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REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Tulsa, Oklahoma's Participation In The National Flood Insurance Program

Federal Insurance Administration
Department of Housing
and Urban Development

This report evaluates the nature and extent of development in Tulsa's Mingo Creek flood plain since February 15, 1972--when the city adopted flood plain management regulations. It also evaluates the effectiveness of Federal, State, and local monitoring procedures established under the national flood insurance program to prevent improper development.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable James R. Jones
House of Representatives

Dear Mr. Jones:

As you requested, we have reviewed the nature, extent, and propriety of development in selected flood plain areas of Tulsa, Oklahoma.

We obtained written comments on the draft report from the Department of Housing and Urban Development, which is responsible for the overall administration of the National Flood Insurance Program, and oral comments from responsible officials from the city of Tulsa. We have included their comments in the report where appropriate.

We have made recommendations to the Secretary of Housing and Urban Development. We are sending copies to the Secretary, the Senate and House Committees on Appropriations and Government Operations, and the Office of Management and Budget. (15)

Sincerely yours,

A handwritten signature in black ink that reads "James R. Abate".

Comptroller General
of the United States

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ABBREVIATIONS

FIA Federal Insurance Administration
GAO General Accounting Office
HUD Department of Housing and Urban Development

COMPTROLLER GENERAL'S
REPORT TO THE HONORABLE
JAMES R. JONES
HOUSE OF REPRESENTATIVES

TULSA, OKLAHOMA'S PARTICIPATION
IN THE NATIONAL FLOOD INSURANCE
PROGRAM

Federal Insurance Administration
Department of Housing and Urban
Development

D I G E S T

GAO recommends that, to achieve more effective implementation of flood plain management regulations designed to reduce future flood damage, the Secretary of Housing and Urban Development, require the Federal Insurance Administrator to:

- Propose legislation amending the Flood Disaster Protection Act of 1973 to prohibit federally regulated financial institutions from purchasing mortgages in the secondary market on properties located in designated flood hazard areas that are not protected by flood insurance. (See pp. 5 to 8.)
- Require communities, when submitting their flood plain management regulations to the Federal Insurance Administration for approval, to also demonstrate that they have adequate procedures for enforcing adopted regulations. (See pp. 15 to 16.)
- Establish a monitoring system to insure that communities comply with adopted flood plain management regulations. (See pp. 14 to 17.)
- Clearly specify in Federal Insurance Administration regulations (1) the requirements a participating community should meet in proposing changes to the flood plain levels as initially approved (see pp. 10 to 11) and (2) the type of information needed to evaluate such proposed changes. (See pp. 10 to 11.)
- Revise agency criteria to require future development in the flood plain to be 1 foot above the 100-year flood level. (See pp. 18 to 19.)

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GAO was asked to evaluate the nature, extent, and propriety of development in Tulsa's Mingo Creek flood plain since February 15, 1972--when the city formally adopted flood plain management regulations--and to evaluate the effectiveness of Federal, State, and local monitoring procedures established under the national flood insurance program to prevent improper development. (See p. 1.)

GAO identified 386 structures which had been or were being constructed in Mingo Creek's special flood hazard area between February 15, 1972, and December 15, 1974. Of the 386 structures, 39 were not residential. Construction of 33 structures was financed with loans guaranteed by the Federal Government. (See p. 4.)

The mandatory requirement of the 1973 act has been interpreted differently by the Federal regulatory agencies. The agency and the Federal Home Loan Bank Board have interpreted the act as applying to not only the origination of mortgage loans but also purchase of mortgage loan portfolios in the secondary market. The Federal Deposit Insurance Corporation, Federal Reserve Board, and Comptroller of the Currency, however, interpreted the term financial assistance to include only the original mortgage loans but not secondary market purchases. Thus, flood insurance is not being required for mortgages being purchased in the secondary market by federally regulated banks. (See pp. 6 to 7.)

Tulsa allowed channel improvements designed to lower the designated 100-year flood level along a portion of Mingo Creek and then permitted construction in the flood plain at the new levels before requesting agency approval of the changes.

As of March 1975, when GAO completed its fieldwork and about 6 months after the agency first learned of the changes, no decision had been reached on the impact of the changes on the flood plain. Meanwhile, Tulsa continued to allow development in the improved areas below the approved minimum elevation levels. The agency subsequently approved the revised flood levels in May 1975. (See pp. 9 to 11.)

Although Tulsa adopted flood plain management regulations in February 1972 as a condition for the city's continued participation in the national flood insurance program, the city did not enforce compliance with Federal regulations until January 1975. (See pp. 12 to 14.)

The agency does not formally monitor the flood insurance program to insure that communities enforce approved flood plain management regulations. Agency officials informed GAO that they relied on complaints and notifications of non-compliance from such sources as private citizens, interested local groups, and newspapers.

HUD officials generally agreed with GAO's findings and conclusions. (See app. I.) Officials from the city of Tulsa also provided comments on portions of the report where appropriate.

CHAPTER 1

INTRODUCTION

As requested by Congressman James R. Jones on August 30, 1974, we reviewed selected aspects of Tulsa, Oklahoma's flooding problems. Our review was limited to the Mingo Creek flood plain and directed toward the following objectives:

- Identifying the development which occurred in the Mingo Creek flood plain since February 15, 1972-- the date that the city formally adopted flood plain management regulations.
- Determining whether Federal or federally guaranteed funds were involved in such development and whether flood insurance was obtained as a condition of loan approval on and after March 2, 1974, as required by Federal legislation.
- Evaluating the propriety of such development in view of requirements and restrictions applicable to flood plain development in communities participating in the flood insurance program.
- Evaluating the effectiveness of Federal, State, and local monitoring procedures established under the national flood insurance program to prevent improper development.

The National Flood Insurance Act was enacted in August 1968. Its two primary objectives were to make flood insurance available at affordable rates and to encourage communities to adopt flood plain management regulations designed to reduce flood damage to property. The Flood Disaster Protection Act of 1973 requires residents of participating communities to purchase flood insurance in connection with any form of Federal financial assistance approved on and after March 2, 1974, for the construction, acquisition, or improvement of facilities located in any area identified as having special flood hazards.

The acts give a dual approach to the problem of flood damage. On the one hand, insurance will be available to cover flood losses. On the other hand, as a condition precedent to availability of insurance, communities must adopt and enforce land use and control measures to reduce the probability and severity of damage by

- restricting the development of land exposed to severe flood damage,
- guiding proposed construction away from areas threatened by severe flood hazards, and
- improving the long-range land management and use of flood-prone areas.

PROGRAM ADMINISTRATION

The Federal Insurance Administration (FIA), Department of Housing and Urban Development (HUD), administers the national flood insurance program through its Office of Flood Insurance. FIA's responsibilities include:

- Identifying communities having flood hazard areas.
- Notifying identified communities that they are flood prone and providing flood hazard boundary maps which establish their program eligibility.
- Performing and publishing flood insurance studies and flood insurance rate maps which provide a basis for communities to adopt and enforce flood plain management regulations.
- Insuring that adopted flood plain management regulations are enforced.

Tulsa entered the program on November 20, 1970. The city received its flood insurance rate map on August 31, 1971, and formally adopted flood plain management regulations on February 15, 1972. FIA accepted the regulations as meeting their general requirements.

SCOPE OF REVIEW

We identified all new construction that occurred between February 15, 1972, and December 15, 1974, in 14 major developments in the Mingo Creek flood plain. We identified all loans for acquisition or construction of property in these developments from March 2, 1974, until December 15, 1974, to determine whether the mandatory flood insurance was required as a condition of loan approval. Our review included:

- Examining pertinent policies, procedures, studies, and reports and the program's legislative history.

--Interviewing pertinent HUD, Veterans Administration, Army Corps of Engineers, Oklahoma State Water Resources Board, and Tulsa County and city officials responsible for implementing the program.

--Interviewing officials at financial institutions and the National Flood Insurers Association Servicing Office concerning their involvement in the program.

CHAPTER 2

DEVELOPMENT IN MINGO CREEK FLOOD PLAIN

A considerable amount of development has occurred in the Mingo Creek special flood hazard area since February 15, 1972, the date Tulsa adopted flood plain management regulations.

We identified 14 major developments--4 apartment complexes, 5 industrial sites, and 5 residential housing subdivisions--which had been or were being constructed in Mingo Creek's special flood hazard area between February 15, 1972, and December 15, 1974. During this period 386 structures were constructed or started. Of the 386 structures, 39 were not residential.

The names of the developments follow.

<u>Residential</u>		<u>Commercial/ Industrial</u>
<u>Apartments</u>	<u>Single-family housing</u>	
Bradford Addition	Longview Lake Estates	Braniff Park West
Brook Hollow	Memorial Acres	Craine Carrier
Glenwood Addition	Millwood Estates	Mingo Valley Tract
Marina	Mingo Valley Estates	Tulsa Southeast District
	Shannon Park Sixth	Wolf Point

None of the 386 structures were funded by direct Federal loans. Construction of 33 structures was financed with loans guaranteed by the Federal Government, primarily the Veterans Administration and HUD's Federal Housing Administration.

MANDATORY FLOOD INSURANCE
WAS NOT ALWAYS OBTAINED

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance in participating communities after March 2, 1974, when any form of Federal financial assistance is provided for the construction, acquisition,

or improvement of structures in any area identified as having special flood hazards. This includes, in addition to direct Federal loans and Federal loan guarantees, any financing provided by federally regulated financial institutions, such as banks (regulated by the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency) and savings and loan institutions (regulated by the Federal Home Loan Bank Board).

Analysis of Tulsa County records disclosed 119 transactions relating to the acquisition, major improvement, or construction of structures in the Mingo Creek special flood hazard area between March 2, 1974, and December 15, 1974, when it appeared that flood insurance would be required by the act. Servicing agent's records showed that flood insurance had been obtained in 43 instances. We tested the remaining 76 transactions by visiting 6 financial institutions which accounted for 30 transactions. Of the 30 transactions reviewed, 14 were not subject to the act for various reasons, such as the loan had actually been made before March 2, 1974. Flood insurance should have been obtained in the remaining 16 instances but was obtained in only 5. The 11 instances in which insurance should have been obtained, but was not, occurred early in the program because of delays in receiving instructions, misinterpretation of requirements, and oversights, all of which bank officials attributed to the newness of the program. After the financial institutions became acquainted with the new requirements, they were insuring that flood insurance was being obtained for applicable properties.

INCONSISTENT FEDERAL POLICY ON SECONDARY MARKET PURCHASES

Nonfederally regulated lenders usually sell mortgages to permanent investors, such as banks and insurance companies or to the Federal National Mortgage Association in the secondary market, within a few months after making the original loans. Generally, these permanent investors pay the nonfederally regulated mortgagees to continue servicing the mortgages after their sale.

Some federally regulated financial institutions do not require flood insurance when purchasing loans in the secondary market from nonfederally regulated institutions. Consequently, indirect financing from federally regulated institutions can still be obtained for property located in flood hazard areas for which flood insurance has not been obtained.

The number of construction loans and source of funds before and after the effective date flood insurance was required is shown in the table below for the 386 structures discussed on page 4.

<u>Time period</u>	<u>Construction loans</u>				<u>Total</u>
	<u>Federally regulated institutions</u>	<u>Nonfederally regulated institutions</u>	<u>Mortgage companies</u>	<u>Other</u>	
February 15, 1972, to March 2, 1974	103	22	67	89	192
March 2, 1974, to December 15, 1974	<u>49</u>	<u>30</u>	<u>115</u>	<u>145</u>	<u>194</u>
Total	<u>152</u>	<u>52</u>	<u>182</u>	<u>234</u>	<u>386</u>

After flood insurance was required (Mar. 2, 1974), construction loans made by federally regulated institutions declined by more than 50 percent. Before March 2, 1974, about 54 percent of the construction in the Mingo Creek flood plain was financed by federally regulated institutions. After March 2, 1974, the number dropped to 25 percent, although the number of new construction loans remained about the same. Construction funds after March 2, 1974, were provided primarily by nonfederally regulated lenders not subject to the mandatory requirement for flood insurance. Nonfederally regulated lenders include such institutions as mortgage companies and mortgage bankers. About 75 percent of the 194 mortgages we reviewed that were made after March 2, 1974, were originated by nonfederally regulated mortgagees.

Unless federally regulated institutions require flood insurance before purchasing mortgages originated by nonregulated institutions, the mandatory requirement of the act can be circumvented. The Federal regulatory agencies have interpreted the 1973 act's mandatory requirement differently. We talked to officials from the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency regarding their positions concerning flood insurance requirements on secondary market purchases.

FIA and the Federal Home Loan Bank Board have interpreted the act as applying not only to the origination of mortgage loans but also to the purchase of mortgage loan

portfolios in the secondary market. Thus, flood insurance is being required when institutions subject to the Board's jurisdiction--savings and loan institutions--purchase mortgages on the secondary market which finance construction in flood plains. The Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency have, however, defined the term "financial assistance" to include only the original mortgage loans but not secondary market purchases.

Thus, flood insurance is not required for mortgages being purchased in the secondary market by federally regulated banks.

CONCLUSION

Clarification of the Flood Disaster Protection Act of 1973 is needed since all Federal agencies and federally regulated institutions should be consistent concerning the applicability of flood insurance when mortgages are purchased on the secondary market.

RECOMMENDATION

We recommend that the Secretary, HUD, propose legislation to the Congress amending the Flood Disaster Protection Act of 1973 to prohibit federally regulated financial institutions from purchasing mortgages in the secondary market on properties located in designated flood hazard areas that are not protected by flood insurance.

AGENCY COMMENTS

The Federal Insurance Administrator advised us that FIA strongly agreed that uniformity among federally regulated lenders is needed and stated that HUD would take the following actions.

- Report our views to the regulatory agencies noting that they are in accord with those expressed by HUD's General Counsel. HUD will recommend that all of these instrumentalities, other than the Federal Home Loan Bank Board, reconsider and reverse their earlier position.
- If this fails, HUD will recommend that the Comptroller General issue an opinion which would be binding on all such instrumentalities except the Federal Reserve Board.

--Finally, should the preceding steps prove unsuccessful, FIA will recommend to the Secretary that our recommendation of remedial legislation be implemented, so that the 1973 act's insurance purchase requirements will not continue to be undermined.

CHAPTER 3

PROPRIETY OF DEVELOPMENT

DEVELOPMENT UNDERTAKEN WITHOUT FIA APPROVAL

Tulsa allowed channel improvements designed to lower the FIA-designated 100-year flood level¹ along a portion of Mingo Creek and then permitted construction in the flood plain at the new levels before requesting FIA's approval of the changes. Although FIA contended that Tulsa should have obtained approval before allowing such changes in the flood plain, we found no specific reference to the need for such approval in FIA's regulations.

As of March 1975, when we completed our fieldwork and about 6 months after FIA first learned of the changes, no decision had been reached on the impact of the changes on the flood plain. Meanwhile, Tulsa continued to allow development in the improved areas below the FIA minimum. In May 1975 FIA approved the revised flood levels.

FIA regulations require participating communities to insure that new structures are built at or above the FIA-designated 100-year flood level and that the cumulative effect of all development in the flood plain will not cause more than a 1-foot increase in that flood level.

A private developer submitted plans to the city engineer for channel improvements and construction along Mingo Creek between 21st and 41st Streets South. The city engineer, mayor, and board of commissioners reviewed and approved the channel improvements. In August 1974, after most of the improvements were completed, Tulsa forwarded the plans to FIA and requested them to revise the flood insurance rate maps for the areas involved.

Analysis of the developers' maps indicated that about 73 of the 146 lots in the Longview Lake Estates, Millwood Estates, and Mingo Valley Estates were below the 100-year flood level elevations shown on the flood insurance maps. None of the lots, however, were below the new flood level approved by Tulsa. (The developers' maps were used in the analysis because Tulsa did not maintain records of finished floor elevations. We did not verify the developers' elevations.)

¹The flood level (or magnitude) that on the average will have a 1-percent chance of occurring in any given year.

Tulsa contended that the improved channel would contain or otherwise prevent the 100-year flood from reaching the finished floor elevations of those structures built below the established FIA requirement and that the channel work had not adversely affected downstream areas.

According to FIA officials, a community is required to obtain prior FIA approval for any change to the flood plain which requires a change to the existing FIA maps and that Tulsa should not have authorized channel improvements without FIA's approval. A city official stated that they found no requirement in the 1968 or 1973 acts indicating that the city had to obtain approval from FIA prior to the start of such work and that FIA regulations should be clarified if this is their policy. We found no specific reference to the need for such approval in FIA's applicable regulations.

In August 1974 Tulsa notified FIA of the channel improvements and related development and requested revisions of the flood insurance rate maps. In December 1974 FIA requested Tulsa to provide additional information because the initial data was insufficient for revising the maps.

FIA contracted with a consulting firm to study the effects of the channel improvements on the areas adjacent to and downstream from the development. In January 1975 the consultant requested more information. As of March 1975, when we were completing our fieldwork and about 6 months after FIA first learned of the changes, no decision had been reached. Meanwhile, Tulsa continued to allow development in the improved areas below the FIA minimum elevations.

According to the FIA consultant, a decision could have been made sooner had all of the necessary data been available. A reasonable time frame for evaluating change data and for preparing new maps would be 60 days--30 days to reach a decision, then 30 days to prepare new maps. He indicated that to expedite FIA's review, FIA could identify in its regulations the type of information needed to evaluate proposed changes requiring prior approval.

CONCLUSIONS

Tulsa approved plans for channelization which changed the 100-year flood level without obtaining FIA approval. Consequently, development was allowed below the 100-year flood plain level shown on existing FIA maps.

FIA regulations do not clearly specify the circumstances when a community should obtain FIA approval before preceeding with changes which may alter the flood plain levels initially approved by FIA, nor the type of information needed to evaluate proposed changes.

RECOMMENDATIONS

We recommend that, to achieve more effective implementation of flood plain management regulations designed to reduce flood damage to property, the Secretary, HUD, require the FIA Administrator to clearly specify in FIA regulations (1) the requirements a participating community should meet in proposing changes to the flood plain levels initially approved by FIA and (2) the type of information FIA needs to evaluate such proposed changes.

AGENCY COMMENTS

The Federal Insurance Administrator agreed that more specific regulations on this point would be useful and agreed to study the matter with a view toward drafting regulations setting forth appropriate procedures and information to aid communities in obtaining approval for such changes. Regarding the type of information FIA needs to evaluate proposed changes, he agreed to include such guides in any regulations promulgated.

CHAPTER 4

FEDERAL, STATE, AND LOCAL MONITORING OF DEVELOPMENT IS INADEQUATE

Although Tulsa adopted flood plain management regulations in February 1972 as a condition for the city's continued participation in the national flood insurance program, the city did not enforce compliance with FIA regulations until January 1975. FIA does not formally monitor the flood insurance program to insure that communities enforce FIA-approved flood plain management regulations. FIA officials told us that they relied on complaints and notifications of noncompliance from such sources as private citizens, interested local groups, and newspapers. As a result, FIA was unaware that Tulsa was not enforcing compliance with the FIA-approved flood plain management regulations until we brought it to FIA's attention.

FIA requires participating communities to effectively monitor development in the flood plain to insure that it is in accordance with FIA-approved flood plain management regulations. In approving those regulations, FIA does not determine if the community has established any means or procedures for enforcing its regulations nor does FIA monitor the program to insure that communities enforce their adopted flood plain management regulations. As a result, FIA was unaware of Tulsa's deviating from the approved regulations and did not establish procedures to enforce compliance with those regulations until we brought it to FIA's attention, some 3 years after Tulsa entered the program.

PROGRAM NOT MONITORED BY TULSA

After adopting flood plain management regulations which generally met FIA requirements, FIA placed Tulsa in a "work with" status to allow time to work out minor deficiencies. Although flood plain management regulations were adopted in 1972, Tulsa did not adopt the FIA flood hazard boundary maps until January 14, 1975.¹ Without the official adoption of the maps, which identify the

¹All maps were adopted except those relating to the improved areas along portions of Mingo Creek where Tulsa requested FIA to approve new flood levels and along parts of Joe Creek where similar improvements and requests were made.

hazard areas in which control measures are required, the city had no basis for enforcing their regulations. During the intervening 3-year period, Tulsa did not record information on the elevation of the lowest floor for new construction in the flood hazard areas and, except for spot checks in the improved areas along Mingo Creek, Tulsa did not verify that new construction met the minimum elevation requirements shown in the flood insurance rate maps.

Tulsa officials said that neither the regulations nor the law specifically stated that a community must adopt the FIA maps. The following reasons were given for not adopting them and enforcing compliance with their flood plain management regulations.

--The maps were technically inadequate to demonstrate in a court of law that the restrictions placed on development were "fair and reasonable."

--The city's interpretation of the "work with" status was to allow them to identify the floodways in Tulsa's flood hazard areas.

According to a city attorney, FIA maps are technically inadequate because they outline the flood plain on a street-by-street (blocked out) basis rather than on a curvilinear topographical basis. Also accurate maps are needed to demonstrate in court that the restrictions placed on development are fair and reasonable.

FIA officials disagreed that the blocked-out maps were technically inadequate stating that the maps were prepared by qualified engineers who obtained the technical support for the maps using accepted engineering practices. They contend that unless technical data is developed that contradicts the information used to develop their maps they can be legally supported. They further stated that anyone who feels their property was incorrectly included in the flood plain can have it removed by providing FIA sufficient technical data which supports their claim. FIA has received about 418 such requests since June 1974, and has removed 273 from the flood plain. As of April 10, 1975, 106 cases were pending.

FIA officials stated that the older maps showing a blocked-out flood plain were prepared for all participating communities before December 31, 1973, when participation in the program was voluntary. Because Federal financial assistance for the construction or purchase of homes can be denied now to individuals living in flood hazard areas who refuse to purchase flood insurance, all of the older

maps (including Tulsa's) are being redrawn to more accurately outline the 100-year flood boundaries with curvilinear lines which show the actual topography.

It should be noted that the city did not notify FIA of its views concerning any possible map inadequacies, and a city engineer said that the city had sufficient technical data to enforce compliance if the maps had been adopted.

Tulsa established procedures in November 1974 requiring that a certificate of elevation be provided the building inspector at the start of a structure in the special flood hazard areas. The city officially adopted FIA's flood insurance rate maps in January 1975, except for the Mingo and Joe Creek flood hazard areas where the city contended that the channel improvements had lowered the 100-year flood level below that determined by FIA. Both actions-- adoption of the maps and requiring a certificate of elevation--were apparently taken to avoid jeopardizing the city's participation in the flood insurance program. City officials said that the elevation levels of new construction were now being verified for compliance with FIA minimums in all locations except the two improved flood plain areas along Mingo Creek and Joe Creek. We found no evidence that Tulsa was verifying elevation in these two areas while awaiting FIA's determination of the effect of channel improvements on existing maps.

PROGRAM NOT MONITORED BY STATE

The Oklahoma Water Resources Board, a State agency, has been designated as the State coordinating activity for the program. The agency receives no Federal funding so no Federal control or direct requirements are placed on them. Three people of that agency devote approximately 10 percent of their time to FIA activities, primarily distributing program literature and answering questions. A board official advised us that the board did not attempt to monitor communities compliance with adopted flood plain management regulations.

PROGRAM NOT MONITORED BY FIA

Tulsa is in FIA's Dallas region which includes the States of Texas, Louisiana, Arkansas, Oklahoma, and New Mexico. FIA has only a staff of three at the Dallas regional office, a director, and two others to cover the five State area. FIA emphasizes notifying communities that they are flood prone, encouraging them to participate in the program, and completing flood insurance studies and maps. FIA does not determine whether communities are

effectively enforcing their flood plain management regulations. FIA officials stated that they relied on the integrity of local officials and notification from such sources as private citizens, interested local groups, and newspapers.

Proposed flood plain management regulations are reviewed for adequacy at the FIA Washington level. FIA does not require communities to submit evidence that they have proper control procedures in effect to enforce compliance with adopted flood plain management regulations.

Although FIA regulations require communities to submit annual reports on their progress in the program, we found that FIA did not actively encourage submitting reports. FIA has provided no report format to the communities, does not notify communities that a report is due, and does not contact delinquent communities. Although about 3,700 annual reports should have been received during fiscal year 1975, FIA had only 81 annual reports on file as of April 22, 1975. FIA officials said that they planned to provide a report format to communities and more aggressively solicit reports; however, this project has a low priority. This reporting system, if properly designed and adequately supplemented with field verification on a sample basis, could be a useful first step in establishing a system to monitor the program.

CONCLUSIONS

Although Tulsa adopted flood plain management regulations, FIA maps identifying the hazard areas were not adopted and the control measures were not enforced until nearly 3 years later. FIA, when reviewing a community's flood plain management regulations does not determine whether the community has established any means or procedures for enforcing adopted regulations. Furthermore, they do not monitor compliance with the approved regulations and therefore, have no assurance that participating communities are implementing flood plain management regulations designed to reduce flood damage to property.

RECOMMENDATIONS

We recommend that the Secretary, HUD, direct FIA to

--require communities, when submitting adopted flood plain management regulations to FIA for approval, to demonstrate also that they have adequate procedures for enforcing adopted regulations; and

--establish a monitoring system to determine whether participating communities are complying with FIA-approved land use and control measures.

AGENCY COMMENTS AND OUR EVALUATION

Regarding our recommendation that communities demonstrate to FIA that they have adequate procedures for enforcing adopted regulations, the Federal Insurance Administrator stated that FIA regulations already require communities to resolve that they will establish effective enforcement provisions. He stated that FIA would study the feasibility of providing communities model enforcement guidelines to assist them in establishing and implementing enforcement procedures.

We believe that, since FIA has established no system to monitor a community's compliance with adopted flood plain management regulations, it is particularly important for the communities to demonstrate to FIA that they, in fact, do have an adequate enforcement system in effect implementing their adopted regulations. Resolving to establish such a system does not necessarily insure it has been or will be instituted. The logical time for FIA to determine that an enforcement system exists would be when communities submit their adopted flood plain management regulations for approval. The system for enforcing regulations could then be evaluated concurrently with the evaluation of flood plain management regulations.

Regarding our recommendation that FIA establish a monitoring system, the administrator said that the Congress had directed HUD to identify all of the Nation's flood-prone communities by July 1, 1974, and qualify them for the emergency program by July 1, 1975. He said that because of staffing limitations, the monitoring of communities' flood plain management regulations and enforcement must be held in abeyance until all communities gain program eligibility. The administrator also said that FIA should study the feasibility of obtaining--through appropriate grants and contracts--State agency assistance in the performance of flood plain management monitoring with FIA field and central office oversight.

Before the Flood Disaster Protection Act of 1973, participation in the flood insurance program was voluntary. Communities joining the program did so voluntarily and could thus be expected to be more committed to the principles of sound flood plain management than those that

entered to avoid the sanctions the 1973 act imposed on nonparticipating communities. Consequently, we believe that this makes it all the more necessary that FIA implement a system to monitor participating communities' compliance with program requirements.

CHAPTER 5

FIA REGULATIONS MAY ALLOW FLOODING OF SOME STRUCTURES IN SPECIAL FLOOD HAZARD AREAS

The Code of Federal Regulations--title 24, chapter x, part 1910.3(c)(2)--requires

"new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood." (Underscoring added.)

Part 1910.3 (c)(4) of the same regulations, allows construction in the flood plain as long as it can be demonstrated that

"the proposed use, when combined with all other existing and anticipated uses, will not increase the water surface elevation of the 100-year flood more than 1-foot at any point." (Underscoring added.)

As a result, structures built at the 100-year flood level which meet initial FIA requirements, may eventually lay below the FIA-permitted flood level when the cumulative effect of all development has increased the flood level by 1 foot as allowed.

Tulsa apparently recognized this problem because its flood plain management regulations require the lowest floor of new construction or substantial improvements of residential structures within areas of special flood hazards to be elevated 1 foot above the 100-year flood level.

However, other communities may not consider this problem and allow construction which could later be flooded.

CONCLUSION

Structures built to FIA 100-year flood level elevation requirements would be below that level if future development in the flood plain raises the 100-year level 1 foot as allowed.

RECOMMENDATION

We recommend that the Secretary, HUD, require that the Federal Insurance Administrator consider revising FIA's regulations to require future development in the flood plain to be 1 foot above the 100-year flood level.

AGENCY COMMENTS AND OUR EVALUATION

The acting Federal Insurance Administrator advised us that although our recommendation was valid, implementation, at this time, would be impractical without intensive studies by interested parties. Some of the reasons given for not revising the 100-year flood level were:

- More than 40 States, and all Federal agencies, currently use the 100-year standard in the administration of their flood plain management programs.
- The 100-year standard was adopted by FIA only after extensive study and coordination with other Federal and State agencies.
- Possible inequities could result to communities already participating in the program using the 100-year standard.
- Construction in unregulated areas outside the special flood hazard areas can also increase flood levels.

We do not question the validity of the 100-year flood level as the acceptable standard for flood plain management purposes. Current FIA regulations, however, allow future development within the special flood hazard area which could increase this level by 1 foot. Consequently, individuals building in the special flood hazard area to the 100-year flood level would be still susceptible to flooding if the allowable development takes place.

We believe that the action taken by Tulsa in adopting construction requirements 1 foot above the 100-year flood level demonstrates that such requirements are realistic. Accordingly, we believe that FIA should give further consideration to the merits of revising its regulations to require future development to be 1 foot above the 100-year flood level.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 FEDERAL INSURANCE ADMINISTRATION
 WASHINGTON, D. C. 20410

JUL 28 1975

IN REPLY REFER TO:

Mr. Henry Eschwege
 Director
 United States General Accounting
 Office
 Resources and Economic Development
 Division
 Washington, D. C. 20548

Dear Mr. Eschwege:

Secretary Carla A. Hills has asked me to respond to your letter of July 8, 1975, enclosing for comment a copy of GAO's draft report to Congressman James R. Jones, entitled "Review of Tulsa, Oklahoma's Participation in the National Flood Insurance Program, Federal Insurance Administration, Department of Housing and Urban Development B-."

GAO's continuing interest in the flood insurance program and the protection of lives and property it makes possible at the local community level is appreciated by the Department of Housing and Urban Development. You can rest assured we shall do everything possible to follow through on recommendations for improvement of the program made by GAO. In aid of formulating your final report, we offer the following comments to be made a part of that report:

1. FIA concurs that the requirements for the purchase of flood insurance to cover loans for acquisition or construction in the flood plain should apply to the secondary mortgage market as well as to the primary market. We agree that the experience in Tulsa has shown that the flood insurance purchase prerequisites of the Flood Disaster Protection Act of 1973 can be circumvented through secondary market purchases, by federally regulated lenders, of mortgage loans from lenders not subject to the 1973 Act, thus thwarting the intent underlying the legislation.

Indeed, it was in recognition of this potential of deficiency in the Flood Disaster Protection Act of 1973 that we met with the Federal financial instrumentalities soon after the '73 Act became law to advise them of our view, as supported by the opinion of our Office of General Counsel, that the

insurance purchase requirement of §102 clearly applied to the purchase of mortgage loans by federally chartered, supervised, or insured lending institutions. These deliberations resulted in FIA's published opinion, in which the Federal Home Loan Bank Board concurred, as follows:

"(b) The Federal Insurance Administration and the Federal Home Loan Bank Board have construed the Act to include not only the origination of mortgage loans but also the purchase of mortgage loan portfolios in the secondary market and participations thereof. Thus, mortgage loans and interests in mortgage loans purchased after March 2, 1974, must be covered by flood insurance, where applicable, unless the original loan was made pursuant to a formal loan commitment issued prior to March 2, 1974. The Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency have construed the term 'financial assistance' to include only the origination of mortgage loans and not the purchase of loans in the secondary markets in this respect; therefore, guidelines from these instrumentalities will differ." --from FIA Guidelines, Federal Register, Vol. 3-, 26186-93, page 2, July 17, 1974."

In a similar vein, the Federal Home Loan Bank Board in the Preamble to the amendment to its regulations published on February 15, 1974, in the Federal Register, Vol. 39, No. 33, at page 5749, articulated the view that, "Moreover, the Board believes that certain purchases of certain loans are covered by the Flood Disaster Protection Act of 1973, which expressly refers to the making of loans, because the word "make" is a broad and ambiguous word, which should be construed to avoid existence of a loophole in such prohibiting act and regulation. Further, the Board believes it desirable that there be uniformity as to applicability of flood insurance requirements with respect to the Bank members regulated by the Board. Therefore, the pertinent provisions of the regulations set forth below include purchases of such loans to a similar extent as the making of such loans."

FIA strongly seconds the need for uniformity among federally regulated lenders and, in light of GAO's Tulsa disclosures, doubtless a part of a national problem, regrets all the more that only the Federal Home Loan Bank Board decided to concur in our initial secondary market recommendation.

In view of your findings and recommendations, we propose to proceed as follows:

- A. Report your views to the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Board, and Federal Home Loan Bank Board, noting that your views accord with those expressed by our Office of General Counsel. We shall request that all of these instrumentalities, other than FHLBB, reconsider and reverse their earlier position, failing which,
- B. We shall recommend that the Comptroller General issue an opinion in the matter which would be binding upon all such instrumentalities except the Federal Reserve Board.
- C. Finally, should all of the foregoing prove to be of no avail, we shall recommend to the Department that GAO's recommendation of remedial legislation be implemented, lest the 1973 Act's insurance purchase requirements continue to be undermined.

In the latter connection, it will only be necessary to seek legislation to prohibit federally regulated lenders from purchasing in the secondary market mortgages on properties located in designated flood hazard areas not protected by flood insurance, since the 1973 Act already proscribes such purchases on the part of Federal agencies. (See P. L. 93-234, Section 3(a)(4).)

2. Regarding GAO's suggestion that we "Require communities, when submitting their flood plain management regulations to the Federal Insurance Administration (FIA) for approval to also demonstrate that they have adequate procedures for enforcing adopted regulations," we enclose, as Exhibit A, a copy of the sample resolution "A" which must be adopted by a community and submitted to FIA as a condition precedent to the attainment of eligibility for the program, in which it is required that the community must not only enact the requisite flood plain management ordinances but that it must resolve to maintain these measures in force "with effective enforcement provisions consistent with the Criteria set forth in Section 1910 of the National Flood Insurance Program Regulations" (underscoring added). Aside from the need to monitor community enforcement techniques, FIA proposes to study the feasibility of providing communities, in aid of their resolution to enforce regulations,

with model enforcement guidelines for community flood plain management so that those communities having inadequate enforcement techniques will be provided with the means to establish and implement proper procedures for enforcing adopted regulations.

3. Turning to the need to monitor the efforts of communities to enforce flood plain management regulations, in view of the Congressional mandate to HUD in Section 201 of the 1973 Act to identify all of the Nation's flood prone communities by July 1, 1974 (it turns out there are upwards of 20,000 whereas Congress thought there were only about 10,000 when it enacted the 1973 Act), which, in turn, triggers the requirement that identified communities gain eligibility in the program by July 1, 1975, or one year from the date of identification, whichever is later, we submit that, until the duty of qualifying communities is adequately discharged--a substantial task in light of time constraints and FIA Central and field office staff resources--the monitoring of community flood plain management and enforcement must be held in abeyance unless a system of monitoring, where feasible, with State agency assistance augmented by other contractual arrangements can be implemented. We believe the following comment, from page 47 of the 1975 GAO Report to the Congress, "National Attempts to Reduce Losses From Floods By Planning For and Controlling the Uses of Flood-Prone Lands" recognizes this need:

"Although the need for reducing flood losses through more rational use of flood-prone lands has long been recognized, we found that only limited progress has been made in achieving this goal. The key to more rational use under present Federal-State relations rests with State and local governments because they have direct authority to determine and regulate land use in their localities. To date these governments have not been as active as desired. The principal obstacles appear to be political and economic constraints which affect State and local governments.

"The Flood Disaster Protection Act of 1973, as discussed on page 7, should provide greater incentive to localities to regulate the development of flood-prone lands if FIA (1) properly implements the provisions of the act and (2) monitors the activity of localities to satisfy the requirements of the act. However, as discussed in chapter 3, it will be many years before all the localities with flood problems will get the information needed to regulate land development, at the rate of progress made in recent years by the responsible Federal agencies."

Thus, FIA believes it should study the feasibility of obtaining through appropriate grants or contracts (and this should overcome the obstacle of "economic constraints" cited by GAO), State agency assistance in the performance of flood plain management monitoring with FIA field and central office oversight. A primary source of State agency assistance is already available to FIA in the State Coordinating Agencies for flood insurance which we have established for each State, as set forth in the attached Exhibit B. We believe the existence of these agencies might well overcome, in a large measure, the "political" obstacles cited by GAO. We believe more State involvement in the program is consistent with the Administration's goals and desirable both from the standpoint of dealing with local communities and because it is contemplated by the program's enabling legislation.

In addition to field monitoring in local communities, such agencies could also assist FIA in the review of annual reports, another area of concern to GAO, which admittedly has had a low priority in view of the heavy burden of responsibility placed upon FIA by the Congress in the 1973 Act, as set forth above in the discussion on monitoring the efforts of communities to enforce flood plain management regulations.

4. Concerning the fourth recommendation in the DIGEST, page i., that FIA regulations should specify the requirements to be met by a participating community in proposing changes to the flood plain levels as initially approved by FIA and the type of information needed by FIA to evaluate such proposed changes, we note that underlying this recommendation is the view that there is no requirement in the enabling legislation or FIA's regulations for such approval.

We agree it would be useful if more specificity were contained in the program regulations on this point and we are studying the matter with a view toward drafting regulations setting forth appropriate procedures and information in aid of a community's obtaining approval for changes to the flood plain, requiring changes to the existing FIA maps, prior to the commencement of the work in the community. In no event could a community adopt a lower 100-year flood level for flood plain management purposes other than that prescribed by FIA unless or until FIA modified its 100-year flood level either sua sponte or as a result of evidence adduced by the affected community.

We should like to point out that, while there is no specific requirement that communities notify FIA in advance of any plans which alter the flood elevations which have been determined by the Flood Insurance Rate Map, Section 1910.3(c) specifically requires the community to adhere to the level of the 100-year flood in the construction or substantial improvement of residential structures within the area of special flood hazards (However, Tulsa (see Exhibit C) was specifically instructed to so notify FIA in view of its record in enforcing flood plain management regulations). It should also be pointed out that it is actually to the benefit of a community to notify FIA where it has taken steps to reduce flood levels since the higher FIA elevations are determinative of actuarial insurance premium rates and must be adhered to for flood plain management purposes in terms of new construction and substantial improvement of structures in the special flood hazard areas of the community, until such time as the FIA flood insurance rate map is revised.

In this connection, we should like to point out that FIA has always maintained an informal administrative procedure for amending both flood insurance rate maps and flood hazard boundary maps on behalf of any community requesting such revision. In such cases, FIA furnishes to the community sufficient guides and explanatory material so that the community can provide FIA with the requisite degree of scientific and technical documentation which is needed for FIA to evaluate the change and, if warranted, to issue the amendment or revision of the map. In addition, it is also a matter of record that FIA has always maintained the tradition of restudying whole communities or parts of communities where the community has requested it and provided sufficient grounds. Even in the matter of individual grievances with flood plain designations, FIA has accommodated owners and lessees of structures situate in special flood hazard areas with the issuance of letter determinations amending its maps, where warranted, to reflect that a given individual's property is not located in a special flood hazard area, contrary to what was originally suggested by the map. Thus, we feel there is ample room for the correction of technical mapping deficiencies in an administrative way within this agency, although we are constantly striving to clarify these matters in regulation and guideline form.

In respect to the latter, we enclose a copy of Part 1920, newly added to Chapter X, Title 24, Code of Federal Regulations, as the same appeared in the Federal Register, Vol. 40, No. 107,

June 3, 1975. Part 1920 provides an administrative procedure for correcting technical mapping deficiencies which have resulted in the inadvertent inclusion of property in an area of special flood, mudslide, or erosion hazard. Likewise enclosed is a reprint of Federal Register, Vol. 39, 26904-06, July 2, 1974. Included therein are Parts 1917 and 1918 relating to appeals from flood elevation determinations made by the Administrator.

A copy of the program regulations is enclosed along with a copy of the proposed changes to the flood plain management regulations which were recently made the subject of a series of public hearings in several major cities. You will note that the proposed Section 1910.6 of these regulations deals extensively with the subject of variances and exceptions to flood plain management regulations because of local conditions.

It is also FIA's general policy that communities may take action to lower flood elevations in cases of channel improvements coordinating such changes in a waterway (see Section 1910.3(b)(1) of existing FIA regulations).

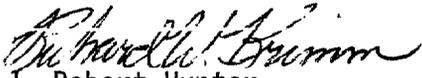
Moreover, FIA's intent in studying proposed revisions to the program regulations regarding construction in the flood plain area beyond the floodway is to set a limit on the cumulative encroachment, if any, which may be tolerated in a community. This matter is presently under study. In States such as New Jersey where a more restrictive standard is required by State law, that standard is used by FIA.

Regarding the type of information needed by FIA to evaluate proposed changes a community would make in its flood plain we shall include such guides in any regulations promulgated.

It is noted that, as pointed out at page 9 of your report, there were 11 instances in Tulsa where insurance should have been obtained by financial institutions but was not, the reason given being that delays in receiving instruction and a misinterpretation of requirements early in the program caused bank officials to overlook the requirement. To bring these lending institutions into compliance with the 1973 Act it might be recommended that they require their mortgagors to obtain the insurance at this time, the language of the mortgage instruments permitting. In this connection both

the FHA and VA standard forms of bond and mortgage would permit the bank to require the appropriate hazard insurance, even subsequent to the closing of the loan.

Sincerely,

for 
J. Robert Hunter
Acting Federal Insurance Administrator

Enclosures