home ownership, affordable housing, and private property rights, NAR supports the efforts of the Committee on Financial Services to reform the National Flood Insurance Program.

The NFIP is of critical importance to communities across the country. The National Association of Realtors believes that reforming the program to ensure its long-term viability, financial stability, and actuarial soundness is essential.

NAR supports many provisions in H.R. 1682, including the following: Increasing the NFIP borrowing authority; increasing available coverage; addressing mitigation and repetitive losses; and building public awareness.

NAR would like to see the GAO study in Section 18 expanded to include renters, because they, too, are at risk and eligible to purchase flood insurance.

NAR, however, has significant concerns regarding the following three provisions that I would like to focus on this afternoon: First, proposed changes to the mapping program; second, elimination of subsidies for non-residential properties and non-primary residences; and third, the new notification requirements in Section 9.

NAR is concerned that the requirements in Section 21, to map the 500-year floodplain, may lead to delays in the current task at hand, which is updating the 100-year floodplain maps.

The ongoing update of the 100-year maps should be completed before any effort to map the 500-year floodplain is begun.

In addition, NAR believes that the technical mapping advisory council established in Section 21 should include a real estate professional.

A real estate professional would be able to provide the perspectives of map users, including home owners, and potential home buyers, and explain how these maps impact real estate transactions.

NAR strongly opposes Section 4, which calls for phasing out subsidies for non-primary residences and non-residential properties.

As a matter of fairness, properties built under the same circumstances and facing identical flooding risks should not be charged different premiums.

Although limiting subsidies on non-primary residences makes for a great sound bite, there may be significant unintended consequences for renters, potential home buyers, neighborhoods, and communities.

The average subsidized policyholder pays more into the NFIP system than do non-subsidized properties, roughly $720 in premiums annually, as opposed to the average non-subsidized actuarially rated policy premium of about $350 per year.

NAR is concerned that eliminating subsidies would result in higher premiums, increase the cost of rental housing, and could lead to increased delinquencies, foreclosures, and reduced property values for both rental units and owner occupied homes. Some properties could see premiums increase fourfold or more.

There's a limit to the amount that insurance can increase before people are either forced to sell their house or go without insurance.

NAR believes that the great majority of residential rental property owners would be hard pressed to absorb a cost increase of $1,100 or more in annual premiums.

Consequently, the increased cost of flood insurance would be passed on through rent increases to tenants, creating a hardship

and housing affordability problem for low- and fixed-income home renters.

Another issue that needs to be considered is what happens when a non-primary residence is sold and then becomes a primary residence. Apparently, there is no tracking presently.

NAR supports increasing the visibility of the NFIP. We believe that renter notification requirements in Section 9, though well-intended, will not achieve its intended goal. In order to build the level of awareness of the NFIP, we believe that a broader public awareness campaign is in order.

Residential property managers have indicated that while the type of brochure proposed in Section 9 is most likely to be overlooked amongst the rental paperwork, a well-designed public awareness campaign would not suffer from this shortcoming.

In addition to supporting reforms to the National Flood Insurance Program, the National Association of Realtors strongly encourages Congress to enact a comprehensive natural disaster policy to mitigate exposure to the risks of natural disaster and foster the availability and affordability of property insurance for homeowners and commercial property owners.

Thank you again for this invitation to present the views of NAR on H.R. 1682. We stand ready to help you enact meaningful reforms to the National Flood Insurance Program, and will be glad to answer any questions you may have.

[The prepared statement of Mr. Malta can be found on page 69 of the appendix.]

Chairwoman WATERS. Thank you very much, witnesses.

Without objection, your written statements will be made a part of the record.

I thank you for your testimony, all of you. Your testimony was very useful as we revisit the issue of flood insurance reform, and I certainly have a few questions I'd like to ask, and I'm sure my colleagues do, as well.

First of all, I'd like to go to Mr. Osman. You talked about the States playing a bigger role in decision making about flood insurance and flood management.

Could you be more specific? Are you talking more about being able to eliminate the possibility that development and building would be accomplished in certain areas? What are you referring to?

Mr. OSMAN. The NFIP, as written, provides a base standard of regulations for development in floodplain areas, and a lot of States and a lot of communities have gone above and beyond those.

It's estimated that, again, one of the things you don't hear, one of the successes of the NFIP is over $1 billion per year is saved from flood losses through these regulations.

A lot of communities in the States have gone above and beyond those FEMA-based minimum standards and have more restrictive regulations.

We talked about the 500-year flood plain. A lot of communities require construction of another foot or 2 feet on top of the base 100-year flood elevation, another level of protection.

And FEMA rewards communities who go above and beyond through the CRS, which provides discounted flood insurance premiums to those communities.

So yes, the States and local communities need to take a more aggressive stance towards regulating floodplain above and beyond the FEMA minimums.

Chairwoman WATERS. And you're saying that you're prohibited from doing that now?

Mr. OSMAN. Oh, no. Not prohibited. But just recognize the floodplains and regulate them appropriately.

Chairwoman WATERS. Does everyone agree with that? Any disagreement with that?

[No response.]

Chairwoman WATERS. All right. Let me turn to Mr. Davey.

Do you or did you insure the Gulf Coast region?

Mr. DAVEY. For flood insurance?

Chairwoman WATERS. Yes.

Mr. DAVEY. Yes, we did, substantially.

Chairwoman WATERS. And could you describe the claims that you have had to cover since Hurricane Katrina and Rita?

Mr. DAVEY. Well, it was a rather life changing event for myself and for our organization. As Katrina approached, there was a lot of prayer that took place that it wouldn't hit New Orleans or a populated coastline.

After it hit, I personally got on an airplane, flew to Houston, Texas, rented a motor home, and was in Katrina a day after it happened. We started surveying, assessing the damage, assessing accessibility, staging our adjusting staff to provide what areas what accessible, where they could come, where they could not come, and just trying to get an immediate response to the event.

Chairwoman WATERS. I'd like you to describe your exposure. What did you have to pay out?

Mr. DAVEY. We processed—on behalf of the National Flood Insurance Program, we processed approximately 65,000 claims for the event.

Chairwoman WATERS. And 65,000 claims amounted to about how much in dollars and cents?

Mr. DAVEY. In excess of $4 billion.

Chairwoman WATERS. In excess of $4 billion.

Could you also describe to me how you handled this very, very troubling area of wind versus water and flood? How do you you handle that, and what is your understanding about the NFIP's responsibility?

Mr. DAVEY. We're unique in the industry. We have 200 insurance underwriters who are dedicated exclusively to the Federal flood program. That operation runs completely separate from our at-risk division.

We had roughly 800 homeowners' claims as a result of the event. Those claims were administered out of our offices in Omaha, Nebraska, and Jacksonville, Florida.

Our flood claims were exclusively handled out of our St. Petersburg office, where have, as I said, approximately 200 people to manage that book of business. We increased our staff to approximately 350 inside employees, as we worked through those claims.

The two policies of insurance are separate contracts. The claims administration is completely separate for those two, for the flood and the other. There isn't any communication as to, in our organi-

zation, and I'm speaking only on behalf of the company which I represent.

Chairwoman WATERS. Yes.

Mr. DAVEY. I'm not speaking on behalf of the PCI or the industry.

Our claims are handled exclusively by each one of those divisions, and there isn't any communication, and each policy is evaluated for the coverage that it affords. The risk is examined.

We did examine every risk at that juncture, from what was flood damage, what was covered under the flood policy, and again, out of 65,000 claims, we had a very limited homeowners's exposure affected by this event.

So the vast majority of the circumstances, we were only handling the flood side of the equation, and when we did participate in both, it was two separate claims files, two separate adjustors, and no communication between the two.

Chairwoman WATERS. Very interesting.

I will now recognize the ranking member, Mrs. Biggert.

Mrs. BIGGERT. Thank you, Madam Chairwoman.

The question of the debt forgiveness has come up, and I guess the question is, if there is another event such as 2005, and the hurricanes such as Katrina, and let's say that the debt was forgiven, would we be right back in the place that we are now, with the huge borrowing that the NFIP has to make?

Mr. Osman, you had said something about that in your written testimony.

Mr. OSMAN. Is the question do we support the debt forgiveness?

Mrs. BIGGERT. Yes, and, well, do you support the debt forgiveness, and number two, if there is another disaster such as Hurricane Katrina and the others, would then the NFIP be back in the same position, of having to borrow again to pay off the claims?

Mr. OSMAN. I think it's important to realize the fact that again the successes the NFIP worked is envisioned for 38 years, and the 2005 hurricane season was a bit of an anomaly, at least hopefully it was, which put us into the debt.

I think with some of the movement that FEMA is making towards premium increases, policy retention, policy increases, those sort of things, hopefully we'll recognize the fact that that's what we need to, you know, to face through these kind of future catastrophes, should they happen. Hopefully, they won't.

Mrs. BIGGERT. So what you're saying is that probably because of these new innovations, that it wouldn't be the same, there wouldn't have to be the borrowing by the NFIP?

Mr. OSMAN. Hopefully, but it's hard to forecast what's going to happen.

Mrs. BIGGERT. I know.

Mr. Minkler, would you agree with that?

Mr. MINKLER. Yes, Congresswoman, I think our concern is the overall viability and sustainability of the program, and the consideration of elimination of the debt, along with going to a more actuarial based rating system, would go a long way in that effort.

Mrs. BIGGERT. Mr. Davey, would you agree with that?

Mr. DAVEY. If you look at the coastlines and examine the exposures and the population density in several areas, I don't think

it's—we will, at some juncture, perhaps not encounter something on the same level as Katrina.

If the area that's affected is not protected by levees, the water can escape, and we don't have nearly the financial cost to repair those structures that are initially flooded, where the water is allowed to subside. But there are areas across the country, the St. Petersburg area, where we could see devastating destruction.

I'm fully in favor of bringing up not only the rate levels on secondary homes and other homes to the actuarial—to a real actuarial rate level, but across the country, because if you look at the percentage of owner occupied homes versus rental versus seasonal, if we can bring the entire program's rate level up to an actuarially sound basis, we're far better off than trying to raise, while we artificially hold down the rates for owner occupied homes, and then try to make up the difference on the backs of those other properties.

I think the program is far better off if we work to bring all rates to an actuarially sound basis.

Mrs. BIGGERT. Thank you.

Mr. Sumner, do you know how much it would cost and how long it would take for LiDAR to—for the entire Nation to satisfy FEMA's specifications? Maybe this is for Mr. Maune.

Mr. SUMNER. It's probably better for Dave.

Mrs. BIGGERT. Okay.

Mr. MAUNE. Yes, I would put a price tag of $400 million on acquiring LiDAR for the Nation, but that should not be borne by FEMA. That would solve a national problem for USGS, NOAA, the Army Corps of Engineers, the Bureau of Land Management, the Forest Service—everybody.

Mrs. BIGGERT. Thank you.

Mr. MAUNE. And it would take about 5 years.

Mrs. BIGGERT. Thank you.

And then, Mr. Osman, you talked about the mitigation, the repetitive loss properties, and there were grant programs to address that, and by the Flood Insurance Reform Act of 2004, and then you say that we're still waiting for regulations for the program to be released by the Department of Homeland Security.

Why is that taking so long?

Mr. OSMAN. I'm not sure I can answer that question. I think Mr. Connor was asked that question earlier.

But there are repetitive loss—

Mrs. BIGGERT. I don't think he replied.

Mr. OSMAN. Some of those programs are in effect now, and there is—those rules are due out any time, we're told.

But repetitive loss properties, they are a problem nationwide, and they have been addressed aggressively since the 1993 flood when a lot of these mitigation programs came into effect.

One of the things that was mentioned was the regulation, the 50 percent rule, and a lot of communities have adopted cumulative clauses where the point of the property reaches 50 percent damage from cumulative events, and mitigation programs come into effect. So there has been a strong effort to address repetitive loss programs.

Mrs. BIGGERT. Thank you.

And Madam Chairwoman, I have a question for you. Do you know when we expect to mark up this bill?

Chairwoman WATERS. Would you help me, staff? When have we targeted this for markup? Before the end of the month.

Mrs. BIGGERT. Thank you very much, and I yield back.

Chairwoman WATERS. You're welcome.

The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Madam Chairwoman, and thank you, members of the panel, for being with us today.

Mr. Malta, I'd like to start with you, if I may.

You mentioned the unintended consequences of phasing out the non-residential aspect of this, and you spoke very briefly on primary residences and then those that are secondary perhaps becoming primary as a result.

Do you have any additional thoughts on this, please?

Mr. MALTA. Well, yes.

Who would monitor, let's say if you were to exclude one, and then who would monitor when someone is living there as their primary residence and when it no longer is, so that someone could still obtain coverage? So we think that it's really not workable.

Obviously, there is no tracking system in place, as we heard earlier, and so we feel it is very important. Flood waters do not distinguish between people who are using a home as their primary residence or not, or commercial versus residential properties.

And it would pose a tremendous financial burden on a lot of these communities where these subsidies have existed for 40 years.

Mr. GREEN. And what about renters? You mentioned that briefly, also—many properties are rental properties, and how would they be impacted?

Mr. MALTA. Well, renters would be impacted because property owners probably would not absorb the increase in costs, and they would try to pass those costs on to renters.

Many of these properties are already low- to moderate-income rentals. The fallacy is that they're all beach properties, they're tremendous mansions. That's not the case. So this would affect renters, a great deal.

Mr. GREEN. Let me move to the gentleman who represents the Big I. And I have a question.

We've talked about having persons actually pay who are in the targeted areas of floodplains, let them pay the costs of the burden of having repairs or replacement, making it actuarially sound.

What will that cost a typical person if we do this?

Mr. MINKLER. Congressman, I don't have the exact figure. A broad statement would be actuarially there will be an increased cost for those.

Mr. GREEN. Do you think it would double what persons are paying now? Could it triple what persons are paying now?

Mr. MINKLER. I'm sorry, I don't have an answer for you.

Mr. GREEN. Does someone else on the panel have some intelligence to share with us on this? Double, triple?

[No response.]

Mr. GREEN. Is it safe to say that it would—I believe you're getting something whispered to you.

Mr. MINKLER. I am. Thank you.

Mr. GREEN. Okay.

Mr. MINKLER. The point was made that the increase would be optional to the policyholder or the landowner, building owner, above and beyond the standard amount, so the replacement cost factor would probably not be a direct multiple of whatever they're paying for the base policy.

That still doesn't get you the answer that you're looking for, I know, but it would not be a direct correlation of the two times, three times, that type of thing.

Mr. GREEN. Mr. Malta, do you have some intelligence on this?

Mr. MALTA. Well, our intelligence said that the costs would increase 2 to 3 times. It would be—they are right now—it's about 35 percent of the cost, if they were to be actuarialized.

So our data indicates 2½ to 3 times.

Mr. GREEN. Would this in some way impact the economic status of people who will stay in these areas? Will we find that these areas could only be affordable to certain people and perhaps not affordable to others?

Mr. MALTA. That's our concern, and that's why we believe that you should look very hard at this before you proceed in excluding them.

Mr. GREEN. Any of the insurance folk like to comment on that?

Mr. DAVEY. Is your question regarding bringing the base program rates to an actuarially sound level, or just the non-owner-occupied units?

Mr. GREEN. Well, let's talk about both.

Mr. DAVEY. If you're going to bring the program to an actuarially sound level, and you're going to rate those properties as they are exposed, for example—

Mr. GREEN. And phase out the—have only the primary residences.

Mr. DAVEY. And you have only the primary residences?

Mr. GREEN. Right.

Mr. DAVEY. There are going to be vast swings in the amount, what's deemed an actuarially sound rate for somebody living in Key West, Florida, versus an actuarially sound rate for somebody living on Long Island, New York, based on your catastrophic wind models and your various modeling techniques that they may employ to see what the potential damageability of an area is—

Mr. GREEN. Because my time is running out, let me just move to another point that I haven't heard us discuss in any great detail.

We seem to associate this with the Gulf Coast area, and I understand why, but if we find reason to do this along the Gulf Coast, will this not also impact other areas where they have other types of disasters? Is this going to be the genesis of things to come in other areas?

For example, right now, we're talking about hurricanes, but there are some places where they have tornadoes, and there are other places where they have earthquakes.

So we're just focusing right now on one area, but you do concede that we could decide that people living in Tornado Alley should not have the opportunity to have the benefit of disaster insurance or at least impact their insurance as well?

Insurance folks?

Mr. DAVEY. My comments are strictly related to flood. An actuarially sound rate for somebody in a hurricane, in a substantially hurricane, Gulf Coastal area will be much different than an actuarially sound rate for somebody, for example, in Cape Cod, Massachusetts, where the probability of a hurricane making landfall there is less, is much diminished.

So I think if you look at this and you bring this and you work toward bringing it to an actuarially sound basis across the country, I don't think that the rate will be the same, and that's one of the things. The burden, if you convert this program to an actuarially sound basis, will be borne for the most part through rates for those who are in the greatest area of incident, and less so from those people that are not.

Mr. GREEN. Thank you.

I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Actually, I only have one question, I guess one-and-a-half, based on what my colleague just asked.

Mr. Davey, do you support all-peril insurance? I realize that's not the subject of this hearing. But my colleague, Mr. Taylor, of course, has a bill on that, and I'm just curious.

Mr. DAVEY. I do not. I recognize that there are some areas in the United States where there is what could best be defined as an insurance crisis. There's a complete lack of availability of the product at a rate level that's acceptable to the general population in those areas today.

Is the National Flood Insurance Program the vehicle to provide that? I'm not in a position to comment on that.

Mr. CLEAVER. I'll leave that to my colleague.

One final question for me, and this is out of curiosity.

What would be the cause for interest in national flood insurance by the real estate industry?

Mr. Malta?

Mr. MALTA. Well, Congressman, because this is a program that exists to fill the void where the private sector cannot, and if people cannot get insurance, they cannot buy a home if it's contingent upon a loan, they cannot sell property in a given area, so it fills a void, and that's why we're concerned.

Mr. CLEAVER. I yield to my colleague from Mississippi.

Mr. TAYLOR. I thank the gentleman for his questions.

Mr. Malta, I'd like to follow up.

I was obviously very pleased to see, towards the tail end of your testimony, where your organization has come out for a comprehensive natural perils insurance, seeing as how that I'm convinced that the half of America who lives in coastal America, the half of the Realtors, the half of the homebuilders, the half of the mortgage lenders, and the half of the homeowners are, on a State-by-State basis, waking up and finding themselves with 300, 400, or 500 percent increases in their premiums, if they can get the coverage, and that it has caused a delay on people building houses, buying houses.

I'm told in my State that the cost per unit of a new apartment complex is $300 a month, even for a renter.

So it does affect everyone, and I'm obviously pleased to see your organization come out for something.

On the specifics, I was wondering if your organization has looked at H.R. 920, which I have introduced, along with Ms. Waters, Mr. Cleaver, and several other members of the Gulf Coast delegation. I was curious if your organization has looked at that and would be willing to support that, which would be all natural perils insurance, as an option on your national flood insurance policy, given the new Democratic rules, which call for pay-as-you-go. It would not be taxpayer subsidized. It would have to be done in a way that the premiums match any potential losses that you—

Mr. MALTA. The National Association of Realtors has no position on that bill presently, but we have many members who are very much concerned in the coastal areas that you're talking about, regarding the concerns that your bill addresses.

Mr. TAYLOR. Mr. Malta, the reason I bring this up is that obviously everyone recognizes something has to happen.

You have an extremely powerful lobby called the insurance industry, that dumped $25 million in the last election cycle on congressional candidates, and about that much on the last presidential race, mostly towards the President.

And so having watched this town for a while, it's a pretty safe bet that nothing happens unless some organizations like the homebuilders, like the Realtors, like the mortgage lenders, those people who are losing the most, will weigh in on behalf of something specific.

I don't see much happening when people talk in generalities. I see a lot of things happen up here when people get specific behind an idea or a bill.

And so I would make this request, that if you have any reservations about the specific provisions of H.R. 920, if the Realtors could get back to us about what they would like to see changed, I would welcome that, as a primary sponsor of the bill, and I would think the other co-sponsors would, as well, because it is a crisis. It's something that has to be addressed.

It very much affects the people in my State; it very much affects 52 percent of all Americans.

And just like the flood insurance program was started to fill a void that the private sector chose not to fill at a reasonable cost, I think we're realized after Katrina that there's another void out there that needs to be filled, and I see government is in the business of filling voids that the private sector chooses not to or chooses not to at a reasonable rate.

Mr. MALTA. Madam Chairwoman, may I respond?

Chairwoman WATERS. Yes, you may.

Mr. MALTA. The National Association of Realtors will get back to you on your bill. Okay? And we do support a comprehensive natural disaster policy. So we would welcome that, and we would work with Congress on that in the future.

Mr. TAYLOR. Closing thoughts, Mr. Malta. And that would be that one quarter of this Congress has passed this by, and that if we want to do something during this Congress, we would certainly

hope for a timely response on the part of your organizations and the other organizations.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

Members, you have been, to our witnesses, you've been extremely helpful, and I almost feel as if we need another session with you, because there are some other proposals that are coming forth.

Before you leave, Mr. Osman, do you know how many States have some kind of disaster insurance programs—flood insurance or other kinds of programs—in existence now?

Mr. OSMAN. I can only tell you that 20,000-plus communities nationwide all over the country participate in the National Flood Insurance Program.

As far as States which have higher regulatory standards, I can only estimate that maybe half of the States have higher standards that go above and beyond FEMA's minimums, and again, that's a guess.

Chairwoman WATERS. I was distracted for a minute, and I did not hear everybody's response to an all-perils insurance idea or concept.

Does everyone agree that there should be something to take care of flood, wind, earthquake, and all of the other disasters in a more comprehensive way that would be available to everybody? Any thoughts?

You don't have to answer this, but if you have any thoughts, could you tell me quickly what they are?

[No response.]

Chairwoman WATERS. No thoughts.

All right. Thank you very much. We appreciate your participation today. We will make sure that your testimony is a part of the record.

This panel is dismissed.

Okay. Let's see. The written statement of the Consumer Federation of America will be made part of the record of this hearing, as will the New Orleans Times-Picayune editorial entitled, "Where is the Outrage?"

The Chair also notes that the hearing record will remain open for 5 days to allow for the submission by members of additional materials.

With that, the hearing is adjourned. Thank you.

[Whereupon, at 12:41 p.m., the hearing was adjourned.]

A P P E N D I X

June 12, 2007

Financial Services Committee
Hearing "The Flood Insurance Reform and Modernization Act of 2007, HR 1682"
Opening Statement of Congresswoman Julia Carson
June 12, 2007

I would like to thank Chairwoman Waters and Ranking Member Biggert for holding this important hearing today. The National Flood Insurance Program was established in 1968 and has helped residents and communities in flood zones prepare for and recover from flooding. Until the devastating 2005 hurricane season, the program could sustain itself. Damage claims filed to the NFIP from Hurricane Katrina alone cost $16.3 billion.

In 2005, hurricanes Rita, Wilma and Katrina overwhelmed the program and prompted reform in the 109th Congress with H.R. 4973, which passed the house a year ago. Unfortunately, there was no action in the Senate. In the 110th Congress, however, we now have the opportunity to modernize the program and make improvements to the previous bill.

Representative Frank and leaders on this bill skillfully address the weaknesses in the National Flood Insurance Program (NFIP) in H.R. 1682. The bill enhances the ability of the program to respond to crises in the future by increasing the maximum insurance limits, modernizing the flood maps, increasing available coverage, including demolition and rebuilding as a mitigation measure, and raising awareness for the NFIP.

It is clear that increased participation in the program is in everyone's best interest and I believe this bill does an excellent job of working towards enhanced awareness of the program and updating coverage limits to more accurately reflect property values.

The catastrophic aftermath of 2005's hurricanes highlight the need for a strong NFIP and I think this bill is the right step towards ensuring the program's improved performance in case of future events.

OPENING REMARKS OF THE HONORABLE RUBEN HINOJOSA
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING
"H.R. 1682, THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2007"
JUNE 12, 2007

Chairwoman Waters and Ranking Member Biggert,

I want to thank you for holding this very important and timely hearing on an issue that is very important to me and all the constituents in my district. I look forward to working with the two of you as the Committee moves forward with consideration of H.R. 1682, the "Flood Insurance Reform and Modernization Act of 2007" introduced by Chairman Frank and Ranking Member Biggert earlier this year.

I commend the two of you for all the work that you have done to date to improve housing conditions for many, many residents in the United States. I especially want to thank the two of you again for moving forward with my two rural housing bills on the Housing Assistance Council and the Rural Housing and Economic Development program. I am very grateful.

At this point, I ask unanimous consent to submit my entire statement for the record as well as two documents from the Management Association for Private Photogrammetric Surveyors.

In light of the devastation caused by Hurricanes Katrina, Rita and Wilma, this Committee has held numerous hearings on ways to address the massive flooding and wind and surge damage done to homes and other structures along the coast of the Gulf of Mexico and in Florida. We have tried to find ways to ensure that the massive flooding that occurred in New Orleans does not reoccur and that we are able to get our dams and levees up to code to certify that they protect those living behind them.

I realize that H.R. 1682 is intended to address a number of weaknesses in the National Flood Insurance Program that were exposed by the unprecedented 2005 hurricane season, and I support several of the provisions included in the bill. However, I must stress that there are several provisions in the bill with which I find fault and several provisions that have been left out of the bill that I now propose.

My main concern is that FEMA and the Corps of Engineers might not be creating very accurate maps. If the mapping is being done now, I am concerned that those maps might not be taking into account the fact that some areas will eventually have dams and levees that are up to par, including those in my district and all along the U.S. border with Mexico.

I am also concerned that they might not be using the appropriate methodology or the most advanced technology to draw those floodplain maps. Along those lines, I am very pleased that the Management Association for Private Photogrammetric Surveyors (MAPPS) are testifying here today. I agree with them that Section 21 of H.R. 1682 omits language regarding map accuracy and the use of modern geospatial technologies, and FEMA standards and requirements.

I also agree with MAPPS that we should consider providing mapping by watershed. It would result possibly in much more accurate, and less politically motivated, floodplain maps. MAPPS has wonderful ideas that I have heard from other such entities. The National Structure Inventory they have discussed in the past is ideal. It would link each structure's street address with its geographical coordinates, owner's name and assessed value. Such an inventory would greatly simplify the sale, rating and processing of flood insurance and is vital for timely response, recovery and assistance to the individuals involved.

I am also concerned that the legislation is not clear as to when homeowners and homebuyers will be forced to purchase flood insurance. I would hope that today's witnesses can and will clarify what will trigger the flood insurance mandatory requirement and when that will occur.

Madame Chair, I am also concerned that there is no indication in the text of H.R. 1682 that will allow for a phase-in of premiums imposed on low-income homebuyers and current homeowners that are not currently located in a floodplain but might be once the mapping is complete.

I realize the bill requires several studies, including one on the impact of the bill on low-income homebuyers and homeowners, but I am wondering and, in fact, hoping that the authors of this legislation will support a premium phase-in approach for those areas of the country that have not traditionally been included in floodplain maps but will be included after the mapping process is concluded and for all areas of the country in which the truly low-income reside.

My greatest fear, and I believe the fear of several in the financial services industry, is that this legislation could result in people losing their homes or not being able to afford to purchase homes because the premiums are such that low-income potential homebuyers will refrain from buying a home if flood insurance is required and then might be increased up to 15 percentage points annually.

More important, it was my understanding that the maps would solely depict 100-year floodplains. Two of my Republican colleagues and I managed to pass an amendment during flood insurance markup last year to stop the 500-year floodplain mapping process. Apparently, I was mistaken. I truly believe that we need to first study the methodology and technology that is being used to map the 100-year floodplains before moving forward.

There is quite a bit at stake economically if those maps are not drawn using the latest and greatest technology. We need to focus solely on the 100-year floodplain maps before even beginning to think about updating the 500-year maps.

Madame Chair, we have lost many homes in the past due to hurricanes and other weather storms. I would hate for us to lose homes because we failed to pass legislation containing requirements that the maps be made using the most up-to-date and thorough technology and that we provide a phase-into the mandatory flood insurance premiums.

I yield back the remainder of my time.

Testimony of
Edward L. Connor
Deputy Assistant Administrator
Mitigation Directorate
Federal Emergency Management Agency
Department of Homeland Security
Before
The United States House of Representatives
Committee on Financial Services
Subcommittee on Housing and Community Opportunity
June 12, 2007

Good morning Chairman Waters, Ranking Member Biggert, and Members of the Subcommittee. I am Edward Connor, Deputy Assistant Administrator for Insurance within the Mitigation Directorate of the Department of Homeland Security's Federal Emergency Management Agency (FEMA). I appreciate the opportunity to appear today before the Subcommittee to discuss the National Flood Insurance Program (NFIP).

This morning I would like to provide a context for how the NFIP has moved forward since the devastating hurricane season of 2005. My testimony will address (a) the NFIP's financial status; (b) how the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Reform Act) has enabled the NFIP to operate more effectively; and (c) opportunities to fundamentally strengthen the NFIP's financial underpinnings.

The NFIP was established in 1968 to make affordable flood insurance available in communities that adopt and enforce measures to make future construction safer from flooding. From 1968 through 2004, a total of $15 billion was paid out to cover more than 1.3 million claims. From 1968 through 2004, the NFIP took in $20.5 billion in Earned Premium.

After the June 2004 signing of the Reform Act, the United States experienced back-to-back catastrophic hurricane seasons. The 2004 hurricane season resulted in over 75,000 claims totaling a record payment of over $2 billion dollars. That record fell in 2005 when Hurricane Katrina resulted in claims totaling over $16.3 billion to date – over eight times that of 2004 and exceeding, by over a billion dollars, the aggregate amount of all claims previously paid in the nearly 40-year history of the NFIP.

Last year David Maurstad, Assistant Administrator of FEMA's Mitigation Directorate, informed the House Financial Services Committee and the Senate Banking Committee that we expected the total NFIP payout (claims and associated expenses) for the 2005 hurricane events to be over $23 billion. We have reexamined that projection based on actual claims and payments to date, and lowered the estimate for claims payments,

related adjustment expenses, and interest paid on borrowing to approximately $20 billion.

From 1986 until the 2005 hurricane season, the NFIP was self-supporting. During periods of high losses, consistent with the law the NFIP has borrowed from the U.S. Treasury. Prior to Hurricane Katrina, the Program had been in a debt position four times since the mid-1980s.

(1) After the 1993 Midwest Flood, the Program borrowed $11 million, and the loan was quickly repaid.

(2) Between 1995 and 1996, flood losses were twice as high as the historical average, and NFIP borrowing peaked at $922 million during fiscal year 1998. These monies were completely repaid by June 2001.

(3) In June 2001, Tropical Storm Allison required the Program to borrow $650 million, which was repaid by the end of October 2002.

(4) Between then and the 2004 hurricane season, the Fund balance grew to a positive $1.1 billion. However, the fund was exhausted after four hurricanes crossed Florida in 2004, forcing the Program to borrow $300 million. The repayment of this debt was on track but not completed before Hurricane Katrina struck.

The authority to borrow from the Treasury is an essential part of the NFIP's financing design by providing the necessary resources in those years where claims exceed premium pool levels. This authority enables the program to borrow limited amounts from the Treasury on occasions when income is not sufficient to cover claim payments and related costs. The loans from this period have been repaid, with interest, from policyholder premiums and related fees.

The large number of claims and severity of flood losses from the 2004 and 2005 hurricane seasons are unprecedented in the history of the NFIP. The challenges these storms have presented to the Mitigation Directorate, particularly the 2005 hurricane season – in terms of flood insurance claims handling, floodplain management, flood hazard mapping and mitigation planning and grants management – have never been encountered, on this scale, before.

However, Program claims have been resolved expeditiously. Only five months after Hurricanes Katrina, Rita, and Wilma struck the Gulf Coast, the NFIP resolved over 70 percent of the 241,000 claims filed from these events. By the summer of 2006, more than 98 percent of all Katrina and Rita flood insurance claims had been closed – a volume that far exceeded the highest number of claims filed from any single event in the NFIP's history, and more than triple the total number of claims filed in 2004. Given the circumstances, our industry partners – Write-Your-Own (WYO) insurance companies,

as well as claims adjusters and agents – have more than fulfilled their responsibility to help NFIP policyholders begin to rebuild their lives.

In the wake of the worst natural disaster the Nation has ever experienced, we have continued to fulfill the promises made to NFIP policyholders and communities. FEMA is proud of the NFIP's ability to provide solid customer service to our flood insurance policyholders.

NFIP Financial Status

The extremely active 2004 and 2005 hurricane seasons raised the Nation's awareness of the flood risks we all face. This activity, along with NFIP marketing efforts, has resulted in dramatic NFIP growth over the past three years.

The NFIP has over 5.4 million policies for homes, businesses, and other non-residential property, insuring in excess of $1 ***trillion*** in assets, which represents an increase of 19 percent over the past 12 months. The NFIP now collects more than $2.5 billion annually in premiums and fees. As previously stated, from 1968 (the NFIP's inception) through 2004, the Program paid out $15 billion to cover more than 1.3 million claims. Many of these claims occurred as a result of smaller flood events that did not rise to the level of a Presidential disaster declaration and for which Federal disaster assistance was not available. Yet many of these property owners endured as much of an individual loss as those in larger events.

It is important to note that NFIP rate schemes are not designed to, in aggregate, cover catastrophic events or years, although the premiums for most properties already consider the potential for catastrophic losses. Over the years, the NFIP set premium levels to provide total program revenue covering the average, non-catastrophic loss year, plus expenses associated with administering the Program. Most of the NFIP's 2005 claims resulted from the damages caused by Hurricane Katrina, an event that has, and continues to, inform the NFIP, and that must be considered as we work to strengthen this important Program.

The NFIP provides insurance at actuarial (risk-based) rates for newer construction, with the majority of policyholders paying full actuarial rates, which consider the potential for catastrophic losses. However, statutorily, structures built prior to the mapping and implementation of NFIP floodplain management requirements are considered pre-Flood Insurance Rate Map (Pre-FIRM) buildings. Many Pre-FIRM buildings – which make up 24 percent of all NFIP policies – pay heavily discounted rates on the first $35,000 of their structure's insured value, and full risk-based rates for the remaining insured value. . Those Pre-FIRM building owners with discounted NFIP policies are paying, on average, only 40 percent of a full risk-based premium – while the NFIP considers the remaining 60 percent as forgone revenue – a loss that is ***not*** passed on to other NFIP policyholders

How is it possible that NFIP maintained financial balance for so many years while heavily subsidizing such a large portion of its clients? Prior to Hurricane Katrina, although the NFIP had experienced heavy loss years, it had not experienced a rare, catastrophic flooding event. As a result, the Program's average historical loss year expectations significantly understated the actual long-term expected loss year.

About 75 percent of the NFIP's policy base consists of newer construction and buildings located outside the floodplain that pay full risk premiums. The remaining 25 percent of NFIP policyholders are charged much less than full-risk premiums. Before Katrina, the Program's total premium was sufficient to pay for the typical non-catastrophic loss year. If all policies had paid full premiums considering the potential for catastrophic losses, then the program would have built up a reserve in all those years in which catastrophes did not occur to at least partially cover the costs of Katrina.

Older, subsidized construction (built before 1974) was built at great risk to flood. Full-risk premiums for these buildings, on average, would be about five times greater than buildings that comply with current NFIP standards. The discounted rates charged to owners of pre-1974 buildings only cover about 40 percent of their full-risk

As stated earlier, we anticipate that total payouts for the 2005 hurricanes will be approximately $20 billion. To date, the NFIP has borrowed $17.535 billion to pay for Hurricane Katrina claims and for the interest payments due on that borrowing. A $2 billion borrowing authority bill passed Congress in early September 2005, and we have borrowed 11 times since. The most significant borrowing months were: $10 billion in November 2005; $1.775 billion in December 2005; $2 billion in January 2006; $2 billion in February 2006; $500 million in March 2006; and $400 million in October 2006.

Annual interest on the borrowing related to these payouts will be approximately $800 million. The 2005 flooding events were of a magnitude far beyond the ability of policyholder premiums to cover. Since Hurricane Katrina struck the Gulf Coast in August 2005, Congress has increased the NFIP's borrowing authority three times to the present limit of $ 20.775 billion. This additional borrowing authority has been a critical element of the NFIP's ability to fulfill the promise we made to our policyholders, allowing FEMA to resolve almost all of the Katrina, Rita, and Wilma claims received to date. However, under current loan obligation arrangements – with the NFIP needing new loans at least every six months to cover semi-annual interest payments – it is unlikely that the Program will ever be able to retire its debt without a significant adjustment to rates. Annual interest payments are expected to be $800 million to $900 million for the next few years. Assuming we can collect this as a non-premium fee, this would require about a 35 percent increase above the current NFIP written premium of $2.5 billion; which, in turn, would raise the average annual NFIP premium from approximately $480.00 to $650.00

The 2004 Reform Act and Effective NFIP Operations
In the aftermath of Katrina, the Reform Act proved to be instrumental in our ability to effectively inform and help Gulf Coast policyholders, and it continues to be a catalyst for programmatic success and improvement. We began implementing Reform Act changes during the 2004 hurricane season, and we have since improved our delivery by distributing informative materials to policyholders, implementing important training initiatives, adopting a flood insurance claims appeals rule, and carrying out initiatives that address repetitive loss properties.

New Materials
Increasing risk awareness among homeowners and consumers with improved, succinct information is one of the NFIP's basic principles, and is an important element of the Reform Act. FEMA, through an aggressive education and outreach campaign, is continuously designing and upgrading informational material to increase the public's awareness of flood risks and to effectively keep our policyholders informed.

For instance, as the Reform Act requires, FEMA distributes two informational documents, the ***NFIP Summary of Coverage*** and the ***Flood Insurance Claims Handbook*** to policyholders to help them through the claims process. These easy-to-understand materials, designed in concert with our insurance industry partners, are being distributed to all policyholders at the time of initial purchase, policy renewal, and at the time a claim is filed. Additionally, FEMA and the WYOs distribute these materials in our Joint Field Offices, Disaster Recovery Centers, and Flood Response Centers – as well as in Town Meetings – as soon as possible after storms strike. The ***NFIP Summary of Coverage*** and the ***Flood Insurance Claims Handbook*** have been invaluable additions to the Program and have played a major role in FEMA's ability to close claims quickly and fairly.

Training of Agents Who Sell Flood Insurance
Flood insurance training for insurance agents continues to be a high priority for the NFIP. Training requirements were published in the September 1, 2005 *Federal Register*, and we are working with the States as well as the insurance industry and related associations to inform insurance companies and agents of these requirements. To date, 40 States and the District of Columbia have issued bulletins making flood insurance training mandatory for agents who sell NFIP coverage.

We also are encouraged by the continued growth of classroom and online training participation. Since October 2006, the NFIP has conducted over 300 classroom workshops nationwide, which were attended by more than 11,000 agents. Also, FEMA's new on-line flood insurance training course has been well received. So far, over 15,000 insurance agents in 40 States have earned 3 hours of continuing education credit by completing the on-line training.

Of course, FEMA would like to see all of the States make flood insurance training mandatory for agents. We continue to encourage the States that already have minimum training and education criteria to place these requirements in their licensing and continuing education programs. FEMA is committed to providing technical assistance and resources to all the States as appropriate. One such resource is Agents.FloodSmart.gov. As part of our highly successful FloodSmart marketing campaign, this website provides extensive information for flood insurance agents, including links to educational and training programs.

Appeals Rule

FEMA's Flood Insurance Claims Appeals rule was published as an interim final rule in the October 13, 2006 *Federal Register*. This Reform Act requirement formalizes a process through which flood insurance policyholders may appeal the decisions of adjusters, agents, insurance companies, or FEMA, regarding claim settlements. The rule speaks to the issue of mediation, and we emphasize that mediation is most effective when it occurs early in the claims process. We are encouraging companies that sell flood insurance under the NFIP to make, or continue to make, this alternative dispute resolution option available to policyholders.

As the NFIP settles the last of the 2005 season flood claims, it is important to understand that the Program has maintained its historically high success rate of resolving over 99 percent of its claims without litigation. The NFIP's claims and appeals processes are based on a balance of power between the States and the Federal government. If State officials were conferred the authority to compel agents of the Federal government into the State's service, this balance could be upset, jeopardizing the NFIP's ability to close flood insurance claims quickly and fairly.

Currently, if a claim is denied, the insured may file an Appeal directly with FEMA. The ***Claims Insurance Handbook***, which is provided to all policyholders and claimants, includes detailed instructions on how to file that appeal. This allows the policyholder to go right to the source, the NFIP, to state their claims problem rather than turning to a third party such as a congressional office or state insurance commission. While assistance from those third parties can be helpful, it extends and further delays the claim resolution process. Creating a state mediation process would add another layer of delay, especially since the mediation would not be binding. Allowing the policyholder to work directly with FEMA in a Claims Appeal has been very beneficial to the claimant and is the best way to guarantee a prompt response and resolution.

Just as important, the NFIP is a federal program. The terms and conditions, including the insurance contract itself, are set by FEMA's Administrator. Such terms and conditions should not be subject to interpretation by state officials; therefore, FEMA

opposes any provision which would require the NFIP to participate in state-sponsored mediation of flood insurance claims.

Addressing Repetitive Loss Properties

The Reform Act authorized a new $10 million Repetitive Flood Claims Program (RFC), which made the mitigation of repetitive flood loss properties a priority. Assistant Administrator Maurstad recently selected 41 RFC property acquisition proposals for further review, using all Repetitive Flood Claim Program funds for fiscal 2007. In FY2006, the first year of the Program, $9.8 million was awarded for property acquisitions.

Additionally, the Reform Act provided authority for increased funding under our existing Flood Mitigation Assistance Program, and I am pleased this Program's funding was increased to $31 million in Fiscal Year 2007, as opposed to $20 million in past years. Our 10 FEMA Regions are currently working with these funds, and the FMA application period has been extended to reflect the funding increase.

The Severe Repetitive Loss (SRL) Pilot Program, also authorized by the Reform Act, is in its final stages of development. In each of fiscal years 2006 and 2007, Congress authorized FEMA to transfer up to $40 million from the National Flood Insurance Fund to mitigate severe repetitive loss properties, which the Act defines as: properties that have experienced four or more flood losses of at least $5,000 each, with at least two claims payments occurring in a 10 year period, and with the total claims paid exceeding $20,000; or properties that have received at least two separate flood claims payments, where the cumulative flood claims payments exceed the value of the property. FEMA is developing the SRL program regulations, guidance and administrative documents necessary for implementation; and once the regulations are published in the Federal Register, FEMA will provide guidance to potential applicants. Multi-year funding is available to applicants during the first open application period, which we expect to begin this summer.

The President's budget for FY 2008 requested $80 million for the Severe Repetitive Loss program.

A more robust SRL program is a critical component of FEMA's overall strategy to strengthen the National Flood Insurance Program (NFIP) that includes measures to reduce the nation's flood risk through floodplain management and improved flood hazard data; charging fair and actuarially sound premiums by phasing out subsidized premiums; increasing program participation incentives and improving enforcement where mandatory participation is warranted; increasing risk-awareness by improving information quality; and reducing future risks through a combination of mitigation measures and exploration of enhanced protective measures.

Since the majority of SRL properties were built before flood plain management regulations were established, they represent a disproportionate amount of losses in the NFIP relative to the subsidized premiums paid. SRL properties make up only 1 percent of all properties covered under the NFIP, but make up 20 percent of all claims. GAO findings confirm the need to reduce the number of subsidized premiums to strengthen the financial status of the NFIP:

> *"One reason the NFIP is not actuarially sound is because a number of its policies on dwellings built before flood plain management regulations were established in their communities are subsidized and pay premiums of 35-40 percent of the true risk premium.* Further, *In January 2006, FEMA estimated an annual shortfall of premium income of "$750 million because of such properties".*[1]

Increased investment in the SRL program provides a significant, long-term benefit to the NFIP. Savings realized by the reduction in SRL properties are realized year after year. The more rapid these properties can be mitigated, the greater the savings will be as not only will the number of flood losses be reduced, but the risk to life and property will also be reduced. Under the current FY 2007 funding levels for SRL ($40 M per year) and the Individual Repetitive Loss Program ($10 M per year), FEMA will be able to mitigate 1,500 properties that are currently incurring an average of $17.6 million in insured losses annually. Over ten years, the NFIP will have reduced loss payments by approximately $176 million, more than paying back the initial $100 million invested in these programs. And after twenty years, the reduction in loss payments will have grown to $352 million.

These mitigation tools will become critical components in our efforts to reduce repetitive loss structures and eliminate the flood-rebuild-flood cycle that residents in the Nation's flood-prone areas have become so familiar with.

Strengthening the Program

Significant flood events have played major roles in the NFIP's evolution: the Program was created after Hurricane Betsy carved a swath of destruction through the Gulf Coast in 1965; Tropical Storm Agnes in 1972 provided the impetus for the mandatory purchase requirements to increase participation in the program; and the 1993 Midwest Flood was the catalyst behind the National Flood Insurance Reform Act of 1994 and its stronger lender compliance requirements. It is entirely appropriate, therefore, that the catastrophic 2004-2005 hurricane seasons result in an examination of how the NFIP can be further strengthened.

Since the end of the 2005 hurricane season, in Congressional hearings and in presentations at various events nationwide, the Mitigation Directorate and the NFIP have outlined the following fundamental mitigation and insurance principles:

Protect the NFIP's integrity by covering existing commitments;

Phase out discounted premiums in order to charge policyholders fair and actuarially sound premiums;

- Increase NFIP participation incentives and improve enforcement of mandatory participation in the program;

Increase risk-awareness among homeowners and consumers by improving information quality; and

Reduce risk through combinations of proven mitigation practices and explore opportunities to reduce risks through enhanced protective measures.

The Administration strongly supports the concept in the bill of moving to actuarially sound premiums, but would prefer additional flexibility in the implementation of premium increases to allow an equitable transition to actuarial rates for all policyholders as quickly as possible. FEMA believes that H.R.1682, which is substantially similar to the previous bill from the 109th Session of Congress, is consistent with those principles because it:

- Provides authority to eliminate premium discounts over time for properties built before flood insurance rate maps were in place for non-primary residences;

- Increases the penalties for Federally-regulated lending institutions that do not comply with their mandatory purchase regulatory responsibilities;

- Requires a study of the feasibility and implications of expanding the standard for mandatory flood insurance purchase requirement to include properties in areas of residual risk – structures protected by levees, dams, and other manmade structures;

- Requires tenants to be notified of the availability of contents insurance; and

- Increases the annual limitation on premium increases.

The Administration recognizes the need to assess premiums that are fair and actuarially sound for all Federal flood insurance policyholders, not just commercial properties or

non-primary residences. As written, the bill could exempt some pre-FIRM policyholders from having to pay actuarial rates.

We oppose the sections of the bill that would increase types of coverage and, Maximum Coverage Limits. As noted in last year's Statement of Administration Policy, increasing the coverage amounts could encourage expensive development in high-risk areas and should be rejected, especially given that total NFIP exposure already exceeds $1 trillion. In the same vein, the need for additional types of coverage is unclear without first studying the feasibility and cost implications of expanding coverage.

We also have constitutional concerns regarding a provision in the bill purporting to require FEMA claims adjustors to participate in State-sponsored mediation at the request of State insurance commissioners. The Constitution carefully allocates power between the branches of the Federal government, and between the States and the Federal government. This balance could be upset were Congress to confer on State officials the authority to compel agents of the Federal executive into the State's service.

Conclusion

The 2005 hurricane season presented the NFIP with numerous challenges on a variety of fronts and provided opportunities for fundamental structural reforms, as outlined above, that are critical to the financial viability of the program.

The proposed changes to the NFIP, when integrated into a comprehensive mitigation strategy, will improve the program's economic and financial viability. However, I want to emphasize that there is no quick solution that will enable the program to absorb catastrophic loss years.

I look forward to continuing to work with the Committee, our NFIP WYO companies, agent groups, and other partners to implement future changes to the National Flood Insurance Program, and I will be happy to answer any questions that the Subcommittee might have. Thank You.

TESTIMONY OF MARK DAVEY
ON BEHALF OF
FIDELITY NATIONAL INSURANCE COMPANY AND
THE PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA
BEFORE THE
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"THE NATIONAL FLOOD INSURANCE REFORM
AND MODERNIZATION ACT OF 2007", H.R. 1682

JUNE 12, 2007

My name is Mark Davey and I am President and Chief Executive Officer of Fidelity National Insurance Company. Fidelity National is a "Write-Your-Own" flood insurance partner with the National Flood Insurance Program and the largest writer, through this program, of flood insurance in the nation. Fidelity National is also a member of the Property Casualty Insurers Association of America, a trade association representing over 1,000 insurers that write more than 40 percent of all the property and casualty insurance in the United States.

Thank you for the opportunity to appear before you today on behalf of Fidelity National and PCI to comment on this important program and the reforms contained in "The National Flood Insurance Reform and Modernization Act of 2007, H.R. 1682.

Introduction

As the events of 2004 and 2005 have shown, the devastation caused by hurricanes and floods can impact millions of lives, businesses and our nation. Even as those hardest hit continue to recover from these events, scientists and meteorologists tell us we will continue to see more frequent and more severe storms for another 10 years or more.

The National Flood Insurance Program (NFIP) is a necessary public policy response to an uninsurable peril and should be continued. It has undergone significant changes throughout its roughly 40 year history and continues to provide vital protection to policyholders nationwide. However, the program as currently structured does not provide the level of protection needed by consumers and has not achieved the breadth of participation (i.e., the take-up rate) needed. Greater participation in the NFIP and program reforms are essential so that our nation can prepare for and respond to future catastrophic events. Fidelity National and PCI support proposals intended to achieve these goals, many of which are contained in H.R. 1682.

We commend the authors of H.R. 1682, Chairperson Waters, Ranking Member Biggert, and the Members of this Subcommittee for the important work being done to examine and improve the NFIP so that it may better serve all of our citizens. We believe this bill

is important to property owners, insurers, government and our nation and support, with some suggested changes, its passage.

Industry Reforms

We believe that there are several key issues that must be addressed to make the NFIP: 1) more responsive to purchasers, 2) fiscally responsible, and 3) to make sure that properties built or rebuilt are protected against future losses. There are numerous key elements that should be part of any reforms to the program and, thanks to the authors of the bill; most of them are contained in H.R. 1682. We believe the most important reforms are as follows and have identified those that have been addressed in the legislation being discussed today:

- We encourage Congress to forgive the outstanding debt incurred by the NFIP as a result of Hurricane Katrina and other recent events, which will ensure the NFIP has the ability to access funds when needed without constantly coming back to Congress (as was necessary in 2005 and 2006) to increase its borrowing authority, needlessly slowing the claims-paying process to those who need it most, those with flood claims.

  We see that H.R. 1682 includes an increase (to $21.5 billion) to pay for the outstanding claims in Section 11; however, we do not see relief for that debt. We believe that this is an important step toward moving forward. We also believe that steps should be taken to make sure the program charges appropriate premiums in order to lessen the possibility of future borrowing from the Treasury. However, that will most certainly happen shortly, should the $20.775 billion (or more) debt-burden have to be repaid. According to testimony earlier this year, the NFIP collects roughly $2 billion in premiums annually, the costs of the program, paying for events during these periods and the fact that the NFIP will need new loans about every six months to cover the annual interest alone, it is unlikely that the NFIP will ever be able to retire this debt.

- The program should be reauthorized on a long-term basis (e.g., for 10 years) as the current program will expire on September 30, 2008. This will ensure that there will be no gaps, such as occurred at the beginning of 2004, in making the protection available to purchasers and policyholders and provide for the smooth operation of the program. – This important extension does not appear in H.R. 1682.

- In order to reduce litigation which significantly raises operational costs for all stakeholders including the federal government, Congress should affirm federal court jurisdiction over all disputes relating to procurement of a policy and adjustment of claims under the NFIP. – Again, this reform does not appear in H.R. 1682 and it is an issue of vital importance to "Write-Your-Own" (WYO) insurers.

- The program should include revised and enhanced mitigation efforts such as adoption of a strong, statewide minimum building code, that considers all the risks of loss (including, for example, life safety and wind-borne debris for hurricanes) due to natural disasters and that cannot be weakened by local jurisdictions, as a condition for disaster assistance provided to a community.

We are happy to see that Section 15 of H.R. 1682 includes mitigation grants and addresses repetitive loss properties both of which are important reforms that should be retained, that we believe are vital to the program and that we very strongly support.

- Legislation reforming the program should provide additional federal funds to expedite completion of the Map Modernization initiative.

  H.R. 1682, under Section 21 addresses this issue and we are very pleased to see that additional funds are to be appropriated for this purpose, as well as the re-establishment of the Technical Mapping Advisory Council to provide direction and assistance to FEMA as it continues this important update project.

- The program should expand the mandatory purchase requirement to include additional properties at risk, such as properties which have sustained a flood loss, are located behind a levee or other protective barrier, or are located within a specified distance from the coast or major body of water. Mandatory purchase requirements should not be limited only to those located in Special Hazard Flood Areas.

  H.R. 1682 provides for a study of this issue in Section 3 and we believe that these properties, in the "natural floodplain" should be part of the mandatory purchase requirement of this important protection.

- The maximum coverage limits should be increased above current $250,000/100,000 limits for residential property to accommodate increasing property values. The limits offered should facilitate replacing the average home based on today's construction costs.

  We are pleased that Section 7 of H.R. 1682 significantly increases these limits; however, since they have not been revised since 1994, even the amount of these increases may be inadequate and could still lead to problems following an event based on demand surge.

- The program should also include at least some coverage for additional living expenses and the option to insure all buildings to their replacement cost value.

  Section 8 of H.R. 1682 includes limited coverage for additional living expenses, basement improvements, business interruption, and replacement cost of contents and we are pleased to see these included. However, the concern we have is with the myriad of options that would be available. One of the reforms the industry would like to see is a simplification of the rating process. The various options outlined in this bill would further complicate the rating process not simplify it, thus leading to more confusion for the agent and the policy purchaser. The program should establish a single, higher deductible and we should do whatever we can to make policy rating simpler and less cumbersome so agents can easily rate a policy accurately and consumers can understand the purchase. We are certainly willing to work with you on changes to these provisions.

- The Standard Flood Insurance Policy should be revised and rewritten to make it more consistent with standard homeowners and other property/casualty insurance products.

  While there is a provision in H.R. 1682, Section 23, "Clarification of replacement cost provisions, forms and policy language" that requires a "one-page description of the policy using plain language and easy to understand terms and concepts"; we do not believe that this would address this issue. A form such as this was developed, as a result of Title II of the Flood Insurance Reform Act of 2004 (Public Law 108-264) and although that document is more than one page, it is going out to policyholders now. Creating yet another, shorter, summary document would be redundant and would only further confuse the policyholder.

- FEMA should change its disaster assistance procedures to make sure that those with flood insurance are paid ahead of those who have not purchased flood insurance. As an example, those without flood insurance were often provided funds from the federal government ahead of those who purchased the coverage, sending the wrong message to citizens and perhaps encouraging some to abandon the purchase of flood insurance in the future.

- The program should encourage lenders to establish escrow for flood policies outside the Special Hazard Flood Areas (SHFAs).

  We are pleased that H.R. 1682 in Section 19, "Notice of availability of flood insurance and escrow in RESPA good faith estimate", requires that the notice provide information on contacting the NFIP regarding the purchase of flood insurance. The industry would like to see this provision expanded to include a statement that says the purchaser can contact his or her insurance agent or the NFIP as well as have the ability to escrow funds for this purchase.

- The program should provide more educational materials and strengthen requirements for flood protection.

  Once again, H.R. 1682 addresses this issue in a positive way in Section 14 as it provides for outreach programs to encourage more property owners and renters to purchase flood insurance.

Additional Comments on H.R. 1682

There are some specific additional comments that we would like to make regarding the provisions of H.R. 1682:

- We are pleased to see that Section 5. "Exception to waiting period for effective date of policies" fixes a problem that had been at issue for real estate closings and support this important change.

- Section 10. "Increase in annual limitation on premium increases" will allow the program to increase rates by a maximum of 15 percent per year instead of the current 10 percent, thus getting the NFIP to more appropriate, risk-based rates sooner, lessening the potential burden on taxpayers.

- Section 18. "GAO study of methods to increase flood insurance program participation by low-income families." We are concerned with how eligibility, should such a program be recommended and implemented, would be determined as insurers do not collect income information, nor do we desire to do so.
- Section 25. "Extension of deadline for filing proof of loss". The extension of the time period from the current 60 days to 180 days is entirely unnecessary. It will increase the potential costs to the program, limit the ability of the property owner, the WYO insurers and thus the NFIP, to mitigate the property from further damage and delay the repair process further. The ultimate costs of such an extension would be borne by the taxpayers and policyholders through increased premiums.

Conclusion

Again, thank you for the opportunity to present our views on this important legislation and we commend the Chair and the Members of this Subcommittee for holding this hearing to move this program forward.

In summary, it has been mentioned in the past, but it should be reinforced, that the National Flood Insurance Program provides important catastrophic protection for our nation's property owners. While it needs significant reform, we are encouraged by the direction of this legislation and are willing to work with Chairperson Waters, Ranking Member Biggert, this Subcommittee and Congress to refine and obtain passage of this bill during this Congress.

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STATEMENT OF VINCE MALTA ON BEHALF OF THE NATIONAL ASSOCIATION OF REALTORS®

Before the

The Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services

"THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2007, H.R. 1682"

June 12, 2007

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EQUAL HOUSING OPPORTUNITY

Introduction

Thank you, Chairwoman Waters, Ranking Member Biggert, and Members of the Subcommittee for inviting me to testify here today before the Subcommittee on Housing and Community Opportunity and present the views of the National Association of REALTORS® (NAR) on H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007.

My name is Vince Malta. I am the owner and broker of Malta & Co., Inc, a San Francisco California firm handling real property sales and management of over 300 residential rental units. I am a member of the California Association of REALTORS® and National Association of REALTORS® and have held a number of leadership positions in both associations, including serving as the 2006 President of the California Association of REALTORS® and the 2007 Vice-Chair of the Public Policy Coordinating Committee for the National Association of REALTORS®.

The National Association of REALTORS® is America's largest trade association, representing more than 1.3 million members involved in all aspects of the residential and commercial real estate industries. NAR is the leading advocate for homeownership, affordable housing and private property rights.

Overview

The National Association of REALTORS® supports the efforts of the Committee on Financial Services to reform the National Flood Insurance Program (NFIP). NAR is concerned, however, that certain provisions of H.R. 1682 could negatively impact housing markets, as well as low- and moderate-income renters, would-be homebuyers, and communities.

The Importance of the National Flood Insurance Program

A strong real estate market is the linchpin of a healthy economy, generating jobs, wages, tax revenues and a demand for goods and services. In order to maintain a strong economy, the vitality of residential and commercial real estate markets must be safeguarded.

The National Flood Insurance Program (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. Nearly 20,000 communities throughout the United States and its territories participate in the NFIP and have adopted floodplain management ordinances. In each of these communities, the NFIP makes federally-backed flood insurance available to homeowners, renters, and business owners. As a result of these proactive efforts, federal expenditures for disaster assistance and flood control are reduced.

Since its creation, the National Flood Insurance Program has helped to mitigate the escalating costs of repairing damage to buildings and their contents caused by floods. Buildings constructed in compliance with NFIP building standards suffer approximately 80 percent less damage annually than those not built in compliance. According to FEMA, flood damage is reduced by nearly $1 billion a year as the result of communities implementing sound floodplain management requirements and property owners purchasing flood insurance.

As a necessary first step to providing flood insurance and implementing floodplain management regulations, the NFIP identifies and maps the nation's floodplains. This mapping process provides the data needed to design effective floodplain management programs, actuarially rate flood insurance policies, and create public awareness of what areas are subject to flood hazards.

Created nearly forty years ago, the NFIP performed well until the extreme storm season of 2005. As of August 2006, the NFIP has paid more than $17.3 billion in claims for the 2005 floods.[1] This amount is greater than all claims paid out by the NFIP up to that point in time. In prior years, when losses exceeded the NFIP's ability to pay claims, the program was able to borrow money from the U.S. Treasury and pay it back with interest. The very sizeable flood losses resulting from the 2005 storm season have made people take a closer look at the NFIP.

Understandably, many members of Congress, after voting to increase the NFIP's borrowing authority three times, are seeking to reform the NFIP. The National Association of REALTORS® agrees that, given the importance of the NFIP to communities across the country, it is critical that the program be financially stable and actuarially sound. Congress, FEMA, and industry stakeholders, working together, can make a number of changes to ensure that the NFIP rests on a solid footing well into the future.

While the NFIP can be improved, REALTORS® are concerned that some of the provisions of H.R. 1682 might have undesired impacts on certain segments of the population, neighborhoods and communities. NAR encourages Congress to strike a balance between ensuring the long-term fiscal viability of the NFIP and avoiding changes that may result in market inequities and housing affordability problems.

NAR Views on H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007

The National Association of REALTORS® strongly supports the purposes of H.R. 1682, specifically: 1) protecting the integrity of the NFIP by fully funding existing legal obligations owed policyholders, 2) creating additional incentives for homeowners and communities to

[1] Government Accountability Office, "High-Risk Series: An Update," (January 2007), p. 91.

participate in the NFIP, and 3) increasing homeowners' awareness of flood risks. We have concerns, however, with proposed changes to the mapping program, new notification requirements and the elimination of subsidies for non-residential properties and non-primary residences.

Provisions Supported by NAR

- Increase NFIP Borrowing Authority (Section 11): The NFIP must meet its contractual and legal obligations to policyholders by paying claims for flood damages.

- Increase Available Coverage (Sections 7 and 8): The proposed increases in maximum coverage limits for residential properties, non-residential properties and contents coverage would more accurately reflect increases in property and contents values and provide fuller coverage to policyholders. In addition, providing additional coverage for living expenses, basement improvements, business interruption and replacement cost of contents would help protect homeowners and business owners.

- Address Mitigation and Repetitive Losses (Sections 15, 16 and 17): Repetitive loss properties pose a significant financial burden to the NFIP. Research conducted by the Multihazard Mitigation Council of the National Institute of Building Sciences found that a dollar spent on mitigation saves society an average of four dollars.[2] We agree that amending the flood mitigation assistance program to allow "demolition and rebuilding" should be included as a mitigation measure. We strongly support funding for mitigation activities for individual repetitive loss properties, and extending the pilot program for mitigation of severe repetitive loss properties.

- Build Public Awareness (Section 18): We fully support provisions to increase awareness of the NFIP and provide information on obtaining coverage. NAR believes having the Government Accountability Office (GAO) examine ways to increase low-income family participation in the NFIP is a first step towards ensuring that a greater percentage of at-risk homeowners and renters are able to protect themselves from future flood losses. We would suggest expanding this analysis to include how best to encourage renters to participate in the NFIP because they too are at risk and eligible to purchase content insurance.

[2] Multihazard Mitigation Council, "Natural Hazard Mitigation Saves: An Independent Study to Assess the Future Savings from Mitigation Activities, Volume 1 – Findings, Conclusions and Recommendations," National Institute of Building Sciences, Washington, D.C. (2005), p.5.

NAR Concerns Regarding Notification Requirements (Section 9)

While NAR supports efforts to increase the visibility of the NFIP, NAR members believe that the brochure and notification requirements for tenants of buildings located in special flood hazard zones proposed by Section 9 will not achieve the intended goal. In order to build the needed awareness of the NFIP, we believe that a broader public education campaign is in order. This effort should be targeted at owners and tenants since flood waters do not discriminate on the basis of property ownership.

Residential property managers have also indicated that the type of a brochure proposed in Section 9 is most likely to be overlooked amongst rental paperwork and the details of moving. A well-designed public awareness campaign would not suffer from this shortcoming. The addition of yet another disclosure requirement would also subject small property owners to potential liability and impose additional compliance costs. NAR has approached the Federal Emergency Management Agency (FEMA) about developing educational materials that can be used to raise awareness among REALTORS® and their clients about the NFIP.

NAR Concerns with Flood Mapping Provisions (Section 21)

NAR is concerned that the requirement in Section 21 to map the 500-year floodplain as part of FEMA's map modernization program may lead to delays in updating the 100-year floodplain maps, now scheduled to be completed in 2010. Accurate and up-to-date flood maps are the keystone to the NFIP insurance program. Without accurate maps, property owners are not able to properly evaluate the risk to their property from flooding.

FEMA has been engaged in a map modernization program to update and digitize the flood maps for the 100-year floodplain for several years. According to a report by the General Accounting Office submitted to the Chair of this Subcommittee in March 2004, when Congress

appropriated funds in FY 2003 to allow FEMA to undertake a full-scale update of the nation's flood maps, FEMA expected the effort to take five years to complete.[3] [4]

NAR does not want to see this process delayed further. Consequently, we are concerned that requiring FEMA to map the 500-year floodplain -- a task much larger than updating the existing 100-year floodplain maps -- may delay completion of the 100-year floodplain map update. NAR believes that the ongoing efforts to update the 100-year floodplain maps should be completed before any effort to map the 500-year floodplain is undertaken.

Technical Mapping Advisory Council Should Include a Real Estate Professional (Section 21)

NAR believes that it is important to have a real estate professional serve on the Technical Mapping Advisory Council when it is reestablished. A real estate professional will be able to provide the perspectives of map users, including homeowners and potential homebuyers, and explain how these maps impact real estate transactions.

NAR Opposes the Phase-Out of Subsidies (Section 4)

The National Association of REALTORS® strongly opposes phasing out subsidies for non-primary residences and non-residential properties. Non-primary residences should be given the same consideration as primary residences. Properties built under the same circumstances and facing identical flooding risks should not be charged different premiums. While proponents of eliminating "subsidies" on non-primary residences and non-residential properties argue that such a change would make the NFIP more fiscally sound, there may be significant unintended

[3] U.S. General Accounting Office, "Flood Map Modernization: Program Strategy Shows Promise, but Challenges Remain," March 2004, p. 8.
[4] Ibid.

consequences for renters, business owners, potential homebuyers, neighborhoods and local economies.

The properties receiving "subsidized" or less-than actuarial rates were built prior to December 31, 1974 or the date of completion of the flood map for the community in which the property is located, whichever date is later. Congress authorized the use of these less-than-actuarial rates because these structures were built prior to adoption of the flood maps and without the knowledge of the flooding risks inherent in the sites.

The original intent of the subsidy was to mitigate the increased costs that the new flood insurance mandate would impose on property holders. It was expected that over the long run, these older buildings would reach the end of their useful life and be replaced by newer flood-resistant construction. In practice, this process takes much longer than was assumed. Meanwhile, the expectation has grown that people who own properties in high-risk areas should pay actuarial rates based on their exposure to risk.

It should also be noted that the use of the terms "subsidies" or "subsidized rates" can be misleading. No federal tax dollars are used to pay for the difference between the "subsidized" and actuarial NFIP insurance rates. The difference between the actuarial and "subsidized" rate is simply not collected. It is important to note that the NFIP's latest Actuarial Rate Review indicates that the average "subsidized" policyholder pays more into the NFIP systems than do non-subsidized properties, roughly $720 in premiums annually as opposed to the average non-subsidized "actuarially rated" policy premium which pays about $350 per year in flood insurance premiums.

The National Association of REALTORS® is concerned that eliminating subsidies would result in yet higher flood premiums, increase the cost of property ownership and rents in these

areas, and could lead to increasing delinquencies, foreclosures and reduced property values. FEMA estimates that if the average subsidized policy were to pay its full-risk premium, that premium would be increased to $1,800 per year, or about two and a half times the current level; some properties could see premiums increase four-fold or more. There is a limit to the amount that insurance, or any other operating expense, can increase before owners are either forced to raise rents, sell their properties, or go without insurance. In the case of residential rental properties, it is especially likely that a significant portion of single-family property owners would be hard pressed to absorb such a cost increase without raising rents.

Presently, under the NFIP, flood insurance is purchased for the structure and/or contents. Section 4 of the bill would change this by adding a condition of use (i.e., primary or non-primary residence) requirement to determine the insurance rate for residential properties. Singling out non-residential and non-primary residences would require an annual certification of the use of the property. This would pose an additional burden on FEMA or some other agency to certify use of the property annually.

NAR also has concerns about how this provision would apply to residential rental properties, or more importantly, renters of these homes. For a renter, the house in which he or she is living is a primary residence, but would be considered a non-primary residence under the bill because it is a non-primary residence of the owner. Thus, if the subsidy was eliminated and owners were unable to cover the additional $1,100 - $2,100 in annual flood insurance costs, tenants would face rent increases that would have a dramatic effect on rental housing affordability, especially in the case of low and fixed-income individuals and families.

Given the uncertainty that exists as to how the elimination of subsidies would impact low and fixed-income residents and communities, NAR believes that the GAO study referenced in

Section 18 of the legislation should be expanded to include such an analysis before any actions are taken to eliminate these long-standing subsidies.

Finally, we would point out that the bill's provisions are unclear as to what happens when a non-primary residence is sold and becomes a primary residence. We would argue that the insurance should revert to its previously subsidized rate. It is also unclear how the phase-in of actuarial rates would affect a subsidized primary residence that is sold in 2015 and became a non-primary residence. Multiply this circumstance by several hundred thousand transactions and this could become a certification nightmare.

The Importance of a Comprehensive Federal Natural Disaster Policy

In addition to reforming the National Flood Insurance Program, the National Association of REALTORS® strongly encourages Congress to develop and enact a comprehensive natural disaster policy to mitigate exposure to the risks of natural disasters and foster the availability and affordability of homeowners' insurance coverage.

The National Association of REALTORS® supports the development of a comprehensive natural disaster policy that encourages personal responsibility, promotes mitigation measures, ensures insurance availability, and strengthens essential infrastructure (e.g., levees, dams, bridges, etc.).

NAR believes the creation of a federal natural disaster policy will promote the availability of affordable homeowners' insurance in disaster-prone areas. The lack of a national natural disaster policy has had a measurable direct impact on the availability and affordability of property casualty insurance in many parts of the country. The inability to obtain affordable homeowners' insurance is a serious threat to the residential real estate market – and thus, our economy.

Homeowners and commercial property owners need insurance to protect themselves, their families and their property in case of catastrophe. However, if insurance is not available or affordable, many make the unfortunate, but understandable, decision to purchase only the minimal amount or type of insurance required. The problem with this rational economic decision is that if "the big one" hits, and people are not insured for that type of catastrophe, then the American Taxpayer, that is to say everyone in the country, will pay through taxpayer-funded disaster assistance.

Property owners should have confidence that their homes and businesses will survive future catastrophic events. Appropriate mitigation measures can help to create that confidence. Federal and state governments can provide incentives (e.g., tax credits, insurance rate reductions) to property owners to undertake appropriate mitigation measures for their homes and businesses.

Finally, an essential part of a comprehensive natural disaster policy is the recognition of the basic responsibility of government at all levels to build and maintain infrastructure. Hurricane Katrina was not the largest hurricane to ever hit the Gulf Coast, but the failure of the levees protecting New Orleans contributed significantly to the loss of life and property from that storm. The U.S. Army Corps of Engineers on February 1, 2007, released a list of 122 "Levees of Maintenance Concern" that includes 37 levees in California.[5] Moving forward, we believe that all levels of government must do a better job of shouldering their respective responsibilities.

To summarize, we believe that it is in the best interests of all Americans to have a comprehensive federal natural disaster policy that includes aggressive mitigation and appropriate assumption of risk so that affordable insurance for homeowners and commercial properties is available. Having a comprehensive natural disaster policy is essential in the coming years since there is no guarantee that 2007 or any future years will be as benign for natural catastrophes as

[5] *See*: U.S. Army Corps of Engineers, "Levees of Maintenance Concern," Feb. 1, 2007.

2006. The question is not whether there will be another Katrina-like event in size and scope of destruction, but when. As we have learned, it is far less costly to prepare ahead of time than to fund recovery efforts.

Conclusion

Thank you again for inviting the National Association of REALTORS® to present its views on H.R. 1682 to the Subcommittee. We stand ready to work with you, Chairwoman Waters, Ranking Member Biggert, Chairman Frank, and all the members of the Committee on Financial Services and others in Congress to enact meaningful reforms to the National Flood Insurance Program and ensure its long-term viability.

Testimony of
David F. Maune, Ph.D., CP, CFM
on behalf of
MAPPS
before the
Subcommittee on Housing and Community Opportunity
House Committee on Financial Services
Hearing on
H.R. 1682, The Flood Insurance Reform and Modernization Act of 2007
June 12, 2007

Madam Chairman, members of the Subcommittee, I am Dave Maune, a member of MAPPS, a national trade and professional association of more than 160 of the nation's leading mapping, geospatial and geographic information firms. MAPPS member firms span the entire spectrum of the geospatial community, including Member Firms engaged in surveying, photogrammetry, satellite and airborne remote sensing, aerial photography, hydrography, aerial and satellite image processing, GPS, and GIS data collection and conversion services. MAPPS also includes Associate Members, which are companies that provide hardware, software, products and services to the geospatial profession in the United States and other firms from around the world.

I am a Remote Sensing Project Manager for Dewberry in Fairfax, VA. We are a major user of digital elevation data, and I personally specialize in independent quality assurance/quality control of digital elevation data produced by others. I previously served 30 years as an Army officer in the U.S. Army Corps of Engineers where I last served as Director of the U.S. Army Topographic Engineering Center at Fort Belvoir, VA. I previously served as a principal author of Appendix A, *Guidance for Aerial Mapping and Surveying*, to FEMA's "Guidelines and Specifications for Flood Hazard Mapping Partners." I recently served as a member of the National Research Council's Committee on Floodplain Mapping Technologies. And I serve on the MAPPS Task Force that has been reviewing the FEMA flood mapping program.

H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007, overhauls the National Flood Insurance Program (NFIP) and, among other things, directs FEMA to develop more comprehensive and updated flood maps and ensure they reflect accurate risks to home owners.

H.R. 1682 is a good start in addressing reforms within the NFIP. While MAPPS supports many of the provisions in H.R. 1682, we have developed a series of reforms we believe will help make the program run more efficiently, and most importantly, will ensure accurate mapping data reaches those entities and individuals impacted everyday. WE urge their inclusion in H.R. 1682, or other legislation the Committee develops to reform the nation's flood mapping effort.

The full listing of MAPPS recommendations may be found at the end of this testimony. Permit me to highlight a few major points --

- Where needed, FEMA should collect accurate ground elevation data using the latest, state-of-the-art commercial geospatial technologies. Language should also provide that hydrologic and hydraulic (H&H) modeling be created to support all flooding sources.
- FEMA should re-establish the Technical Mapping Advisory Council (TMAC). Membership should include individuals from the private sector topographic mapping profession.
- FEMA should be permitted to access the Master Address File (MAF) maintained by the Census Bureau for floodplain management, as well as disaster response.
- FEMA should place a new emphasis on vertical positioning, lowest floor <u>and</u> lowest adjacent grade (LAG) elevations, in addition to the traditional focus on horizontal (latitude and longitude) coordinate data.
- FEMA should create a National Levee Inventory with a "geospatial" component – X, Y and Z geo-referenced coordinate data – included for each levee in the inventory.
- FEMA should transform the program to fully embrace digital products with the goal of eliminating paper products by 2010.

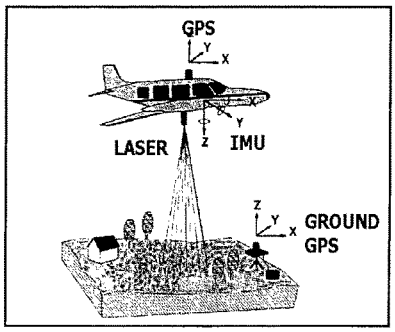
The National Research Council study report, soon to be published in final form, supports the objectives of H.R. 1682 by:

1. Identifying the current mapping technologies being used by FEMA to develop flood hazard maps;
2. Identifying mapping technologies that are currently available; and
3. Determining if newer technologies are appropriate and would be of additional benefit to floodplain mapping.

Before going any further today, I would like to provide background information, including explanations of terminology that I will use:

- "Topography" is elevation data normally expressed in terms of topographic contours or digital elevation models.
- "Contours" are lines of equal elevation drawn on a topographic map. If any member of this subcommittee ever served in the Army or Marine Corps, you probably took a course in map reading and learned how to read contours so that you could visualize the shape of the terrain, determine slopes, and use your understanding of the terrain to your advantage.

- The "contour interval" determines how accurate the elevations are; 90% of tested elevations are accurate within one half the contour interval.
- 1-ft contours are twice as accurate as 2-ft contours; 2-ft contours are twice as accurate as 4-ft contours, etc.
- Computers don't read or interpret contours. Instead, computers use various forms of digital elevation models (DEMs) for such things as hydrologic modeling of watersheds and hydraulic modeling of floodplains. The accuracy of DEMs can still be expressed in terms of their equivalent contour interval accuracy where 90% of test points are accurate within one-half the contour interval.
- For flood hazard mapping, FEMA has guidelines and specifications for elevation data equivalent to 2-ft contours in flat floodplains and 4-ft contours for floodplains in hilly to mountainous terrain.
- For decades, elevation data, including contour lines, were mapped using aerial photography and a technology called "photogrammetry."
- Today, high density digital elevation model data points are produced by a technology called LiDAR (Light Detection and Ranging), an aerial mapping technology that emits over 100,000 laser pulses per second to map the bare earth terrain beneath the trees, as well as tops of trees and buildings. It is common to have LiDAR points so dense that there is approximately one elevation point for every square meter on the ground. Multiple technologies enable these ground elevations to be very accurate.



- A DFIRM is a Digital Flood Insurance Rate Map.

FEMA routinely uses LiDAR data whenever such data are available. FEMA's goal is to make reliable flood maps as efficiently as possible. In many cases the FEMA lead determines that the best use of the budget is to focus on the flood data update rather than the new elevation data. But when the elevation data is poor and the flood risk is very high, FEMA will fund the collection of new elevation data as part of a study. FEMA's funding is focused on hydrologic and hydraulic modeling and DFIRM production and procession, so FEMA usually uses the "best available" elevation data. Other federal agencies have the mission and technical expertise to provide basic mapping services including topography, but they too lack the funding necessary to produce and maintain accurate mapping data.

With further regard to the National Research Council's evaluation of FEMA's use of technology for flood hazard mapping, the NRC panel concluded that FEMA effectively uses technology, including LiDAR data; but for the most part FEMA is an elevation data user – not an elevation data producer. Furthermore:

- Our Nation's "best available" elevation data are inadequate to support many of FEMA's Flood Map Modernization requirements, as specified in Appendix A, *Guidance for Aerial Mapping and Surveying*, to FEMA's "Guidelines and Specifications for Flood Hazard Mapping Partners."
- Many "best available" elevation datasets do not satisfy FEMA's needs for accuracy and currency.
- Based on considerable testimony, we believe that FEMA needs elevation data that are reasonably up-to-date; accurate to 4-ft contours in hilly to mountainous terrain; accurate to 2-ft contours in most other areas (minus sparsely populated areas of low priority); and accurate to 1-ft contours in very flat coastal or inland floodplains, including areas subject to subsidence. For hurricane storm surge and evacuation planning, Florida is currently acquiring LiDAR data equivalent to 1-ft contours in the flat coastal areas of that state; 2-ft contours are simply not accurate enough for such areas "flat as a pancake." Determining what is "reasonably up-to-date" requires informed judgment on a variety of factors.
- Solutions would require significant expense for those agencies (Federal, state, and local) responsible for acquiring/producing such elevation data.
- *Elevation for the Nation* is needed and would have many beneficial uses beyond floodplain mapping and mapping. There are hundreds of users, other than FEMA, who similarly need elevation datasets that are more accurate and up-to-date than data in the National Elevation Dataset – often decades old and accurate to 10-ft contours instead of the 2-ft or 4-ft contours needed.

Our major recommendations are as follows:

1. *Elevation for the Nation* should employ LiDAR as the primary technology for digital elevation data acquisition. LiDAR is the technology most capable of producing the (bare-earth) elevation accuracy that meets FEMA's requirements for national floodplain mapping in all terrain types (while simultaneously satisfying other user requirements as well). The panel also acknowledged there are other technologies that can also contribute to the effort.
2. A seamless nationwide elevation model produced with LiDAR has application beyond the FEMA Map Modernization program. As part of *Elevation for the Nation*, federal, state, and local mapping partners should have the option to request "buy up" data that exceed minimum specifications if they pay the additional cost of data collection and processing required to achieve higher accuracies.
3. The new data collected in *Elevation for the Nation* should be disseminated to the public as part of an updated National Elevation Dataset maintained by the U.S. Geological Survey (USGS).

Following the release of the draft NRC study in January of 2007, USGS hosted a forum focused on obtaining *LiDAR for the Nation*. Participants included members of the National Digital Elevation Program (NDEP) as well as many others. Participants were unanimous in agreeing to the need for *LiDAR for the Nation*. The major issues are: (1) who should acquire and maintain the data? ... and how do we pay for it? No single agency has the funding for such a nationwide LiDAR mapping program, although all participants see the need for such a vital program.

There is a tier of federal producers and/or users who have legitimate but unfunded needs for elevation data equivalent to 5-ft contours. These include USGS and perhaps the USFS, BLM, USDA/NRCS, and NASA. Could and should these agencies obtain funding authorizations and appropriations necessary to map the entire U.S. with LiDAR data accurate to 5-ft contours? What would this cost?

Next, there is a tier of federal, state and local producers and/or users who have legitimate needs for elevation data equivalent to 2-ft contours, but only in areas that are relatively flat. These include FEMA and USACE for flat floodplains, NOAA for coastal areas, NGA for 133 cities, and some states. Note: North Carolina has already paid for statewide LiDAR data accurate to 2-ft contours, and several other states have similar programs in progress. Could and should FEMA, NOAA, USACE and NGA obtain authorizations and appropriations necessary to pay the additional costs for "buy up" from 5-ft to 2-ft contour accuracy? What would this cost? FEMA cannot afford to take this "out of hide. They need every penny of their proposed appropriated funds for their engineering analyses. However, if FEMA received additional funding specifically for this purpose, they would be in a position to provide USGS (or whoever is responsible) with funding to influence decisions on where to upgrade from 5-ft to 2-ft contours. Without any contributions to NDEP funding, FEMA is in no position to influence "buy up" decisions needed to ensure elevation data satisfy FEMA requirements for accuracy and currency.

Lastly, there is another tier of users who need elevation data equivalent to 1-ft contours. They should only have to pay the differential costs between 1-ft accuracy and 2-ft or 5-ft accuracy data required by others listed previously. Florida is currently acquiring LiDAR data equivalent to 1-ft contours along coastal areas, and California is doing so for subsidence areas in the Central Valley.

Although funding options such as this are currently under consideration by the NDEP participants, it is clear that FEMA needs elevation data better than the best currently available. Other federal agencies need funding to support *LiDAR for the Nation*, and FEMA needs additional funding to "buy up" in selected areas where higher accuracy elevation data are needed. Under no circumstances should FEMA be expected to pay for such LiDAR data "out of hide" because that would undermine the effective steps that FEMA is already taking to modernize its flood hazard maps.

Perhaps it would be "cleanest" for everyone if the members of the National Digital Elevation Program would come up with a total cost estimate to acquire *LiDAR for the Nation* to satisfy the total needs for initial acquisition and subsequent maintenance of such data at the required levels of accuracy. The National Academy of Sciences study already proposed a methodology for determining areas with different accuracy needs. OMB would need to propose a total funding package to avoid the need for perhaps 10 federal agencies working with 10 congressional committees to justify funding for 10 parts of the total package, especially when many of those requirements are duplicative. We would be most effective and efficient if we had a total package, rather than piecemealed parts thereof.

In conclusion, FEMA is doing an excellent job with resources available. They are attempting to map the 500-year floodplain, to map risks to those behind levees and those downstream from dams that could fail. Anything that Congress can do to get FEMA the accurate and current elevation data they need will support the overall objective to more-accurately map the true flood risks to home owners.

But there are additional improvements when MAPPS recommends, beyond elevation data and the funding to support that effort.

H.R. 1682 includes a provision, in Section 21, regarding Flood Insurance Rate Maps (FIRM) that directs the FEMA Director to establish a program within FEMA to review, update, and, maintain Flood Insurance Program Maps. However, Section 21 omits language regarding topographic data accuracy and the use of modern commercial geospatial technologies to satisfy FEMA standards and requirements. MAPPS suggests that language be added to this provision providing for FEMA to work with the U.S. Geological Survey and other Federal agencies for their collection of accurate ground elevation data utilizing technologies to include but not to be limited to LiDAR, IFSAR, Photogrammetry or other commercial geospatial technologies. The language should also provide that hydrologic and hydraulic (H&H) modeling be created to support all flooding sources, which can be automated and easily updated as changes occur. "Accurate ground elevation data" should be defined as data that meets the requirements of Appendix A, *Guidance for Aerial Mapping and Surveying*, to FEMA's "Guidelines and Specifications for Flood Hazard Mapping Partners." This provides some guidance and standards for FEMA with regard to focusing on the professional and technical accuracy of data, rather than an arbitrary control on the age of data. In some cases, older data is adequate, if it meets the standard in Appendix A. In other cases, the collection of new data is needed if the existing data is not adequate to meet the accuracy standard. Whereas FEMA is a user of accurate topographic data for the most part, the U.S. Geological Survey, National Oceanic and Atmospheric Administration, and U.S. Army Corps of Engineers have the expertise and mission to provide such topographic data, but they too lack the requisite funding.

H.R. 1682 includes a provision, in Section 21, to re-establish the Technical Mapping Advisory Council (TMAC). However, the listing found in Section 21 does not include representation on the TMAC by individuals representing mapping and engineering organizations. MAPPS supports the re-establishment of the TMAC. Membership should include individuals from the private sector topographic mapping profession.

FEMA should investigate means for presenting flood risks to individual homeowners based on the elevations of their lowest adjacent grade (LAG) and/or lowest floor elevations compared with water surface elevations computed for standard flood frequencies. By showing the probability of flooding to various depths for individual structures, we believe many more homeowners would recognize that their risk of flooding is serious and may even be more probable than their risk from other hazards (e.g., fire). LiDAR technology, in particular, is ideal for determining the elevations of

LAG elevations for automated comparison with water surface elevations for 100-year and 500-year floods that have 1% and 0.2% annual chance of occurring each year.

The following are not specific to H.R. 1682, but are important recommendations from the MAPPS Task Force which we believe will help address issues important to the success of the FEAM flood mapping effort.

In New Orleans, flooding was so severe that the utility of aerial photography and satellite imagery use could have been greatly enhanced if the Title 13 address privacy restrictions were not in place. Imagery acquired immediately after Katrina showed that road network maps were rendered virtually useless, as the imagery showed only rooftops. Emergency response (by boat or helicopter, due to the inundation of roads) was hampered by the lack of an accurate address map layer, which could have been over laid on the imagery to give first responders valuable information as to the location of people in need. The accurate address map layer and data was in the possession of Census, but the Title 13 restriction prohibited the sharing of this data between Census and FEMA, creating a hurdle in a life and death situation. FEMA should consult with the Census Bureau and the private geospatial community to determine whether the Title 13 restriction on Census address data can be revised in an emergency response situation, to permit first responders access to Census address data for life saving activities in a declared emergency, or whether the restriction is generally no longer needed.

To facilitate the above recommendation, Congress should remove the Title 13 restriction on FEMA's use of the Census Master Address File (MAF) data to link street addresses to geographic coordinates of structures with known LAG elevations. This would assist FEMA by better identifying flood risk, improving the flood insurance coverage rate, and enhance flood insurance processing. It would also improve emergency response by allowing first responders to access the data for life saving activities in a declared emergency. If, due to committee jurisdiction issues, a change in the law is not feasible, MAPPS recommends that Congress authorize a study of this matter.

MAPPS strongly recommends that Congress create in FEMA a suite of multiple-award, indefinite delivery/indefinite quantity (IDIQ) contracts for geospatial services, competed and awarded in advance and stood up on a contingency basis (ready and available in virtually a moment's notice). They should develop a time-sensitive process for enhancing the utilization of geospatial assets in protecting lives and property during catastrophic events and having contracts pre-positioned to provide certainty and efficiency in the emergency response process and to utilize the contracts for mitigation, preparedness and ongoing geospatial requirements. Contracts should be awarded by FEMA on a national or regional basis or delegated to another agency (such as the Corps of Engineers or USGS), and all Federal, state and local government requirements for geospatial services related to an emergency should be coordinated through FEMA for tasking under these contracts to prevent duplication. Contracts and subcontracts for geospatial mapping services should be awarded in the same manner as a contract for architectural and engineering services is selected, awarded and negotiated under chapter 11 of title 40, United States Code. The term "mapping" or "geospatial" should be taken

to mean "contracts and subcontracts for services for collecting, storing, retrieving, or disseminating such graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services." The goal of developing a pre-awarded competitive contracting process for enhancing the utilization of geospatial assets (aerial photography, satellite imagery and geographic information or "geospatial" activities for emergency response) was also recently endorsed and recommended by the National Research Council in the report, "Successful Response Starts With a Map."

Previous legislation attempted to create a National Levee Inventory. MAPPS supports the creation of such an inventory and recommends that a "geospatial" component – X, Y and Z geo-reference coordinate data – be included for each levee in the inventory.

Previous legislation included a provision requiring digital mapping. To help bridge the "digital divide" by transforming the program to utilize and make available digital mapping, MAPPS supports the digital mapping provision.

Lastly, MAPPS member firms recommend establishing a national licensing program, in place of the current patchwork of state-by-state programs, to license photogrammetrists as a prerequisite for working on FEMA, USGS, NOAA, USACE, USDA or any other Federal mapping program that will contribute data to the National Spatial Data Infrastructure that could be merged or integrated with the FIRM. Many states now define photogrammetry and geographic information systems (GIS) creation as the practice of surveying. However, the licensing requirement differs from state-to-state. This inhibits "national" mapping programs, as surveyors performing photogrammetric mapping must meet different state standards rather than a national standard. Moreover, photogrammetric mapping firms engage in commerce across state lines, thus they are engaged in interstate commerce, the regulation of which is constitutionally a Federal, not state, government responsibility. Finally, while the traditional land and boundary survey law varies from state to state, photogrammetric mapping is conducted in accordance with the same "laws of science" – the same in every state. Therefore, a national licensing program is necessary and desirable.

Madam Chairman, thank you for the opportunity to present our views.

Independent Insurance Agents & Brokers of America, Inc.

STATEMENT OF THOMAS MINKLER
ON BEHALF OF THE
INDEPENDENT INSURANCE AGENTS & BROKERS OF AMERICA

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

UNITED STATES HOUSE OF REPRESENTATIVES

June 12, 2007

Good afternoon Chairwoman Waters, Ranking Member Biggert, and Members of the Subcommittee. My name is Tom Minkler, and I am pleased to be here today on behalf of the Independent Insurance Agents and Brokers of America (IIABA) to present our association's perspective on efforts to reform the National Flood Insurance Program (NFIP or the "Program"). I am the president of the Clark-Mortenson Agency, Inc., headquartered in Keene, New Hampshire, a regional insurance agency with eight locations and 55 employees in New Hampshire and Vermont. I also serve as the Chairman of the IIABA's Government Affairs Committee.

IIABA is the nation's oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of more than 300,000 agents, brokers, and employees. IIABA represents independent insurance agents and brokers who present consumers with a choice of policy options from a variety of different insurance companies. These small, medium, and large businesses offer all lines of

insurance – property, casualty, life, health, employee benefit plans, and retirement products. It is from this unique vantage point that we understand the capabilities and challenges of the insurance market when it comes to insuring against flood risks.

Background

IIABA believes that the NFIP provides a vital service to people and places that have been hit by a natural disaster. The private insurance industry has been, and continues to be, largely unable to underwrite flood insurance because of the catastrophic nature of these disasters. Therefore, the NFIP is virtually the only way for people to protect against the loss of their home or business due to flood loss. 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, the NFIP has saved disaster assistance money and provided a more reliable system of payments for people whose properties have suffered flood damage. It is also important to note that for almost two decades, up until the 2005 hurricane season, no taxpayer money had been used to support the NFIP; rather, the NFIP was able to support itself using the funds from the premiums it collected every year.

Under the NFIP program, independent agents play a vital role in the delivery of the product through the Write Your Own (WYO) system. Independent agents serve as the sales force of the NFIP and the conduits between the NFIP, the WYO companies, and the consumers. This relationship provides independent agents with a unique perspective on the issues surrounding flood insurance, yet also means that the role of the insurance agent in the delivery process of flood insurance is considerably more complex than that of traditional property/casualty lines. Agents must possess a higher degree of training and expertise than their non-NFIP participating counterparts, which requires updating their continuing education credits through flood conferences and seminars. This is done regularly and involves traveling to different regions of the country, costing personal time and money. Every agent assumes these responsibilities voluntarily and does so as part of being a professional representative of the NFIP. In an effort to bring the education process to as many people as possible, many of our State associations have begun to provide internet based seminars. This training has been extremely popular and a tremendous tool. We believe in the effectiveness of the Program and would like to see it continue and offer consumers even greater protections in the years ahead.

However, no program is perfect, which was made all the more clear by the devastating 2005 hurricane season and the unpredictable weather patterns across the country. In my home state of New Hampshire, there have been eight federally-declared disasters from flooding in the last 10 years. This increased flooding activity in such a short period of time has highlighted some of the deficiencies of the program and has strained government resources. While IIABA is confident that the NFIP will recover, it is important that Congress shore up the NFIP's financial resources and use this opportunity to enact needed reforms to ensure the long-term sustainability of the program.

For this reason, the IIABA strongly supports Chairman Frank and Rep. Biggert's legislation, H.R. 1682, the Flood Insurance Reform and Modernization (FIRM) Act of

2007. The IIABA has released a 23-point plan for reform to restore the NFIP to sound actuarial footing, and we are extremely pleased to see a number of IIABA recommended provisions in this proposed legislation.

Modernization of Coverages

In particular, the Big "I" is especially grateful that the Committee has chosen to modernize the NFIP by increasing maximum coverage limits and by including, at the option of the consumer, the purchase of business interruption coverage, additional living expenses, replacement cost coverage for contents, and basement coverage. The modernization of coverages will hopefully have three positive effects on the NFIP as a whole. First, it will allow consumers to more adequately insure their properties and valuables against their true risks. This will in turn make the NFIP as a whole a more attractive product for consumers, thereby increasing participation in the program. And finally, as optional purchases that are sold at actuarial rates, the modernization of coverages will result in a NFIP that is closer to being on actuarially sound footing.

The inclusion of optional business interruption coverage is particularly crucial to Big "I" members and their commercial customers. If a flooding catastrophe causes a business premises to be temporarily unusable, that business may have to relocate or even close down temporarily. Property owners are still required to pay employees, mortgages, leases and other debts during this process, and these ongoing expenses can mount up quickly for a business that has reduced income or no income at all. For property insurance policies, business interruption insurance provides protection against the loss of profits and continuing fixed expenses resulting from an interruption in commercial activities due to the occurrence of a peril. The inclusion of an optional business interruption provision will provide stability to the local economies in the areas affected by flood damage and will offset government disaster relief payments should the flood peril result in widespread destruction across a region. Business interruption coverage, and the security and peace of mind it provides, is crucial to our members and to small businesspeople across America.

Another provision in the legislation which we strongly support is the inclusion of the option to purchase additional living expenses. This provision will provide consumers with greater security during the often bewildering post-flood period, and will do so in an actuarial basis as opposed to relying solely on FEMA grants and assistance

Also chief among our recommendations, and present in FIRM, is the proposed increase in the maximum coverage limits. The NFIP maximum coverage limits have not been increased since 1994 and since then, the United States has seen a housing market boom of epic proportions. Labor and materials costs have skyrocketed, and yet the maximum indemnity a homeowner can receive for a flood loss is $250,000. Similarly, a total loss on a commercial property would only net the occupant $500,000. These figures are caught in time, and they do not provide reasonable financial relief for policyholders facing a complete rebuilding process. Hurricanes Katrina and Rita clearly showed that homeowners and businesses need higher NFIP coverage limits in order to properly insure their properties. An increase in the maximum coverage limits will better allow both

individuals and commercial businesses to insure against the damages that massive flooding can cause, and we're grateful that this increase was included.

NFIP Borrowing Authority

Finally, the increase of the NFIP's borrowing authority has been an important issue for independent insurance agents and brokers. NFIP claims liabilities arising from Hurricanes Katrina and Rita are estimated at more than $21 billion dollars, far surpassing the total claims paid in the entire history of the NFIP. The 109th Congress passed three increases in the NFIP temporary borrowing authority, with the current amount at $20.775 billion. Despite the three borrowing authority increases, the NFIP likely will not have enough funds to pay all outstanding claims without another increase. We are very supportive of the Committee's efforts in this legislation to increase the borrowing authority again to $21.5 billion. The increase of the borrowing authority is vital to ensure the continued payout of promised monies to consumers, and the IIABA applauds the Committee for its efforts to ensure that the U.S. Government delivers on this promise.

Additionally, we urge the Committee to consider carefully whether it may be appropriate to eliminate the incurred NFIP debt that has resulted from the 2005 Hurricane Season. It is estimated that the NFIP will need to pay as much as $900 million a year to the U.S. Treasury in interest payments alone, which represents nearly half of their annual premium. The long term survival of the program may require Congress to consider eliminating their debt and the resulting interest payments.

Conclusion

The IIABA is very pleased that the Subcommittee is conducting today's hearing on comprehensive flood insurance reform and we urge the Financial Services Committee to pass H.R. 1682 and send it to the full House of Representatives for approval. The Flood Insurance Reform and Modernization Act of 2007 is critical towards ensuring the long-term stability of the NFIP. The NFIP is essential to Americans and to the U.S. economy, and we strongly support your efforts to update it to reflect today's risks. Adopting the reforms found in H.R. 1682 would help to make the NFIP more actuarially sound and more effective at serving both consumers and taxpayers. In particular, we also strongly support your efforts to increase the maximum coverage limits and to provide for the optional coverage of business interruption insurance and additional living expenses.

I thank the Committee for giving me the opportunity to express the views of the IIABA on this important Program. I hope very much that this hearing will contribute to additional action taken by Congress to pass flood insurance reforms and to ensure prosperous growth and stability of the National Flood Insurance Program.

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TESTIMONY

Association of State Floodplain Managers, Inc.

before the
Subcommittee on Housing and Community Opportunities
House Committee on Financial Services

Flood Insurance Reform and Modernization Act of 2007

H.R. 1682

presented by
Paul A. Osman, CFM, ASFPM Co-Chair, Insurance Committee
Floodplain Programs Manager, State of Illinois

June 12, 2007

The Association of State Floodplain Managers is pleased to respond to the Committee's request for our views on H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007. We appreciate the work that went into last session's bill that passed the House, as reflected in many of the provisions in H.R. 1682.

Who We Are

The Association of State Floodplain Managers, Inc. (ASFPM) and its 26 Chapters represent over 11,000 state and local officials and other professionals who are engaged in all aspects of floodplain management and hazard mitigation, including management, mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources, and insurance. Many of our members worked with communities impacted by hurricanes Katrina and Rita or work with organizations that continue to support the rebuilding efforts. All ASFPM members 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 flood mitigation programs and working to achieve effectiveness in meeting our shared objectives. Many of our state members are designated by their governors to coordinate the National Flood Insurance Program and many others are involved in the administration of and participation in FEMA's mitigation programs. For more information on the Association, please visit http://www.floods.org.

Improving the National Flood Insurance Program

ASFPM endorses legislation that will, over time, improve the financial stability of the NFIP. We wish to emphasize that FEMA reports that the program has been self-supporting for 20 years, since 1986. Prior to Hurricane Katrina, income from policyholders covered claims and all operating expenses, including salaries and expenses of the Federal employees who administer the NFIP and floodplain management programs. From time to time the NFIP exercised its authority to borrow from the U.S. Treasury when claims exceeded short-term income. Importantly, the program was praised for its ability to repay debts ahead of schedule and with interest. This is exactly the way the program was intended to function.

We recognize that even the original framers did not anticipate the truly catastrophic flooding associated Hurricane Katrina and the fiscal impact on the NFIP. However, we urge that the Committee keep in mind that the NFIP has multiple goals, and providing flood insurance that is reasonably priced in order to avoid direct government subsidy of flood damage is an important goal. A number of studies have concluded that if premiums rise too steeply or become too costly, many policyholders will find ways to avoid buying flood insurance. The consequence of having fewer people insured against known risks would be greater reliance on tax-payer funded disaster assistance and casualty loss tax deductions.

Results of FEMA's Evaluation of the NFIP

ASFPM has long urged a comprehensive evaluation of the NFIP and are pleased that FEMA undertook such an effort which has resulted in the recent release of 14 reports. We understand that more than 100 recommendations were made by the independent researchers. FEMA has indicated that it has evaluated the recommendations and is determining priorities and plans of action. ASFPM applauds FEMA's willingness to have so many aspects of the program examined in this manner and look forward to FEMA's efforts to implement and improve the

NFIP. We will be reviewing the reports in light of ASFPM's recently completed "National Flood Programs and Policies in Review, 2007." This document contains our long-term policy positions on all aspects of floodplain management, including the NFIP. We suggest that the Committee request a briefing from FEMA on its plan of action, and monitor progress in the coming years.

ASFPM Comments on H.R. 1682

H.R. 1682 contains a number of provisions that will move the NFIP towards greater financial stability, and some provisions that will enhance existing program authority to mitigate properties that have received repetitive claims. As noted below, ASFPM endorses many of the provisions, but recommends caution regarding the impact of some changes. We also have identified a number of changes that we believe are consistent with the Committee's intent to strengthen the NFIP.

►► **Sec. 3. Study of Mandatory Purchase for Natural 100-Year Floodplain and Non-Federally Regulated Loans.** ASFPM supports imposing mandatory purchase of flood insurance in areas that are subject to what we call "residual risk." Residual risks are present in areas that would flood if not for the presence of measures such as levees, floodwalls, and flood control dams. Importantly, residual risk areas are at risk of catastrophic flooding when such flood control measures fail. Rather than a study, we urge that the mandatory purchase requirement be implemented immediately, and that FEMA be directed to work with other federal, state and local entities to map such residual risk areas. It should be made clear that the land use controls that the NFIP requires communities to administer in the special flood hazard areas shown on Flood Insurance Rate Maps are not to be applied to the residual risk areas.

►► **Sec. 4. Phase-In of Actuarial Rates for Nonresidential Properties and Non-Primary Residences.** ASFPM supports gradual movement to actuarial rates for pre-FIRM non-residential buildings and non-primary residences.

►► **Sec. 5. Exception to Waiting Period for Effective Date of Policies.** We appreciate the flexibility that would make coverage immediately effective if a policy is purchased within 30 days of the purchase or transfer of a property.

►► **Sec. 6. Enforcement.** ASFPM supports increasing civil penalties on lending institutions related to administration of the mandatory purchase of flood insurance requirements. We note that the National Flood Insurance Reform Act of 1994 directed that collected penalties are to be deposited into the National Flood Mitigation Fund and made available for grants that mitigate flood losses – another mechanism to improve the financial stability of the NFIP.

►► **Sec. 8. Coverage for Additional Living Expenses, Basement Improvements, Business Interruption, and Replacement Cost of Contents.** ASFPM supports making optional coverages available at actuarial rates. However, we believe that the coverage for "basement, crawl spaces, and other enclosed areas under buildings that are not covered by primary flood insurance" should not be provided, even at actuarial rates. Because even shallow flooding can completely flood a basement, the current floodplain management requirements prohibit basements in new buildings (except in a small number of communities that FEMA has granted a special exception). When crawl spaces and other

enclosed areas are built as part of post-FIRM buildings, such areas are, by regulation, limited in use to parking, storage, and building access. Providing insurance for the areas that are guaranteed to flood sends a mixed message and will likely lead to more illegal conversion of enclosures to uses other than those allowed by regulation.

►► **Sec. 11. Increase in Borrowing Authority.** Although increasing the borrowing authority may be appropriate in the short term, ASFPM supports forgiving the debt. Incurred as a result of the 2005 hurricane season. The taxpayer has benefited from the NFIP – FEMA reports that the NFIP is credited with avoiding over $1 billion each year in flood damages in recent years. Damages are avoided because states and communities administer floodplain management ordinances and codes that encourage locating development outside of flood hazard areas and that require certain construction methods when development is placed in the floodplain.

►► **Sec. 12. FEMA Participation in State Disaster Claims Mediation Programs.** ASFPM does not endorse requiring FEMA to participate in non-binding mediation of claims issues when multiple claims for same property.

►► **Sec. 14. Flood Insurance Outreach Grants.** For several years the NFIP has expended considerable financial resources on marketing the NFIP, and many states and communities also undertake actions to encourage property owners to understand their risks and to purchase flood insurance. ASFPM believes that this section should be modified to include the States, so that outreach campaigns become a state-local partnership. Also, in some states it will be more efficient to have a statewide outreach campaign that could target multiple communities in high risk areas, even if on or more individual communities were not interested in taking an active part.

►► **Sec. 15. Grants for Direct Funding of Mitigation Activities for Individual Repetitive Claims Properties.** ASFPM endorses the proposed change to this program that was authorized in the Flood Insurance Reform Act of 2004. Current NFIP-supported mitigation grant programs provide funds to communities – and thus successful projects depend on community participation. ASFPM has long supported community-based mitigation; however, we recognize that some repetitive loss properties are in communities that may not have the resources to participate. In order to achieve the goal of reducing the repetitive loss drain on the National Flood Insurance Fund, we urge that it be made clear that FEMA has the authority to work directly with certain property owners under this program, which was authorized at $10 million each year.

►► **Sec. 16. Extension of Pilot Program for Mitigation of Severe Repetitive Loss Properties.** The Severe Repetitive Loss grant program was authorized as a five year initiative by the Flood Insurance Reform Act of 2004. Although initially anticipated to be issued in 2005, recently FEMA has signaled that the regulations are under review by the Department of Homeland Security, and are expected to be issued this year. We urge the Committee to encourage FEMA and the Department of Homeland Security to move expeditiously to publish the regulations as soon as possible so that we can begin to implement the program. ASFPM endorses extending the Severe Repetitive Loss program so that it will operate for the full five years as originally envisioned.

►► **Sec. 17. Flood Mitigation Assistance Program.** ASFPM supports the proposals in this section. Adding "demolition and rebuilding" as an eligible activity not only achieves consistency with the NFIP-funded Severe Repetitive Loss grant program, but gives another option that makes sense in certain situations. Specifically, many communities are not interested in fee simple acquisition of land, but are interested in mitigation measures that help improve livability and community integrity. Elevation-in-place is a feasible measure for many buildings; however, for many older buildings and certain types of buildings, it is more feasible or cost-effective to demolish and rebuild a new building. The new building will be in full compliance with floodplain requirements and building codes which address fire resistance, energy efficiency, and where appropriate, resistance to other hazards such as hail, high winds, and seismic forces.

►► **Sec. 21. Ongoing Modernization of Flood Maps and Elevation Standards.** ASFPM supports this section; we endorse the new mapping tasks and especially note the importance of mapping the 500-year floodplain, areas protected by levees and dams, and coastal erosion areas. ASFPM agrees with the Committee's formal recognition that maintaining the Nation's flood risk data and flood maps requires an ongoing effort. We are particularly pleased to see the proposal to reestablish the Technical Mapping Advisory Council, a body that was instrumental in helping FEMA to formulate and prepare to implement the President's map modernization initiative, and will be valuable as the effort continues, especially for recommendations related to the quality of the ongoing mapping work. At the end of this testimony we offer some background and additional thoughts on the issue ground elevation data as it relates to flood mapping.

►► **Sec. 22. Notification and Appeal of Map Changes; Notification of Establishment of Flood Elevations.** ASFPM supports the requirement of this section. It is appropriate that community officials receive timely and informative materials related to map changes, and that public notice of those changes are published to inform affected property owners.

►► **Sec. 24. Authorization of Additional FEMA Staff.** The salaries and expenses of a significant number of FEMA staff in the National Office and all ten Regional Offices who are involved with the NFIP are funded by policy service fees that are assessed on every flood insurance policy. As the NFIP policy base grows, and as the NFIP-funded mitigation grant programs are implemented, FEMA needs to be able to expand its staff to support the increased workload.

►► **Sec. 25. Extension of Deadline for Filing Proof of Loss.** ASFPM does not endorse this provision that would allow a property owner as long as six months to file a claim for flood damage. The FEMA Director has authority to extend the filing period, and does so for large events. ASFPM is concerned that extending the period to file claims leads to more repairs that are undertaken without permits. In addition, it could lead to postponing eligibility for NFIP insurance coverage known as Increased Cost of Compliance, which provides funds to substantially damaged buildings to help pay costs associated with bringing the buildings into compliance, as required by regulations.

Additional Suggestions for Consideration in H.R. 1682

Use of Advisory and Preliminary Maps in Major Disaster Areas. The standard process that leads to adoption of revised Flood Insurance Rate Maps takes at least a year after preliminary maps are issued. When advisory or preliminary maps are issued for areas impacted by major disasters, it is in the interest of public safety, as well as in the interest of lessening confusion over what building standards apply, to either (1) give the FEMA Director discretionary authority to require NFIP participating communities to use the advisory or preliminary maps while the formal map adoption is ongoing, or (2) require that NFIP communities advise property owners and buildings who apply for building permits that if they do not use the advisory elevation information, they will have to pay actuarial rates for flood insurance once the new maps are adopted. The latter option is less desirable because it appears likely to pose significant difficulties for insurance agents, mortgage lenders and policyholders.

Provide for Delegation of Flood Mitigation Programs Administration. FEMA is authorized to delegate to qualified states the administration of the post-disaster mitigation grant program authorized in the Stafford Act and known as the Sec. 404 Hazard Mitigation Grant Program. If selected states develop the capacity necessary for that delegation, it is appropriate that FEMA also delegate the authority to administer the NFIP-funded grant programs. ASFPM continues to focus on building state capacity. We believe that those states that have developed the capacity to assume program administration are in the best position to efficiently and effectively carry out the purpose of the reducing flood losses.

Provide for Delegation of Map Program Administration. A number of states have had long standing flood hazard identification and mapping programs – some even pre-date the NFIP. Many of those states are willing and able to take on more responsibility for the flood data and maps prepared under the map modernization and ongoing mapping efforts for the NFIP. FEMA has encouraged cooperative partnerships, executed mapping partnership agreements with some states, and implemented small-scale delegation of some functions. In order to move to more extensive delegation, ASFPM suggests that the Committee direct FEMA and the Technical Mapping Advisory Council to develop the necessary framework and metrics.

Thoughts on Improving the Nation's Flood Maps

Undoubtedly one of the NFIP's most significant responsibilities that benefits the public is the creation and publication of the Flood Insurance Rate Maps (FIRM). Since the NFIP's inception, the FIRM has become the primary source of flood risk information used by individuals to make risk management decisions and by communities to administer floodplain management requirements. The daunting task of developing the nation's initial flood data layer (floodplain information that was developed and published on individual paper flood maps) was the primary focus of the early mapping efforts of the 1970s and 1980s.

From the late 1980s through the 1990s, flood mapping made little progress largely because funds were limited to income generated by the policy service fee assessed on NFIP flood insurance policies. An investment of about $50 million a year was largely consumed by processing Letters of Map Change for individual properties made necessary because the flood maps had become

outdated. In the early 2000s, a growing awareness of the age of flood maps and other factors led to the five-year initiative now known as Map Modernization. The goal was to improve the flood maps by updating and improving the flood data layer and by converting data to a common, electronic GIS based platform. A standard task when updating maps is to identify available risk information and, where necessary, to conduct new studies which include hydrologic, hydraulics, and engineering.

In recent years it has become clear that, for a number of reasons, the initial expectations for map modernization accomplishments cannot be fully achieved in a five year period. The scope of map needs identified by states and communities proved to be greater than originally estimated. The effort required a mid-course adjustment to assure map quality since a "population-mapped" metric was found to be leading towards digitizing existing data, rather than towards more time-consuming but necessary flood studies. Hurricanes Katrina, Rita and Wilma necessitated a major unanticipated and unprecedented effort to develop advisory maps for the affected areas.

Funding for map modernization is limited and priorities must be made. ASFPM believes that the funds and any subsequent, ongoing mapping funds should be focused on updating the flood risk data layer. Where flood data is not adequate, new flood studies are necessary. The most critical needs are to address outdated flood models, to identify all of the floodplains, and to convert maps to a GIS platform. ASFPM notes – but disagrees with – recommendations by some to acquire new nationwide ground elevation data as part of FEMA's mapping program. Topographic data is not the key element in accurate flood maps; engineering studies are.

State and local governments are increasingly purchasing topographic data to meet many needs. Just two examples among many, the State of North Carolina has made such an investment, and the State of Ohio is developing statewide data. ASFPM recommends that any large scale investment in ground elevation data should:

- be led by the U. S. Geological Survey, which is the nation's agency traditionally charged with such a mission;
- leverage state and local mapping investments that have already been made; there should not be a system of licensure and every effort must be made to ensure that the data are made widely and freely available;
- require contribution by the various agencies that would benefit, such as the Departments of Interior, Agriculture, Transportation, Commerce, Homeland Security, and others.

For any further questions on this testimony contact Larry Larson, ASFPM Executive Director at (608) 274-0123 or Rebecca Quinn, ASFPM Legislative Officer at (443) 398-5005.

Curtis Sumner, Executive Director
American Congress on Surveying and Mapping
Before the House Finance Committee
Subcommitee On Housing and Community Opportunity
Regarding H. R. 1682

June 12, 2007

Chairwoman Waters, ranking Member Biggert and members of the Subcommittee, I wish to thank you for the opportunity to speak with you about the important issues contained in H. R. 1682, the Flood Insurance Reform and Modernization Act of 2007. My name is Curtis Sumner, and I am the Executive Director of the American Congress on Surveying and Mapping.

I ask that the complete text of my written testimony be placed in the permanent record for this hearing.

The American Congress on Surveying and Mapping (ACSM) is a professional association of surveyors, cartographers, and other geospatial practitioners. Since its creation just prior to World War II, ACSM, has provided input to the Congress and federal agencies on a variety of issues and programs related to the disciplines of surveying, cartography, and other geospatial sciences.

The diversity of its professional membership is among the reasons ACSM is considered to be a valuable asset and source of expertise to those interested in such issues.

Through the collective expertise among its four member organizations, ACSM has the ability to internally discuss a wide range of topics related to the geospatial disciplines of cartography, geodesy, geographic and land information, and surveying, then convey its collective input.

ACSM is comprised of individuals who serve the public in one way or another. Our members serve as educators in the colleges and universities throughout the country, work in varying levels of government service, or are professionals who, by virtue of their education and expertise, are licensed by the various states to provide services that their fellow citizens cannot provide for themselves.

Among the issues on which we have worked with federal agencies is our management of the Certified Floodplain Surveyor program created by FEMA to help reduce costs to FEMA related to the review of the submittals (on behalf of property owners) of Letters of Map Amendment (LOMA) and Letters of Map Amendment based on Fill (LOMR-F). LOMA and LOMR-F applications result when property owners believe the information depicted on Flood Insurance Rate Maps (FIRMs) does not correctly represent whether their respective properties lie within a flood hazard area.

ACSM strongly supports the intent of H. R. 1682, the Flood Insurance Reform and Modernization Act of 2007, but has some general comments to make with regard to specific items in Section 21 of the bill that ACSM believes will both strengthen and clarify the intent of the bill.

Other ACSM officials and I would welcome opportunities to meet with Congressional staff to further address the suggestions and issues discussed in my testimony.

Section 21 (k) calls for review, updating, and maintaining national flood insurance program rate maps. After discussing this issue with ACSM members familiar with it, I suggest that language be included in the bill that defines *updating* as more than simply digitizing old outdated maps. Many of the Flood Insurance Rate Maps (FIRMs) are over 20 years old. While those maps were useful for their intended purpose at the time they were created, in many cases they are no longer adequate to do so. Due in part to the perception that digitized information is often construed as being superior to non-digital or paper maps, merely publishing digitized versions of those same maps may result in public misunderstanding that they represent current flood risks.

The bill's language should require the development of a plan for how and when to produce new geo-referenced maps, using appropriate technological advancements, and setting minimum standards for accuracies as appropriate for the situation.

The bill should not read so as to prohibit local or state agencies from mapping areas they deem it necessary to map, but should provide that mapping of undeveloped areas such as swamplands, state and national forests, and other preserved areas (such as habitat zones) that are unlikely to be developed is not mandated for updating.

The bill should include language expressly establishing and authorizing a FEMA map maintenance program.

The vast number of submittals of the previously mentioned LOMA and LOMR-F applications are evidence that the current map maintenance program is inadequate. A plan for the timely maintenance and updating of all maps, not just those in the areas affected by Hurricanes Katrina and Rita, will reduce the number of such applications and save significantly on the amount of money spent reviewing them.

Section 21 (k) (2) (A) (i) requires that the 500-year floodplain (0.2% annual chance of flooding) be depicted on each updated map. While our members agree with this requirement in general, we suggest that the bill include language that would provide that adequately created "future conditions" maps (depicting ultimate build-out conditions) prepared by state or local jurisdictions be deemed to be compliant with the 500-year floodplain requirement of H. R. 1682.

An example of such maps are those created for five (5) urban areas in North Carolina that will be provided to the committee staff, and that I also ask be made part of the record of this hearing record.

ACSM applauds the reestablishment of the Technical Mapping Advisory Council in Section 21 (7) (b) of H. R. 1682, but we are not sure that its language provides sufficient authorization to the Council to allow it to function in the same manner as the previous council. We recommend that the bill be reviewed to insure such authorization.

In addition, ACSM represented the surveying and mapping community on the previous Technical Advisory Council, and we believe that our diversity of expertise and collective approach to issues makes us an appropriate choice for representation on Council that would be reestablished by H. R. 1682.

Since the last Technical Mapping Advisory Council was in place, the Cooperating Technical Partners program was established by FEMA. This program has leveraged partnerships with local, state, and regional organizations towards the development of modernized FIRMs. ACSM encourages the inclusion of representation on the reestablished Technical Mapping Advisory Council by the Cooperating Technical Partners.

In closing, I thank the House Finance Committee and the Subcommittee for recognizing the need to address the flood map modernization program, and I want to thank the Subcommittee for considering the suggestions contained in my testimony today.

Again, I wish to express my gratitude for being allowed asked to participate in this hearing, and reiterate the commitment of ACSM to work with Congressional staff for the betterment of H. R. 1682.

I am prepared to answer any questions you may have for me.

Testimony before the U.S. House of Representatives

Financial Services Subcommittee On Housing and Community Opportunity

on the subject of " The Flood Insurance Reform And Modernization Act of

2007, H.R. 1682"

Tuesday, June 12, 2007

10 a.m.

2128 Rayburn House Office Building

Washington, DC

A Call For Federal Oversight And Control Of The Insurance Industry

Presented by:

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Chairman Frank, and Distinguished Members of the House Financial

Services Subcommittee On Housing and Community Opportunity, and staff:

Thank you very much for giving me the opportunity to present testimony to you today.

My name is Eric D. Gerst. I am a member of the Philadelphia Bar Association, the Pennsylvania Bar Association, the Washington, D.C. Bar Association, the American Bar Association, and a member of the ABA's Tort Trial and Insurance Practices Section (TIPS). I am presenting this statement on my own behalf, as a taxpayer and as an insurance policy holder, and not as a representative of any particular organization.

For more than 30 years, I have worked as an attorney. A major aspect of my practice, besides transportation law, has been representing corporate and individual clients in the insurance field. I have created and represented insurance businesses. I have drafted and implemented insurance policies. At different times, I have litigated for plaintiffs or defendants, and have represented both sides of the insurance equation , i.e., insurance entities and policyholders, have negotiated with regulators, and acted as a legal consultant. I have previously appeared before Congressional committees, and assisted in formulating federal legislation and regulations. I have also negotiated extensively with agencies of the state and federal governments. In addition, I have served on numerous insurance advisory panels. In 2003, I was appointed to, and served on, Pennsylvania Governor Ed Rendell's

Insurance Transition Committee. I have submitted recommendations to the Governor's Medical Malpractice Insurance Task Force, as well as to the Governor, and Insurance Commissioner, on other insurance matters. I am pleased that a number of my suggestions have made their way into the insurance landscape. In 2006, I was the co-lead counsel in Chester County, Commonwealth of Pennsylvania, for a statewide organization which represented a number of individuals running for federal and state offices, including newly elected Senator Robert P. Casey, re-elected Governor Edward G. Rendell, and newly elected Congressman Joseph A. Sestak. I am currently completing a book on the insurance industry, which is expected to be published this year by a major publishing entity.

Today's House Committee hearing is for the purpose of reforming the National Flood Insurance Program (NFIP). After the devastating 2005 Hurricanes Katrina and Rita, and the massive insurance claims denials which followed for thousands of homeowners and businesses in the region, the Committee will be exploring federal involvement in reforming the National Flood Insurance Program. Flooding not only affects the Gulf Coast, but involves almost all other geographical regions of the country.

A significant part of the Committee discussion and analysis, as is currently being done in the Senate, will no doubt be to implement an

important concept similar to that used in the Terrorism Risk Insurance Act of 2002 (TRIA), as extended by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA) -- where the federal government (and taxpayers) would take a significant layer of insurance risk above the commercial insurers' layer.[1] In TRIA and TRIEA, the government exposed the taxpayers to a risk of $100 billion per year, without the government having the ability to oversee the insurers. It is on this issue -- that is, the federal government's need to regulate the insurance industry -- upon which I wish to focus, and which will be the subject of my remarks today.

Insurance is the backbone of our economy. Insurance is big business – with insurers receiving more than $1 trillion per year in annual premiums. Equally important is the recognition that there are many dedicated, good people working in the industry. As a key to a healthy insurance industry, good government must foster a climate where it is attractive for insurers to write risks, and for insurance customers to have trust and peace of mind that their selected carrier will promptly pay their legitimate claims, and that the regulatory system will protect them. It is for that reason that I heartily support the concept of federal government involvement in reforming the NFIP, in principle.

However, Congress must not lose sight of the fact that, in such creation, the money being obligated for this fund will be taxpayer dollars at risk. We must keep in the forefront of our minds that serious problems have beset the insurance industry, coming together in the last few years like a "perfect storm". They include: Hurricane Katrina's massive insurance claim denials; terrorism; international takeovers; major liquidations; audits solvency and reserves; bid-rigging of insurance premium quotes between broker and insurer; deceptive marketing and improper claims practices; rogue executives; unregulated internet insurance sales; and managed care inefficiencies and excessive bureaucracy. In addition, the industry has been criticized for: lack of sufficient consumer education and protection; excessive costs for insured and insurers alike; the malpractice insurance crisis; a huge number of formal consumer complaints filed with state insurance departments; class-action lawsuits; civil and criminal investigations; stiff regulatory fines; and antitrust issues.

There has been a strong outcry from the public and growing scrutiny by the media concerning many of these problems. The National Association of Insurance Commissioners (NAIC) has reported that more than 422,000 formal complaints are filed with the respective state insurance departments per year.[2] On a monthly basis, that would be an average of more than 35,0

and0 formal complaints per month. While these may not be formal court cases, they represent a lot of dissatisfied, even angry, people.

State regulators and enforcement agencies have begun to react to some of the problems. For example, New York Attorney General Eliot Spitzer (now New York State Governor) launched a probe in 2004 in which he and his team investigated, and subsequently charged, major insurance brokers and insurance companies with manipulating bid quotes to get clients to buy their pre-selected insurance product, at an inflated cost. In 2005 and 2006, Attorney General Spitzer was able to recover millions of dollars in settlement payments for the unsuspecting corporate and individual insurance clients. Some of the insurance executives pleaded guilty to criminal charges. Investigations in other states followed. Though Attorney General Spitzer was effective, his success applied to only one state. However, policyholders nationwide face similar issues.

Therefore, imagine how much more wide-reaching, efficient, and successful a national, coordinated approach would be. These and other insurance problems could be solved on a less costly, more uniform basis, affecting and benefiting all states, as well as the delivery of a better insurance product across the United States.

As you are aware, the current controlling law as to regulation of the insurance industry is the antiquated McCarran-Ferguson Act of 1945 (15 U.S.C. 1011, et seq.), which not only provides antitrust immunity for insurers, but prohibits the federal government from getting involved in the "business of insurance", and leaves it to each state to regulate within its borders .[3] In many cases, state insurance regulators have been unwilling or unable to keep up with the fast-paced, multilayered industry which, one half century ago, was more local in nature, but now has clearly become national and international in scope, and is beset with significant issues, as set forth above. As a result, there is a patchwork of 50 non- uniform and cumbersome state insurance laws and regulations, different interpretations of the same insurance concept, differing levels of enforcement, and extra costs to insurer and insured alike. The time has come to repeal or drastically modify the McCarran-Ferguson Act, and to create and adopt a new federal law.

Therefore, in exchange for the taxpayers taking a large layer of risk for catastrophes, the federal government must also be able to take the active, supervisory role in oversight and regulatory control of the insurance industry. Any such catastrophic insurance coverage plan involving the taxpayers and the federal government, without federal oversight and controls

over the regulation of the insurance industry, should not be adopted. And even if the federal government does not take part of the risk, and another method is adopted, the federal government should nevertheless be involved in all aspects of oversight and control/regulation of the insurance industry. Currently, the federal government is unable to do so.

Over the years, I have been a keen observer of the insurance industry. In the last five years, in conjunction with writing my book, I have researched and gathered extensive information -- and have arrived at some significant conclusions .

In so doing, I have also analyzed various current views on how to remedy the industry, and the existing legislative proposals. While some of them are well-conceived, they are ultimately lacking. I therefore recommend what I believe is the only real solution : a call for federal oversight and control of the insurance industry, and the creation and adoption of a new law, which I have suggested might be called the Uniform Federal Omnibus Insurance Law, or UFOIL. I believe that UFOIL would provide uniformity of law, predictability of outcome, and reduction of costs, for insurer and insured alike.

The UFOIL law would have the federal government first form a commission or another appropriate body to review the industry. Among

other things, the reporting entity would create a proposed uniform federal floor of legislation, taking the best of the insurance laws and regulations of each state, adding some new ones where necessary, and molding it into a national set of standards, upon which the individual states can adopt additional laws or regulations in the future for specific insurance needs and protections for its state or region.

The UFOIL law would create a Federal Insurance Regulator and staff. Existing state insurance departments, and the National Association Of Insurance Commissioners (NAIC), would act as deputies to carry out the federal UFOIL law, as well as any additional state law. Trade associations could also assist in this effort as advisory panels, or in other roles. This would be a "revenue-neutral" law, with no additional cost anticipated to the taxpayer. Revenue to the states, and generated by insurance premium tax, or other revenue devices, would be distributed based upon the approximate revenue being received currently, periodically adjusted for changed circumstances (for example, demographic shifts, or significant changes in premiums or risks).

Federal oversight and control of the insurance industry is now necessary. The complete changeover process from state regulation to federal regulation and oversight of the insurance industry will take time. However,

some portions could be implemented fairly quickly. We all recognize inertia, and that people resist change because of the fear of the unknown. But the changeover must begin, not only for natural disaster catastrophe insurance, but for all insurance products.

If legislation calling for a federal government to be the sole regulator and overseer of the insurance industry is fairly conceived and properly drafted, allowing for full public input, there is no doubt in my mind that it would be supported by many, if not most insurance companies, insurance producers, trade associations, consumer groups, and the general public.

There is not only a need, but there is plenty of interest and momentum for the federal government to be the sole regulator of the insurance industry. The ball is in Congress's court to act.

I will be available to answer questions today, or at any other time, at the contact information supplied above. Thank you for taking the time to carefully consider, and then, hopefully, implement appropriate legislation for this most important topic.

Respectfully submitted,

Eric D. Gerst, Esq.

Before the House Financial Services Subcommittee On Housing And Community Opportunity, June 12, 2007, Washington, DC, testimony of Eric D. Gerst, Esq.

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[1] The Terrorism Risk Insurance Act of 2002 (TRIA), which was set to expire on December 31, 2005, was extended on December 22, 2005, pursuant to the passage of the Terrorism Risk Insurance Extension Act (TRIEA). TRIEA expires on December 31, 2007, unless extended again by Congress .

[2] Source: "2005 Insurance Department Resources Report" (National Association of Insurance Commissioners, Kansas City, Missouri , 2007). For the calendar year 2005, the NAIC reported a total of 422,260 formal complaints nationally, filed with the state insurance departments; and 2,476,233 consumer inquiries nationally. The NAIC compiles important information about activities and resources of state insurance departments, and the insurance industry, primarily through an extensive survey completed by each of the respective state departments. This report, the latest Insurance Department Resources Report available, is published annually by the NAIC.

[3] The full text of the McCarran-Ferguson Act of 1945, United States Code, Title 15 Commerce and Trade, Chapter 20 Regulation of Insurance, 15 USC 1011, et seq, (P.L.15, 1945, enacted by the 79th US Congress, and signed into law by President Franklin D. Roosevelt on March 9, 1945), reads as follows:

Section 1011. Declaration of Policy. Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

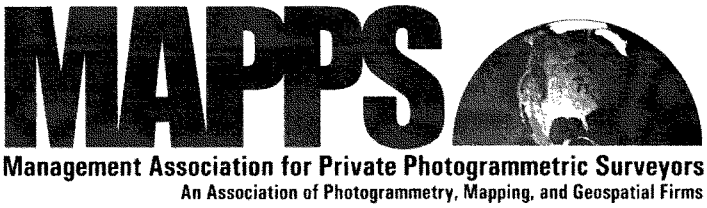
Section 1012. Regulation by State Law. Federal Law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948
(a)State regulation. The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business. (b) Federal Regulation. No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended (15 U.S.C. 41 et. seq.), shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

Section 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation. (a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof. (b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Section 1014. Effect on other laws. Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act (29 U.S.C. 151 et seq.), or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et. seq.), or the Act of June 5, 1920, known as the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et. seq.)

Section 1015. "State" defined. As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

Before the House Financial Services Subcommittee On Housing And Community Opportunity, June 12, 2007, Washington, DC, testimony of Eric D. Gerst, Esq.



MAPPS Recommendations to FEMA Flood Map Reform Legislation

Congress will soon consider legislation to reform FEMA's flood insurance program, including provisions to strengthen flood map modernization. The House Financial Services Committee is considering H.R. 1682, the Flood Insurance Reform and Modernization (FIRM) Act of 2007. The Senate Banking Committee is considering draft language by Senator Jack Reed of Rhode Island that is likely to follow after S. 3589, reported by the committee in the 109th Congress. The following are the recommendations of MAPPS (www.mapps.org), a national professional association of more than 160 private mapping and geospatial firms, based on a review by a MAPPS task force of the nation's leading professional experts in flood mapping.

- H.R. 1682 includes a provision, in Section 21, regarding Flood Insurance Rate Maps (FIRM) that directs the FEMA Director to establish a program within FEMA to review, update, and, maintain national flood insurance program rate maps. However, Section 21 omits language regarding map accuracy and the use of modern commercial geospatial technologies, FEMA standards and requirements.

  ♦MAPPS suggests that language be added to this provision providing for collection of accurate ground elevation data utilizing technologies to include but not to be limited to LiDAR, IFSAR, Photogrammetry or other commercial geospatial technologies. The language should also provide that hydrologic and hydraulic (H&H) modeling be created to support all flooding sources, which can be automated and easily updated as changes occur. "Accurate ground elevation data" should be defined as data that meets the requirements of Appendix A, *Guidance for Aerial Mapping and Surveying*, to FEMA's "Guidelines and Specifications for Flood Hazard Mapping Partners." This provides some guidance and standards for FEMA with regard to focusing on the professional and technical accuracy of data, rather than an arbitrary control on the age of data. In some cases, older data is adequate, if it meets the standard in the memorandum. In other cases, the collection of new data is needed if the existing data is not adequate to meet the accuracy standard.

- H.R. 1682 includes a provision, in Section 21, regarding Flood Insurance Rate Maps (FIRM) that directs the FEMA Director to establish a program within FEMA to review, update, and maintain national flood insurance program rate maps. However, Section 21 fails to provide for mapping by watershed.

  ♦MAPPS recommends that the FEMA mapping be on a watershed basis, not on a county or political boundary basis. This is the model established in the North Carolina program implemented after Hurricane Floyd. Mapping on a watershed basis provides for more

technically effective and efficient studies and H&H modeling, since water, streams, rivers and floods follow watershed basins, not political lines, or portions of watersheds. This will eliminate or minimize the discrepancies that currently exist between adjacent political entities where Base Flood Elevations (BFEs) on one side of a political boundary can be significantly different from BFEs on the other side of the political boundary.

- H.R. 1682 includes a provision, in Section 21, to re-establish the Technical Mapping Advisory Council (TMAC). However, the listing found in Section 21 does not include representation on the TMAC by individuals representing mapping and engineering organizations.

  ♦MAPPS supports the re-establishment of the TMAC. Membership should include individuals from the private sector topographic mapping profession and the hydrologic and hydraulic engineering community.

MAPPS supports additional recommendations to H.R. 1682 and the Senate bill:

- The FEMA program should include a National Structure Inventory. The structure inventory will link each structure's street address with its geographic coordinates (latitude/longitude), owner's name, and assessed value. Whereas FEMA and first-responders can review post-disaster imagery to assess devastation, without geocoded addresses they have no way to know what addressed structures were damaged, who owns those structures, or what those structures were worth prior to the disaster. A National Structure Inventory greatly simplifies the sale, rating and processing of flood insurance and is vital for timely response, recovery, and assistance to individuals involved -- whose own records may have been destroyed during the disaster. A National Structure Inventory should be georegistered to current imagery from the National Digital Orthophoto Program (NDOP), or higher-resolution digital orthophotos from states, counties and communities, so that FEMA and first-responders can compare pre-disaster imagery with post-disaster imagery for damage assessments.

- The FEMA program should place a new emphasis on vertical positioning, lowest floor <u>and</u> lowest adjacent grade (LAG) elevations, in addition to the traditional focus on horizontal (latitude and longitude) – x, y and z (vertical – elevation) coordinate data. The focus should be on the Z coordinate, a secondary version of the structure inventory. Flying aerial imagery after disasters is of limited utility without combining X, Y, Z coordinates with a national structure inventory. The FEMA program should include an Elevation Registry, linked to a National Structure Inventory that identifies the BFE for each structure, its LAG elevation, and its lowest floor elevation. In the absence of ground surveys, LiDAR and/or other aerial survey elevation data equivalent to 2' contours can be used to determine the LAG elevation needed to determine whether flood insurance is mandatory. The Elevation Registry should focus on structure data used by insurance agents, floodplain managers, realtors and potential owners to determine flood risks. With an Elevation Registry, it will be possible to use vertical criteria to determine flood risk (structure elevation data compared with its BFE) rather than horizontal criteria (structure horizontal location compared with the 1% annual chance flood zone boundary). It will then be possible to update/maintain the Elevation Registry by requiring real property transactions to capture lowest floor elevation during the closing transaction in which property is surveyed for title insurance and flood insurance.

- Congress should include a provision to explore revisions to the Title 13 restriction on Census address data to permit application in flood insurance processing and emergency response, to permit first responders' access date for life saving activities in a declared emergency, or include language requiring FEMA to obtain address data that is privately available. A key issue that inhibits the sharing of geospatial information is the Title 13 restriction on Census address data. Due to this restriction, Census data cannot be shared with and utilized by FEMA, or state and local flood insurance stakeholders, emergency response agencies or first responders in the field. In an emergency response situation, it may be advisable and desirable to permit first responders to have access to Census address data for life saving activities in a declared emergency. If, due to committee jurisdiction issues, a change in the law is not feasible, MAPPS recommends that Congress authorize a study of this matter.

In New Orleans, flooding was so severe that the utility of aerial photography and satellite imagery use could have been greatly enhanced if the Title 13 address privacy restrictions were not in place. Imagery acquired immediately after Katrina showed that road network maps were rendered virtually useless, as the imagery showed only rooftops. Emergency response (by boat or helicopter, due to the obliteration of roads) was hampered by the lack of an accurate address map layer, which could have been over-layed on the imagery to give first responders valuable information as to the location of people in need. The accurate address map layer and data was in the possession of Census, but the Title 13 restriction prohibited the sharing of this data between Census and FEMA, resulting in a barrier in a life and death situation. The study should require FEMA to consult with the Census Bureau and the private geospatial community to determine whether the Title 13 restriction on Census address data can be revised in an emergency response situation, to permit first responders access to Census address data for life saving activities in a declared emergency, or whether the restriction is generally no longer needed.

- MAPPS recommends establishing a national licensing program, in place of the current patchwork state-by-state program, to license Photogrammetrists, as a prerequisite for working on the FEMA program or any other Federal mapping program that will contribute data to the National Spatial Data Infrastructure that could be merged or integrated with the FIRM. Many states now define photogrammetry and geographic information systems (GIS) creation as the practice of surveying. However, the licensing requirement differs from state-to-state. This inhibits "national" mapping programs, as surveyors performing photogrammetric mapping must meet different state standards rather than a national standard. Moreover, photogrammetric mapping firms engage in commerce across state lines, thus they are engaged in interstate commerce, the regulation of which is constitutionally a Federal, not state, government responsibility. Finally, while the traditional land and boundary survey law varies from state to state, photogrammetric mapping is conducted in accordance with the same "laws of science" – the same in every state. Therefore, a national licensing program is necessary and desirable.

- MAPPS strongly recommends that Congress create in FEMA a suite of multiple-award, indefinite delivery/indefinite quantity (IDIQ) contracts, competed and awarded in advance and stood up on a contingency basis (ready and available in virtually a moment's notice) to develop a time-sensitive process for enhancing the utilization of geospatial assets in protecting lives and property during catastrophic events and having contracts pre-positioned to provide certainty and efficiency in the emergency response process and to utilize the contracts for mitigation,

preparedness and ongoing geospatial requirements. Contracts shall be awarded by FEMA on a national or regional basis or delegated to another agency (such as the Corps of Engineers or USGS), and all Federal, state and local government requirements for geospatial services related to an emergency shall be coordinated through FEMA for tasking under these contracts to prevent duplication. Contracts and subcontracts for geospatial mapping services shall be awarded in the same manner as a contract for architectural and engineering services is selected, awarded and negotiated under chapter 11 of title 40, United States Code, or if contracted by a state or political subdivision, such contract or subcontract shall be awarded pursuant to an equivalent state statutory qualifications based selection (QBS) process. As used in this Act, the term "mapping" or "geospatial" shall mean "contracts and subcontracts for services for collecting, storing, retrieving, or disseminating such graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information related thereto, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services." The goal of developing a pre-awarded competitive contracting process for enhancing the utilization of geospatial assets (aerial photography, satellite imagery and geographic information or "Geospatial" activities for emergency response) was also recently endorsed and recommended by the National Research Council (NRC)/National Academies of Science (NAS) in the report, "Successful Response Starts With a Map."

- Previous legislation attempted to create a National Levee Inventory. MAPPS supports the creation of such an inventory and recommends that a "geospatial" component – X, Y and Z georeference coordinate data – be included for each levee in the inventory.

- Previous legislation included a provision requiring digital mapping. To help bridge the "digital divide" by transforming the program to utilize and make available digital mapping, MAPPS supports the digital mapping provision.

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Management Association for Private Photogrammetric Surveyors

An Association of Photogrammetry, Mapping, and Geospatial Firms

MAPPS Talking Points for FEMA Flood Map Reform Legislation

The following are the talking points provided by MAPPS (www.mapps.org), a national professional association of more than 160 private mapping and geospatial firms.

1) FEMA should collect accurate ground elevation data using commercial geospatial technologies. Language should also provide that hydrologic and hydraulic (H&H) modeling be created to support all flooding sources. **[S]**
2) FEMA should coordinate mapping projects on a watershed basis, not to a county or political boundary basis. **[S]**
3) FEMA should re-establish the Technical Mapping Advisory Council (TMAC). Membership should include individuals from the private sector topographic mapping profession and the hydrologic and hydraulic engineering community. **[H] & [S]**
4) FEMA should include a National Structure Inventory so that, at a bare minimum, FEMA and first-responders can compare pre-disaster imagery with post-disaster imagery for damage assessments. **[S]**
5) FEMA should access the Master Address File (MAF) maintained by the Census Bureau for floodplain management as well as disaster response.
6) FEMA should place a new emphasis on vertical positioning, lowest floor and lowest adjacent grade (LAG) elevations, in addition to the traditional focus on horizontal (latitude and longitude) – x, y and z (vertical – elevation) coordinate data.
7) FEMA should establish a national licensing program, in place of the current patchwork state-by-state program, to license Photogrammetrists, as a prerequisite for working on the FEMA program or any other Federal mapping program that will contribute data to the National Spatial Data Infrastructure that could be merged or integrated with the FIRM.
8) FEMA should create a suite of multiple-award, indefinite delivery/indefinite quantity (IDIQ) contracts, competed and awarded in advance and stood up on a contingency basis for the utilization of geospatial assets in protecting lives and property.
9) FEMA should create a National Levee Inventory with a "geospatial" component – X, Y and Z georeference coordinate data – included for each levee in the inventory. **[P]**
10) FEMA should accept and apply digital mapping to bridge the "digital divide" in transforming the program to utilize and make available digital mapping. **[S]**

[H] included in House bill (H.R. 1682).
[S] included in Senate 'Draft' legislation by Senator Reed.
[P] passed in previous legislation.

The Times-Picayune

Hearing on flood claims is today

Adjusting procedure is one of the issues

Tuesday, June 12, 2007

By Rebecca Mowbray

Immediately after Hurricane Katrina hit, the National Flood Insurance Program, under pressure from the insurance industry, took radical steps to streamline its claims handling process so it could get payouts into the hands of policyholders more quickly.

Documentation requirements were dropped. So were adjuster training requirements. And new procedures allowing adjusters to rely on satellite photos in determining a property's flood damage were rolled out.

The program's swift adjustment has been lauded for getting money into disaster victims' hands rapidly -- a noble impulse in the plodding Federal Emergency Management Agency -- and upheld as an example of how government and private business can work together to meet people's needs in a crisis.

But questions are mounting about whether insurance companies have used the program to overpay flood claims while they underpaid wind claims, thereby shifting costs that should have been borne by the private sector onto taxpayers.

Some now wonder whether those hassle-free adjustments facilitated a raid on the federal treasury by the insurance industry while FEMA, which runs the national flood program, was ill-equipped to catch it because of deficient auditing methods.

Those questions about insurance companies' handling of the flood insurance claims -- and FEMA's failure to catch alleged improprieties -- will be probed today in a hearing in Washington sponsored by the House Financial Services Subcommittee on Oversight and Investigations and the Homeland Security Subcommittee on Management, Investigations and Oversight.

Officials from the Government Accountability Office and the Department of Homeland Security's Office of the Inspector General, which are investigating how insurance companies allocated flood and wind damage, are scheduled to testify.

"Congress must ensure that every flood victim receives prompt and fair reimbursement for storm damage to their home. While the National Flood Insurance Program needs to be responsive when assessing damage and paying out claims to flood victims, it must also conduct better oversight to ensure that it's not being abused by its private insurance partners," said Rep. Christopher Carney, a Democrat from Pennsylvania who is chairman of the homeland security subcommittee.

It's happened before

Today's hearing isn't the first time FEMA's oversight of Katrina flood claims has been called into question. The GAO has twice faulted the flood program for its auditing procedures, and says that it can't sign off on the results from the expedited claims procedures because the audits weren't done from a random sample of estimates.

In a recent report, the GAO urges FEMA to improve its oversight of the flood program. "FEMA did not adopt our October 2005 recommendation that it select the claims to be reinspected from a

random sample of the universe of all closed claims," the report states. "The results of FEMA's NFIP quality reinspection program for Hurricanes Katrina and Rita cannot be projected to a larger universe than the claims adjustments sampled. As a result, FEMA is unable to determine the overall accuracy of claims settled for these flood events -- an action that is necessary to meet GAO's internal control standard."

The report says that proper auditing is especially important because Katrina and Rita involved more claims and higher payouts than ever before, as well as new procedures that must be tested for accuracy.

David Maurstad, administrator of the flood program, and other FEMA officials were not available for interviews about the development of the expedited flood procedures and the GAO findings, but the report says that FEMA accepts the GAO recommendations.

In a letter commenting on the report, FEMA says that it didn't have time to adopt the October 2005 recommendation to reinspect a random sample of claims because of its efforts to respond to Hurricanes Katrina and Rita.

While FEMA says it will start using random sampling, the agency bristled at the report's findings. "It is difficult to understand how GAO reached a conclusion that FEMA is not meeting an internal control standard without giving thorough consideration to all of the controls and processes that FEMA has in place to provide oversight of the program," the response letter reads.

Getting it moving

FEMA set the stage for how it would allow Katrina flood claims to be handled at a Sept. 7, 2005, meeting of 300 insurance company representatives, insurance agents and Gulf Coast insurance commissioners. Maurstad assured the crowd, jittery about the mammoth task of administering what eventually would become 162,065 flood claims, that he had already had conference calls with the largest insurance companies in the flooded areas and was working on emergency procedures to streamline claims-handling.

"We're going to do everything that we can to make sure from this national program that the policyholders and the citizens of these areas that are affected are going to be treated as quickly and fairly as possible, given the scope that everyone else has already talked about," Maurstad, a former insurance agent and Nebraska lieutenant governor, said at the meeting. "We're working with all the companies, the trade associations, as closely as we can. We're trying to do what we can to expedite the claims-handling process.

"I think we'll have it up and rolling pretty soon," he told participants in the meeting, which had been convened at the Atlanta Airport Marriott by then-Louisiana Insurance Commissioner Robert Wooley.

Just two weeks later, on Sept. 21, as Hurricane Rita was readying its punch to Texas and Louisiana, Maurstad's expedited flood procedures were unfurled. Those procedures removed claim documentation requirements and adjuster training requirements and allowed companies to pay a flood policy's limits if the house was gone or sat in standing water for an extended period of time.

The expedited procedures approved by the flood program after consultation with insurers also allowed companies to settle flood claims without a site visit if satellite and aerial images showed that the home disappeared in areas that suffered storm surge, or if the home sat in floodwaters and the damage was likely to have exceeded the policy limits.

In addition, FEMA waived the line-by-line adjusting that was of concern to participants in the Wooley meeting. Rather than require room-by-room, item-by-item calculation of insured losses, FEMA allowed flood adjusters with two large but unnamed insurance companies to calculate damages by measuring the square footage of each room and characterizing the building materials as high-, medium-, or low-grade, according to the GAO report.

Those two large insurance companies probably made money off of that procedure. While FEMA scaled back the fee that private companies earned for adjusting claims if satellite photos and house measurements on file made it likely that the home was a total loss, FEMA paid the same fees to companies for the easier square-foot adjustments that it paid for the detailed line-by-line adjustments.

Companies earned $750 for claims that were expedited using satellite photos but collected the full fee -- 3.3 percent of the total claim or the amount listed on a fee schedule -- when conducting square-footage adjustments, according to the GAO.

FEMA also didn't keep track of how many homes were adjusted using the square-foot method, according to the GAO report.

At the same time, FEMA loosened the adjuster training requirements to get more adjusters into disaster-stricken areas.

Under private contract

Most of the flood program is run by a private contractor, Computer Sciences Corp., which has 170 employees working on the National Flood Insurance Program to the government's 40 employees.

The California company manufactures a popular automobile claims-processing software used by Allstate, called Colossus, but maintains a wall between its private-sector and public-sector businesses.

Computer Sciences is the flood program's data bank, auditor and liaison with the insurance industry. It tracks policies, claims and damages, reconciles the financial accounts, tracks financial information for the private companies working with the flood program, looks for errors, does claims reinspections when problems arise, and trains insurance agents and adjusters.

To audit flood claims, Computer Sciences uses its judgment to select the more challenging claims for reinspection, on the theory that if the more difficult claims are handled properly, the more routine claims are probably OK as well. While that method may help to identify problems with certain types of claims, the GAO says it obscures the overall picture.

"The major limitation of this type of sampling is that the results cannot be generalized to a larger population, because there is no way to establish, by defensible evidence, how representative the sample is," the GAO says.

The report also says that FEMA doesn't generally require reports of the overall results of reinspections after floods.

FEMA says about 17,200 claims, mostly from Katrina but a few from Rita, were adjusted using the expedited procedures.

Computer Sciences reinspected 4,316 Katrina and Rita claims. When the GAO looked at a statistically valid sample of 740 of those claims, it found errors in about 14 percent of Katrina claims using regular processes, and 1 percent of Katrina and Rita claims using the expedited processes. But because FEMA hasn't done statistical sampling of claims in the past, there's no way to know whether it's high or low, so the results are inconclusive.

"Because in the past FEMA has had neither an appropriate sampling methodology nor a requirement for an overall analysis claims adjustment done after every event, we do not know how the error rates we identified compare to adjusting errors identified in reinspections of claims from other smaller flood events," the report says.

Problems with reports

It's not the first time the GAO has faulted FEMA for its auditing. In a report released in October 2005 as a requirement of the Flood Insurance Reform Act of 2004, the GAO says that its auditing work is insufficient, and says that implementing proper auditing procedures will be critical for checking claims adjustments from Katrina and Rita.

"The lack of statistically representative samples for processes to assess the accuracy of claims and adjustments limits FEMA's ability to project the results of its analyses in order to provide management information on the private sector's overall implementation of the program," the report concludes. "Without such information, the value of FEMA's monitoring processes . . . as critical internal control activities is limited."

For the 2005 report, the GAO interviewed some of the adjusters who reinspect claims for Computer Sciences Corp. An instructor in an adjuster refresher training program observed that while adjusters performed well during the 2004 hurricane season, problems were found with the measurement of rooms and the allocation of flood damage and wind damage, the report said.

The Times-Picayune

EDITORIAL: Where's the outrage?

Sunday, June 10, 2007

Despite eye-popping allegations that eight major insurance companies improperly shifted what could total billions of dollars in Katrina claims to the federal government's flood insurance program, no one in government seemed to be riled up about the matter.

That should change now.

U.S. District Judge Peter Beer apparently isn't happy with the government's non-response to a whistleblower lawsuit filed by a group of former insurance adjusters who claim that the government was systematically defrauded after Katrina.

Judge Beer, who unsealed the lawsuit in May, filed a one-sentence motion last week calling for federal prosecutors to get involved in the case or explain why they refuse to do so. The motion puts pressure on Attorney General Alberto Gonzales and U.S. Attorney David Dugas in Baton Rouge to do something.

Judge Beer, who serves in the court's Eastern District in New Orleans, expressed surprise that Mr. Dugas' office had planned only to monitor the case. The lawsuit currently is being pursued by a private attorney representing the whistleblowers. "What about the good old general public? Who better to look after the interests of the public than the U.S. attorneys?" Judge Beer said.

Those are very good questions. The accusations in the lawsuit are so serious that it is almost unfathomable that the U.S. government would ignore them.

Judge Beer, who is privy to more details than the public has seen so far, says "the United States should be right in there, and not just monitoring it, given as far-reaching and serious as this case is."

He is right. Even without every detail of every example laid out by the whistleblowers, that is clear.

The former insurance adjusters who filed the lawsuit say they have reinspected 150 properties with flood and wind damage. In every case, they found that the flood claim had been inflated and the wind claim underestimated. Not in some cases, in every case.

The average overpayment from the flood program was 66 percent. If that calculation were to hold true over the entire body of claims, the improper costs to the flood program could total more than $9 billion. For every dollar shifted to the government program, the insurers saved on their own costs for wind coverage.

Even $1 million in fraudulent claims would be offensive. The public subsidizes the flood program, so all of us are on the hook if it is cheated out of money.

Some of the examples gathered by the adjusters are truly brazen:

For instance, the suit claims that State Farm paid a Metairie homeowner $88,280 for flood damages although there was no flooding in the home. The company apparently paid out only $5,379 on its homeowners policy. The adjusters who filed the lawsuit, known collectively as

Branch Consultants, say that the home actually had $110,918 in wind damage, which would properly be paid under the homeowners' policy.

State Farm also calculated $45,000 in roof damage, exterior finish work and framing as part of a flood claim on a West Bank home that had only eight inches of water inside, the lawsuit says. The homeowner was paid only $5,768 for wind damage, but the Branch Consultants say the home had $95,030 in wind losses.

An Allstate claim counted flood damage twice on an eastern New Orleans home, the adjusters say. American National Property & Casualty Insurance Co. gave one property owner in Versailles Gardens $95,000 in flood damages, even though no floodwaters got into the buildings, they say.

And the list goes on. Insurers would pump up the charges to the government and underestimate their own liability.

It is surprisingly easy to do so. Insurers issue flood policies to homeowners, who pay a premium subsidized by the government. When a claim is made, insurance companies have the authority to write checks on the government's accounts. They are supposed to make sure that payouts on the flood policy actually are for flood losses, but that doesn't seem to have happened in these cases.

Perhaps that is not entirely surprising given the immense damage from Hurricanes Katrina and Rita and the massive flooding caused by the collapse of the federal government's levees. When flood program officials decided early-on to expedite payments to victims, cost shifting might have looked like an easy out for insurers.

But taxpayers have to foot the bill for any shortfall in the program. In the months after Katrina, Congress approved a total of $18.5 billion in borrowing power for the flood program, which had been quickly overwhelmed by claims.

If it turns out that private insurers bilked the flood program for any part of those claims, the government ought to do something about it. At the least, those firms should repay the U.S. Treasury. And if insurers defrauded the government, someone should go to jail.

The Times-Picayune

Judge prods feds in flood insurance case

Justice Department urged to play active role in whistle-blower suit

Friday, June 08, 2007

By Rebecca Mowbray

The federal judge who unsealed a whistle-blower case last month about insurance companies allegedly overbilling the National Flood Insurance Program is demanding that the U.S. Department of Justice get involved in the case or explain itself.

The unusual move comes from U.S. District Judge Peter Beer, who unsealed a case in which a group of former insurance adjusters say that they have collected evidence that insurance companies have defrauded taxpayers by overbilling the federal flood program while underpaying claims for Hurricane Katrina wind damage to save the companies money.

Beer filed this one-sentence motion in court this week:

"The Court, on its own motion, respectfully requests the United States Department of Justice enter this case by July 9, 2007, or show cause on July 11, 2007, at 9:30 a.m., why they are not intervening in this civil action."

Beer said he was surprised to learn that the U.S. attorney's office in Baton Rouge planned only to monitor the case, which now is being prosecuted on behalf of the U.S. government by a private attorney in New Orleans representing the whistle-blowers, rather than to take it over.

"What about the good old general public? Who better to look after the interests of the public than the U.S. attorneys?" Beer said. "This is a case the government should be involved with. The United States should be right in there, and not just monitoring it, given as far-reaching and serious as this case is."

The whistle-blowers say that they've analyzed the insurance company appraisals of damage and readjusted claims at 150 properties in the New Orleans area, and they've documented that in each case, the flood claim was overpaid while the wind claim was underpaid. So far they have found that flood claims were overpaid by an average of 66 percent, meaning that the overcharging could reach into the billions of dollars, given that the flood program paid $14 billion after Hurricanes Katrina and Rita in Louisiana.

Because private insurance carriers administer federal flood insurance policies and adjust both flood and wind claims, the theory is that companies may be dumping the bills for wind damage onto the taxpayer-financed flood program to save themselves money.

Insurance companies have said they stand by their claims-handling practices.

Beer's motion was copied to U.S. Attorney General Alberto Gonzales or his deputy; Jim Letten, the U.S. attorney in New Orleans; and David Dugas, the U.S. attorney in Baton Rouge.

Although the whistle-blower suit was filed in federal court in New Orleans, Dugas' office in Baton Rouge fielded the complaint with the civil division of the Department of Justice in Washington. The U.S. attorney's office in New Orleans has said it can't say why the complaint isn't being handled locally.

Dugas was unable to be reached for comment. A spokesman in Washington said the Justice Department would have no comment at this time.

The Times-Picayune

Insurers bilked flood program, suit says

Adjusters say wind claims underpaid

Thursday, May 31, 2007
By Rebecca Mowbray

A newly unsealed whistleblower lawsuit claims that at least eight major insurance companies in Louisiana and their adjusters are ripping off the federal government by overbilling the National Flood Insurance Program for Hurricane Katrina flood damage while stiffing homeowners on wind damage payments under their homeowners insurance policies.

In the suit, a group of former insurance adjusters, identified only as the Georgia company Branch Consultants LLC, say they have reinspected 150 properties with flood and wind damage. In all cases, private insurance companies overcharged the federal flood program for storm damage while they underestimated wind damage.

"Every single one of them," said Allan Kanner, a New Orleans attorney representing the insurance and construction experts as they pursue what they say is a violation of the False Claims Act on behalf of the federal government. "There's a pattern here."

In one striking example, the suit claims that owners of a group of fourplex apartments in eastern New Orleans were compensated for flood damage with taxpayer money even though they experienced no flooding. Each building in the complex was paid only a pittance for severe wind damage on its regular property insurance policies.

American National Property & Casualty Insurance Co., or ANPAC Louisiana Insurance Co., paid the owner of several buildings in the Versailles Gardens subdivision on Alsace Street about $95,000 in flood damages, or about half the value of each property's individual $200,000 flood policy, even though no floodwaters got inside the buildings.

In each unit, roof shingles and sheathing were badly damaged by wind, most of the windows were blown out, and enough driving rain got inside to ruin both the floors of the apartments and their mechanical systems, according to the suit.

But American National paid $40,000 or less per building from its own coffers for wind damage that Branch estimates should have been more than $250,000 at each location, resulting in the property owner being undercompensated for hurricane repairs.

American National, based in St Louis, did not return several phone messages seeking comment.

Other insurance companies named in the suit are Northbrook, Ill.-based Allstate Insurance Co.; Bloomington, Ill.-based State Farm Fire and Casualty Co.; Boston-based Liberty Mutual Fire Insurance Co.; Jacksonville, Fla.-based Fidelity National Insurance Co. and Fidelity National Property and Casualty Insurance Co.; Arizona-based Scottsdale Insurance Co.; and St. Paul, Minn.-based St. Paul Travelers Cos., which changed its name since the suit was filed to the Travelers Cos. Inc.

The suit also names five subcontractors that provided adjusters to the insurance companies after Katrina: Mobile, Ala.-based Pilot Catastrophe Services Inc.; Atlanta-based Crawford & Co.; Indianapolis, Ind.-based NCA Group Inc.; and Niceville, Fla.-based Simsol Insurance Services Inc.

Kanner says other companies could be added as the suit develops.

Although companies were scheduled to be served copies of the lawsuit last week, defendants said they had not yet seen copies of the suit, which has been under seal in U.S. District Court in New Orleans since it was filed in August 2006.

State Farm and Allstate, Louisiana's largest residential insurers, each expressed confidence in their claims-handling practices.

"We feel that we've appropriately handled claims arising out of Katrina and that we followed NFIP and FEMA guidelines with regards to expediting flood claims," State Farm spokesman Fraser Engerman said.

"We have not yet received a copy of the suit. Nonetheless, Allstate remains confident in its claim settlement practices following Hurricane Katrina and is committed to resolving all claims fairly and appropriately," said Allstate spokesman Michael Trevino.

Pilot Catastrophe Services and Crawford & Co. adjusters each said they were unable to comment because they hadn't seen the suit. The rest of the companies did not respond to queries for comment.

The burden of claims

The lawsuit, unsealed by Judge Peter Beer, alleges that the defendants "defrauded" the U.S. government and violated the False Claims Act by knowingly submitting fake Katrina damage bills to the government for payment. While insurance companies "maxed out or nearly maxed out" flood policies from the Federal Emergency Management Agency, they "substantially underpaid" payments for wind damage at the same properties.

"Rather than follow in good faith the streamlined procedures that FEMA had set up, defendants instead systematically adjusted, paid and submitted reimbursement claims to NFIP regarding losses that obviously should not be covered by flood policies. They did so in massive quantities," the complaint reads. "Defendants defrauded NFIP by misattributing wind damage and other non-flood losses to the flood policies underwritten by the Government rather than correctly attributing such losses to causes that are covered by their homeowners policies."

The whistleblower suit is the strongest and broadest compilation of evidence to date that insurance companies may be shifting the burden of claims that they should be paying onto taxpayers through the flood program.

Two weeks ago, Slidell public adjuster Chris Karpells of YourAdjuster.com LLC disclosed that Allstate Insurance Co. charged inflated prices to the government for common rebuilding jobs while charging itself reduced prices for the same work at the same house.

The scope of the suit is potentially huge. The whistleblowers, who remain anonymous while they try to document insurance payouts and actual damage on more properties, say they have found an average overpayment of 66 percent on flood policies.

If the Branch Consultants' 66 percent overpayment statistic holds true across the $14 billion that the National Flood Insurance Program paid in Louisiana from Katrina and Rita flood damage, it would mean that insurance companies bilked the flood program for as much as $9.24 billion, or more than the total cost of the Road Home grant program.

Flood insurance is provided by the federal government and is subsidized by taxpayers, but 96 percent of all flood policies are sold and administered by the private insurance companies that often sell people their homeowners insurance coverage.

Faced with 240,000 claims after Katrina, the flood program removed hurdles to adjusting claims in an effort to get money into disaster victims' hands quickly. Many people now question whether that well-intentioned move unlocked the federal treasury's vault for the insurance industry, which then could freely charge the federal government for storm damage simply by attributing it to rising water with little documentation. While insurance companies pacified homeowners with flood money, the theory goes, they held the line on paying for damage from wind or wind-driven rain that comes out of their own bank accounts.

Ed Pasterick, senior adviser to the National Flood Insurance program, said he's skeptical about the potential scope of any wind/water allocation problem.

After Tropical Storm Isabel flooded parts of Maryland and Virginia in 2003, Pasterick said, people complained that they didn't receive adequate compensation from their flood policies. In response, the flood program reopened 24,000 claims, Pasterick said, but the huge effort to readjust the claims turned up no systemic evidence of problems.

Still, Pasterick said, FEMA, which oversees the flood program, takes seriously the concerns of the Branch whistleblowers and will look into their allegations.

"If those figures are accurate, we've obviously got a problem," Pasterick said.

Under the radar

Federal officials from the Department of Homeland Security, FEMA, the Federal Bureau of Investigation and the U.S. Attorney's Office in Baton Rouge were briefed on the suit in November while it was under seal and before insurance companies knew it existed.

David Dugas, U.S. attorney for the Middle District of Louisiana in Baton Rouge, said his office fielded the complaint with the Civil Division of the Department of Justice in Washington.

When a "qui tam action," or a whistleblower suit, is filed by a private individual on behalf of the government, it is automatically placed under seal for a period of time so that public officials have a chance to investigate the evidence and decide whether they want to take it over.

So far, the answer is no, which is why the complaint was made public, but Dugas said he retains the right to step in at any time.

"We have at this point declined to intervene, but we will continue to closely monitor the litigation," Dugas said.

Jim Letten, U.S. attorney for the Eastern District of Louisiana in New Orleans, said he could not say why Dugas' office in Baton Rouge, and not the New Orleans office, handled the complaint.

For now, Kanner and the Branch consultants will press the case on FEMA's behalf.

"I don't believe the federal government has decided to ignore it," Kanner said. "They can always jump back in. We thought, on a public interest view, that it ought to be pursued."

If whistleblowers are successful in pursuing the suit without the U.S. attorney's intervention, they could be awarded as much as 30 percent of the proceeds if the suit is victorious. If the U.S. attorney's office decides later to take over the investigation and the effort is successful, the whistleblowers' take is reduced to 15 percent to 25 percent of the proceeds, Dugas said, because the government is the one doing the heavy lifting.

Under the False Claims Act, anyone who knowingly submits fake bills to the government is liable for three times the amount of damages sustained by the government, according to the Branch suit. There is also a civil penalty.

Homeowners not penalized

Although many people in the New Orleans area may have been overpaid for flood damage while being shorted on wind payments, FEMA says homeowners do not have to worry about losing what they've gotten if they speak up.

"If the situation is being paid too much on the flood claim and not enough on the wind claim, the homeowner is not going to get penalized," Pasterick said. "We would simply readjust it and require that the company pay the appropriate amount under the wind policy."

Under normal circumstances, Pasterick said, FEMA would ask anyone who was overpaid by the flood program to return the money. But in this case, homeowners would not risk losing their flood money, because they're not the beneficiaries of an accidental windfall; they're pawns in a possible flood-wind allocation scam. "They should make it clear that they have both wind and flood coverage and they felt they were overpaid. They should make it clear that, 'I had more wind damage than was actually accounted for, and I was paid for it under flood.' "

FEMA would go after the companies for not adjusting claims properly, Pasterick said, not individual homeowners.

Under the law that governs the flood program, private companies have a clear duty to adjust claims properly. Insurance companies have a fiduciary responsibility to the federal government "to assure that any taxpayer funds are accounted for and appropriately expended" under the National Flood Insurance Program. They are also required to handle flood claims according to their "customary business practices," and adjust claims according to "general company standards and NFIP claims manuals," implying that they're required to handle flood claims in the same way they would handle wind claims.

The law also says that if there are any inadvertent delays, errors or omissions under a transaction relating to the flood program, "the responsible party must attempt to rectify that error as soon as possible after the discovery of the error and act to mitigate any costs incurred due to that error." If steps are not taken to rectify the situation, the law states, "the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law."

Kanner, head of the insurance section at the Louisiana Association for Justice, formerly known as the Trial Lawyers Association, said he hopes that people will look at their flood and homeowners adjustments and come forward if they think they may have been overpaid on flood and underpaid on wind.

"I think at some point people will stand up and say, 'Something's got to be done about this,' " Kanner said.

All the same problems

The Branch Consultants have been collecting flood and homeowners insurance adjustment figures on houses around the area and then going to the properties to readjust the claims themselves using Xactimate, a standard adjusting software used by State Farm and many other companies.

They say their estimates err on the side of generosity to the homeowner, and they do not analyze payments for contents.

After calculating what the adjustment should have been, they analyze how the insurance company adjustments deviated from reality. Across the board, they have found overpayment on flood and underpayment on wind.

State Farm, for example, paid one Metairie homeowner $88,280 even though there was no flooding inside the home. Meanwhile, the company paid $5,379 on the homeowners policy for what Branch says is actually $110,918 in wind damage.

State Farm also paid a homeowner on the West Bank in Jefferson Parish $51,205 for eight inches of water inside the home. The flood estimate cost breakdown includes damages unlikely to have been caused by flooding, such as $7,086 for a roof, $18,418 for exterior finish, and $20,145 for rough framing.

Meanwhile, the policyholder was paid $5,768 for wind damage, but suffered $95,030 of actual wind losses, the Branch reinspection found.

Allstate paid the flood policy limits of $250,000 on a home in the Eden Isles area of Slidell that took on two feet of water, and paid the flood policy limits of $91,600 on a home in eastern New Orleans that took on three and a half feet of water. Neither estimate provides any measure of square footage or documentation of damage that would allow an auditor to know whether paying the policy limits was justified; it simply lists a total loss figure. The eastern New Orleans home sustained $71,685 of wind damage, for which the owner was paid $12,266.

Another Allstate adjustment of a property in eastern New Orleans that took on eight inches of water counted the flood damage twice.

At the beginning of the estimate, Allstate lists estimates to repair everything in the kitchen, bathroom and rest of the house below four feet, and calls the home's fixtures "better" grade even though Branch says they were only standard grade. The adjustment then goes back in and bills the flood program to remove and replace the floor in each room, even though flooring should have already been included in the tally.

While that eastern New Orleans homeowner was paid $69,000 for flood damage that should have totaled $43,847, the homeowner was paid $11,894 for wind damage that should have cost $75,529, according to the suit.

A flood policy written by Fidelity on an eastern New Orleans home insured by Louisiana Citizens Property Insurance Corp. paid the policy limits of $75,000. Although the house took on four feet of water, the Fidelity flood estimate billed the government for parts of the house that didn't need to be replaced, such as the roof, brick veneer exterior finish, framing, foundation and tile floor, which simply needed to be mopped clean, the suit alleges.

Meanwhile, the homeowner was paid $21,098 for $58,022 of wind damage.

The overpayments on the flood and mistakes in the adjustments are particularly striking, Branch says, because flood adjusters are among the best-trained in the business. To become a certified flood adjuster, according to a 2005 Government Accountability Office report, a candidate must have at least four consecutive years of full-time adjusting experience, have attended an adjuster workshop, and recertify each year.

Flood adjusters also are required to submit detailed reports and photographs to support their findings. The Branch evaluators say that in most cases, those rules still should have been in force, because FEMA's expedited flood procedures should have applied only to homes that disappeared in the storm or sat in standing water for an extended period of time.

"These kind of abuses are just unconscionable," Kanner said.

The Times-Picayune

Same house. Same repairs. Same insurer. Why different prices?

Evidence suggests Allstate pays far more for flood repair than for wind damage. The reason? The government picks up the flood tab, and the company minimizes its own payout.

Sunday, May 20, 2007

By Rebecca Mowbray

Something about the insurance settlement on the Slidell townhouse seemed fishy to Chris Karpells, a prospective buyer who would be collecting the insurance money as part of the deal.

As he pored over the fine print, what caught Karpells' eye was this: Allstate seemed to have two different ways of pricing the damage repair costs, depending on whether the damage at 286 Marina Drive was chalked up to flooding or wind.

If Allstate attributed the damage to wind or rain, for example -- putting it on the hook for payment under the customer's homeowner policy -- the company priced the cost of removing and replacing the drywall at 76 cents per square foot. But if the damage was blamed on storm surge or flooding, the estimated cost of removing and replacing the drywall more than quadrupled, to $3.31 per square foot.

"On my best day, I couldn't get my client paid that much for Sheetrock. It would almost be misrepresentation or fraud," said Karpells, a registered public insurance adjuster as well as a real estate investor. "What the hell's the difference between wind Sheetrock and flood Sheetrock?"

A key difference between flood Sheetrock and wind Sheetrock is this: Allstate must pay for damage covered by its homeowner policy. But damage blamed on flooding is covered by the National Flood Insurance program, set up by the federal government and subsidized by taxpayers. And who decides which policy covers which damages? As with 96 percent of flood policies these days, it is the private insurer, in this case Allstate.

Drywall wasn't the only construction material cost that suddenly skyrocketed when Allstate was assigning the damage to the flood insurance program, Karpells noted.

The cost to recarpet the master bedroom, bathroom, loft and stairwell -- upstairs spaces that hadn't flooded and therefore were covered under the homeowner policy -- was pegged by Allstate at $23.48 a square foot. But when it came to replacing the same carpet in downstairs areas covered by the flood policy, Allstate set the price at $28.43, a 21 percent jump.

And so it went: For texturizing and repainting upstairs walls, Allstate set costs at 80 cents a square foot. The cost to the government program for apparently identical work downstairs: $1.15 per square foot, a difference of more than 40 percent.

Karpells said that, in his work as a public adjuster, he has seen the dual pricing on almost every Allstate adjustment that lists the damage line by line. And from his experience, Allstate is the only company that's doing it, said Karpells, a third-generation carpenter from Massachusetts who moved to Slidell several years before Katrina hit. Karpells said he believes that "someone is saying, 'On a flood policy, we use this database. On a wind policy, we use this database.' They're front-loading all the money on the flood policy."

Karpells is not alone in his suspicion that Allstate is gouging the government in order to minimize its own exposure to post-Katrina repair costs -- a charge Allstate flatly denies.

"Our firm position is that there are not any discrepancies in the rates charged," said Mike Trevino, a spokesman for Allstate. "The component prices reflect current market conditions. And they are the same for wind and flood."

Cindy Montgomery, a public adjuster from LaPorte, Texas, said she has seen the dual pricing in numerous Allstate cases in St. Tammany, Orleans and St. Bernard parishes and on the Mississippi Gulf Coast.

"I ended up with probably a hundred of these," said Montgomery, who is with Anchor Mitigation and Proof of Loss LLC. "Seventy-seven cents was nowhere near reality, and they knew it. I told them, and hundreds of other adjusters told them."

And the dual price list for repair costs has not been the only method of adjustment that lets Allstate be more generous with the public's money than its own.

Sometimes almost the entire burden is passed to the flood program. Down the street from the townhouse Karpells' business partner bought, for example, is Guy Smith's unit at 1546 Marina Drive: an almost identical townhouse with Allstate coverage and similar damage.

Even though both had flooded to the same depth, 42 to 48 inches, the financial burden at 1546 Marina Drive was tilted even more heavily to the federal insurance program, saving Allstate money. Smith was offered $170,927 for flood damage, while Allstate agreed to shoulder only $20,172 for roof and upstairs damage.

Indeed, in a one-page summary that contained no breakdown of costs or damages, Allstate's adjuster had declared that the appropriate response to damage at 1546 Marina Drive was to "replace" the three-story building, even though only the ground floor flooded.

"In my wildest dreams, I couldn't submit something like that and get it paid," Karpells said. "It's just so nonreflective of the damage that it's bizarre. The building was not destroyed. It was not a total loss."

Karpells thinks the flood damage at Smith's unit was probably about $80,000 to $85,000. Smith, a New Orleans firefighter, agrees that the unit wasn't a total loss. He was able to repair the damage and has been living in his townhouse since last September.

More disturbing still was the experience of Allstate customers Robert and Merryl Weiss, a Slidell couple who eventually took Allstate to court. As part of their flood insurance claim, Merryl Weiss drew up a handwritten list of damaged household contents, mostly fishing equipment. Her claim came to $38,848.35.

During depositions taken in connection with the litigation, they discovered that on the contents list submitted by Allstate for payment under the Weisses' flood policy, the value of the loss billed to the federal program had soared to more than $139,000. Fishing gear was nowhere on the list, but things had been added that the Weisses didn't even own, including furs, jewelry and the like.

"When Allstate pays a claim under a flood policy, they are using the checkbook of the United States Treasury. When they pay a claim under their homeowners policy, they are using the Allstate checkbook. For every dollar paid out of the federal treasury under flood, Allstate takes a credit and keeps a dollar. Essentially Allstate is profiting at the expense of the American taxpayer," Weiss attorney John Denenea said.

'It's apples to apples'

Allstate's Trevino declined to discuss the specifics of the claim on Karpells' townhouse, but said that the cost of repairs changes over time, and the cost of repairing one room versus another can vary, depending on how the damage occurred.

"The cost to repair wet drywall versus dry drywall is different. The cost to repair carpet from one room to carpet of another room may be different because you may have different quality carpet from room to room," Trevino said. "You can have different methods and approaches regarding paint. In one room, you may have one coat of paint, but in another room, you may need more than one coat of paint depending on the color."

Trevino further noted that public insurance adjusters, people who are hired to represent consumers after disasters to make sure they're paid properly, have an agenda.

Karpells rejected Trevino's insinuation that his profession as public adjuster was a factor in the dispute. The adjustments, he noted, were done for the previous owner of the townhouse at 246 Marina Drive. No public adjuster -- with or without an agenda -- was involved.

Moreover, Karpells argued, market fluctuations in repair costs couldn't account for the differences between prices on the flood and homeowner adjustments. They were done within two months of each other, too short a time for them to have been so extreme.

As for Trevino's suggestion that materials used upstairs might have been of different quality than those used downstairs: Not so, Karpells said. The carpet was the same on all floors, and the texture and paint on the walls was identical throughout the house.

"It's apples to apples," Karpells said. "The facts speak for themselves."

Craig Berthelot, vice president of the Home Builders Association of Greater New Orleans and owner of Berthelot Construction Services, which renovates and repairs storm-damaged homes in the New Orleans area, said that the real price for replacing drywall is between the prices that Allstate calculated.

Without the tear-out portion of the job, it costs about $2 to $2.50 per square foot to replace drywall, he said. The $3.31 billed to the flood program for tearing out and replacing drywall is high but more realistic than Allstate's 76 cents on the homeowners policy, Berthelot said.

The Katrina memo

Allstate is the nation's largest publicly held insurer of homes, autos and other personal risks. But when Katrina hit, the policies it had written in Louisiana were not backed up by reinsurance, a corporate policy that kicks in to cover an insurer's losses beyond a certain level in the event of a catastrophe like a hurricane.

Reinsurance paid for an estimated 45 percent of U.S. losses incurred by insurers as a result of the 2005 storms, according to the Insurance Information Institute, but Allstate was on the hook for the entire cost of damages covered by its Louisiana customers' homeowner policies. By the end of 2006, it had paid $1.4 billion in homeowners claims in Louisiana, where it is, after State Farm, the state's second-largest residential insurer.

Trevino said that reinsurance wouldn't have saved the company much money, and having to pay out of its own pocket didn't affect the company's generosity in handling claims. Nor did it inspire the company to slough off damages onto flood policies, he said.

Facing at least 200,000 claims after Katrina, the largest disaster it had confronted, the National Flood Insurance Program looked for ways to expedite payments to policyholders.

On Sept. 21, 2005, three weeks after the storm, acting flood program Director David Maurstad, who consulted regularly with insurers after the storm, issued a memo expediting the processing of flood claims.

The memo waived the requirements that customers prove their losses and instructed the insurance companies to pay the flood policy limits if the home was washed off of its foundation or if the home was in "standing water" for "an extended period of time."

Ed Pasterick, a senior adviser to the flood program, offered this explanation: "What we didn't want people to do was be penalized while we were determining if it was wind or water. He (Maurstad) just made a decision that he didn't want people to have suffer because of it."

The memo is widely credited with getting money into disaster victims' hands quickly and is upheld as an example of business and government working together to handle a challenging situation.

In hindsight, others have begun to wonder if it didn't send a signal to the private insurance industry that the federal treasury was their cookie jar and that no one would be looking if insurers helped themselves at the public's expense.

As the flood program went broke after Katrina, requiring a massive taxpayer bailout, U.S. Rep. Gene Taylor, D-Miss., began to ask pointed questions about how the rules got eased so quickly and in ways that were so advantageous to the private insurers. After all, FEMA, the agency that runs the flood program, was also the agency that had proved too hopelessly dysfunctional to make the adjustments that might have smoothed the flow of desperately needed public money to prostrate local governments.

"Our experience is that these guys didn't do anything to speed up the program anywhere else. Why did they do it here?" asked Brian Martin, a Slidell native who is Taylor's policy director. "I suspect that the idea came from the insurance companies."

Taylor's hunch is that the flood program eased its rules at the behest of the private insurers, who stood to benefit directly if the lion's share of losses could be laid off on the flood program, rather than homeowner policies.

"They get to go right out there and give them a check. It's from the federal government," Martin said. "It gives the homeowner something so that there's not huge pressure on the insurance company to pay something now.

"The flood insurance program made it easy for a few of the insurance companies to manipulate those claims to put it all on flooding," Martin said. "The taxpayers pick it all up."

"It was a very bad idea," said Bob Hunter, who oversaw the federal flood insurance program in the Ford and Carter administrations and now is a consumer advocate as director of insurance at the Consumer Federation of America. "It allowed these insurance companies to come in and say, 'This was all flood damage,' and hand out a check without any analysis of whether it was wind damage."

Officials bewildered

But even Hunter, skeptical as he was, didn't imagine that a company would develop two different price lists for nearly identical repair work. He thought the insurance companies would stop at trying to argue that damages were due to flooding, rather than wind. Indeed they have in a number of well-publicized lawsuits -- notably including U.S. Sen. Trent Lott's fight to recover more money from the homeowner policy that covered his destroyed waterfront home in Pascagoula, Miss.

The dual price lists are something else again. "I had no idea they would be so blatant," Hunter said.

FEMA also expressed bewilderment over the idea of charging government and private insurers different prices, when told about practices in the New Orleans area.

"I don't have an explanation for that," said Tim Johnson, senior insurance examiner on the claims section at FEMA. "If that's what they say is happening, I would love to see it. The overpayment surely does affect me."

The lack of uproar from customers is easier to understand. Essentially, claims adjustment, when both flood and homeowner policies are in play, is a zero-sum game. The customer wants insurance to cover the cost of repairing or replacing the house and has little reason to care whether the federal program or the private insurer foots the bill.

Smith, the firefighter who owns 1546 Marina Drive, said Allstate told him not to worry about whether the damage was attributed to wind or flood, that it would all come out in the wash. "It was basically, 'Look at the entire package, don't look at the wind claim for what it is, just look at the entire package,' " Smith said. "It was pretty clear."

The Times-Picayune

Inflated flood claim turns up at trial
Allstate contents list is news to owners
Sunday, May 20, 2007
By Rebecca Mowbray

Fishing poles and fancy furs weren't the issues at trial. Instead, Merryl and Robert Weiss had gone to court to fight the contention by their insurer, Allstate, that they were entitled to only a pittance under their homeowner policy because flooding, not wind, was largely responsible for the destruction of their home on Slidell's Treasure Isle.

But about a month before trial, Merryl Weiss realized there was something wrong with the payment for household contents that they had received on their obliterated Slidell home.

In making the claim under their taxpayer-subsidized National Flood Insurance policy, Weiss had given Allstate a handwritten list of belongings from the ground floor of the three-story house -- most of it rods, reels and other gear owned by her husband, a retired doctor who is a die-hard sport fisherman with a charter boat license. She valued the lost contents at $38,848.35.

But as documents were being flashed in front of her for identification, Weiss was shown a typed property-loss worksheet totaling $139,562. The inventory listed a formal living room, dining room, kitchen, living room/great room/game room, an office, a foyer, bathrooms, five bedrooms, a garage/shed, utility room, clothes, miscellaneous items and categories labeled "DVDs/VCRs/records" and "jewelry, furs, memorabilia, etc."

Weiss didn't generate the list, and never submitted a contents list for the upstairs rooms of the home to Allstate before the flood contents check was cut. Indeed, she said she doesn't own any furs. But Allstate submitted the bill to the National Flood Insurance program, which paid the policy's limit of $100,000 for contents after depreciation and a deductible were taken out.

"I never even claimed that we had any of this stuff," Weiss said in her deposition. "I did not write this, and I did not write this," she said, pointing to items on the list.

Mysterious paperwork

At last month's trial, the Weisses were awarded a $2.8 million judgment against Allstate for failing to properly adjust the claim, an award that the insurer is appealing. That settled, at least temporarily, a fight over wind versus flood damage. But the unanswered question was how the Weisses' contents claim got inflated by $100,714. No one seemed to have an explanation.

Not Mike Wells, the outside adjuster employed by Allstate to handle the claim. He testified that he had given the Weisses' handwritten list of fishing equipment to Allstate.

Not Mung Hatter, who worked for four months processing Allstate claims before landing her current job at Beau Rivage casino on the Mississippi coast. Hatter testified that she simply put the finishing touches on the claim using the numbers the company gave her before supervisors signed off on the settlement and it was mailed to the flood program for payment.

'Quality control measures'

On the fourth day of the trial at the federal courthouse on Camp Street, Paul Tracey, field operation's manager for Allstate's catastrophe unit, was asked point blank by Weiss attorney Richard Trahant how the contents figures grew.

"Do you have any idea how those numbers increased from $38,000 to $139,000?" Trahant asked.

Tracey said he could explain how the process works, and he hastened to say that Allstate handled claims honorably.

"We . . . have quality control measures under our policy, under our process, to ensure that the evaluations are being done correctly and accurately. The federal government also reinspects our work for the National Flood Insurance Program," Tracey said.

But that didn't explain the inflated and imaginative contents list. To counter the implication that there was something underhanded going on with the list, Allstate lawyer Judy Barrasso asked Tracey what was to prevent Allstate from dumping costs onto the flood policy so as to spare Allstate the expense of a settlement under the homeowner policy.

"In handling these claims, what's to stop Allstate from just putting all of somebody's claim as a flood loss instead of a wind loss?" Barrasso asked.

"Well, number one, we don't do that. . . . If there's damages from wind, we pay it under the wind; if there's damages from flood, we pay it under the flood," he responded.

Destroyed by tornado

The Weisses said they limited their contents claim under the flood policy to the ground floor of their house because storm surge estimates suggested that the upper two floors were above the water line. Based on early conversations with their adjuster and an engineer who visited the house in November 2005, they believed their house was destroyed by a tornado.

In trial testimony, Hatter said the inflated contents list named an Alabama contract worker as adjuster. The contract worker could not be found for the trial and efforts by The Times-Picayune to contact her were unsuccessful. Hatter said that after getting the list from the contract worker, she typed up the claim and circulated it for approvals from higher-ups at Allstate before sending it to the flood program for payment.

Hatter testified that Allstate had programs in place to monitor what lower-level contract workers were doing with computerized claims. In his testimony, Tracey affirmed that everything Hatter would have done went up the ladder and was approved by someone at Allstate before it was submitted by the government.

Didn't call Allstate

At deposition, Allstate attorney Meredith Cunningham asked Weiss why she didn't notice that they were being overpaid by the flood program and why they didn't say anything about it when they realized the discrepancy.

"When you received a check for $100,000 for the contents . . . did you ever ask anybody at Allstate why am I getting an extra, you know, tens of thousands dollars more than I intended to get on this coverage?" Cunningham asked.

Weiss said that in the barrage of paperwork after the storm, she didn't read everything in the envelope that came with the checks.

"I knew it would all come out in the end one way or another. I mean, why would I call Allstate and say, 'Wait, you gave me too much money here,' when I'm waiting on another . . . $600,000?" Weiss said. "I assumed that in the end, all of this would be evened out. I never asked for more than I thought we should have."