

January 29, 2014

To: Members of the United States Senate

From: James C. Ballentine, Executive Vice President, Congressional Relations & Political Affairs
J. Kevin A. McKechnie, Senior Vice President & Director, ABA Office of Insurance Advocacy

Re: Amendments to S. 1926, the Homeowner Flood Insurance Affordability Act of 2014

On behalf of the members of the American Bankers Association (ABA) and the American Bankers Insurance Association (ABIA), we are writing to express our views on two amendments to S. 1926 to be considered later today: the Heller-Lee amendment #2700 and the Merkley amendment # 2709. For the reasons outlined below, we support the Heller-Lee amendment and oppose the Merkley amendment.

Support Heller-Lee # 2700

The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) had the unintended consequence of making it more difficult for private insurers to provide private flood insurance and for lenders to accept those policies. Prior to the enactment of BW-12, lenders were able to accept private flood insurance to meet the mandatory purchase requirement of the National Flood Insurance Reform Act of 1994. Lenders typically followed guidance published by the Federal Emergency Management Agency (FEMA), which provided six criteria that lenders could look to when deciding whether to accept private flood insurance to meet the mandatory purchase requirement.

These criteria were considered guidance only; lenders had the discretion to accept a policy that did not meet FEMA guidance if the lender was satisfied that the private policy adequately protected its collateral. BW-12 incorporated those criteria into the definition of “private flood insurance,” turning the FEMA guidelines into requirements that *must* be met before a lender can accept a private flood insurance policy.

Consequently under BW-12, lenders will be forced to reject many residential private flood policies and most commercial private flood insurance policies that do not comply in every way with these requirements. For example, a private policy may provide significantly higher coverage than a FEMA Standard Flood Insurance Policy, but also include a higher deductible. A lender would be unable to accept such a policy, even though it provides greater coverage, simply because it does not exactly meet the definition of “private flood insurance” as currently found in BW-12. As a result, lenders who may have used their discretion to accept such a private flood policy prior to BW-12 must now reject that same private policy. This frustrates the intent of Congress, limits the ability of lenders and insurers to build a functional private flood insurance market, and ultimately harms consumers.

The Heller-Lee amendment would amend the definition of “private flood insurance” to restore the discretion necessary to allow lenders, private insurers, and regulators to develop a functional private insurance market. We support this commonsense solution as a simple means of effectuating Congressional intent and encouraging the growth of private flood insurance as a viable alternative to coverage provided by the National Flood Insurance Program.

Oppose Merkley #2709

Senator Merkley's amendment would encroach on the purview of state regulators by subjecting one type of force-placed insurance – flood insurance – to duplicative and unnecessary federal requirements. Force-placed insurance, including force-placed flood insurance, is a necessary tool to protect homeowners, mortgage lenders, investors, and the broader economy. A homeowner's failure to maintain required insurance subjects lenders and their investors to a significant risk of loss, raising costs for all homeowners. Consequently, mortgage lenders are required to ensure that homeowners maintain continuous flood and homeowners insurance. Force-placed insurance is provided only as a last resort to protect against unnecessary uninsured losses.

Such coverage, and the broader insurance sector, is traditionally and effectively regulated at the state level by individual state agencies. State insurance regulators have proven themselves very willing to address issues related to force-placed insurance, especially in recent years. This is especially true for states that have experienced high rates of force-placed insurance, such as Florida, California, and New York. For example, New York State implemented extensive new regulations of the force-placed insurance industry in the fall of 2013, in addition to entering into agreements with major force-placed insurers doing business in the state.

These state-level regulations already effectively address the issues highlighted by the Merkley amendment; additional duplicative federal requirements would only serve to complicate the process and limit the ability of state regulators to implement state-specific solutions. This concern is compounded by the fact that the amendment seeks to subject only one aspect of force-placed insurance to additional federal regulation, meaning that lenders, investors, and state regulators would be forced to implement differing sets of requirements for force-placed insurance in the same state.

For the reasons stated above, we urge Senators to support the Heller-Lee amendment and to oppose the Merkley amendment.