

Washington Legislative Report

ASFPM Annual Conference

Atlanta, Georgia
May 31-June 5, 2015

Meredith R. Inderfurth
ASFPM Washington Liaison

From Last Year to This Year

At the time of last year's ASFPM Annual Conference in Seattle, the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) had recently been passed as a response to alarm over the "unanticipated consequences" of the 2012 Biggert-Waters Flood Insurance Reform Act. That bill bypassed the usual development and consideration by committees of jurisdiction and created some of its own "unintended consequences", which were not yet apparent.

During the summer of 2014, the Technical Mapping Advisory Council (TMAC) created in the Biggert-Waters bill, was stood up with an initial call-in meeting followed by the first in-person meeting on September 30th. John Dorman with the State of North Carolina was elected Chairman. Sally McConkey with the Illinois Water Survey and ASFPM's representative along with Scott Edelman of AECOM were elected Vice-Chairs.

In November, the House Financial Services Committee held a hearing on the Flood Insurance Market Parity and Modernization Act (HR 4558 in the 113th Congress).

The measure simplifies language in the Biggert-Waters legislation defining requirements for private flood insurance policies to meet the mandatory purchase requirement.

During a very short, two week, session following the August Congressional Recess and before the long recess prior to the November elections, the Congress gave up on passing the 12 regular appropriations bills before the end of the fiscal year on September 30th and, instead, passed a Continuing Resolution (CR) (PL 113-235) to fund the government until December 11th. By that time, the Congress would have returned for a Lame Duck session after the elections. Federal budgets for Fiscal Year 2015 were, therefore, in a holding pattern at FY 2014 levels.

In December, the Congress passed the Cromnibus appropriations bill (Continuing Resolution + Omnibus) which included FY 2015 appropriations

for all of the federal government except the Department of Homeland Security. DHS was funded under a further CR until February 27, 2015 because of concerns about the President's announced immigration policy.

Since Last Year

The elections produced a more substantial majority for Republicans in the House and created a Republican majority in the Senate. In the Senate, this meant that leadership of the Senate and all of its committees and subcommittees changed from Democrats to Republicans. This also meant adjustment of ratios of Republicans to Democrats on committees and related changes in the size of Republican and Democratic staffs.

FY'15 DHS Appropriations

Despite all the reorganization of committee assignments and other responsibilities, the House quickly passed an FY '15 appropriations bill for DHS (HR 240) on January 14th. However, the bill carried five amendments relating to the President's immigration policy. Another short CR became necessary before all parties backed away from the immigration dispute and passed the FY '15 appropriations bill on March 3rd.

That bill increased funds for flood risk mapping to \$100 million from the \$95.2 million in FY '14. Funding for Pre-Disaster Mitigation (PDM) remained at \$25 million, the same as for FY '14. Flood Mitigation Assistance (FMA) was funded at \$120 million with monies from the National Flood Insurance Fund.

Biggert-Waters and HFIAA Implementation

TMAC

The TMAC has met another three times in-person since the beginning of the year. It has divided its work into subcommittees and is focused on producing both its first annual report and its report on mapping future conditions, both due for completion in the fall.

Office of the Advocate

An interim Office of the Advocate was stood up prior to receiving a full appropriations measure for the fiscal year, in order to move on the legislative mandate. As of now, the office is staffed by several FEMA employees detailed from other responsibilities both in Washington and in regional offices. The official application period for the Advocate position is now closed and applications are under review.

Premium rate, fee and surcharge implementation

On April 1st, the most recent round of implementations took effect. Those are:

- New rate tables will apply for Substantial Damage/Substantial Improvement properties and these properties will be subject to 25% annual rate increases until they reach full risk rates.
- The Reserve Fund Assessment will increase to 15% for all except Preferred Risk Properties (PRPs) which will increase to 10%.
- The new premium surcharge will be applied to policies at \$25 for single family primary residences, individual condominiums or apartments which are primary residences, \$250 for non-residential properties or non-primary residences, \$250 for condominium buildings or other multi-family buildings.
- New rate tables will apply to properties newly mapped into a SFHA.
- The new optional \$10,000 deductible will be available for residential properties.
- The Federal Policy Fee will increase to \$45 for all policies other than PRPs.
- New minimum deductibles will apply to certain categories of properties.
- A new input section will be added when collecting information from policy holders to identify legal addresses for properties.

Executive Order 13690 and the Federal Flood Risk Management Standard

On January 30th, the President issued a new Executive Order, amending the previous floodplain management Executive Order (EO 11988), to establish a new flood risk management standard for federal investments and programs. Draft guidelines for implementation were published in the Federal Register on February 4th and were open for comment until May 6th. Once those guidelines are finalized, each federal agency will develop rules or guidance for its own programs, providing another opportunity for public comment.

The new standard incorporates a freeboard, or additional height above the national minimum standard, representing a safety factor. Almost half the nation has already adopted some degree of freeboard in local ordinances. A freeboard of 2 feet and 3 feet for critical facilities is called for in the new federal standard which applies to federal investments and programs only when funds are used to build or significantly repair or improve structures. The new standard can be implemented by use of freeboard or use of science-based, actionable data which considers future conditions or by building to the 500 year (.2% annual chance) flood elevation. It does not affect development standards or premium rates of the NFIP.

Concerns about the application of the new standard and its impacts as well as concerns about the processes by which the standard was developed have led to language in the Cromnibus appropriations bill and the Homeland Security appropriations bill prohibiting use of funds to implement the standard until opportunity has been provided for input from governors, mayors, tribal leaders and other stakeholders. It is likely that a hearing will be held on the subject in the House T & I Committee. A policy rider has already been added by amendment to the Energy and Water Appropriations bill for FY 2016 prohibiting use of funds in that bill for implementation of the FFRMS.

Meanwhile, FEMA has conducted many Listening Sessions around the country to collect views and encourage discussion.

Legislative Activity

Increasing Costs of Disasters

The House Transportation and Infrastructure Committee (T & I) and its Subcommittee on Economic Development, Public Buildings and Emergency Management, held a hearing on January 27th. Subcommittee Chairman Lou Barletta (R-PA) said in his opening statement, “The purpose of today’s hearing is to launch a public policy debate about the growing human and financial costs of disasters and to review if we –as a Nation- are responding in the most appropriate and cost-effective way.” He indicated that his top priorities for the 114th Congress are public buildings reform and disaster legislation.

The Chairman announced a series of Roundtable Discussions which will address such questions as: “How much do we really spend on disasters? Where is the money going? And what are the key drivers of those cost increases? How have disaster programs evolved over time? Are they still targeted at the greatest need and are they cost beneficial? What are the principles guiding federal assistance and how it is used to rebuild in the wake of a disaster? How can we bend the growing cost curve and ensure there is less damage and fewer people hurt in the future?”

The first Roundtable was held on March 18th and a second will be held on May 28th in Philadelphia. Testimony from the hearing can be found by going to: www.transportation.house.gov and clicking on January 27 on the calendar.

H.R. 1471 FEMA Disaster Assistance Reform Act

This bipartisan measure was marked-up and reported out of the House T & I Committee on April 15th. It is very likely to be taken up on the House floor in June or July. ASFPM provided a letter of support for the measure. It would:

- commission an assessment of trends in disaster losses – their causes and amounts. This would be accomplished through FEMA’s National Advisory Council (NAC) which is also asked to provide recommendations for reduction of losses and increased cost savings
- authorize FEMA through FY 2018
- re-authorize Urban Search and Rescue Response System (USAR)
- re-authorize the Emergency Management Assistance Compacts (EMAC) grants
- establish new aggregate limit on grantee and sub-grantee management costs under HMGP of 15%, with a maximum of 10% for the grantee and 5% for the sub-grantee (an ASFPM recommendation for several years)
- establish new aggregate limit on grantee and sub-grantee management costs of 10% for Section 406 (PA) mitigation
- clarify mitigation activities related to wildfires and earthquakes
- reinstate “a 3 year statute of limitations on FEMA’s ability to reclaim funds, based on a change in policy determination, after an applicant has spent the funds on previously determined eligible projects and when there is no evidence of fraud, waste or abuse”

Waters of the U.S.

The House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee held a joint hearing on February 4th.

The unusual joint hearing was entitled, “Impacts of the Proposed Waters of the United States Rule on State and Local Governments”. Testimony can be found at: www.transportation.house.gov.

H.R. 1732 Regulatory Integrity Protection Act

This bill passed the House on May 12 with a vote of 261-155 and was sent to the Senate for consideration. The accompanying committee report is: H.Rept. 114-93. It would require withdrawal of the Administration’s proposed rule defining “waters of the U.S.” within 30 days of enactment. It further provides instructions for development of a new rule to define “waters of the U.S.”. The bill had 70 cosponsors and the lead sponsor was Chairman Bill Shuster (R-PA) of the House T & I Committee. Chairman Shuster said, “The Administration’s process was flawed from the beginning, and it’s no surprise the result is a proposed rule that broadly expands federal power.”

H.R. 2028 Energy and Water Appropriations for FY 2016

This appropriations bill has passed the House. It includes language (Section 105) which prohibits use of funds in the bill to “develop, adopt, implement, administer or enforce any change to the regulations and guidance pertaining to the definition of waters under the Federal Water Pollution Control Act”. During House floor consideration, an amendment offered by Rep. Don Beyer (D-VA) to strike Section 105 failed on a voice vote.

Appropriations for FY ‘16

So far, the House has passed 3 of the 12 regular appropriations bills (Energy and Water, Military Construction/VA and Legislative Branch). Two others have been reported out of committee and are ready for House floor consideration (Commerce, Justice, Science and Transportation, Housing and Urban Development). The House Agriculture Appropriations bill is likely to be marked-up in mid-June. No appropriations bills have been considered yet on the Senate floor.

The big picture for appropriations remains problematic. The Congress has adopted a Budget Resolution which sets caps significantly below the President’s budget requests. Both House and Senate Appropriations Committees have now set allocations for their subcommittees based on the Budget Resolution, but acknowledge that the overall budget agreement could be adjusted later in the year.

This would include the possibility of avoiding the “sequestration” requirements and replacing them with an agreement comparable to a 2013 bipartisan two year budget agreement that has been the framework for the past two years. The possibility of policy “riders” on appropriations bills is very real.

Appropriations – Energy and Water

The House passed the Energy and Water Appropriations bill (H.R. 2028 and H. Rept 114-91) on May 1st. The Senate Appropriations Committee reported out its version of the bill (S. Rept. 114-54) on May 21st.

The bill so far provides \$864.7 million over the President’s budget request for the Army Corps of Engineers – Civil Works. That budget request included what the Administration described as \$31 million for the Corps’ technical assistance programs. There is no one line item for technical assistance, but rather the amount will be drawn from several other programs such as Flood Plain Management Services (FPMS), Planning Assistance to States (PAS), National Flood Risk Management Program (NFRMP) and Flood Control and Coastal Emergencies (FCCE).

More detail about the Army Corps budget can be found in ASFPM's "Insider" for May, 2015. The committee report referenced above also provides significantly more detail.

Appropriations – Homeland Security

It is likely that this bill will be one of the last marked up in the House. Timing in the Senate committee is less clear. The delay in the House pertains to concern about the same difficulties the FY 2015 bill faced over the President's announced immigration policy.

Hearings on the proposed FEMA budget were held in the House Subcommittee on April 23rd and in the Senate Subcommittee on April 22nd. FEMA Administrator Craig Fugate testified at both. ASFPM submitted Outside Witness Testimony to both House and Senate subcommittees expressing strong support for the budget increases requested for mapping, Pre-Disaster Mitigation (PDM) and Flood Mitigation Assistance (FMA). The testimony is at www.floods.org, under National Policies and Programs/Testimony.

Other Legislation to Watch

S. 544 Secret Science Reform Act

The bill was reported out of the Senate Environment and Public Works Committee (EPW) on April 28. An identical bill, H.R. 1030, passed the House in March and was accompanied by H.Rept. 114-34. It would prohibit the EPA from "proposing, finalizing, or disseminating a covered action unless all scientific and technical information relied on to support such action is the best available science, specifically identified, and publicly available in a manner sufficient for independent analysis and substantial reproduction of research results. A covered action includes a risk, exposure, or hazard assessment, criteria document, standard, limitation, regulation, regulatory impact analysis, or guidance."

H.R. 2230 Disaster Savings Accounts Act

This bill was introduced on May 1 by Rep. Dennis Ross (R-FL). It would establish tax-free savings accounts allowing annual contributions of up to \$5,000.

H.R. 1775 and S. 896 Innovative Stormwater Infrastructure Act

Introduced by Rep. Donna Edwards (D-MD) and Senator Tom Udall (D-NM) in April, the bill would create up to 5 regional centers of excellence for research, development of recommendations and for training and technical assistance regarding stormwater control and management. The bills were

referred to the House T & I Committee and Senate Environment and Public Works Committee.

Hearings of Interest

April 22 House Transportation and Infrastructure Committee (T&I)
Subcommittee on Water Resources

The subcommittee held a hearing on the Corps of Engineers budget request for FY 2016. Assistant Secretary for Civil Works, Jo-Ellen Darcy and Chief of Engineers, Lt. Gen. Thomas Bostwick testified. Overall, concern was expressed that the budget request was too low and that it reflected too little focus on the magnitude of deferred maintenance needs.

May 1 Senate Small Business and Entrepreneurship Committee

A field hearing was held in New Orleans, led by Chairman Vitter (R-LA).

The subject was, “How Flood Insurance Rate Increases and Flood Mapping Policy Changes Will Impact Small Businesses and Economic Growth”.

Testimony was heard from Roy Wright and Brad Kieserman, FEMA Deputy Associate Administrators for Mitigation and Insurance respectively, Dwayne Bourgeois of the North Lafourche Conservation, Levee and Drainage District, David McKey of Coldwell Banker One and Jerry Passman of the Louisiana Home Builders Association.

May 15 Senate Environment and Public Works Committee

The Committee held a field hearing in New Orleans entitled “Providing Necessary Flood Protection for Coastal Communities”. Among those testifying was Shirley Laska, Professor Emerita of the University of New Orleans. She was joined by the Regional Directors of the Southeast Louisiana Flood Protection – East and West, and the Executive Director of the Plaquemines Association of Business and Industry as well as the Commander of the Army Corps New Orleans District.

National Flood Insurance Program Reauthorization

While no hearings are on committee agendas at this point, it is important to note that many informal discussions are beginning among stakeholders and others interested in and engaged with the NFIP.

June 10 House T & I, Water Resources Subcommittee

The subcommittee will hold a hearing entitled, “One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014”.

Other Policy Activity

Briefing on Coastal Flooding

The American Meteorological Society (AMS) organized a briefing on March 11th for Congressional staff and NGOs on coastal flooding science and adaptation.

ASFPM, the Coastal States Organization and the Consortium for Ocean Leadership joined in cosponsoring the event. One of the three speakers was the Floodplain Manager for the City of Baltimore, Kristin Baja, who gave an impressive presentation on the adaptive strategies being implemented in Baltimore to manage adjustment to sea level rise and floodplain use.

Briefing on Inland Flooding

The American Meteorological Society (AMS) organized a briefing on May 6th for Congressional staff and NGOs on Inland Flooding. ASFPM co-sponsored the event. Among the several speakers were Bill Nechamen, ASFPM Chair and Ceil Strauss, ASFPM Vice Chair. They were joined by John Dorman, Director of the N.C. Floodplain Mapping Program, Stacy Underwood, Silver Jackets Program Coordinator the Army Corps, Baltimore District and Stephen Bekanich, Director of the PA Emergency Management Agency's Bureau of Recovery and Mitigation.

Resources for the Future event

RFF organized a group briefing and discussion May 11th on "Resiliency, Future Storms and the Role of Insurance". Much of the briefing and discussion centered on the RFF study of the feasibility of community based flood insurance.

SmarterSafer Coalition Report Release

The SmarterSafer Coalition, an interesting mix of insurance, housing, environmental and other interests, released a report on April 21st entitled, "Bracing for the Storm: How to Reform U.S. Disaster Policy to Prepare For A Riskier Future". The report is on the coalition website: www.smartersafer.org.

Property and Casualty Insurers' National Flood Conference

In the absence of a National Flood Conference organized by FEMA, the Property and Casualty Insurance Association of America took on the project this year. The conference was held from May 18-20 in the Washington D.C.

area and attracted many lenders, insurance companies, Write Your Own companies, insurance agents and organizations as well as other stakeholders. ASFPM Executive Director Chad Berginnis participated in a panel entitled, “Just Two Years Away: Setting the Stage for NFIP Reauthorization”.

Coalitions

ASFPM participates in the following coalitions of groups focused on particular issues:

Stafford Coalition
Streamgage Coalition
Conservation Coalition
USGS Coalition
Congressional Hazards Caucus Alliance
Flood Map Coalition

Legislation and committee reports referenced can be found by going to www.Congress.gov and typing in the bill number.