American Bankers Association
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The Honorable Jeb Hensarling
Chairman
House Committee on Financial Services
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the members of the American Bankers Association, I am writing to share our views on the seven bills scheduled for consideration by the committee on June 14th, 2017 relating to reform and reauthorization of the National Flood Insurance Program (NFIP). We appreciate the Committee's attention to the issues raised during the deliberation of these bills as timely reauthorization of the NFIP before the September 30th, 2017 expiration of program authority is a top concern of our members.

In addition to timely reauthorization, the ABA supports legislative efforts to ensure that private flood insurance is a viable option as an alternative to the NFIP. We support allowing borrowers with commercial properties to opt out of mandatory purchase requirements, while maintaining the option of NFIP coverage. We also support and have urged greater guidance from the Federal Emergency Management Agency (FEMA) on NFIP compliance and greater coordination between FEMA and the prudential bank regulators to ensure that banks, who have been placed in the position of mandatory flood purchase enforcement, have the tools and guidance necessary to ensure proper compliance. It will also be essential that reform balances affordability and sustainability of the program.

The NFIP currently faces significant financial challenges with debt to the U.S. Treasury of nearly $25 billion and a premium structure that does not support the obligations taken on by the program. It is essential that in addressing these sustainability issues, the affordability of the program for borrowers remains a priority. Moving too fast or without other offsets to address affordability will only harm the NFIP and the customers it serves. We believe that some key provisions being considered will help to address these concerns, including the efforts to allow private flood insurance options for borrowers. However, other provisions, including the elimination of NFIP availability for properties with excessive lifetime claims, should be reconsidered as they will have dire consequences. We offer the following comments in the hope that they will aid the Committee in addressing these key concerns.

We support H.R. 1422, the Flood Insurance Market Parity and Modernization Act, bipartisan legislation by Rep. Dennis Ross and Rep. Kathy Castor. This proposal is similar to legislation which passed the full House in the last Congress by unanimous vote. The legislation removes statutory and regulatory impediments which have inhibited the use of private flood insurance as an alternative to the NFIP. Private flood insurance options will expand competition and access to flood insurance for consumers across the nation.

We support H.R. 2246, the Taxpayer Exposure Mitigation Act of 2017 introduced by Financial Institutions and Consumer Credit Subcommittee Chairman Blaine Luetkemeyer. This legislation would repeal the mandatory purchase requirement for commercial properties located in a special flood hazard area, while allowing commercial property owners the option of purchasing a NFIP policy. The legislation would also enable NFIP to engage in risk transfer arrangements to lay off some of the risk borne by the NFIP to the private sector. Such arrangements have proven very successful for Fannie Mae and Freddie Mac and their development by NFIP should be encouraged. The bill also provides for the development and use of private or community flood maps as alternatives to NFIP rate maps. The lack of reliable and updated maps by NFIP remains problematic. Allowing the development of private and community flood map alternatives will help to address those problems.

We support H.R. 2565, also introduced by Chairman Luetkemeyer, to require the NFIP to study the use of replacement cost in determining premium rates. To provide consumers with the greatest value and fairness, we believe that NFIP rates and payouts should be on the replacement value of the property. Therefore, the ABA urges that consideration be given to aligning premium rate determinations to policy settlement provisions. In other words, policies with premiums rates based on replacement cost should pay out at replacement cost, however, customers should not be charged premium rates based on replacement cost where policies pay out at actual cash value. In these cases, the premium rate determination should also be based on actual cash value, given the payout would generally be less.

ABA supports several provisions included in the draft National Flood Insurance Program Administrative Reform Act of 2017, expected to be introduced prior to the scheduled markup. These include Section 2, which would provide for increased cost of compliance coverage up to $60,000 at a borrower's option; Section 13 providing for sufficient staffing for the Office of the Flood Insurance Advocate; and Section 14 creating a Federal Flood Insurance Advisory Committee. With regard to Section 14, ABA supports the creation of the Technical Insurance Advisory Council and urge the addition of two representatives of the primary lender sector to the list of enumerated members of the council. We feel it is especially important that lender representatives are included in the council, as compliance with flood insurance coverage is placed on the lender and it is essential that lender concerns be brought to and addressed by the council.

The 21st Century Flood Reform Act of 2017, expected to be introduced by Housing and Insurance Subcommittee Chairman Sean Duffy, contains several provisions which are of great concern to our members.

Section 105 of the draft legislation would authorize procedures to finalize implementation of the monthly installment payment of premiums initially required under the Homeowner Flood Insurance Affordability Act of 2014. We note that for loans only with escrow accounts, which include flood insurance - accounts for the vast majority of loans with NFIP coverage - there is no need for this provision. Nevertheless, we acknowledge the interest in advancing this previously authorized provision for loans not subject to escrow. We urge the committee, and the NFIP to ensure that in doing so, any guidance or regulation is consistent with industry practices so that it does not create unintended consequences for borrowers with escrow accounts and that it properly addresses any potential issues with lender placed insurance when a borrower fails to make timely monthly payments. It will be essential that clear guidance, consistent with industry practice for escrowed loans also be applied with regard to lender placed insurance when borrowers fail to make timely monthly payments as authorized under this provision.

Section 505 of the draft bill would provide for the elimination of coverage for properties with excessive lifetime claims, defined in the bill as claims exceeding twice the replacement cost of the property. ABA has grave concerns over this provision. While we recognize the concern over the impact to the NFIP and to taxpayers from repeatedly flooded properties with excessive lifetime claims, we believe that dropping NFIP coverage for any property with lifetime claims exceeding twice the replacement cost of the property will have severe consequences. Cutting off such properties from NFIP coverage will likely lead to significant hardship for homeowners, lenders and communities. As borrowers lose NFIP coverage, and especially if alternative private coverage is not available or affordable, these properties will lose value and the risk of abandonment and/or foreclosure increases dramatically. In some flood prone communities, this could lead to local or regional foreclosure crisis. We strongly urge the committee to reconsider this provision. While it may ultimately be necessary to remove excessive loss properties from NFIP coverage, it must be done in a methodical and thoughtful way which allows for a reasonable transition for the borrower, lender and community. We suggest that this provision be deleted and offer to work with the committee to develop an alternative which would provide transition options such as mitigation and/or buy out alternatives for borrowers before abruptly facing loss of coverage.

Section 508 of the draft will increase the penalties for lender non-compliance from $2000 to $5000. ABA strongly opposes the proposed increase in penalties for failure to comply with mandatory flood coverage. A better way to ensure compliance with flood coverage requirements is to ensure better guidance and coordination on compliance requirements by FEMA and the prudential regulators. Increasing penalties will only drive lenders, particularly smaller lenders who will seek to avoid compliance risk, from mortgage lending.

Again, we appreciate the committee's attention to the important task of reauthorizing the NFIP in a timely manner. Balancing the need for reform and the need to keep the program available and affordable will be a difficult, but necessary task. We offer the comments above in the hope of assisting in that task and stand ready to assist further.

Sincerely,

James C. Ballentine

cc: Members of the House Committee on Financial Services