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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 61

[Docket ID: FEMA-2011-0037]

RIN 1660-AA09 (Formerly 3067-AD02)

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) concerning National Flood Insurance Program (NFIP) insurance premium rates for structures that have suffered multiple flood losses. The proposed rule would have required owners of such structures to pay a higher premium for flood insurance if they declined an offer of funding to eliminate or reduce future flood damage. FEMA is withdrawing the NPRM because it has been superseded by legislation.

DATES: The Notice of Proposed Rulemaking, published on August 5, 1999 (64 FR 42632), is withdrawn as of May 30, 2012..

ADDRESSES: The Notice of Proposed Rulemaking and this withdrawal notice are available online at http://www.regulations.gov under docket ID FEMA-2011-0037. Insert FEMA-2011-0037 in the “Keyword” box, and then click “Search.” The Docket is also available for inspection or copying at FEMA, 500 C Street SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598-3020. Phone: (202) 646-3419. Facsimile: (202) 646-7970. E-mail: Thomas.Hayes@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., authorizes FEMA to offer insurance against flood losses through the National Flood Insurance Program (NFIP). The NFIP allows FEMA to offer flood insurance at less-than-full-risk premium rates for older structures. This is because Congress recognized that in authorizing the NFIP there would be a trade-off: participating local governments would adopt and enforce flood mitigation standards that make future construction resistant to future flood loss, but federally-backed flood insurance would be available for older structures built without the benefit of detailed flood risk information.

To implement the NFIP, FEMA has worked with communities to develop the kind of detailed flood risk information needed for flood mitigation efforts. This information is reflected in a community's Flood Insurance Rate Map (FIRM). Many properties built before the publication of a community's FIRM are at a greater risk of incurring flood loss because they were constructed prior to the availability of full flood risk information. These properties are discussed in FEMA's actuarial studies, which show that the owners of buildings insured under the NFIP that repetitively flood are not charged premiums that truly reflect the risk.

One of FEMA's highest priorities is to correct the problem of multiple flood losses to older structures (target repetitive loss buildings) insured under the NFIP. The Notice of Proposed Rulemaking (NPRM) defined target repetitive loss buildings as those with four or more losses, or with two or more flood losses cumulatively greater than the building's value. The NPRM proposed to apply full-risk premiums for flood insurance coverage to a target repetitive loss building, if an owner declined an offer of mitigation funding authorized by FEMA. Under the proposed rule, if the owner of a target repetitive flood loss building declined an offer of mitigation funding to relocate, elevate, or flood-proof the structure, then that owner would, upon the next policy renewal, have to pay full-risk premiums for flood insurance coverage under the NFIP.

II. Summary of Comments

FEMA received seven comments on the NPRM from private parties and interest groups. Generally, commenters supported the regulation. Some had concerns that it needed to include greater detail on important issues. Several commenters had reservations about the NPRM's possible effects on the mortgage industry. Specifically, they discussed the criteria banks use in issuing mortgages, such as a borrower's ability to insure the building, which they stressed is the collateral for the loan. If the insurance rate increases to the point where the borrower can no longer afford insurance, the collateral for the mortgage is at substantial risk and the mortgage is in jeopardy. This relationship to the requirements of the NPRM caused concern that the NPRM could destabilize the primary and secondary mortgage markets. Commenters also expressed the opinion that public notice, or at least notice to the mortgage holder, should be incorporated into the premium rate increase process. Finally, one commenter was concerned that the NPRM would be economically detrimental to homeowners who suffer from flood damages through no fault of their own.

III. Reason for Withdrawal

FEMA is withdrawing the NPRM because it has been superseded by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (the Act), Public Law 108-264, 118 Stat. 712, 42 U.S.C. 4001 note. The Act amended the National Flood Insurance Act of 1968 by authorizing increases to the flood insurance premium rates for building owners of repetitive loss who decline offers of mitigation funding (section 102 of the Act; 42 U.S.C. 4102a). FEMA promulgated a final rule implementing this amendment at 44 CFR part 79 on September 16, 2009 (74 FR 47471). Therefore, this NPRM is no longer necessary.

IV. Conclusion

FEMA is withdrawing the August 5, 1999 NPRM for the reasons stated in this notice.

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.

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