



**Consumer Federation of America**

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

**TESTIMONY OF**

**J. ROBERT HUNTER,  
DIRECTOR OF INSURANCE,  
CONSUMER FEDERATION OF AMERICA**

**BEFORE THE**

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS  
OF THE  
UNITED STATES SENATE**

**REGARDING**

**AN EXAMINATION OF THE NATIONAL FLOOD INSURANCE PROGRAM**

**October 2, 2007**

Mr. Chairman and members of the Committee, I appreciate the invitation to appear before you today to discuss current issues regarding the National Flood Insurance Program. I am J. Robert Hunter, Director of Insurance for the Consumer Federation of America (CFA). CFA is a non-profit association of 300 organizations that has sought to advance the consumer interest through research, advocacy, and education since 1968. I am a former Federal Insurance Administrator under Presidents Ford and Carter and have also served as Texas Insurance Commissioner. As Administrator, I ran the National Flood Insurance Program (NFIP) in the 1970s.

**A. THE UNDERLYING PRINCIPLES OF THE NFIP ARE SOUND**

Congress wisely based the program on two fundamental principles:

1. The program would discourage unwise new construction through the enactment and enforcement of sound land-use policies, enforced at the local level, so that over time, taxpayer subsidies for flooding would be greatly reduced; and
2. Owners of existing structures would receive affordable flood insurance through early program subsidies, which would be eliminated over time as the buildings were retired from use because of aging or damage. These buildings would then have to be elevated or relocated under the program's rules.

When I testified before you on February 2, 2006, I told you that if the program had worked as Congress intended it to work, it would be a blessing to the nation. A workable program would ensure that new construction in areas prone to flooding is wise and would provide affordable coverage to all Americans exposed to high flood risk. The program would not allow unwise construction in the highest risk velocity ("V") zones and would require that buildings be elevated to the true 100-year flood line, at least in the other high-risk ("A") zones.

However, if the program encourages unwise construction in flood plains, it is a danger to the nation rather than a blessing. If the program lures people into flood plains; if it subsidizes construction in unsafe places; if it cannot stop communities that defy the program's mitigation requirements; if it falsely assures people that they are in a low-risk area that does not need flood insurance, then it must be reformed to keep the promises of safer construction made to the taxpayers. Or, it must be abolished.

**B. FEMA ADMINISTRATION OF THE NFIP UNDERMINES CONGRESSIONAL PRINCIPLES**

**1. Old Flood Maps Create New and Hidden Subsidies and Endanger Homeowners**

The antiquated maps in use right now are a disgrace. When I was Administrator of this program, we had a goal of updating the maps every three to five years. Even at that fairly frequent rate, I was considering adding freeboard (extra height over the 100-year level) because development

drives up surface elevations. It is like sitting in a bathtub in which the water goes up as you sit down. If you put on weight, the water level goes higher. New development is like putting on weight. Lots of development drives the water level much higher.

Consider Hancock County, Mississippi. There are 76 different maps covering most of that county on FEMA's webpage. These maps, called "Hurricane Katrina Surge Inundation and Advisory Base Flood Elevation Maps," are a "smoking gun" that demonstrates how FEMA's lack of action contributed to the destruction and loss of life caused by Hurricane Katrina. They show that the antiquated 100-year flood levels are woefully out of date and extremely low.

Consider map MS-E8.<sup>1</sup> In this area, Katrina's surge was 23 to 24 feet above sea level. The current map required structures to be built at 14 to 19 feet above sea level at the waterfront and 11 to 13 feet elsewhere in the county, but the revised suggested elevations are 20 to 30 feet throughout the entire area. Thus, a person who built to FEMA's standard just prior to the hurricane was building about 10 feet below the real 100-year risk. The flooding that occurred in many areas after the hurricane was truly a disaster waiting to happen because of FEMA's incompetence.

Consider map MS-G8.<sup>2</sup> Here, a person complying with FEMA's 100-year map just before the hurricane hit would have been required to elevate to between 9 and 11 feet above sea level. The real 100-year risk was at 18 to 27 feet. Katrina came in with elevations of 19 to 24 feet, so people were building 10 feet or more below the real risk level. On average, the V zones in the entire county were 12 feet too low when comparing current maps with the new proposals. For A zones, the average shortfall was 13 feet. These old maps are a tragedy for the nation. People all over the country are building what they think are safe homes but, to varying degrees, are not. They are in peril.

Taxpayers are subsidizing unwise construction as a result of these bad maps. Actuarial rates are predicated upon the maps and if they are too low, huge federal taxpayer subsidies of unwise construction occur. Further, large areas that appeared to be outside of the special flood hazard area should actually be in the high-hazard area. People who should have been warned that their homes were in high-risk areas were not warned and many of these, who had mortgage commitments over the past two decades or more, would have been required to purchase insurance had the maps been up to date. In Hancock County, for example, a lot more people would have had flood insurance when Katrina hit. If maps are not quickly brought up to date and kept that way, the program should be terminated.

## **2. Costs in The Write Your Own Program are Excessive**

In recent years, CFA has consistently asked why private insurers cannot assume a greater role in writing flood insurance. Insurers originally objected to a private role when the National Academy of Sciences (NAS) conducted a feasibility study because they said they could not price

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<sup>1</sup> [http://www.fema.gov/hazards/floods/recoverydata/maps/katrina\\_ms\\_topo-e8.pdf](http://www.fema.gov/hazards/floods/recoverydata/maps/katrina_ms_topo-e8.pdf).

[http://www.fema.gov/hazards/floods/recoverydata/maps/katrina\\_ms-e8.pdf](http://www.fema.gov/hazards/floods/recoverydata/maps/katrina_ms-e8.pdf).

<sup>2</sup> [http://www.fema.gov/hazards/floods/recoverydata/maps/katrina\\_ms\\_topo-g8.pdf](http://www.fema.gov/hazards/floods/recoverydata/maps/katrina_ms_topo-g8.pdf).

[http://www.fema.gov/hazards/floods/recoverydata/maps/katrina\\_ms-g8.pdf](http://www.fema.gov/hazards/floods/recoverydata/maps/katrina_ms-g8.pdf).

policies to avoid adverse selection—attracting properties that were extremely likely to be flooded. This concern could be resolved today by using technology to better assess risk and by requiring purchase of the coverage (perhaps up to the 500-year storm level) to assure the spread of risk. Congress should consider a long-term program to shift flood insurance back into the private sector, where political pressures to bring rates below the actuarial level for people who can afford higher costs will not be present. CFA will remain committed to ensuring that lower and moderate-income residents have access to affordable flood insurance.

However, if the program is to remain a fully federal one, then why continue the Write Your Own Program (WYO)? It is terribly expensive and has not significantly increased the market penetration of flood insurance as insurers said it would. It results in wind/water claims adjustment conflicts-of-interest that could be avoided by using competitively bid contractors.

I raised this issue with you in testimony in 2005 and 2006. The GAO has just issued a report that shows that FEMA has no idea if expenses for the WYO program are anywhere near fair. Consider this information from the GAO<sup>3</sup>:

<u>Fiscal Year</u>	<u>Premium Revenue</u>	<u>Payments to WYO Companies</u>	<u>% of Premium Paid to WYO</u>
2004	\$1.8 billion	\$ 619 million	34.9%
2005	\$1.9	\$ 985	50.7%
2006	\$2.4	\$1,584	64.9%

In “good” years, the WYO program takes over one-third of the NFIP premium, a remarkable sum. In years with claims, the very time the program needs resources, the WYO takes increases. In the wake of Hurricane Katrina the share of the program paid to WYO insurers was almost two-thirds of the premium. In 2000, it was 37% of premiums, almost three times the losses paid in that year.

As the Insurance Transparency Project put it, when they reviewed the GAO report on expenses, “Now that’s what ITP calls ‘Write Your Own’ all right. Wow.”<sup>4</sup>

The costs of the WYO program are too high. The use of contractors should be expanded and WYO contracts should be renegotiated to save significant taxpayer cost. At the very least, the payment of commission dollars to insurers who do not use commissions (such as USAA) should stop. Why should taxpayers pay agent commissions when no agent receives such commissions? Further, consideration should be given to having FEMA set only the part of the rate that covers the risk and let the WYO insurers add their own percentage loading for their costs, subject to a maximum load of, say, 25 percent.

<sup>3</sup> Government Accountability Office, National Flood Insurance Program, FEMA’s Management and Oversight of Payments for Insurance Company Services Should be Improved, September 2007.

<sup>4</sup> *Insurance Notes!*, “GAO: Private Insurers Take 1/3 of Flood Premiums for Sales Commissions, Expenses, Starkman, Insurance Transparency Project,” September 20, 2007.

### 3. The Write Your Own Program is Ineffective and Rife with Conflicts-of-Interest

Is the extraordinarily high cost of the WYO program producing excellence in result? The evidence indicates that this is not the case. There are two measures of success in flood insurance servicing: good market penetration and a high level of policyholder satisfaction after a claim.

Market penetration is weak. When I left the program in 1980, there were 2.3 million policies in force. The WYO program began in 1983. In 1993, after 10 years of the program, there were 2.5 million policies in force. Only after Hurricane Andrew showed the ineffectiveness of the WYO effort did policies increase, thanks to a sharp increase in NFIP advertising by FEMA. Even today, at about 5.5 million policies, the percentage of the flood-prone properties covered by flood insurance is only about 30 percent, according to our estimates.

The handling of claims by WYO insurers is very poor and marked by severe conflicts-of-interest. Since Hurricane Katrina devastated the Gulf Coast, there has been much public discussion about whether damage to homes was caused by wind and rain, or by flooding. Many policyholders have policies covering wind and rain damage (under homeowners' policies), but not flooding, which is a separate policy underwritten by the NFIP.

Lawsuits abound. In *Norman and Genevieve Broussard v. State Farm Fire & Casualty Company*, a federal judge and jury in Gulfport found that State Farm engaged in illegal cost shifting that was likely adverse to the NFIP. A federal judge and jury in *Robert and Merryl Weiss v. Allstate Insurance Co.* came to the same conclusion about Allstate. Eight whistleblowers from a third-party adjusting firm allege that a unit of American National Property & Casualty Insurance Co. assigned \$95,000 in flood damage to property that never flooded at all.<sup>5</sup> Some public adjusters are saying that insurers are charging the flood program 300 percent more for sheetrock and other materials than they would charge themselves for the same house, depending on whether wind or water caused the damage.<sup>6</sup>

Consider these additional examples of claims abuses that likely adversely impact the NFIP, which are posted on the website of Representative Gene Taylor of Mississippi.<sup>7</sup>

1. "Emails exchanged by engineers revealing that State Farm fired their firm because two assessments ruled that damage was caused by wind. The emails reveal that State Farm demanded that reports name only the "predominant" cause of damage rather than estimate what damage was caused by wind and what damage was caused by flooding, and that State Farm instructed the firm to identify all water damage as flood damage. FAEC agreed to reassess the reports in order to keep the State Farm business."

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<sup>5</sup> "Whistleblower Suit Accuses Insurers of Overbilling Federal Government," *Times Picayune*, May 30, 2007.

<sup>6</sup> "Same House, Same Repairs, Same Insurer: Why Different Prices?," *Times Picayune*, May 20, 2007.

<sup>7</sup> <http://www.house.gov/genetaylor/OIHearing.Docs.htm>.

2. “Affidavit by Cori Rigsby & Kerri Rigsby in *McFarland v. State Farm*, in which the Rigsby sisters described the actions of State Farm officials to manipulate Katrina claims in Mississippi.”
3. Engineering reports in cases known as *McIntosh*, *Mullin*, *Nguyen*, *Beckham*, *Gaspard*, *Kuntzman* and others showing engineering reports citing wind damage being scrapped, and others citing water damage shown to homeowners.
4. “Oct. 12, 2005 report of on-site damage assessment conducted by engineer Brian Ford of FAEC for State Farm. Ford concluded that damage to the McIntosh home was caused by wind, wind-driven debris, and “failure of the windows, walls, and doors due to wind.” Cori and Kerri Rigsby photocopied this report with a note attached that read, “Put in Wind file – DO NOT Pay Bill. DO NOT discuss. Second on-site damage assessment of the McIntosh claim, conducted by John B. Kelly of FAEC on Oct. 18, the day after FAEC agreed to State Farm’s demand for a new assessment. Kelly’s assessment, which did not mention the previous assessment by Ford, concluded that “damage to the first floor walls and floors appears to be predominantly caused by rising water from the storm surge and waves.”
5. “Emails exchanged by engineers revealing that State Farm fired their firm because two assessments ruled that damage was caused by wind. The emails reveal that State Farm demanded that reports name only the “predominant” cause of damage rather than estimate what damage was caused by wind and what damage was caused by flooding, and that State Farm instructed the firm to identify all water damage as flood damage. FAEC agreed to reassess the reports in order to keep the State Farm business.”

The most significant evidence that WYO insurers are more worried about their own interests than that of the taxpayers is that many WYO carriers have adopted anti-concurrent causation clauses (ACCs) in homeowners’ policies. This blatantly anti-consumer clause works like this: If an insured wind claim is filed that occurred at about the same time as a flood claim, the wind coverage is voided and the insurer pays nothing for wind (but will pay the flood claim on behalf of the NFIP). Insurers claim the legal right to revoke wind coverage because flood damage occurred, even for distinguishable flood damage occurring hours after the wind damage happened.

The use of the ACC clause by WYO insurers exposes taxpayers to huge potential liabilities not anticipated in the calculation of flood rates by making it more likely the NFIP will end up paying for at least some wind damage.

CFA calls on Congress to require that as a condition of being a WYO company, any company seeking to become or remain as a WYO agrees not to use private policies with an ACC in conjunction with NFIP policies it administers. Such a requirement passed the House last week as part of their flood insurance legislation, H.R. 3121.

To the extent that insurers underpay wind losses when allocating damage between their homeowners’ policies and NFIP policies, taxpayers will suffer. It is also true that the more lax the

federal government is in demanding that the allocation be fair to taxpayers, the more likely it is that persons without flood insurance will receive unfair or no compensation under their wind policies.

In its recent preliminary report on this subject, GAO found that FEMA “does not have all the information it needs to ensure that its claims payments were limited to damage caused by flooding.”<sup>8</sup> GAO expressed concern about a “potential conflict of interest.”

GAO pointed out that the NFIP does not collect any information on wind damage, limiting the usefulness of FEMA’s claim reinspection program. In other words, GAO says that FEMA does not know if flood claims are being properly paid or if the taxpayer is paying for wind damage that should have been paid out of the WYO insurer’s pocket.

To make matters even worse, FEMA relies on Computer Sciences Corporation (CSC) as its contractor to help run the NFIP. In this role, CSC works for the government in managing the program. However, CSC has very large contractual arrangements with many of the WYO insurers in providing them software programs that run significant aspects of their businesses. We would like to see GAO also undertake a review of these potential CSC conflicts-of-interest.

### **C. RESTORING THE NFIP TO LONG-TERM SOLVENCY**

The damage caused by Hurricane Katrina and other recent storms in the past three years, with payouts over \$20 billion, has raised the question of the best way to make sure the program serves homeowners who need it, but minimizes taxpayer exposure as Congress wanted when the NFIP was first enacted. In this context, the subsidy of existing structures is an important consideration. When the flood insurance program began, it was assumed that existing structures would, over time, be eliminated from the program by age and damage. However, many subsidized structures are still in the program.

The subsidy built into the NFIP was there for a reason that made sense at the start of the program, but decades later makes far less sense. The NFIP subsidy was never intended to help poor people obtain insurance, although it probably did so for a subset of the population. The subsidy was intended to help people – rich as well as poor – who had built before the Flood Insurance Rate Maps (FIRMs) were in place who might not have realized that there was a flood risk, or who misunderstood the degree of such risk. The subsidy was also an incentive for the communities to join the program and thereby put mitigation (land use) requirements in place.

Over 30 years – a generation – has passed since the original FIRMs have been in place. In retrospect, the program should have phased the subsidy out as homes were sold, since the maps would have been available at that point. In other words, reducing the subsidy at each sale would have been both equitable and financially wise. Congress should start this process now so that thirty years from now taxpayers will not be continuing to subsidize most pre-FIRM structures.

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<sup>8</sup> Government Accountability Office, National Flood Insurance Program Preliminary Views on FEMA’s Ability to Ensure Accurate Payments on Hurricane-Damaged Properties, June 2007.

Such a phase-out of subsidies should definitely take into consideration the ability to pay of the homeowners of pre-FIRM properties. Subsidies for low value structures should be phased out more slowly, or some other method should be used to assure that removal of the subsidies do not make insurance unavailable for the poor living in a pre-FIRM home.

The recent Congressional Budget Office report<sup>9</sup> offers very important insights into the structures being insured under the NFIP and the subsidy structure of the program. Here are some of the more interesting findings:

- Properties insured by the NFIP tend to be more valuable than other properties nationwide. The most valuable structures are in coastal areas.
- Many subsidized properties have high values.
- Subsidized properties in coastal areas are less valuable than unsubsidized structures.
- In the sample, 23 percent of the coastal properties are not the policyholders' principle residences.

Thus, it is clear that many enjoying subsidies today do not need continued taxpayer largesse.

The time has come to find ways to lower the subsidy over a relatively short period of time. I submit the following ideas for your consideration:

- A 500-year mitigation and purchase requirement, rather than the current 100-year standard, would mean no subsidies in the areas that have experienced storms between 100-year and 500-year storm levels.
- Subsidies should be immediately ended on structures with market values in excess of some significant amount (for instance \$500,000).
- Subsidies should be eliminated on all additional homes beyond the primary residence for an insured homeowner with more than one home.
- Subsidies should be phased out over a certain number of years (perhaps 10) on all structures with market values greater than, for example, \$250,000, but less than \$500,000.
- Subsidies should be reduced for homes with market values under \$250,000 each time the home is sold. This should be done in increments that will eliminate the subsidy over three sales of the structure. Persons who have received flood insurance claims payments or flood disaster relief should not get a subsidy when purchasing a new home.
- Subsidies should be eliminated on all structures that have experienced more than one flood with over \$5,000 in program losses in the past.
- As stated above, Congress should explore shifting flood insurance coverage back into the private sector over time.

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<sup>9</sup> Congressional Budget Office, Value of Properties in the National Flood Insurance Program, June 2007.

The 100-year storm standard for the elevation of new structures and the purchase requirement within that area should be revisited. Requiring coverage up to the 500-year storm for the nation would result in greater spread of risk, fewer surprises when storms occur, and greater market penetration. The price for flood insurance outside the 100-year area would be very reasonable.

Consideration should also be given to increasing the amount of mandatory coverage in at least the 100-year flood risk zone. Flood after flood shows market penetration of 10 to 20 percent. This is a serious problem. Non-federal lenders, such as state banks and life insurance companies, should be required to require flood cover on high-risk homes.

It is evident that many structures are being built in high-risk areas of the nation, such as on barrier islands. There should be verification by a GAO audit that participating communities forbid building in floodways and other V zones, such as storm surge areas. GAO should study the actual development that has taken place after the Flood Insurance Rate Maps (FIRMs) were put in place in participating communities to see how the development conforms to the requirements of the FIRMs. If mitigation is not working, costs will go up and people will be killed. Mitigation failures must be fixed or the program will just encourage unwise construction into the future. Finally, the legislation to reduce losses to repetitively flooded properties, passed by Congress in 2004, should be a significant help in controlling costs and must, at long last, be adopted by FEMA.

In summary, the NFIP collects too little money to cover losses over the long haul. It now collects only enough to pay for relatively normal flooding in a year, with no long-term build up of reserves to cover larger than normal loss years. Katrina is but one example of this shortfall. But even bigger flooding events than Katrina are possible and, over the long-term, certain. Category 5 hurricane storm surges at high tide hitting Miami Beach or New York City and Long Island are examples of much larger potential flooding events. Stated simply, for the program to be actuarially sound, actuarially sound rates must be charged.

There are other steps beyond raising rates that should be taken to save money for the program, such as eliminating the excessive WYO expense charges for immediate savings and making sure that mitigation is fully enforced for longer-term savings. While these are necessary steps to bring the program into actuarial soundness, they are not sufficient. Only moving over time to full actuarial rates for all properties can achieve that.

#### **D. COMMENTS ON PROPOSALS FOR REFORM**

##### **1. H.R. 3121**

Attached to this testimony is a letter of opposition to H.R. 3121 that CFA distributed last week.

Our key concern with the bill is that this legislation would significantly expand the NFIP and increase costs to taxpayers, while taking inadequate steps to overhaul the wholesale

mismanagement of the program or to reduce unwise construction in flood plains that has occurred despite instructions from Congress to make the program actuarially sound. It would add wind coverage, increase limits on flood coverage, add business interruption coverage, add additional living expense coverage, and effectively lower the elevations of existing structures by allowing coverage below current first floor elevations. It would not require that a mitigation program be in place when wind coverage became available. In fact, given the permissive language of the bill, such a program might never be put in place.

The bill would reduce subsidies, but only by phasing in reductions starting in 2011—four years from now. This is far too little and far too late.

## **2. S. 3589 of the 109<sup>th</sup> Congress**

In the last session of Congress, this Committee reported to the Senate Floor legislation to restructure the NFIP (S. 3589) in a much more effective manner than the House effort. S. 3589 took several positive steps, including:

- Focusing on the critical need to reduce subsidies now;
- Requiring that state-chartered banks require flood insurance to increase market penetration;
- Adding reasonable deductibles to the program, reducing taxpayer exposure;
- Building reserves, over time, for future large losses;
- Adding a 500-year floodplain to the maps as well as require that the flood risk behind dams and levees be evaluated;
- Studying the excessive expenses paid to WYO insurers; and
- Studying the impact of expanding coverage rather than expanding them at a time of program insolvency.

CFA believes that this bill is a good place for you to start your consideration of how to improve the NFIP. We believe that removing more of the subsidy as we outlined earlier in this testimony could strengthen the bill. We particularly would like to see more emphasis on mitigation efforts, which we believe has not been strong under FEMA's recent administration of the program. It does no one – rich or poor – any favor to allow unwise construction in areas of special flood hazard. As demonstrated above, the program's promise of reducing loss of life and property through strong mitigation efforts has been undermined in recent years.

## **E. CONCLUSION**

There are two crucial steps that must be taken to make the NFIP work properly. The first is making sure that mitigation works so taxpayers can realize the program's promise of reduced taxpayer exposure in the future. The second is moving to actuarial soundness.

I never thought I would utter the words that consideration must be given to ending this beautifully designed but hopelessly administered program. However, repeal of the NFIP should be considered if the integrity of the program is not restored. This means bringing the program back quickly to its promise of covering all high-risk homes and businesses, eliminating unwise construction in the nation's flood plains, and taking steps to achieve full actuarial soundness. Congress must undertake tight oversight of FEMA's implementation of the program to achieve these vital goals. We do not trust FEMA to do it without such pressure being brought to bear.



## Consumer Federation of America

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

September 27, 2007

***Re: Urge Opposition to Costly and Harmful Flood Insurance Expansion, H.R. 3121***

Dear Representative:

The Consumer Federation of America urges you to oppose H.R. 3121, the Flood Insurance Reform and Modernization Act of 2007, which the House will vote on today. **This legislation would significantly expand the National Flood Insurance Program – and increase costs to taxpayers – while taking inadequate steps to correct the wholesale mismanagement of the program or to reduce unwise construction in flood plains that has occurred despite instructions from Congress to make the program actuarially sound.** Ultimately, this will harm home and business owners, who may – once again – be encouraged to build or buy in coastal areas prone to flooding.

This is unfortunate, because the NFIP was brilliantly conceived. Taxpayers would subsidize existing construction but new construction would not be allowed to occur in the highest-risk areas, such as high velocity “V” zones. In lower risk areas that would still experience serious wind damage and flooding, all new construction would have to be elevated according to local building codes.

However, poor management by the Federal Emergency Management Agency (FEMA) and lax enforcement of building requirements by local governments has made the program insolvent. Flood maps that FEMA was originally supposed to update every three years are antiquated. Some are over 20 years old. As a result, flood levels that were predicted before Hurricane Katrina were more than ten feet too low in areas like Hancock County, Mississippi. Moreover, the areas of predicted high-risk were much too small. Many who appeared to be “outside” the flood plain were actually in it and should have been required to buy flood insurance coverage. Since rates and mitigation requirements are based on these maps, taxpayers are subsidizing unwise construction as a result.

Unfortunately, H.R. 3121 would actually expand the NFIP in several significant ways without taking the bold steps that are necessary to bring the NFIP into fiscal alignment and discourage reckless building:

- **Maximum flood coverage would be expanded from \$250,000 to \$335,000 for homes and from \$500,000 to \$670,000 for businesses.** The program would also increase limits on contents coverage and cover additional living expenses and business interruption costs for the first time. Remarkably, the bill would offer coverage for the first time for losses in

basement or lower-home areas, the highest risk parts of homes, effectively lowering the elevation of all homes in the current flood plains.

- **Wind losses would be covered for the first time** (at non-subsidized rates.) Requiring FEMA -- one of the most incompetent federal agencies in recent history -- to supervise the adjustment of both flood and wind claims could be a recipe for disaster for many homeowners and taxpayers. H.R. 3121 requires wind policies to be underwritten starting in June, 2008 but places no requirements on FEMA or localities to reduce possible wind damage on homes that the government would insure. Instead of mitigation requirements, the bill requires a study. If and when FEMA ever gets the study, it is authorized (but not required) to “encourage” state and local measures that will reduce wind damage. This is a clear opportunity for developers to build unsafe structures while FEMA waits for the study, tries to develop a mitigation plan, attempts to convince communities to adopt the plan and actually enforces it. Even if they had a plan, FEMA would likely mismanage it, as it has with flood mitigation.
- **Unjustified subsidies are allowed to persist.** The bill phases in over an unidentified period of time a reduction in taxpayer subsidies for second homes and commercial structures, but this process does not begin until 2011. There is no justifiable reason to wait such a long period of time to begin eliminating subsidies for more affluent homeowners who can afford second homes. The bill also requires only a study of whether subsidies could be reduced for “pre-FIRM” homes (built prior to the availability of the Flood Insurance Rate Maps) rather than requiring that non-subsidized rates are charged on more expensive pre-FIRM homes.
- **Meaningful steps are not taken to improve the penetration of flood insurance.** Over 2 million homes were insured by the NFIP in the 1970s. Today there are only 5.4 million insured homes, despite requirements that federally supervised lenders require the purchase of insurance by borrowers in flood plains. Something is clearly wrong with the way the some lenders track the purchase of flood insurance by their borrowers. In response, this bill merely requires a study of whether state-regulated insurers should mandate the purchase of flood insurance.
- **A 500-year mitigation and purchase requirement (rather than the current 100-year standard) is studied but not required.** A 500-year standard would mean no taxpayer subsidies in the areas that have experienced storms between 100-year and 500-year storm levels.

**CFA does support the amendment to H.R. 3121 to be offered by Representative Gene Taylor that would eliminate a conflict-of-interest that encourages insurers to refuse to pay legitimate wind claims and to shift the cost of these claims to the NFIP.** This amendment would prohibit private write-your-own (WYO) insurers that offer flood insurance from using anti-concurrent causation (ACC) clauses in wind coverage. ACC clauses negate wind coverage for homeowners if flood damage occurs during the same general period of time. If insurers were prohibited from using ACC clauses, they would have to fully adjust each wind loss to determine how much of the damage was caused by wind and pay for that damage, subject to audit by the federal government.

Rather than expanding a program in disarray, we urge Congress to repair the fiscal soundness of the NFIP and to prove to taxpayers it can actually end subsidies of unwise construction.



Travis B. Plunkett  
Legislative Director

Sincerely,



J. Robert Hunter  
Director of Insurance