



**National Association  
of Home Builders**

**Testimony of Barry Rutenberg  
On Behalf of the  
National Association of Home Builders**

**Before the  
Senate Banking, Housing and Urban Affairs Committee**

**Hearing on  
“Reauthorization of the National Flood Insurance Program,  
Part II”**

**June 23, 2011**

**Introduction:**

Chairman Johnson, Ranking Member Shelby and members of the Senate Committee on Banking, I am pleased to appear before you today on behalf of the 160,000 members of the National Association of Home Builders (NAHB) to share our views concerning efforts to reform the National Flood Insurance Program (NFIP). We appreciate the invitation to appear before the Committee on this important issue. My name is Barry Rutenberg and I am the First Vice Chairman of the Board for NAHB and a home builder from Gainesville, Florida.

NAHB commends the Committee for addressing reform of the NFIP program. As we have seen this year, floods can devastate every part of the country—even areas we would never think of, and for this reason, NAHB wants to very clear that it strongly supports a long-term program reauthorization. We believe a five-year term is the only way to provide a steady foundation on which to build program revisions and ensure the NFIP is efficient and effective in protecting flood-prone properties. As you know, for the last several years, the NFIP has had to undergo a series of short-term extensions that have created a high level of uncertainty in the program and caused severe problems for our nation's already troubled housing markets. During these uncertain times, many homebuyers faced delayed or cancelled closings due to the inability to obtain NFIP insurance for a mortgage. In other instances, builders themselves were forced to stop or delay construction on a new home due to the lack of flood insurance approval, adding unneeded delay and job loss. NAHB believes a long-term extension will ensure the nation's real estate markets operate smoothly and without delay. We therefore commend the Committee for making this issue a priority.

**Background:**

The Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) plays a critical role in directing the use of flood-prone areas and managing the risk of flooding for residential properties. The availability and affordability of flood insurance gives local governments the ability to plan and zone their entire communities including floodplains. In addition, if a local government deems an area fit for residential building, flood insurance allows homebuyers and homeowners the opportunity to live in a home of their choice in a location of their choice, even when the home lies in or near a floodplain. The home building industry

depends upon the NFIP to be annually predictable, universally available, and fiscally viable. A strong, viable national flood insurance program enables the members of the housing industry to continue to provide safe, decent, and affordable housing to consumers.

The NFIP provides flood insurance to over 5 million policyholders, enabling homeowners to protect their properties and investments against flood losses. Further, the NFIP creates a strong partnership between state and local governments by requiring them to enact and enforce floodplain management measures, including building requirements that are designed to ensure occupant safety and reduce future flood damage. This partnership, which depends upon the availability of comprehensive, up-to-date flood maps and a financially-stable federal component, allows local communities to direct development where it best suits the needs of their constituents and consumers. This arrangement has, in large part, worked well. Unfortunately, the losses suffered in the 2004 and 2005 hurricane seasons, including the devastation brought about by Hurricanes Katrina, Rita and Wilma, have severely taxed and threatened the solvency of the NFIP.

According to FEMA, between the NFIP's inception in 1968 through 2004, a total of \$15 billion has been needed to cover more than 1.3 million losses. The 2004 hurricane season required close to \$2 billion in NFIP coverage, and the 2005 hurricane season resulted in payments totaling over \$13.5 billion. Combined claims for these two years exceeded the total amount paid during the previous 37-year existence of the NFIP program. While these losses are severe, they are clearly unprecedented in the history of this important program, as losses since that time have dropped significantly (e.g., \$612 million in 2007 and \$773 million in 2009). Thus, in our opinion, the losses of 2004 and 2005 are not a reflection of a fundamentally broken program. Nevertheless, NAHB recognizes the need to ensure the long-term financial stability of the NFIP and looks forward to working with this Committee to consider and implement needed reforms, including the possibility of privatizing the NFIP.

While NAHB supports reform of the NFIP to ensure its financial stability, it is absolutely critical that Congress approach this reauthorization with care. The NFIP is not simply about flood insurance premiums and payouts. Rather, it is a comprehensive program that guides future development and mitigates against future loss. NAHB believes a financially-stable NFIP is in all of our interests, and the steps that Congress takes to ensure financial stability have the potential to greatly impact housing affordability and the ability of local communities to exercise control

over their growth and development options; thus any such steps must be carefully designed and implemented to minimize these real impacts.

### **NAHB Supports Thoughtful NFIP Reforms:**

The unprecedented losses suffered in 2004 and 2005 have severely taxed and threatened the solvency of the NFIP. While these events have been tragic, sobering, and have exposed shortcomings in the NFIP, any resulting reforms must not be an overreaction to unusual circumstances. Instead, reform should take the form of thoughtful, deliberative, and reasoned solutions. A key step in this process is to take stock of where we are today, what has worked, and what has not.

An important part of the reform process is determining what area or areas of the NFIP are in actual need of reform. In the past, a key tool in the NFIP's implementation, the Flood Insurance Rate Maps (FIRMs), have been recognized by Congress to be inaccurate and out-of-date. Through the strong leadership of both Chambers, FEMA is completing its map modernization effort to digitize, update, and modernize the nation's aging flood maps. While FEMA was successful in digitizing most of the FIRMs, not all are based on updated hydrologic data and a recent National Academy of Sciences report faulted some of the maps because of a lack of reliable topographical data. As a result of these data deficiencies, there are large discrepancies between what was mapped as the 1-percent- annual chance of flood (100-year floodplain) decades ago and what areas may be reflected as falling within the 1-percent- annual chance of flood on the newer maps, and what the actual 1-percent- annual chance of flood is today. While FEMA is currently addressing this oversight through its RISKMAP program, NAHB believes that continued Congressional oversight is necessary. Ensuring the scientific validity of the maps, as well as ensuring that they reflect the true risks to property is an extremely important step for all who rely on NFIP. It is for this reason that NAHB supports the establishment of a Technical Mapping Advisory Council, as proposed in the House bill H.R 1309. We are hopeful that if such a council is approved, it would also result in further collaboration and coordination among the agencies and the private sector, thus leading to regular dialog to help ensure that the NFIP is working as intended.

Fixing the maps, however, is merely the first step. In an attempt to improve both the solvency of the program and its attractiveness to potential policyholders, NAHB supports a number of

reforms designed to allow FEMA, through the NFIP, to better adapt to changes to risk, inflation, and the marketplace. Increasing coverage limits to better reflect replacement costs, for example, would provide more assurances that legitimate losses will be covered and improve program solvency by generating increased premiums. Similarly, the creation of a more expansive “deluxe” flood insurance option, or a menu of insurance options from which policyholders could pick and choose, could provide additional homeowner benefits while aiding program solvency. Finally, increasing the minimum deductible for paid claims would provide a strong incentive for homeowners to mitigate and protect their homes, thereby reducing potential future losses to the program.

The NFIP and its implementing provisions were not created solely to alleviate risk and generate premiums. They were created to balance the needs of growing communities with the need for reasonable protection of life and property. Part and parcel of this is the need for regulatory certainty and expedient decision-making. First, the NFIP must continue to allow state and local governments, not the federal government, to dictate local land use policies and make decisions on how private property may be used. While officials at all levels of government must work together so that lives, homes, schools, businesses and public infrastructure are protected from the damages and costs incurred by flooding, the local communities must provide the first line of defense in terms of land use policies and practices. It is clear that the NFIP was specifically designed to allow this to occur, as the availability of flood insurance is predicated on the involvement of the community and relies on the breadth of activities that local governments can (and do) take to protect their citizens and properties from flood damage.

Additionally, FEMA must better coordinate its activities with those of other federal agencies who have oversight over other federal programs. For example, FEMA recently began requiring certain property owners to demonstrate compliance with the Endangered Species Act (ESA) prior to FEMA issuing them a Conditional Letter of Map Revision<sup>1</sup>. To do so, FEMA must engage the U.S. Fish and Wildlife Service or the National Marine Fisheries Service in an extensive consultation to determine the potential impacts on the endangered species in question and to develop any steps that could be taken to mitigate any adverse effects. FEMA, however, has claimed it does not have the resources to conduct the review and has deflected its

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<sup>1</sup> Procedure Memorandum No. 64 - <http://www.fema.gov/library/viewRecord.do?id=4312> (See Appendix)

responsibilities to the landowner. Not only does this cause confusion, but FEMA's dereliction of duties places landowners in a no-win situation, creating project delays, increased construction costs, and a decrease in housing affordability. As NAHB does not believe that the NFIP is a proper trigger for the ESA, we are hopeful that any legislation will clarify that such consultations are unnecessary. Likewise, we are hopeful that FEMA will work to improve collaboration and cooperation with the other federal, state and local entities as this program continues to evolve (see Appendix).

Similarly, NAHB believes FEMA could do a better job of coordinating and overseeing local efforts to implement building codes as part of a community's floodplain management program. In an effort to address this shortcoming, past NFIP bills have asked for a report on the inclusion of building codes in floodplain management criteria. While NAHB supports efforts to allow FEMA to conduct a study on the efficacy, economic and regulatory impacts, and effectiveness of including national model building codes, NAHB believes it would be beneficial to evaluate the effectiveness of allowing states to continue to use the national model codes - specifically, International Building Code and International Residential Code - with state-specific amendments, as currently allowed.

Past language has been unclear about exclusions and would allow state-prescribed or other privately-developed building codes and standards to be considered in the study. This is problematic because over the last five years, state and local governments have begun adopting various "green" codes and protocols for use as mandatory building standards within their respective jurisdictions. In addition to the fact that these codes may not adequately consider the unique geographic needs for building in zones with the potential for high-impact natural disaster risks, these codes and standards generally exist outside of the scope of the national model code development bodies. As such, they can be prohibitively expensive and may not provide all stakeholders an opportunity to equally participate in the codes' development.

NAHB supports allowing FEMA to investigate the costs and benefits of using the national model codes with respect to flood plain management and enforcement in areas with high-impact weather risks. However, NAHB recommends that the study language be modified to focus only on the national model codes that have provisions to address flood plain management criteria - i.e., the International Building Code and the International Residential Code - and not to consider "green" codes, even "green" codes that have been developed in accordance with the model

codes development process, as such codes are not designed to accommodate affordability criteria, which is critical in any cost-benefit analysis.

More importantly, NAHB believes that FEMA must maintain the flexibility for state and local governments to adopt innovative ways to address building needs that cannot be achieved through a nationally-applied or privately-developed code. As such, NAHB recommends that any study on the cost-benefit impacts of adopting national model building codes must include codified safeguards preserving the rights of state and local governments to amend the model building codes to meet specific local needs. Lastly, FEMA must ensure that any study on the impacts of building codes in NFIP be conducted with explicit prohibition against the development, implementation, or enforcement of national model codes by FEMA itself.

### **NAHB is Concerned with Potential Negative Reforms:**

As Congress considers strategies to bolster the financial stability of the NFIP, NAHB cautions against those reforms that have far-reaching and unintended consequences, including reforms that decrease housing affordability and the ability of communities to meet current and future growth needs. Chief among these concerns are changes that would require more homeowners to purchase insurance and expand the Special Flood Hazard Area (SFHA), or expand the current federal minimum residential design, construction, and modification standards.

NAHB believes that modifying the numbers, location, or types of structures required to be covered by flood insurance may play an important part in ensuring the NFIP's continued financial stability, but any such decision must be taken with extreme care. Two options have been widely considered in recent years. The first would require the mandatory purchase of flood insurance for structures located behind flood control structures, such as levees or dams. The second would mandate that all structures within the 1-percent- annual chance of flood obtain flood insurance regardless of whether or not they currently hold a mortgage serviced by a federally-licensed or insured carrier. While both of these strategies would increase the number of residences participating in the NFIP, buttressing the program against greater losses, they are not as simple as they seem. At a minimum, NAHB believes that before any reforms are enacted FEMA should first demonstrate that the resulting impacts on property owners, local communities, and local land use are more than offset by the increased premiums generated and the hazard mitigation steps taken. Only after such documentation is provided, documentation

that includes the regulatory, financial, and economic impact of reform efforts, can Congress, FEMA, stakeholders, and the general public fully understand whether or not such actions are appropriate.

One important component of the NFIP is the ability of communities, with the assistance of the federal government, to design, install, and maintain flood protection structures for the purpose of reducing risk. In most instances, residential structures located behind dams or levees that provide protection to the 1-percent-annual-chance flood level are not required to purchase flood insurance. This is a planned trade off. In exchange for constructing adequate flood controls, structures located behind those controls are removed from the 100-year floodplain or SFHA on the relevant FIRM. Accordingly, any reforms that contemplate bringing these same residences back under a mandatory purchase requirement raise very real and powerful equity and fairness issues. Should Congress or FEMA produce adequate documentation indicating that the benefits of mandating flood insurance purchase for residences behind flood control structures outweigh the costs to homeowners, NAHB would support these residences being charged premiums at a reduced rate to reflect their reduced risk. A great deal of time and taxpayer money was invested to provide additional flood protection to these residences, and it is only fair that homeowners in these areas, if required to purchase insurance, be recognized for their communities' efforts. In addition, some localities charge a levee fee on property taxes to residents for operation and maintenance of the levee, charging for flood insurance is an additional burden.

While changes to the NFIP's mandatory flood insurance purchase requirements present one set of issues, a programmatic change of the SFHA presents an entirely different and overwhelming set of concerns. Changing the SFHA from a 100-year standard (1-percent-annual chance flood) to a higher level (i.e. 500-year standard as described in previous bills) would not only require more homeowners to purchase flood insurance, but would also impose mandatory construction requirements on a completely new set of structures. Furthermore, those homeowners who had been in compliance with the 100-year standard will suddenly find themselves below the design flood elevation for the increased level. Although these structures may be grandfathered and avoid higher premiums as a result of their non-compliant status, this ends when the structure is sold or substantially improved. Placing these homes in this category impacts their resale value



in a very real way, as any new buyer may be faced with substantially higher premiums or retrofit and compliance costs.

Any revision of the SFHA standard would not only affects homeowners, but also home builders, local communities, and FEMA. An expanded floodplain means an expanded number of activities taking place in the floodplain, and a corresponding increase in the overhead needed to manage and coordinate these activities. A larger regulated floodplain would likely result in an increased number of flood map amendments and revisions, placing additional burdens on federal resources to make these revisions and amendments in a timely fashion. Residents located in newly-designated SFHAs would need to be notified through systematic outreach efforts. Communities would likely need to modify their floodplain ordinances and policies to reflect the new SFHA. In short, the entire infrastructure of flood management and mitigation practice and procedures that is currently institutionalized around the 1-percent-annual chance flood standard would need to change, all at a time when FEMA has admitted its lack of resources to provide current services.

Furthermore, there is little convincing data to demonstrate that such a change is necessary or prudent. Indeed, even specially-convened policy forums have failed to reach consensus on the issue. As a result, NAHB strongly cautions against making such sweeping changes to the NFIP and supports the House bill (H.R 1309), which maintains the 100-year level for both maps and the SFHAs.

While requiring mandatory flood insurance purchase is one option, another option that has been considered is to require structures to meet federal residential design, construction and modification requirements. NAHB is strongly opposed to expanding such requirements to any new classes of structures, including those found behind flood protection structures and those affected by any programmatic change to the SFHA. Any such requirements would substantially increase the cost of home construction and severely impact housing affordability. For example, elevating structures could add \$60,000 to \$210,000 to the cost of a home.<sup>2</sup> It is easy to see the tremendous impact that such reforms would have not only on nation's home builders, but also on the nation's homebuyers and homeowners. NAHB urges Congress to soften the impact of

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<sup>2</sup> Federal Emergency Management Agency, *Homeowner's guide to Retrofitting*, (Dec. 2009) table 3-3 – Using the dollar figures in table 3-3 multiplied by a 2,200 square foot median house size. (See Appendix)

any programmatic changes to the NFIP by ensuring that construction requirements remain tied to the 1-percent-annual chance flood standard.

Finally, past bills would phase-in actuarial rates for non-residential properties and non-primary residences. NAHB's primary concern is that flood insurance remains available and affordable. FEMA reports that 78% of policy-holders are already paying actuarial (risk-based) premiums<sup>3</sup>; nevertheless, NAHB believes reforms aimed at reducing federal subsidies for any subset of the remaining properties must ensure that overall affordability is not adversely affected. NAHB looks forward to working with the Committee to strike the proper balance between ensuring the long-term financial viability of the NFIP, and ensuring program affordability and equality for those who rely on this valuable government insurance program.

Thank you for this opportunity to share the views of the National Association of Home Builders on this important issue. We look forward to working with you and your colleagues as you contemplate changes to the National Flood Insurance Program to ensure that federally-backed flood insurance remains available, affordable, and financially stable. We urge you to fully consider NAHB's positions on this issue and how this program enables the home building industry to deliver safe, decent, affordable housing to consumers. I look forward to any questions you or other members of the committee may have for me.

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<sup>3</sup> Federal Emergency Management Agency, *Actuarial Rate Review: in Support of the October 1, 2010, Rate and Rule Changes*, (July 2010) p.22 (See Appendix)