



CleanLaw 66

Joel Scata and Hannah Perls on Fixing the National Flood Insurance Program—February 14, 2022

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Hannah Perls: Welcome to CleanLaw from the Environmental and Energy Law Program at Harvard Law School. I'm Hannah Perls, a legal fellow at EELP. And today, I'll be speaking with Joel Scata, a water and climate attorney at the Natural Resources Defense Council, where he works on clean water and climate change adaptation policy solutions.

Hannah: We're going to be talking about the National Flood Insurance Program, also known as the NFIP. For the past 50 years, this program has helped define floodplain development by issuing federally backed flood insurance policies to property owners and renters, and setting baseline building land use and floodplain management criteria.

Hannah: But many argue the program has failed. Accumulating billions of dollars in debt and subsidizing risky development. In this episode we'll review the program's history, the latest reforms, including Risk Rating 2.0, and what challenges remain if the NFIP is to truly help communities adapt to a climate change world. Welcome Joel, and thank you so much for joining us on CleanLaw.

Joel Scata: Hi, Hannah. Thank you for inviting me to join the podcast. I look forward to this conversation today.

Hannah: Me too. Well, before we dive straight into the NFIP, I think our listeners would just love to hear more about you and your background. So could you tell us a little bit just how you became an environmental lawyer and then what drew you to the fascinating world of state and federal flood risk management?

Joel: Absolutely. I'd be happy to. So I've always really been interested in environmental policy and law since I was an undergrad many years ago. I participated in the Goodwin-Niering Center for Environmental Policy when I was at Connecticut College. And really started getting into the background of why environmental laws and policies are important for preserving the environment, especially in terms of climate change.

Joel: And after I graduated, I went to work for a law firm thinking I'd just go straight to the law school after I did a few years at the firm. But I ended up realizing I wasn't ready to do that.



- Joel: I worked for a corporate firm and it just wasn't what I was looking to do. And I started to think about do I really want to go to law school? I'm not sure if I'm ready yet. I don't know if this is the right path for me.
- Joel: So I decided to join the Peace Corps, instead. And I served about two years in West Africa as an Environmental Resources volunteer. In particular, I worked on helping local farmers protect their fields against desertification. And I partnered with a local nonprofit there to plant trees all around the country.
- Joel: It was a lot of fun. And when I was there, I realized that I could still go to law school, but take sort of a different track in terms of just being an environmental lawyer that does compliance review, instead be much more of an advocate.
- Joel: And that's why I decided to do... and that's how I ended up at American University, where I went for law school. And then did a dual-degree program that brought me to Australia for a few years.
- Joel: So that's really how I got into the background of it. And then, I ended up at NRDC because when I returned from Australia, I was looking for a job as I was studying for the bar and I applied for an internship at NRDC in their Chicago office.
- Joel: And that ended up turning into a full-time job after the summer and I passed the bar exam. So that was something I was very appreciative and I've been at NRDC ever since.
- Hannah: Very cool. I'm thinking about all the law students who are listening, who we're like, "Wait a second. Your internship turned into a job. How do I do that?"
- Hannah: So we can delve into those secrets later, but once you are at NRDC, I'm just curious, how did you then end up as the flood insurance guy? Because I think, at least, when I started digging into this topic, everyone just said, "You've got to talk to Joel."
- Joel: I sort of ended up in it just by a default. I was hired on to work for the water program. And my direct supervisor, Rob Moore, had just started looking into the National Flood Insurance Program and its relationship to climate change.
- Joel: And how it really is setting up a lot of homeowners who participate through the program for failure because the program isn't prepared for the increasing risk of flooding due to climate change.
- Joel: And so, we started diving into the program, looking at, what's wrong with it? What can we look to see can be improved? And how can we do that? Is that through legislation? Is that through administrative action or lawsuits?



- Joel: And so, really just I got assigned to it and it's been seven years now since I've been working on it. It's taking a long time to really understand the sort of the nuances of the program.
- Joel: It's a very complex program, but it's something I've never thought I would say I was going to do. When I started working at NRDC was that I focus on insurance, but this turned out to be actually really beneficial and I've enjoyed the work.
- Hannah: That's awesome. And now I can say, we're just going to take those seven years of experience and condense it into one tiny podcast episode, and we're going to capture everything. I think you did a great job, it's this incredibly complex program and you highlighted how it is.
- Hannah: If you're going to talk about climate change and especially coastal adaptation and managing flood risk in response to that change, you've got to talk about NFIP. You have to deal with this really complex program.
- Hannah: And I think one of the reasons for that is it's enormous. I mean, it's just a truly extraordinary large program that touches so many people's lives in a very direct and tangible way.
- Hannah: And so, I thought we'd just start with the numbers. You know, the NFIP currently covers 22,000 communities in 56 states and jurisdictions with more than 5 million active policies that provide over \$1.3 trillion in coverage.
- Hannah: And so, just in terms of numbers, it is massive. But I think I just want to pull out a little bit further before we get into the nuts and bolts of how it works. Can you just talk a bit more about how important the NFIP is in determining our collective risk and ability adapt to flooding and sea level rise? What is the role that it plays?
- Joel: Absolutely. And as you pointed it out, it is massive. It has a major impact across the country and how we choose to develop and where we choose to develop in terms of a flood risk, because it impacts so many communities.
- Joel: The best way to kind of look at the NFIP is to think of it as a four-legged stool. And so, each leg of the stool represents a different component of the NFIP.
- Joel: I mean, you have your mapping. So FEMA does a lot of floodplain mapping to determine where risks are located. Then you have the insurance part, where it's really important because NFIP for better or worse is the primary source of flood insurance in the nation.
- Joel: Very few private sector companies offer flood insurance. And so, most of the flood insurance in this country almost, I'd say, probably over 80% of it comes through the federal government in the NFIP.



- Joel: The third leg is these minimum criteria that communities must adopt to participate in the NFIP. And this minimum criteria set the baseline for floodplain building codes and floodplain land use standards in the country.
- Joel: And then the last leg is mitigation, where FEMA definitely tries to help communities reduce their flood risk through various mitigation projects. But it's just very small chunk of the program, when you think about it in comparison to the insurance, especially the insurance payouts for flooding.
- Hannah: Great. I love the four-legged stool metaphor because otherwise I was trying to grapple with this program and just thinking through... You know, I have my listicles of all the components and I think that's a really helpful image.
- Hannah: And I think in this episode, we're going to focus on the first three legs of that stool that you mentioned, the mapping component, the actual issuing of these flood insurance policies, and then setting those minimum criteria for floodplain development and whether or not that succeeds, and incentivizing the right kind of development.
- Hannah: And then, we can touch on mitigation, but just for our listeners, those are kind of the big pieces that we're going to focus on. And I just want to dig in a little bit more to how those work, right?
- Hannah: So when the program was first created, it was passed by Congress under the National Flood Insurance Act, it's 1968 for context. This is the same year that the Fair Housing Act was passed. This is really smack dab in the middle of the civil rights movement.
- Hannah: We're starting to appreciate this broader role that people want the federal government to play in disaster response. The Stafford Act, which is our major federal disaster statute was really going through a massive transformation in the same year.
- Hannah: And so, it's this, I think renaissance in terms of federal authority and the National Flood Insurance Act gives FEMA, or in this case, it was HUD when it first started, but eventually FEMA some pretty specific authorities in term of how these flood insurance policies will be issued. And there's some sort of underlying assumptions that govern why this program should work the way it's intended to.
- Hannah: So can you talk a bit about... You know, when Congress it's really putting this idea together and saying, "Yes. We want the federal government to play an outside role in issuing federal flood insurance and accounting for the risks that homeowners and other property owners will experience in the floodplain." What is their intent, like what is their dream scenario and how this program's going to actually accomplish these goals?



- Joel: That's a great question. And so, as you pointed out the program dates back to the late 1960s, and it was stood up because they realized that a lot of the flood damages that were happening throughout the country were putting sort of a heavy burden on the federal government in terms of response.
- Joel: Starting in the 1920s and actually 1930s, going back that far, a lot of the private companies that did offer flood insurance started dropping out the market. And so, you had a long period of time where a lot of people had no access to flood insurance but were suffering flood damages. And the federal government was finding itself stepping in more and more to fill that gap, which by through disaster aid and other types of aid.
- Joel: And so, the impetus behind the creation of the flood insurance program was to create this program that people could buy insurance from to help themselves recover quicker, and that could be self-sustaining.
- Joel: And also provide a way that the insurance could be provided at a much bigger scale because the government can take on a lot more risks than maybe a small insurance company can. And really get a program going that provides people relief after flooding happens.
- Joel: And so, they started offering flood insurance, most of it, at the time was subsidized because they were looking at how a lot of properties were already built. And so, if your property was built before the creation of the program or before a map was issued for your area, you got a subsidized policy rate to encourage you to join the program.
- Joel: And so, they started to really push people to... Or encourage people I should say, to seek out flood insurance. And they tied that with this minimum criteria component that I mentioned earlier, which basically meant that like, if you were a state or a local jurisdiction, and you wanted your residents to be able to purchase flood insurance, you had to agree that you would adopt these minimum criteria that FEMA established or at that time, HUD, but later on FEMA, established for floodplain management and building.
- Joel: And the idea behind that was not only do we help people recover quicker with the insurance, but we also make sure that the likelihood for future damages is reduced by making sure the floodplain is managed in a way that makes sense for flood risk, such as like building higher or not just dumping in a ton of dirt and raising everyone's flood risk at the same time.
- Joel: And so, that's really where the program is going with, it was a two-pronged approach to kind of help people recover quicker and also to reduce flood damages long term.



- Joel: And that's actually in the statutory authorization, is that one of the goals of the program is to reduce these flood damages and to encourage proper land use management of floodplain areas.
- Joel: So that's where Congress was really intending the program to go, was to be this really comprehensive solution to a problem of increasing flood damages and not having enough support for the people who were suffering from those flood damages due to a lack of private insurance and also just until the Stafford Act really stood up ability to get federal assistance.
- Hannah: That's brilliant and there's a lot in there. So I want to unpack it a little bit. I love that you mentioned the subsidies. We're definitely going to get to the subsidies.
- Hannah: And I just even want to back up a little bit further and recognize the policy choice that Congress made, which is we're going to use a market-based solution to indirectly address this national problem of flood damage and risk management, right?
- Hannah: We're going to try and incentivize people to make the right choice as opposed to the more sort of direct option, which would be land use regulation.
- Hannah: You know, you have these mitigation measures that are in place, but fundamentally, we're talking about a market-based solution. And in order for that scheme to work, I think there's sort of three fundamental assumptions that need to be true.
- Hannah: And when we look at why the NFIP maybe hasn't fulfilled the stream that Congress has, I think they really fall under one of these three assumptions as something that should be true, but isn't for various reasons.
- Hannah: So these three assumptions as I've understood them, and Joel, definitely feel free to tweak or massage them in any way you think they need to be.
- Hannah: But, first, just this idea that we can know what flood risk is for a certain property at a certain point in time that this is a knowable thing, it is a fixed idea, and we can know what that is.
- Hannah: The second assumption is that that known risk can be quantified in some way, either as a dollar value that's then incorporated as a policy, or in terms of these mitigation measures that you are mentioning that are necessary to avoid the risk.
- Hannah: And third, I think the most important, is that we are assuming that policy holders can, and they will pay those insurance rates, these risk based or actuarial rates that reflect the risk and that in turn will drive their decision making, right?



- Hannah: So if all those things are in place, this thing will work and we are going to mitigate, and generally avoid rampant damage from flooding.
- Hannah: Obviously, that's not how the world works, but I think this framework is helpful and just helping our listeners, and helping us walk through step by step some of the ways that Congress's dream hasn't quite come true yet. Do those assumptions check out with your understanding?
- Joel: Yes, they do. And you hit the nail in the head with the first assumption about one of the big problems with the flood insurance program, is that, while it has gotten much better as technology has improved, a lot of the risks that it assumed it could calculate was based on just looking at historical averages.
- Joel: And then, I'm sure we'll get it into this later in the program, but looking at historical averages is a huge problem when we are also facing climate change, because climate change is sort of like the wrench thrown into the gears of that approach.
- Joel: You can't look to the past and say, "Okay. Based on X number of floods, we project that Y number of floods will happen in the future." Because climate change is completely changing how those floods are occurring in terms of rainfall patterns, sea level rise, more intense hurricanes.
- Joel: And so, it's really throwing the program off in terms of how it calculates risk and how it maps risk. And that's a huge problem and has been a huge problem already. So that's a big factor in the program's shortcomings.
- Joel: You know, the other kind of assumption of risk is that people would realize that based on the market rate or should have been market rate prices for insurance, that they would understand their risk and make better decisions about where to build or where to locate if a home is already constructed, and how to mitigate that risk.
- Joel: But because the program has been heavily subsidized, especially for a lot of existing properties, risk was masked. And so, people would be getting really low insurance rates thinking, "Oh, great. I only have to pay a couple hundred dollars a year. My risk for flooding is going to be probably reflective of that." But that wasn't the case.
- Joel: A lot of properties that are insured through the program are very high risk, but their insurance rates don't reflect that risk right now. That's changing with Risk Rating 2.0. I know it'll be a big focus as well, but yeah, that's a huge problem, is that it kind of...
- Joel: And there's been evidence to suggests that the programs actually encouraged development in flood prone areas, contrary to its purpose and to its intent because of the way that the insurance prices were masking that risk.



- Hannah: This is perfect. I have my outline for the episode. And it's just like check, check, check, check, check. I just want to throw some numbers behind what you're talking about so folks can appreciate the scope of the challenge, both in mapping and also how much these subsidized policies make up relative to the larger pool.
- Hannah: So just even on the mapping side of things, and our ability to know risk, I just... Again, this first became a challenge in the late '60s. And so, it's incredibly expensive and labor intensive to map risk across all of the different floodplains, both in states and territories.
- Hannah: And that's just with technology available in the late '60s and early '70s. Not to mention what you were talking about with the wrench thrown in the gears of climate change, right?
- Hannah: Mapping this future risk, more frequent flooding, more severe, and even catastrophic events. How do we account for that risk as part of this general picture of what risk looks like and on what geographic scale?
- Hannah: So lots of questions, very difficult task. And just to illustrate the scope of where we are now, in October of last year, the government accountability office, they put out a report and they said that less than 1% of the U.S. land area that's depicted in FEMA's flood maps includes information on "likely future conditions, like climate change".
- Hannah: And so, these are the same maps that are used to determine not just the rates, but who should be required to have flood insurance in the first place? And that's less than 1% of our total land area. So that's bonkers. I think that's the official legal term for that.
- Hannah: FEMA is getting \$3 billion for flood mapping, which is twice as much money as Congress has ever given FEMA over the last seven years combined. So there are resources being pushed towards this mapping issue.
- Hannah: The other piece on subsidies, you mentioned subsidies and how it's almost made the program work against the very purpose that it was designed to fulfill, right? You are actually encouraging risky development by making it seem like it's not that risky to live in these areas through these subsidized policies.
- Hannah: And there's a couple types of subsidies. I just wanted to flag for folks. One is the subsidy you mentioned earlier, which is, if you've lived in a place, if you've been there before the program came into being in 1968, or actually what they said was before 1975, right? Just to give you a little time.
- Hannah: Or before FEMA issued these flood insurance rate maps for the community that you live in, you get these subsidized rates, these pre-firm subsidies. And right



now as of 2018 or so, those are approximately 13% of the NFIP policy pool. So a pretty substantial number.

Hannah: In addition to that, we have what have typically been called grandfathered or legacied subsidies. And this basically means, if you own property in an area that has been part of one flood zone and then they reevaluate it, and it's part of a new flood zone, but you've maintained continuous coverage, then you're going to pay according to the old zone.

Hannah: And just to inject a little empathy here, that kind of makes sense, if you've just shelled out a whole bunch of money to elevate your home and then FEMA turns around, and says, "Mm-mm (negative). Sorry, you need to go a little bit higher." You don't have another a hundred grand to throw your house, right.

Hannah: So practically, I think that does make sense. But as you are highlighting, Joel, this has really significant impacts at the community and at the national level, in terms of whether or not the program's actually fulfilling its goal of incentivizing responsible development.

Hannah: So all that's to say in terms of whether we can know the risk and then whether we're actually quantifying that risk and having people pay these actuarial rates, the cost of mapping well, the cost of including these future conditions, in addition with these subsidies that have been part of the program for a long time, it all makes that really, really, really, really hard, basically.

Hannah: So I think this is a perfect time to bring in Risk Rating 2.0, which is the largest overhaul since NFIP was created in 1968. It went into effect in October. It goes into effect in terms of issuing new rates for policy holders in April of this year.

Hannah: And I just want to get right into it. Joel, can you talk about what the heck is Risk Rating 2.0? And why does it matter and how does it help us address some of those thornier issues around knowing and quantifying risk?

Joel: I'd be happy to. And so, Risk Rating 2.0, as you pointed out, is a huge overhaul of how flood insurance costs are calculated for the program. So in the past, what most of the time they did was they would map an area, and say like, "Okay. Here's a line on the map. Every house in this hundred-year floodplain is going to pay one rate, and houses outside of that line are going to pay another rate."

Joel: And so, it didn't matter though really how granular the risk was if once you were inside that map floodplain. You know, you could be living in a house that was right next to the river. Or you could be living, let's say, like a mile away from that river. Those houses paid the same rate, and they also pay the same rate regardless of the value of that home.



- Joel: And so, it was really, I think, a way to do it when the technology for looking at a granular flood risk per property was really hard to figure out. And now that the technology exists, FEMA is going through this big overhaul.
- Joel: So now under Risk Rating 2.0, it's much more granular concerning flood risk and property characteristics. And so, not only that house that's right on the river have a much higher flood risk than the one that's a mile away.
- Joel: But let's say that house right on the river is also a big mansion because of the scenic view, it's going to pay more in flood insurance because it's going to cost so much more to rebuild that home than it would, let's say, a house a mile away that's just your average home.
- Joel: And Risk Rating 2.0 is really trying to inject some more fairness into the way the program operates. Because under the old program, that house that was a mile away, average size house was paying the same rate effectively, cross subsidizing this mansion right on the river, which had a really high risk and high cost to repair it.
- Joel: And so, under risk grading 2.0, they're getting much more property specific. And they're also accounting for more flood factors in terms of how they calculate risk, like distance to the water body, distance to the shoreline, and whether or not wave action will be a problem for them.
- Joel: And that means the program can be a lot more specific in calculating risk and presenting insurance policies and costs for those insurance policies that reflect actual risk. And that's just going to be key. It's because now people start to see a much more accurate depiction of the risk that they face by participating in the NFIP program.
- Joel: And one of the things to keep in mind, though, is that that's going to be on a glide path. I think there's a lot of concern that these new rates are going to go into effect as soon as April hits. But under the law, FEMA is only allowed to raise rates on average about 18% per year for your average home. And so, there's a glide path.
- Joel: So it won't be a huge impact right away. But you will start to see people are beginning to realize that the risk is increasing. However, that's not to say all properties are going to see a rate increase.
- Joel: Because it's much more property specific, there's a sizable chunk of properties that will actually see a decrease in what they're paying, because they were overcharged for a long time to cross subsidize these higher asset homes.
- Joel: And so, that's why our higher valued homes just as you say, and that's why this program is going to be pretty revolutionary in terms of how FEMA and the NFIP



provide flood insurance. Sorry, that was a lot all at once. I hope it would make sense.

Hannah: I know. That was great. And I'm the only one who gets to speak besides you. So it's not the most democratic process, but I can try and just pull out some of the major themes in there.

Hannah: And I think one thing you've flagged is these broader questions of fairness and FEMA would certainly call that equity. You've seen FEMA in a really unprecedented way, come out and say, "We are going to prioritize equity." It's in their strategic plan. It's never been there before.

Hannah: And FEMA has gotten a lot of flack. I think, well-earned flack for its programs across the board in terms of whether or not, in its allocation of funding, it is accounting for existing disparities, preexisting inequities, and being sure to not exacerbate those inequities.

Hannah: And so, Risk Rating 2.0, it's interesting when the people first starting to get a look at what these rate increases or rate changes would look like, and both proponents and critics of the program said, "Oh! But equity says... The program sucks, or the program's great."

Hannah: And so, there's been a lot of back and forth, in what this program will actually do. And I think you did a great job of highlighting that because we have this much more granular assessment of the actual risk on a property-by-property basis.

Hannah: And what Risk Rating 2.0 does that was never done before, is tying the price to the replacement cost value. So what you were saying with a regular home versus a mansion, right. The mansion's going to pay a lot more, but that wasn't the case before.

Hannah: And so, these all mitigate in favor of a more equitable program. And I found some numbers from Pew that says that almost 1.2 million policy holders will actually see their rates drop because of that granularity that you mentioned. And the majority of policy holders they're going to see minimal increases with costs rising no more than \$10 per month.

Hannah: And some of that's because of the way risk's calculated. Some of that is because of the ceiling you mentioned of 18% increase, max per year, under the statute.

Hannah: Since we're on this trend of equity and fairness, I wanted to zoom out a bit and hit on some of the other elements of equity within the NFIP writ large.

Hannah: I think one notable piece that we haven't talked about yet is because the program came into being in 1968, and then there were these pre-firm, pre-



flood insurance rate map subsidies given to folks who had homes before the rate maps came out or before 1975. This is on the context of really rampant and overt housing discrimination.

Hannah: And so, in general, the people who are getting those subsidies are more likely white homeowners than they are to be Black and immigrant families, for example.

Hannah: And then, we have these broader questions about whether or not it is fair or equitable, choose your term, to put the burden of paying for the risk of living in a particular place on the property owner or the renter, when so much of that risk can be determined by factors beyond that person's control. Climate change being the obvious example, but I think even more localized phenomena.

Hannah: And this gets to that third assumption way back when, when we were talking about the three fundamental assumptions, right? The idea that, well, if we can have the property owner internalize the risk by paying actuarial rates, that's going to influence their decision making and have them make better choices, i.e., not develop in a floodplain or develop in a way that is responsible and takes into account future risk.

Hannah: And I think this is an intuitively reasonable assumption, except that we're dealing with one of the most human choices, which is where we live.

Hannah: And it's this deeply complex question of personal identity and community and place-based values, not to mention just the feasibility of asking people to pick up their lives and move somewhere else.

Hannah: And I think when we talk about the NFIP, and especially when we look at some of the controversies around major reforms that have been proposed like Biggert-Waters in 2012, the big opposition has been that it's not fair to jack up the rates on these folks who can't afford it or who don't want to leave.

Hannah: And so, I just wanted to pull out that human element after we've done all this nitty-gritty pulling apart the statue kind of thing. And I also wanted to flag some of the community level phenomenon that play a pretty significant role in determining the types of risks that different property owners might experience.

Hannah: There's two I think that I find fascinating and really helpful. One is just this catch-22 that often local governments find themselves in this tension between the need to maintain and build up their tax base in order to be able to pay for adaptation measures.

Hannah: And then on the other hand, having to impose more robust land use restrictions on coastal development. So if you don't get significant federal grants and funding, it's going to be very hard to ask these local governments to



restrict or even prohibit development in profitable areas because they need that tax base.

Hannah: The other issue is something called the Levy Effect. Folks might have heard about this, and it's the idea that as you build up hard infrastructure, so I think of sea walls and berms and levies, that protect properties from routine nuisance flooding, you actually encourage continued development.

Hannah: And what's fascinating is the Army Corps, for years, they actually quantified suburban coastal development behind these berms and levies as a benefit in their benefit cost analyses.

Hannah: So, people aren't choosing to move to these places because they think, "Oh, I'm just going to be irresponsible," right? Like we've had many, many, many societal signals pushing people to build and live and create community in these places that are now at severe risk because of climate change and these outside factors.

Hannah: So speaking of long-winded answers, all of that is to say and really begs the question, is it fair? Is it equitable? Is it even effective? To make the property owner, the point of regulation, and have them pay the cost associated with flood risk when that risk is often driven by these community-level decisions, and not to mention the heightened risk associated with climate change and sea level rise. That's to you, Joel.

Joel: Yeah. Thanks. There's a lot to unpack there. And so, I think the... To start off, one of the, I think, shortcomings of the NFIP is that it's very hard for the average homeowner, the average person looking to buy a home or rent a home, to learn of their flood risk.

Joel: So the NFIP puts out information about or FEMA puts out information about flood risk in the form of flood maps. But your average person doesn't know, "I should go to their website and look up a flood map, and see if this home that I'm looking to buy or rent is located there."

Joel: You know, a lot of that comes down to knowledge the seller might already have, or a lessor might already have. But there's a huge disparity in the states in terms of real estate disclosure laws on what a buyer or a renter must be told about properties' flood risk.

Joel: And so, a lot of times people are getting stuck in these situations where they move into an area, because it looks nice, it's got good schools, but they have no idea that it's going to be really flood prone, especially with climate change.

Joel: And so, they're kind of caught off guard. And so, they really do need the insurance to help them. And that's one of the ways that FEMA's looking to change that.



- Joel: So they issued this Request For Information, which was in response to a petition that NRDC file for a rule making along with the Association of State Floodplain Managers.
- Joel: And in this Request For Information that they're starting to do the rule making process with, is it asked like, should there be a national disclosure law? A national standard that states must adopt in order to participate in the NFIP. And I would definitely say yes.
- Joel: I think a huge shortcoming is that there's just not enough information for people to make an informed decision about how to mitigate their flood risk. That's a first thing that needs to really happen is that there's got to be a lot more information out there about flooding.
- Joel: Another problem as we point it out is that it's really hard for communities to determine what to do in terms of relocating, addressing high flood risk areas, because a lot of communities that participate in the NFIP aren't these really big, wealthy beachfront communities.
- Joel: They're more inland. They suffer a lot for riverine flooding. They could be in old mill town that have gone through all the ups and downs of the economic cycles that come with just changing industrialization patterns. And so, what happens to those communities? And so, that really is where mitigation and other factors come into play.
- Joel: One of the benefits of the NFIP is that if you have a flood insurance policy, you're eligible to receive a grant to elevate your property once it's been damaged by a flooding to a significant extent, about 50% of the value of the property.
- Joel: However, that amount hasn't really changed in a couple decades, and that needs to change. And that's something that we put into the petition. The NRDC put into the petition was that FEMA really needs to raise the amount of money that people have received to mitigate their property because it's expensive.
- Joel: And that's another equity issue is that, for a lot of people who can barely afford flood insurance in the first place if they're high risk and don't have this mega mansion it's costly to mitigate. And so, there has to be more assistance to help them.
- Joel: Because as you put it out much earlier that a lot of the discriminatory housing practices actually funneled people into these high risk areas, especially in inland communities and riverine communities. That's where a lot of the red line zones were located.
- Joel: So the white families got the better property deals and the minority families got funneled into these high risk areas. And so, that's something that really needs



to be addressed. And that's why the mitigation is important. And providing that mitigation assistance is important.

Joel: Another factor that I think needs to be addressed too is we've talked a lot about insurance needs to be actuarially sound, and then the price needs to reflect the risk.

Joel: And for a majority of people in the flood insurance program, they can probably, swallow some of those changes in pricing since that it's on a whole, not going up by that much.

Joel: But there are going to be families who already can't afford flood insurance. And thus, don't have access to a lot of the mitigation benefits. But have already been stuck in this high risk area due to these housing practices.

Joel: And so, that's really where Congress needs to step in and create in an affordability program that only helps provide some assistance with buying insurance, but also provides a lot of assistance to making sure that those communities are in front of the line to get mitigation assistance.

Joel: And so, the that's where Congress could really act is looking at how to create an affordability program that helps families buy insurance, but also helps those communities mitigate their risk, in a way that's not encouraging unhealthy development going forward.

Joel: I hope that makes sense. I know that was like all over the place. But, it's a huge problem that really needs a multitude of solutions.

Hannah: That was great. And you highlighted a couple things. One is this Request For Information. I don't know when this podcast will be out, but comments are due on January 27th.

Hannah: And I just want to really celebrate what NRDC did. This RFI was issued in direct response to the petition that y'all and the Association of State Floodplain Managers put out in January of last year. So I just want to make sure that we highlight that work that y'all did.

Joel: Oh, thank you.

Hannah: Oh, yeah. It's important.

Hannah: And then you talked through a bunch of different things that I think FEMA's really asking for in this RFI. And I love that you distinguished between what FEMA can do under its existing statutory authority, right, you talked about having these mandatory disclosure requirements, so people have more information to make better choices. You talked about having these mitigation



grants to really help people address the cost of adaptation, especially for these formerly red line communities.

Hannah: And then there's what FEMA can't do, right. We have to, at some point, get Congress to step in. And I'd actually never heard about the idea of creating an affordability program that will really help families afford the cost of these actuarial rates. But, I think that is fantastic.

Joel: Oh, yeah. I was going to say, there's actually a proposal for an affordability program in the Build Back Better Act that passed out of the House. And it would give FEMA the authority to address rates in a way that is more equitable, as well as looking at how to also use some of the mitigation grant programs in a way that's more equitable.

Joel: So like under the... For example, the Flood Mitigation Assistance Program, which is funded through the NFIP to prioritize communities that are lower income to have a history of redlining and discrimination, to get that money, versus communities that have just the capacity and place already to go through that lengthy application process.

Joel: So that's something that Congress is already starting to do, and hopefully it comes to fruition.

Hannah: Knock on wood. As we get towards the end of the hour, I wanted to zoom out again, right. We started by zooming out, so I want to end by zooming out. And think about whether we have any lessons learned from the NFIP that should or could inform how policy makers think about managing development in areas at risk from other climate change impacts, like wildfires, for example.

Hannah: You know, the NFIP we have, as we were talking about this sort of market-based strategy to managing risk indirectly, by putting out these different kinds of incentives, and you have your four-legged stool that you talked about, right, with mapping the risk that hopefully we can know the risk that we're dealing with through the increased technologies that are available to us.

Hannah: Potentially, this idea of federally backed insurance, certainly people are talking about having the federal government begin to intervene in these areas where the private sector is already backing away, and saying, "You know what, this catastrophic risk, these out of control wildfires, those are uninsurable," and maybe that's somewhere the federal government needs to step in.

Hannah: Should there be minimum criteria that are established as part of that program around development and mitigation. And then this additional provision of mitigation grant funding.



- Hannah: The NFIP certainly is not best success story. And so, are there things that people should really take away from the history of this program to inform the way we deal with other types of climate change related risk?
- Joel: Yeah, absolutely. And so, I think, big takeaway is to not mask risk through these transferable, subsidized policies, to really let people know what the rates are and what the risks are upfront, because I think that helps prevent sort of unchecked development.
- Joel: Because having a subsidized policy kind of alleviates some of the risk that people would take on and may alter their decision making. Especially before Risk Rating 2.0 came around, if you got a grandfathered policy, you could put a huge addition on your house.
- Joel: You can still pay about the same rate, and that actually encouraged a lot of the beachfront development. So I think that's a big factor is making sure that people understand their risk from the get-go by having actuarial rates.
- Joel: A second factor that you touched upon was that there has to be more than just insurance. Insurance only helps you rebuild after a flood or rebuild after a fire. It doesn't necessarily prevent or reduce the likelihood of those damages in the first place.
- Joel: And that's where these minimum criteria come in. So, as I mentioned before, if you're a state or a local community, and you want your residents to have flood insurance, you have to adopt these minimum criteria that the flood insurance program in FEMA have enacted.
- Joel: That criteria, though, hasn't been updated since the 1978. A lot has happened since 1978 in terms of how we build and where we build. And a lesson learned there is that you need to update your minimum criteria to be reflective of current times.
- Joel: And so, some of the criteria that's come out since in 1978 is not even up to modern standards in terms of what modern... like the ICC codes are requiring. And so, that's one of the things that NRDC really pushed for and its petition was that they update these minimum criteria to be, not only current but forward looking.
- Joel: Account for future flood risk, account for future climate impacts. Because why are we building something based on yesterday's standard when we want that structure to last well into this future. We should be looking at what the future impacts are going to be.
- Joel: And so, that's something that really needs to be considered in a lesson learned from the program, is that it can't be backward looking anymore. And so, that's something that I think should be considered and something that will be



continuing the pushing to do, even after the close of this RFI and hopefully move forward to rule making very quickly.

Joel: I think another lesson learned is that sometimes the way that they do mapping kind of gives a false impression that, if you're outside the hundred-yard floodplain line, you're fine. And by having this binary kind of projection of risk gives us false sense of security.

Joel: So if you're starting to look at how you kind of define risk, you need to look at it in a way it's more of a spectrum than an in or an out, so people really get a better idea of the risk that they're facing.

Hannah: That's fantastic and it really encapsulates the entirety of the NFIP. I think they're really is just a host of information and lessons learned that we need to be pulling from this as we are forced to reckon with the impacts of climate change.

Hannah: And so, hopefully while we fix the NFIP, we can also use the lessons learned to inform strategies going forward, so we're not, as you were saying, looking backwards for the next 50 years.

Hannah: Before we close out, I just wanted to give you a chance. Is there anything else that you would want folks to know about the NFIP or about your work at NRDC?

Joel: Yeah. Just if you have any interest in the work, please visit our website and look up the work of the water and climate team. We do a lot in terms of not just looking at how to reform the National Flood Insurance Program, but also looking at how we can improve the Stafford Act, how we can improve some of the disclosure requirements that states have for flood risk and other environmental risks.

Joel: And we're really trying to help communities, at least provide the resources for communities to make decisions on their own, that best suit their needs.

Joel: And please, also feel free to reach out to me anytime too, for those who are listening if you have more questions about what it's like to work at NRDC.

Hannah: Well, thank you, Joel, so much for joining us on CleanLaw. It's been a joy to talk with you.

Joel: Oh, thank you, Hannah. I really appreciate the invitation to join you guys.

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