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Revisiting the National Flood Insurance Program

By Alan C. Weinstein

As the floodwaters caused by Hurricane Fran receded last month, a television ad appeared on stations across the country: A couple stares in dismay at the devastated interior of their home while the narrator explains that most homeowner insurance policies do not cover flood damage, but that coverage for flood hazards is available through the federal government. The ad refers to the National Flood Insurance Program, a federally financed program that makes flood insurance available to property owners in communities that have adopted regulations to control land use and development in areas identified as prone to flooding.

The advertising blitz is needed because public participation in the federal flood insurance program remains low in many parts of the country, despite the fact that the insurance program has been in place since 1968. Recognizing this fact, Congress amended the program in 1994 to bolster its effectiveness. This article discusses the hazards posed by floods, the options for their control, the operation of the insurance program, and the changes made by the 1994 amendments.

HAZARDS POSED BY FLOODS

Floods have been the cause of the worst natural disasters in the United States. The fabled Johnstown, Pennsylvania, flood of 1889 killed 2,200 people when heavy rains burst a dam. In 1900, 6,000 people died when Galveston, Texas, was inundated by the tidal surge from a hurricane, a number that still stands as the nation's highest death toll from a natural disaster. Although deaths from flooding have declined dramatically in recent decades—fewer than 50 people are believed to have died in the devastating Midwest floods of 1993—as a result of improvements in weather forecasting, communications, and emergency management response, floods still cause enormous property damage.

The total damage to insured property in recent years caused by three severe hurricanes—Fran (1996), Andrew (1992), and Hugo (1989)—was close to \$25 billion, while damage from the Midwest floods of 1993 was approximately \$12 billion. The cumulative financial effect of numerous smaller floods is also substantial. Although only seven percent of the land area of the United States is subject to flooding, that area contains over 20,000 communities. All told, more than 9.6 million dwelling units, plus substantial non-residential development, are threatened by flooding.

TYPES OF FLOOD CONTROLS

There are two basic options for reducing flood hazards: structural and nonstructural controls. Structural controls

generally involve modification of a floodplain to reduce the hazard. They include the construction of dams to hold floodwater in upstream areas, channeling rivers so floodwaters pass through more quickly, and constructing levees and dikes along riverbanks to protect low-lying areas. Nonstructural options call for either changing the ways floodplains are used so that periodic flooding can be accommodated, or using sites that are not subject to flooding for activities or structures that are susceptible to damage by floods.

Historically, structural controls have been the preferred method. In the last 30 years, however, we have been moving towards nonstructural approaches. This change is due, in large part, to the recognition that structural controls, while very costly, have often proved ineffective in reducing flood damages. In 1993, despite annual expenditures on flood control exceeding \$4 billion, damage from that year's Midwest floods topped \$12 billion. Moreover, structural controls may actually increase future flood losses by creating a false sense of security and encouraging the use and development of floodplains.

We have also recognized that structural controls damage environmental resources in floodplains. Dams inundate floodplain vegetation and transform free-flowing rivers and streams into impoundments, altering water quality and adversely affecting fish and wildlife. Channelization often leads to sedimentation and siltation of downstream areas, while dredging destroys aquatic habitat.

Because of the environmental and economic costs of structural controls, and questions regarding their effectiveness, other approaches have been pursued. The emphasis in recent years has been on reducing flood hazards, either through changing the ways floodplains are used in order to accommodate periodic flooding, or locating activities or structures that are susceptible to damage by floods at sites that are not at hazard for flooding. If the nature of an activity is such that it requires location in a floodplain, or if the flood hazard is sufficiently low, the construction of flood-resistant buildings in floodplains may be justified. In some cases, where existing investments in the floodplain justify continued use of that location, existing buildings can be floodproofed to reduce future losses.

Local, state, and federal governments use a variety of techniques to discourage the use of flood-prone sites and encourage the use of flood resistant design and construction. Governments have adopted policies limiting the extension of infrastructure (e.g., roads, water mains, and sewers) in flood hazard areas to discourage development. Development rights can be purchased to preserve floodplains as undeveloped open space. Building codes can be used to control the design and construction of buildings. Development in floodplains can be controlled through floodplain zoning, subdivision regulations, or comprehensive codes.

STATE AND LOCAL PROGRAMS

Each level of government is involved in the effort to reduce damage from floods and protect the unique resources of floodplains. Program responsibilities are generally divided according to each level's particular competencies: flood insurance and financial aid for disasters is provided by the federal government, regulation of development in floodplains generally falls to local government, and states tend to play a coordinating role.

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State involvement in floodplain management can take several forms. Every state is involved with floodplain management at least to the extent of appointing a state coordinator to work with the insurance program. Most states have floodplain management "programs" comprising activities undertaken by a variety of state agencies and other governmental entities within the state and usually directed by the agency that coordinates the state's insurance program efforts. Ten states directly issue permits for activities in floodplains. Some states regulate only specific activities, such as the construction of dams or the channelization of streams, while others regulate a full range of development activities. Other states regulate only specific areas, such as floodways, shorelines, coastal areas, or specific waterbodies. State programs regulating wetlands or coastal construction may include floodplain management criteria.¹

A state may delegate authority to local governments to regulate activities in the floodplain, either through special or general authorizing statutes. Some states require local governments to regulate floodplains. State regulation may be limited to floodways or other special areas, with local regulation authorized or required in the flood fringe. In addition to authorizing local regulations, many states mandate special procedures or standards that go beyond the federal minimum requirements. See Association of State Floodplain Managers, *Floodplain Management 1992: State and Local Programs* 15-21 (1992).

Most floodplain management programs are implemented at the local level because local government usually determines and supervises land use within its jurisdiction and because the impetus for obtaining financial and technical assistance from the state and federal levels originates with the local government. More than 18,000 communities have adopted regulations sufficient to meet the minimum standards of the insurance program and many communities have gone beyond the minimum federal standards to create more innovative or comprehensive programs.

There is enormous variety in the management programs implemented by local governments. The extent and complexity of any given program will vary according to a community's size; the floodplain management policies, political structure, fiscal status, and economic condition of the state in which it is located; the type of flooding it faces; and the amount of development pressure in the community as whole and in those areas prone to flooding. Typically, smaller communities have no formal "program" but rely on the efforts of a single official, usually a building inspector, who monitors and enforces compliance with the local flood hazard reduction regulations along with all other duties of the position. Larger communities, with more resources and greater access to technical expertise, will have more sophisticated and complex programs that may involve staff from such departments/functions as planning, engineering, emergency management, maintenance, inspection and enforcement, parks and recreation, and water and sewage treatment. See Association of State Floodplain Managers, *Floodplain Management 1992: State and Local Programs* 3-6 (1992).

1. See, generally, Association of State Floodplain Managers, *Floodplain Management 1992: State and Local Programs* (1992); L. R. Johnston Associates, *Floodplain Management in the United States: An Assessment Report*, Vol. 2 (1992).

THE NATIONAL PROGRAM

The federal government, which has assumed the major financial burden for disaster relief, developed flood insurance as a means of transferring part of the cost of disaster relief to those who occupy lands prone to flooding. In 1968, Congress enacted the National Flood Insurance Act (NFIA),² which created the National Flood Insurance Program in order to make federally subsidized flood insurance available for homes and businesses. To reduce future losses and the resulting fiscal liabilities, flood insurance is available only in communities that adopt regulations restricting development in identified floodplains. The insurance program thus offers a powerful incentive for state and local governments to regulate floodplain development consistent with minimum federal standards.

Out of 21,926 communities identified as having land prone to flooding in 1990, more than 18,023 (82 percent) had adopted floodplain regulations. Approximately 2.39 million properties were insured as of 1990, with a total federal liability in excess of \$201 billion. See Natural Hazards Research and Applications Information Center, University of Colorado at Boulder, *Floodplain Management in the United States: An Assessment Report* 37-40 (1992). One year after the Midwest flood of 1993, the number of policies written in the nine affected states increased by 35 percent.

Although the National Flood Insurance Act has been amended several times, most recently in 1994,³ the basic method of operation for the insurance program has remained the same. It is administered by the Federal Insurance Administration (FIA), which is part of the Federal Emergency Management Agency (FEMA). The program offers flood insurance to property owners in flood-prone communities that agree to meet the requirements of the program. For the regulations implementing the insurance program, see 44 C.F.R. Part 60 (1996).

The insurance program is triggered when FEMA, acting through the FIA, notifies a community that it is flood prone, either entirely or in part. In order to qualify for federally subsidized flood insurance, a community must adopt and enforce floodplain management regulations addressing the flood hazards within its jurisdiction. These generally require the elevation of structures above the 100-year floodplain⁴ and the design of new construction to avoid increasing flood hazards. The program also encourages more restrictive control of land use and more restrictive construction standards in the affected areas.

2. The National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 572, current version codified at 42 U.S.C. §§ 4001-4129 (1996).

3. National Flood Insurance Reform Act of 1994, Pub. L. 103-325, Title V, 108 Stat. 2269, codified at various sections, 42 U.S.C. §§ 4001 *et seq.* (1996).

4. Many regulatory programs refer to floods in terms of their probability of occurrence. The "100-year flood" is not a flood that occurs once every 100 years. Instead, it is the level of flooding that hydrologists predict will be equaled or exceeded once out of every 100 years on average over a period of many hundreds of years. The 100-year flood is thus an expression of probability. It is the flood that is believed to have a one percent chance of being equaled or exceeded during any given year. Other commonly used recurrence intervals are the 10-year flood, which has a 10 percent chance of occurring in any year, and the 500-year flood, which has an annual probability of occurrence of 0.2 percent.

As a condition of receiving any form of federally related financial assistance for acquisition or construction in identified hazard areas, the insurance program requires the purchase of flood insurance. There are two layers of coverage supplying different amounts of insurance and requiring different levels of regulation. Before subsidized insurance will be made available, communities must submit an application to participate in the insurance program. This application must include basic information relating to legislative authorization, population, development, and efforts to manage development in floodplains.

When a community applies to participate in the insurance program, the FIA begins technical studies that eventually define the various flood hazard areas within the community, and assigns insurance premium rates to each area. The first study produces a general Flood Hazard Boundary Map, on which areas of special flood hazard are designated as "A-zones." The second study results in a Flood Insurance Rate Map, on which the basic zones are more finely delineated and given risk premium rates according to their relative risk. On the rate map, coastal high hazard areas subject to high velocity storm surge are designated by several categories of "V-zones."

LOCAL ELIGIBILITY FOR INSURANCE PROGRAM

The Emergency Program

In the period after a community has applied to participate in the insurance program, but before the FIA has provided any flood-related data or issued an boundary map, the community is eligible for lower level "first layer" insurance at subsidized rates as long as it has established minimum construction standards in flood-prone areas. At this stage of the program, the local government must require permits for all proposed development, including manufactured homes; must review permits for a determination of reasonable safety from flooding and for compliance with federal and state laws; and must enforce certain design, construction, and placement standards for all new construction and for substantial improvements.

As redefined by the regulations implementing the 1994 amendments to the NFIA, substantial improvements are defined as "any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the 'start of construction' of the improvement. This term includes structures which have incurred 'substantial damage,' regardless of the actual repair work performed."⁵

If the proposed building site is in a flood-prone area, a community must require new construction and substantial improvements to be adequately anchored to prevent flotation, collapse, or lateral movement from flood forces; to be constructed with materials and methods that minimize flood damage; and to have electrical, heating, ventilation, plumbing, and air conditioning equipment designed or located to prevent water from entering or accumulating during flooding. The community must review proposed developments in flood-prone areas to assure that the proposals are consistent

with the need to minimize flood damage in these areas, that all public utilities and facilities are located and constructed to minimize or eliminate flood damage, and that adequate drainage is provided.

Water supply systems in flood-prone areas must be designed to minimize or eliminate infiltration of flood waters into the systems. Sanitary sewage systems and onsite waste disposal systems must be designed to minimize or eliminate exfiltration, infiltration and impairment during flooding. *See* 44 C.F.R. §§ 60.3(a)(3)-(a)(6) (1996). The community's flood protection regulations must be legally enforceable and applied uniformly to all privately and publicly owned land, and must take precedence over any less restrictive ordinances. *See* 44 C.F.R. § 60.1(b) (1996).

The Regular Program

The emergency program requirements for flood insurance availability apply during the early stage of community participation. Within six months of the date that increasing levels of flood-related data are made available by the FIA, the community must enter the regular program by enacting regulations that meet more restrictive standards. Local governments are subject to suspension from the insurance program for failing to enact, or for repealing, floodplain management regulations meeting the requirements of the act. A failure to adequately enforce otherwise adequate floodplain regulations may subject the community to probationary status, with additional premiums being charged to new or renewing policyholders.

Once a community enters the regular program, flood insurance is required in all but one subcategory of A-zones and in all V-zones. Basically, these represent areas subject to the 100-year or base flood, including coastal areas vulnerable to storm surge and storm wave heights.⁶ From the date the rate map is established, "first layer" flood insurance is available at subsidized rates for existing structures. First layer coverage is also available for new construction and substantial improvements, but only at premium rates that reflect actual risk. Similarly, higher amounts of "second layer" coverage are available to new and existing structures at premium rates that reflect actual risk.

The regulations that a community must adopt increase in stringency with each additional level of data provided by the FIA. If the FIA has designated areas of special flood hazard (A-zones) by publication of a Flood Hazard Boundary Map or Flood Insurance Rate Map, but has produced neither water surface elevation data, nor a regulatory floodway or coastal high hazard areas (V-zones), all construction and proposed development in A-zones must meet the emergency program regulatory standards discussed above. All new subdivision proposals greater than 50 lots or acres, including those for manufactured homes, must include base flood elevation data. The community must utilize this data to assure that the lowest floors of structures (including basements) are elevated to, or above, the base flood elevation. Structures that are not must be designed as watertight, with walls substantially impermeable to water and capable of resisting hydrostatic and hydrodynamic loads and the ef-

5. 44 C.F.R. § 59.1 (1996). "Substantial improvement" does not include work done to meet minimum health, safety, or sanitary codes, or work to maintain "historic structures."

6. Rate maps are divided into zones with some designations such as "A" and "V" zones relating to special flood hazard areas, with "V" zones relating to coastal special flood hazard areas.

fects of buoyancy. These areas must also be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs must be certified by a registered engineer or architect or meet specified design criteria. Most manufactured homes to be placed or substantially improved within A-zones must be installed using methods that minimize flood damage, with the lowest floor elevated to or above the base flood elevation, and must be anchored to an adequate foundation system.⁷

At this point in the program, the community must obtain and review information from federal, state, and other sources, and use it to select and adopt a regulatory floodway, designed to "carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point." The community must prohibit any fill, development, or substantial improvement within the adopted floodway that would result in any further increase in flood levels anywhere in the community during the discharge of the base flood. Where base flood elevation data are utilized, the community must obtain and maintain records of the elevation of the lowest floor (including basement) of all new and substantially improved structures within A-zones, and the elevation to which any nonresidential structure has been floodproofed.

In the regular program, communities must also conform to a number of criteria relating to riverine situations. A community is required to notify all adjacent communities and the state coordinating office prior to any alteration or relocation of a watercourse, and must submit evidence of the notification to the FIA. It must also maintain the flood-carrying capacity of the altered or relocated portion of any watercourse. Any manufactured homes "to be placed within Zone A" must be elevated and anchored to resist flotation, collapse, or lateral movement. This requirement is in addition to any state or local anchoring requirements for resisting wind forces.

If the FIA provides final base flood elevations for one or more A-zones on a rate map, but has not identified the V-zones, the community must enforce the above regulations in all categories of A-zones, with additional requirements. All construction and substantial improvement of residential structures in A-zones with designated base flood elevations, and in A-zones with shallow water depths or unpredictable flow paths must have the lowest floor (including basement) elevated to or above the base flood elevation, or above the depth indicated on the rate map, or at least two feet above the highest adjacent grade if no water elevation depth is specified.

New and substantially improved nonresidential construction in these zones must meet the same elevation standard as residential structures, or be completely floodproofed (including utilities and sanitary facilities) below base flood elevation. Any floodproofing must be certified by a registered engineer or architect as being in compliance with accepted standards for such construction, and the record of certifications, including the specific elevations to which struc-

tures are floodproofed, must be maintained by a designated community official.

Until a regulatory floodway is designated, no new development or substantial improvement may be permitted in areas of special flood hazard with water surface elevations indicated unless there is a showing that it will not cumulatively raise the base flood elevation by more than one foot. In areas with shallow water depths and unpredictable flow paths, adequate drainage must be supplied to guide floodwater around and away from proposed structures. When the FIA provides flood data sufficient to allow the designation of a regulatory floodway, the community must select and adopt the floodway, and prohibit all fill and construction within the floodway that would increase the level of the base flood discharge anywhere in the community.

The final level of regulation is triggered when the FIA provides base flood elevations in all designated A-zones on the rate map, and identifies V-zones, if applicable. The boundaries of V-zones are determined by the inland penetration of a three-foot breaking wave, riding the 100-year storm surge. In V-zones, the base flood elevation is calculated using the 100-year storm wave crest elevations, rather than the lower storm surge level utilized in calculating base flood elevations for A-zones, which are subject to little or no wave action. In addition, communities must require that all new construction be located landward of the mean high tide line and be elevated on pilings or columns so that the horizontal structural members of the lowest floor are elevated above the base flood elevation. Piling or column foundations and all structures in V-zones must be certified by a registered engineer or architect as being capable of resisting flotation, collapse, and lateral movement due to wind and water loads during the 100-year storm acting simultaneously on all building components.

All new construction and substantial improvements in V-zones must be free of obstructions below the lowest floor, or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening designed to collapse under water loads less than those of the 100-year storm without affecting the structural integrity of the building. The space enclosed by these walls may be used only for parking, building access, or storage. Fill may not be used for structural support, and any alteration of sand dunes and mangrove stands is prohibited if the potential for flood damage would increase.

Though the requirement that participating communities adopt adequate floodplain management regulations is statutory and may not be waived, under extraordinary circumstances FEMA may accept regulations that vary. A community proposing a different regulatory structure must explain the nature and extent of and reasons for the exception request, and include supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, as well as data on the impact to public safety and the environment.⁸

8. Generally, variances require a showing of good and sufficient cause, a determination of exceptional hardship, and a finding that granting the variance "will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances."

7. An exception is provided for manufactured homes to be placed or substantially improved within an existing park only if no unit in that park has incurred substantial damage as the result of flooding. This exception does not apply to new expansions of existing parks.

COMPREHENSIVE MANAGEMENT PLANS

The insurance program encourages the formation and adoption of comprehensive management plans for flood-prone areas. Though adoption of such plans is not mandatory, communities are required to evaluate a number of planning considerations which, if included in a flood management ordinance, would strengthen the overall program. Such regulations should not permit development of flood-prone areas unless the development is "appropriate" in light of probable flood damage, is an "acceptable social and economic use of the land in relation to the hazards involved," and "does not increase the danger to human life." The regulations should also prohibit "nonessential or improper installation of public utilities and public facilities in flood-prone areas."

In formulating community development goals after a flood disaster, participating communities must consider preserving flood-prone areas for open space purposes, relocating occupants away from such areas, acquiring frequently damaged structures, and acquiring land or land development rights for public purposes with the goal of minimizing future property losses. In designing a comprehensive flood management plan, and in adopting its regulations, the community must consider the elements listed in the table below.

THE 1994 CHANGES TO THE NATIONAL FLOOD INSURANCE PROGRAM

Congress had two main goals in mind when it created the insurance program in 1968: (1) to provide affordable insurance to property owners in areas prone to flooding and (2) to "encourage State and local governments to make appropriate adjustments to *constrict* the development of land which is exposed to flood damage and minimize damage caused by flood losses, . . . [and] *guide* the development of future construction where practicable away from locations which

are threatened by flood hazards." See National Flood Insurance Act of 1968, §1302(d)-(e) (emphasis added).

In 1994, acknowledging that the program had failed to achieve these goals, Congress enacted reforms that sought to: (1) increase compliance with insurance purchase requirements by lenders and secondary market purchasers; (2) reduce the number of properties in the program that do not comply with flood protection standards; (3) strengthen the Community Rating System (CRS) program that provides incentives, in the form of reduced premiums, to communities that voluntarily adopt and enforce stricter measures to reduce the risk of flood damage; and (4) provide grants to states and communities that engage in activities to mitigate the risk of flooding. See House Conference Rep. No. 103-652 (1994) 195-196.

In response to long-standing criticisms of the insurance program, the legislation also authorized studies of possible future reforms. The most important of these are several related studies that respond to criticism of the fact that insurance rates for coastal properties are based solely on the risk posed by flooding and do not reflect the significant risks represented by the effects of erosion. As a result, owners of coastal properties pay flood insurance premiums that do not reflect the true scope of the risk of damage to their properties.

Community Rating System and Incentives

The 1994 amendments to the NFIA provides for a voluntary community rating system program to provide incentives, in the form of credits on premium rates for flood insurance, for measures that reduce the risk of flood or erosion damage. Such credits are available for flood insurance coverage in communities that the director of FEMA determines have adopted and enforced measures that reduce the risk of flood-

Elements of Local Floodplain Management Plans

(see 44 C.F.R. §60.22 c (1996))

1. Human safety.
2. Diversion of development to areas safe from flooding.
3. Disclosure to prospective purchasers, renters, and other interested parties that structures are located in flood-prone areas or below base flood levels, that variances have been granted for structures in flood-prone areas, and that premium rates for new structures at elevations below the base flood increase as the elevation decreases.
4. Adverse effects of floodplain development on existing development.
5. Encouragement of floodproofing.
6. Flood warning and preparedness plans.
7. Provision for alternative access and escape routes.
8. Establishment of minimum floodproofing and access requirements for hospitals, nursing homes, police stations, and other public or quasi-public facilities located in the flood-prone areas.
9. Improvement of local drainage.
10. Coordination of plans with neighboring communities.
11. Requiring new construction in areas subject to subsidence to be elevated above the base flood level equal to expected subsidence for at least a 10-year period.
12. Requiring developers to delineate floodways.
13. Restricting alteration of watercourses to maintain overall flood carrying capacity.
14. Requiring setbacks for new construction in coastal high hazard areas.
15. Requiring additional elevation above the base flood level for new construction in areas of special flood hazard and coastal high hazard areas.
16. Requiring consistency between state, regional, and local comprehensive plans and floodplain management.
17. Requiring pilings or columns, rather than fill, for the elevation of structures within flood-prone areas.
18. Prohibiting hazardous materials facilities within floodways and coastal high hazard areas.

ing and erosion damage that exceed specified criteria. The credits on premium rates are based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community. If a community has received mitigation assistance under § 4104(c) of the NFIA (42 U.S.C. § 4104(c) (1996)), the credits will be phased in as determined by the director of FEMA so as to recover the amount of such assistance provided for the community.

Mitigation of Flood and Erosion Risks

The 1994 amendments to NFIA eliminated both the Flooded Property Purchase Program and the Erosion-Threatened Structures Program, subject to a one-year transition phase. These programs have been replaced by a Mitigation Assistance Program that will provide grants to states and communities for planning and carrying out activities designed to reduce the risk of flood damage to structures covered by flood insurance under the insurance program. To be eligible for financial assistance under this program, a state or community must develop a flood-risk mitigation plan that is approved by the director of FEMA. The 1994 amendments authorized the director of FEMA to establish a new National Flood Mitigation Fund as the source of the financial assistance provided under the program. *See* 42 U.S.C. § 4104(c) (1996).

Increased Flood Insurance Purchase Requirements

The Flood Disaster Protection Act of 1973,⁹ sought to increase participation in the insurance program by requiring both that communities participate in the program as a prerequisite to receiving federal flood assistance and that owners of property in identified flood hazard areas purchase flood insurance as a prerequisite to obtaining certain federal financing. Further, financial institutions that were federally regulated, supervised, or insured were prohibited from making, increasing, extending, renewing, or purchasing any loans secured by improved real estate or a mobile home for which flood insurance was available unless the property securing the loan was insured.

The 1994 amendments have made several changes in these insurance purchase requirements in an effort to increase compliance by lenders and secondary market purchasers. The 1994 act directs the federal agencies that regulate financial institutions¹⁰ to issue "any regulations necessary" to direct regulated lending institutions to meet the above lending requirement. (An exception to this requirement: if the building or mobile home and any personal property secur-

ing the loan was covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available under the act with respect to the particular type of property.) An identical requirement is imposed on federal agency lenders, which must promulgate regulations "consistent with and substantially identical to" the regulations above.

The act also addressed the problem caused by borrowers who, having experienced an insured flood loss and believing they will never experience another, cease payment of their insurance premiums during the term of their loan. The act now requires that financial institutions and their servicers that escrow taxes, insurance premiums, or any other fees must escrow all premiums and fees for flood insurance.

The 1994 act also requires lenders to discern if collateral for loans is not covered by flood insurance and notify FEMA of any change in the servicer of any loan. In addition, the act subjects financial institutions, but apparently not mortgage companies or nonfinancial institution servicers, to civil penalties if they are found to have a pattern or practice of committing violations of the insurance requirements, escrow provisions, flood insurance notice requirements, or the "forced placing" of flood insurance provisions. The penalties may be up to \$350 for each violation, up to an aggregate of \$100,000 in a single calendar year. *See* Pub. L. 103-325 § 525(f)(5), Sept. 23, 1994, codified at 42 U.S.C. § 4012a(f)(5) (1996).

SUMMARY AND CONCLUSION

The 1994 amendments to the insurance program have strengthened the underlying policy: moving away from efforts to reduce flooding through structural controls and towards the increasing use of nonstructural approaches, such as changing the ways floodplains are used and using sites that are not subject to flooding for activities that are susceptible to flood damage. The amendments accomplish this by providing financial incentive to communities that take steps to reduce the risk of flood or erosion damage and mandating the imposition of new regulatory requirements on financial institutions.

At the same time, the amendments did not go as far as many critics believe is necessary to address the special problems posed by flood risks in coastal areas. Critics have long pressed for changes in the insurance program that would require the owners of coastal properties to pay insurance rates based on the risks posed by erosion, as well as those posed by flooding. Congress, however, chose the more cautious alternative of merely authorizing studies of this issue. Given political realities, this compromise still represents a significant legislative milestone en route to creating an insurance program that rewards efforts to avoid flood damage and penalizes development that ignores flood risks.

9. Pub. L. No. 93-234, 87 Stat. 975 (1973).

10. These are: Federal Reserve Board, Federal Deposit Insurance Corporation, Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and Farm Credit Administration.