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TESTIMONY ON IMPACTS OF THE BIGGERT-WATERS FLOOD INSURANCE REFORM ACT OF 2012

PRESENTED TO THE
SENATE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
AND
SENATE BANKING AND INSURANCE COMMITTEE

BY

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On behalf of the County Commissioners Association of Pennsylvania (CCAP), I want to thank Chairman Yaw, Chairman Yudichak, Chairman White and Chairman Stack, and members of the Senate Environmental Resources and Energy and Banking and Insurance committees for the opportunity to speak to you today regarding the impacts of the Biggert-Waters Flood Insurance Reform Act of 2012. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

In the 1960s, after widespread flooding along the Mississippi River, most private insurers stopped offering flood insurance plans, as they found that the plans required greater payouts than the sum of their premiums. Established in 1968, the National Flood Insurance Program (NFIP) fills this void and offers federal flood insurance to homeowners, renters and business owners in participating communities. Today, NFIP provides nearly all of the flood insurance policies in the U.S. While coastal states typically account for most of these policies, NFIP provides coverage to participating communities in all 50 states.

Although NFIP is a voluntary program, local communities are heavily incentivized to participate. If a community does not participate in NFIP, its property owners cannot purchase NFIP policies, which are often required by mortgage lenders if a property is in a floodplain. Communities that participate in NFIP must have, and enforce, a floodplain management ordinance, which is meant to lower a community's risk of flooding. Communities with Special Flood Hazard Areas (SFHAs), as defined by the Federal Emergency Management Agency (FEMA), must participate in NFIP to receive financial assistance for future flood-related disasters.

The Community Rating System (CRS) is a voluntary incentive program that recognizes and encourages community floodplain management, local mitigation and outreach activities that exceed the minimum NFIP requirements. Across the country, there are 3.8 million policyholders in 1,211 communities who participate in CRS. Under CRS, flood insurance premiums are discounted to reflect the reduced flood risk resulting from community actions that exceed NFIP requirements. Rates are discounted in five percent increments, up to 45 percent, based on creditable activities undertaken by the community.

Another component of the NFIP is the development of Flood Insurance Rate Maps (FIRMs) to provide accurate flood hazard and corresponding premium rates to participating communities. FIRMs divide geographic areas into "flood zones" based on annual risk of flooding; flood zones with annual flood risk greater than 0.2 percent are considered SFHAs. For homes and businesses built in areas where FEMA has already established a FIRM, premium rates correspond to flood zones – that is, a higher flood risk corresponds with a higher premium. Homes and business built before FEMA had established a FIRM (pre-FIRM) for a given area traditionally receive subsidized NFIP premium rates. Existing FIRMs are occasionally redrawn by FEMA to reflect changing flood risks. Traditionally, policyholders continue to pay premiums based on the FIRM that was in effect when their property was built, a practice commonly referred to as "grandfathering."

Traditionally, homes and businesses in SFHAs that were built pre-FIRM paid subsidized rates, which do not reflect true flood risk. As of June 2012, roughly 21 percent of the nation's NFIP policies were subsidized.

In FY2006, NFIP experienced massive losses as a result of Hurricane Katrina; according to a report prepared by the Congressional Research Service for members and committees of Congress, "Katrina financially overwhelmed the program." Due in large part to these losses, NFIP was placed on the Government Accountability Office's (GAO) list of high-risk federal programs in 2006 and remains on that list. The high-risk list calls attention to federal programs that are "most in need of transformation." According to GAO, NFIP owed approximately $24 billion to the U.S. Treasury as of July 31, 2013, and suffers from "structural weaknesses in how the program has been funded – primarily its rate structure."

The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) was enacted to remedy the NFIP's insolvency by phasing out subsidized insurance premium rates. NFIP flood map "grandfathering" will be phased out – beginning in late 2014 or later, policyholders will no longer have the option of using risk data from previous FIRMs that were in effect when their home or business was built. There will also be a gradual phase-out of subsidized rates on certain classes of properties to reflect true flood risks. Both of these provisions will result in rate increases for many policy holders over time. Owners of primary residences in SFHAs with subsidized rates will keep those rates unless or until the property is sold, the policy lapses, there is severe, repeated, flood loss, or a new policy is purchased. In addition, as FEMA continues to update its FIRMs, more low-lying areas may begin to face drastic premium rate increases in the future.

Under the Biggert-Waters Act, FEMA is also required to conduct a study on the affordability of risk-based premiums. The aim of this study is to increase affordability through targeted assistance, rather than broadly subsidized premiums. Apparently as a result of shortages in time and funding, FEMA has not completed this study.

While you have heard from the commissioners and staff in Lycoming County about the significant impact BW-12 is having on their local residents, I want to emphasize that this is an issue that affects all 67 counties in Pennsylvania. According to the GAO, there are about 73,693 subsidized polices in Pennsylvania; just under half (34,477) are estimated to be impacted by BW-12. Immediate phase-outs will occur on non-primary residences (3,798), businesses/non-residential properties (4,934) and pre-FIRM subsidized properties (613). Another 21,423 could be impacted immediately if there is a change of ownership or other trigger as noted above, while another 3,709 will not face phase-out at this time, pending full implementation of BW-12 or one of the triggers.

For some perspective, BW-12 also impacts a significant portion of the nation's 3,069 counties, both coastal and inland; according to the GAO, properties in 2,930 counties had subsidized policies as of June 2012. Currently, approximately 20 percent of policyholders, representing approximately 1.1 million of the 5.6 million NFIP policies, now pay subsidized rates. As FEMA implements the changes stipulated in the Biggert-Waters legislation, these policyholders will eventually pay rates that reflect actual risk to their properties. The remaining 80 percent of policyholders will not see increases as a result of this change, although it is possible that their rates will increase if, in the future, new maps reveal higher risk under the phase-out of grandfathered rates required by the legislation.

CCAP has heard from several counties regarding the impacts of BW-12 locally, and a few examples follow:

- In Jefferson County, following flooding in 2013, FEMA added several more businesses to the flood plain. It appears most business owners were unaware of this change, and when some of these businesses applied for loans, that was when they found out they were included in the flood plain – and the effect that would have on their insurance rates and on their loans.
- Lancaster County property owners paying flood insurance on 705 policies, nearly half of the 1,435 policies written there, are paying or will soon pay between 20 percent and 25 percent more per year.
- In Union County, about three percent of the total tax parcels are being affected, although in one historic downtown along the Susquehanna River that was built long before flood maps, the impact is much greater.
- In Berks County, many of their established industries are near waterways, and the county is trying to get a handle on how this might influence business relocation decisions. Local economic development agencies have been advised of the issue.
- Allegheny County has estimated that BW-12 and mapping changes are likely to have a big impact on some of their municipalities; in particular, the municipalities along the river at the bottom of a watershed tend to be older, smaller, built-out municipalities that will be less able to absorb the cost if businesses relocate or people are unable to sell their property or will not move to the municipality because of high flood insurance costs. AlleghenyPlaces, the county comprehensive plan adopted in 2008, identified the impact of flooding on municipalities at the bottom of a watershed as an equity and diversity issue, precisely because these municipalities often have the least resources to cope with the impacts.
- In Cameron County, much of the county has been newly designated as being in a flood zone, so that just about every area of the county is now included.
- The revised flood maps have expanded affected properties significantly in Juniata County, with a conservative estimate of 15 percent new properties now located in a flood plain. As lending institutions start to require flood insurance of the many properties now included in the flood plain, the county planning office has been overwhelmed with calls. Also, many lending institutions are requiring flood insurance if any part of the property is showing in the flood plain, even though the buildings may not even be in or near the flood plain.

The impact goes much further than the significant, and in many cases, unaffordable, rate increases. As insurance rates rise rapidly in certain areas, counties are concerned that this will lead to a corresponding decline in property values and thus the tax base of local governments. Also, many property owners may want to sell their properties to get out from under the burden of the increasing rates, but since selling properties with high annual insurance premiums is unlikely, people could walk away from existing mortgages, impacting both local economies and housing markets. As more homes and businesses become vacant, counties' property values are in turn impacted again.

For example, Dauphin County has 10,544 homes in an area classified as high hazard flood (2,500 in the city of Harrisburg alone), which have a collective assessed value of $1.57 billion. While none of these has asked yet for a reassessment of their home because of the flood risk, early estimates show that those high-risk homes could lose more than $1 billion in assessed value, which would mean millions of dollars in lost property tax revenue for local governments. If these homes cannot sell, or sell for lower prices, it also means less revenues from real estate transfer fees. It also means that the property tax burden necessarily shifts onto those properties not directly affected by the premium increases associated with BW-12, so that in reality, this issue has the potential to affect all Pennsylvanians in some way.

Several other counties have observed that there are a lot of people now required to obtain flood insurance, who did not need it in the past, due to the new maps. Also, as communities review the maps, along with changes proposed to the guidelines for establishing rates based on the maps, technical problems are being discovered with the accuracy of the maps, which adds to the financial impacts. For example, Tioga County has shared with us they noted what appeared to be a classification error on the maps in which objects on the levee (e.g. a type of vegetation) may have obscured the LIDAR beams used to map the topography and created gaps in the digital representation of the levee, thus allowing water to flow through holes in the levee in the hydraulic model which did not, in reality, exist. This error may have then put large areas of developed land in a higher risk category than what was realistically necessary.

Tioga County has also noticed areas of their maps which were not checked for real-world accuracy. They have shared that discussions with the FEMA mapping contractor for their county revealed that, for the most part, the zones were strictly based on new topography findings with no corresponding hydraulic studies done on the subject streams or bodies of water. In other words, a stream could now have very little water flowing through it and yet it would be considered the source of surrounding flood hazard zones because only topography has been accounted for non-existent stream flowage. The exact opposite case could occur where stream flow could be greater and the potential for flooding could exceed the flood zones created solely based on topography. Other anomalies have also been discovered which have no explanation – such as a flood zone existing on a slope steep enough that it is essentially a cliff. Juniata County, in reviewing its maps, also has found questionable flood plain mapping in most of their municipalities, and noted that the comment they hear most often is "that little run is dry most of the year and has never flooded." Still other counties have compared real-world high water marks to the models used to estimate flood potential and found significant discrepancies.

A FIRM can be modified in one of two ways. The first is a Letter of Map Revision (LOMR), which is a modification to the proposed FIRM or Flood Boundary and Floodway Map (FBFM), or both, as petitioned by the applicant and approved by FEMA. Extensive technical information must be presented, such as hydrologic or hydraulic characteristics of a flooding source, the existing Base Flood Elevations (BFEs) or the Special Flood Hazard Area (SFHA). The second is a Letter of Map Amendment, which is a letter from FEMA stating that an existing structure or parcel of land is situated on naturally high ground so that it would not be inundated by the base flood as proven by revised technical information, similar to that needed for the LOMR, submitted to FEMA for review by a qualified professional, such as a professional engineer. This process is much smaller in scale and cost as compared to the LOMR process and is oriented for individual residences and businesses, single plots of land, stand-alone structures, and other similar properties.

Thus, property owners who believe the maps are wrong are forced to hire engineers or surveyors to prove their property is above the flood elevation, and while quite a few have been successful, they are understandably upset at the expense needed to prove they do not need flood insurance. Others have not been so fortunate and have had difficulty getting cooperation from FEMA or the Army Corps of Engineers to address their concerns, and therefore end up paying increased premiums for insurance they may not need due to map inaccuracies. Juniata County has also reported they have been told by surveyors that they have been turning down work for elevation certificates because there are no available benchmarks near the property in question and the cost would be prohibitive for the property owner.

In addition, there has been some question as to whether the data models used for mapping will exclude flood control structures not built and approved by the Army Corps of Engineers – even though these “unaccredited” structures may have no history of faultiness. In testimony to the Committee on Banking, Housing and Urban Affairs Subcommittee on Economic Policy in September 2013, FEMA indicated that it has reviewed its approach to mapping flood hazards with respect to non-accredited levees, as the Agency recognizes that levee systems that do not fully meet the requirements for accreditation may still provide some measure of flood risk reduction. As a result, FEMA said they were introducing a new approach of targeted modeling procedures to replace the previous “without levee” approach that did not recognize a non-accredited levee as providing any level of protection to communities behind the levees during the base (1-percent-annual-chance) flood. These procedures were said to better characterize actual conditions that a community may encounter when addressing non-accredited levees or levee systems.

However, this does not match with what we are hearing from our membership. Flood maps they have reviewed include data models that calculate flood risk and will push water through an area as if no levee exists – again, even though a historically dependable structure may have held back water with no known problems since its construction. Others have heard that some of their unaccredited levees will not pass the test; for instance, there are questions as to whether the levee protecting the town of Emporium in Cameron County will be recognized as structurally sound.

The short-term solution to this issue is, clearly, either to repeal or to amend BW-12, and we are working closely with our partners at the National Association of Counties (NACo) to do so. Last summer, the NACo membership adopted the following position regarding the NFIP and BW-12:

> *The National Association of Counties supports a sustainable, fiscally responsible NFIP that protects the businesses and homeowners who built according to code and have followed all applicable laws, and we urge Congress to amend the Biggert-Waters Act to keep flood insurance rates affordable while balancing the fiscal solvency of the program. Further, NACo urges Congress to reinstate the*

> *grandfathering of properties (not policies) that were built to code, have maintained insurance and have not repeatedly flooded, and to implement economically reasonable rate structures.*

The Homeowner Flood Insurance Affordability Act, introduced in the House (H.R. 3370) and Senate (S. 1846) in Fall 2013, would delay for four years some of the rate increases being implemented under BW-12. This delay would give FEMA an additional two years and more funding to complete its affordability study. After completing its study, FEMA would have 18 months to establish a draft regulatory framework to address affordability issues identified by the study. Thereafter, Congress would be given six months to review the framework and grant or deny FEMA the authority to propose regulations under the framework.

If Congress approves the authority, the freeze on rate increases would continue until the regulations are finalized. If Congress denies the authority, the freeze would be lifted and rate increases would take effect.

The delays in rate-increases proposed by the Homeowner Flood Insurance Affordability Act would apply to three types of properties:

- All homes and business that are currently "grandfathered" (built to code and later remapped into a higher-risk area)
- All properties covered by a policy purchased after July 6, 2012, but before they were legally required to purchase insurance
- All properties sold after July 6, 2012, unless the property triggers another BW-12 provision, such as Severe Repetitive Loss or non-primary residence status

The measure would also provide funding to reimburse homeowners for successful appeals of mapping determinations. FEMA currently has the authority to provide such reimbursements, but has never received funding for this purpose. The measure further establishes a Flood Insurance Advocate within FEMA to answer current and prospective policyholder questions about mapping and rates.

It is our understanding that S. 1846 may come up for consideration in the Senate in the near future, and we have encouraged our members to contact their U.S. Senators to support this legislation in coordination with NACo's efforts. The fate of the measure in the House is much more uncertain, though, as media reports have indicated that Speaker of the House John Boehner does not support repealing BW-12, though he is willing to consider more modest, unspecified changes to the NFIP. Chairman of the House Financial Services Committee, Rep. Jeb Hensarling (R-Texas), also reportedly opposes the bill. CCAP has also encouraged members to contact their U.S. Representatives to support these bills.

In the meantime, as part of the omnibus FY 2014 budget adopted by Congress on Jan. 16, one policy rider included language that would temporarily delay flood insurance premium increases for properties that face increases due to remapping under BW-12 ("grandfathered" properties). The provision assures that FEMA cannot spend any funds to enforce this particular section until Sept. 30, 2014. If such properties are sold, however, the delay in rate increases would no longer apply. The delay also does not apply to homes and businesses that have already experienced rate increases on Oct. 1, 2013. In addition, under the National Flood Insurance Fund, the omnibus does allocate $154 million for flood plain management and flood mapping – which will remain available until Sept .30, 2015. This represents nearly level funding from the FY 2013 enacted level.

But whether or not this effort is ultimately successful, BW-12 has spotlighted some broader, more long-term policy issues that deserve our attention and consideration. As we have noted, the primary reason the NFIP was created was because people and businesses choose to locate near the water. However, there is a certain risk inherent for homes and businesses near the water, namely flooding and the resulting damage. If we as local, state and federal governments plan to continue to support policies that encourage people to reside and have their businesses in flood plains, for instance as a matter of maintenance and redevelopment of existing communities, the question then becomes how that risk should be mitigated – flood insurance premium subsidies or other assistance, property buyouts, construction of dams and levees, other storm water projects? And following from that, who should bear the cost of mitigating that risk – the property owner or the community? Or both?

For its part, CCAP recently announced that it has selected waterway infrastructure and maintenance as a priority for 2014. Counties and conservation districts make critical front-line decisions to achieve viable economies and environments and are involved in many aspects of waterway planning and management. Dams and levees play an important role in minimizing property damage and preventing loss of human life but they, like other critical infrastructure, deteriorate over time and ongoing investment is necessary to ensure their safety and adequacy. Sometimes structural improvements and reconstruction are required to meet current safety standards or to comply with new or updated design standards. Further compounding these needs, downstream populations have increased and in the wake of recent heavy flooding events states are re-evaluating probable maximum flood levels and the risks to life and property that could result from a dam failure. The end result has been that some dams may now be considered inadequate and need even greater investments to bring them back into compliance, yet state and federal resources have been insufficient to provide assistance.

Counties support increased state and federal funding for maintenance and rehabilitation of dams and levees, particularly those that represent the greatest threat to public safety or are at highest risk of failure. As such, we appreciate that Act 89 of 2013, the transportation funding act, included funding for the first five years for the Fish and Boat Commission to use for the improvement of hazardous dams, although limited to those dams impounding waters on which boating is permitted. The commission had 20 such dams as recently as 2008, and while it has fixed 11 of those since, the $48 million needed to fix the remaining nine has not been available. The Act 89 funding will still not close the gap completely, though, but is expected to account for about $26 million of that.

At the same time, counties intending to undertake important infrastructure projects often run into conflicting state and federal standards or priorities regarding maintenance and protection of a particular waterway. Counties believe it is time to undertake a review of laws, regulations and programs managed by state agencies such as the Department of Environmental Protection and federal agencies such as the Army Corps of Engineers to determine whether those standards are still relevant for current situations. Such a review could also serve to resolve conflicting goals, improve coordination, provide uniform application, assist in consolidating or streamlining programs, and identify more cost-effective and technological feasible tools.

Another tool that could be effective is a partnership between the federal, state and local governments on mapping. Counties use geospatial information systems (GIS) to integrate multiple layers of geographic and spatial data through desktop and web-based intelligent mapping tools, providing a visual way to examine and analyze database records; this includes the ability to map flooding potential. While GIS use and integration among county departments is highly variable across the commonwealth, every county utilizes GIS to some degree.

The singular weakness in Pennsylvania GIS is the fact that it depends on data and applications from all levels of government, but is largely uncoordinated. Near real-time data exists at numerous local government levels and is used in local decision making, and in many cases local government is ready and willing to share their GIS data with state and federal agencies (many of which lack that data), only to find that no efficient mechanism exists to facilitate that sharing of data. Conversely, GIS data originated by state agencies sometimes resides in an information silo and is not easily disseminated to local government for their use in creating a more accurate common operating picture.

CCAP supports legislation, HB 1285 and SB 771, to create an advisory board to bring together state, local, private and academic entities to provide advice and recommendations to the Governor and the commonwealth with the ultimate goal of encouraging data sharing and planning, assisting in reducing redundancies and improving efficiencies. A GIS Advisory Board, by bringing GIS stakeholders together to coordinate efforts throughout the commonwealth, will eliminate needless duplication and offer state and local governments an opportunity to use limited resources more responsibly, and could be an effective tool in working with the federal government to address flood plain mapping issues as well. Both bills are currently before the Senate and we encourage the Senate to continue moving them through the process.

Counties stand ready to assist in understanding and addressing the impacts of BW-12, and to developing long-term solutions to address the risks of flooding in this commonwealth. I would be happy to discuss these comments further and answer any questions you may have.