

September 28, 2016

The Honorable Emanuel Cleaver
Ranking Member
House Financial Services Committee,
Subcommittee on Housing and Insurance
Washington, DC 20515

Dear Representative Cleaver:

Thank you for the opportunity to participate in the flood insurance roundtable discussion that you hosted in Kansas City earlier this summer. In an effort to provide information to policymakers, many of the stakeholders that participated in the discussion in Kansas City had already begun and continue to meet to (1) evaluate flood insurance from both private carriers and the National Flood Insurance Program (NFIP) currently used to satisfy the mandatory purchase requirement of the Flood Disaster Protection Act (FDPA), (2) look for ways to reform and improve the NFIP, and (3) examine the ability and appetite of the private sector to take on more flood risk. At the conclusion of the conversation in Kansas City, you requested a list of items that could be easily achievable. In response to your request, we respectfully submit the following.

Flood insurance plays a critical role in managing the risks associated with flooding and in helping individuals and communities recover from a devastating flood. As such, reauthorization of the NFIP before the September 2017 expiration is crucial. It is also important that we explore ways to (i) encourage those at risk to purchase flood insurance, (ii) improve the NFIP, (iii) leverage the ability of the private sector to absorb more of this risk, and (iv) provide property owners options to purchase coverage to protect their property in the event of a flood.

The changes outlined on the following pages are guided by a set of principles (attached) that represent more than a year's work to identify and build broad support around basic ideas deemed essential to any reauthorization of the NFIP.

While some of these changes outlined here may require Congressional action, many can be accomplished through regulatory or administrative action. In either case, the proposed changes would remove barriers to the private sector's ability to deploy capital to address flood risk, or improve current operations of the NFIP.

I. CHANGES INTENDED TO FACILITATE GROWTH OF PRIVATE MARKET

1) Enact the Flood Insurance Market Parity and Modernization Act (H.R. 2901/S. 1679)

The FDPA has a mandatory flood insurance purchase obligation for all mortgage borrowers obtaining a loan from a federally regulated lender if the mortgaged property is located within a Special Flood Hazard Area, as defined by FEMA. To encourage private flood insurance development, the Biggert-Waters Flood Insurance Reform Act of 2012 (BW12) included a provision requiring lenders to accept private flood insurance with coverage equivalent to an NFIP policy to satisfy the FDPA mandatory purchase requirement. Unfortunately, BW12 imposed strict requirements on NFIP equivalency that had previously served as mere guidance for lenders in evaluating private policies. The imposition of these requirements has perpetuated a structural impediment to growing the private flood insurance market. The Flood Insurance Market Parity and Modernization Act seeks to remedy this defect by clarifying the requirements for equivalent private flood insurance coverage to satisfy the FDPA purchase mandate. The U.S. House unanimously passed the Act in the spring. In the event that this technical fix is not enacted this year, we urge that this be included in any future NFIP reauthorization proposals.

2) Analyze an exemption for large commercial loan transactions from the mandatory purchase requirement

One issue that was discussed in Kansas City was whether the largest commercial mortgages should be exempted from the FDPA. These large commercial customers generally purchase blanket private policies with higher limits and better coverage than the NFIP can provide. Additionally, the regulatory paradigm which requires a minimum of \$500,000 in coverage and imposes numerous regulatory requirements provides little protection for these borrowers or the safety and soundness of their lenders. To be clear, the exemption would not eliminate NFIP commercial policies which adequately address the need of small and medium sized enterprises and would not prevent banks from requiring flood insurance in their underwriting. The commercial exemption will permit lenders, regulators and FEMA to focus resources on protecting those who most need it - residential and small commercial borrowers who are most likely to suffer losses due to lack of coverage - and encourage the private market to continue to address the needs of the large commercial customer and the credit risk of their regulated lenders. This idea warrants further study, including a review of any potential adverse or unintended consequences on the private insurance markets.

3) NFIP must address its data analytic deficiencies and share its data with the public and insurers

FEMA must improve its data analytics, retain outside expertise to address its data deficiencies, and make its underwriting, claims and other flood data publicly available. Some private carriers already have some relevant flood data, are developing better data, and have the expertise to refine that data. Private carriers should be encouraged to move ahead with their own data analytics and not rely entirely on FEMA. However, for many carriers, entering the private flood insurance market will require a “test and learn” approach with the data as it is used for underwriting and pricing. This learning process will accelerate quickly as more and more data becomes available—including FEMA’s claims data—and as overall expertise is developed. Currently, FEMA is selectively sharing NFIP data. It is time that this information be made more widely available, subject to appropriate privacy and business protections for consumers and NFIP business partners. A possible first step could be producing aggregate data without individually identifiable personal information.

4) Remove the non-compete limitation on Write Your Own Insurers in the Arrangement

The contractual relationship between FEMA and its Write Your Own partners, known as “the Arrangement,” precludes WYOs from writing stand-alone flood insurance business that competes with the NFIP.¹ Given WYOs’ knowledge, expertise and interest in insuring flood risks, these companies should not be precluded from insuring flood risks outside of the NFIP, particularly in this time of significant financial burden for the NFIP and growing interest in a private market alternative.

5) Complete flood mapping and enhance flood risk mitigation

FEMA already has the authority to fulfill its current obligation to complete and regularly refresh flood mapping, but has not fulfilled that obligation. Correct and updated mapping information is critically important for everyone to understand flood risk and to take steps to mitigate and insure against this risk. Improving flood resiliency is a key component of the National Flood Insurance Act and FEMA currently has wide ranging authority to advance flood risk mitigation. FEMA should be strongly encouraged to do so and held accountable.

¹ FEMA recently recommended the removal of the Arrangement from the Code of Federal Regulations in proposed rulemaking FEMA 2016-0012, but no final decision has been announced.

6) Investigate the utility and efficacy of reinsurance, insurance linked securities (ILS) and/or catastrophe bonds to limit taxpayer exposure

The enactment of BW12 further encouraged FEMA to employ reinsurance as a way to leverage private sector capital to reduce taxpayer exposure. FEMA recently announced that it has purchased two layers of reinsurance through March 2017, and that the agency intends to continue to explore reinsurance options moving forward. The use of reinsurance will allow FEMA to leverage private capital to reduce its dependence on the federal taxpayer. FEMA should continue to consistently evaluate its reinsurance options. FEMA should also explore other market place alternatives such as catastrophe bonds and/or insurance linked securities as a means to reduce its financial exposure and limit its reliance on taxpayers.

7) FEMA should provide adequate guidance for the industry

Recent legislative efforts in the form of BW12 and the Homeowners Flood Insurance Affordability Act (HFIAA) in March 2014 have brought about significant change to the NFIP and bank compliance obligations.

However, these legislative changes have not been paired with sufficient attempts by FEMA and the banking agencies (Agencies) to provide clear direct guidance. For example, the Interagency Questions and Answers (Q&As), which address many lender compliance questions, have not been updated since 2011, before the enactment of BW12 or HFIAA. Regulations on private flood insurance remain outstanding.

In February 2013, FEMA unilaterally rescinded the Mandatory Purchase of Flood Insurance Guidelines (the Guidelines), which were widely relied on by the industry for comprehensive guidance on flood compliance. FEMA has indicated it has no intention to reissue them. The Guidelines provided one of the only comprehensive overviews of the flood insurance requirements for all participants in the industry, and absent adequate guidance, it is exceedingly difficult for the industry to advise borrowers about their rights and obligations with respect to the flood insurance purchase requirement. In addition, it has become increasingly difficult for the industry to obtain clear guidance on the responsibilities and obligations placed on each party. For these reasons, we urge Congress to mandate that both FEMA and the banking agencies work together to update and republish the Guidelines to once again provide the industry with comprehensive guidance on flood compliance requirements and that the agencies provide updated guidance on a regular schedule.

II. CHANGES PROPOSED TO IMPROVE PROGRAM OPERATION

Currently, there is not a robust private flood insurance market. While the industry has made significant progress in its understanding of flood risk and are better positioned today to grow the private insurance market, it may take several years for a robust private market to develop. During that time period, the NFIP will continue to be the primary flood insurance market for homeowners and businesses. As such, the NFIP must be financially stable and become more responsive to policyholders.

One way to address this is by taking steps to reduce policyholder frustration, complaints and litigation. For example, FEMA should consider improving NFIP policy coverage and claim settlement procedures to mirror industry best practices. By meeting customer needs and expectations, there would be less policyholder frustration, fewer complaints and less litigation. The private market's vast experience in the business of insurance gives us great knowledge and perspective on these issues and therefore we are making several recommendations along these lines. These proposals are not intended to be an exhaustive list of options and considerations, but rather are meant to identify improvements to the NFIP that can be readily accomplished without Congressional action and to bridge the time as private market participation increases. We would, however, urge Congress to use its oversight function to ensure that FEMA is being responsive to taxpayers, policyholders, its private sector partners, and the broader marketplace.

1) Improved disclosures and policyholder education

Insurance coverage under the NFIP policy is complex and substantially different than a typical homeowner's policy, resulting in consumers often misunderstanding the coverage limitations of the NFIP policy. There are a few steps that FEMA could take to improve consumer understanding when the NFIP policy is underwritten and bound. For example,

- i) FEMA should require consumers to sign/click or otherwise positively acknowledge that consumers understand the coverage limitations of an NFIP policy.
- ii) FEMA should update and streamline pertinent disclosures and consumer information into a clear and concise one-page disclosure sheet that plainly outlines coverage terms, conditions for coverage, any exclusions from the NFIP policy, and the disclosure should accompany every new or renewal policy.
- iii) FEMA's cover letter confirming placement of the policy should include a personalized summary of the risk, including a description of the subject insured property and summary of the relevant rating factors (i.e., construction date, pre-firm, elevated, slab).
- iv) FEMA should ensure that consumers are given the opportunity to correct any errors concerning the insured property, to avoid misrating the risk and further avoid potential issues once a claim occurs.

- v) FEMA should also provide clear guidance on their various systems and processes for evaluating risk and claims handling. Similar to FEMA's approach during the Sandy re-review, FEMA should outline for insureds the various steps required in each of its processes including, but not limited to, claims handling, appeal process, letter of map amendment process, restrictions on coastal barrier resource area, and repetitive loss property determinations.

These are the most common issues and questions that arise after a flooding event. Instructions and estimated time for decisions from these processes should be accurate and concise to guide insureds and their expectations. The summary steps, notes or info graphics should be available on-line at www.FEMA.gov.

In addition to working with consumers and policyholders, FEMA should also focus efforts on its relationship/communication with communities. FEMA should stress importance of flood plain management for "at risk" communities with rigorous enforcement for non-compliance and/or provide incentives for prompt compliance.

FEMA should develop and implement a process for meaningful consultation with Write Your Own carriers consistent with the intent of 42 U.S.C. 4013. Major changes to FEMA's processes and procedures that affect customer experience, administrative costs and other significant matters that affect WYOs require thorough stakeholder review in order to avoid unintended adverse, costly program changes.

2) **Simplified underwriting**

While there has been much debate concerning the rating factors utilized in underwriting NFIP policies, specifically concerning the usefulness of elevation certificates, we believe that the factors (including elevation) are appropriate and essential to understanding the risk for each insured property. That noted we believe that FEMA's current process can be improved to facilitate underwriting of flood risks in the NFIP. To that end, we offer the following suggestions.

- i) FEMA should clarify its requirements on grandfathering and specifically identify the number of years that WYOs are required to "look back" to ensure that a newly insured property is getting the best rate.
- ii) FEMA should create a central repository for premium and rating history for every insured property, including copies of the elevation certificates. The information should be collected and be publically available.
- iii) FEMA should provide advance notice to the WYOs with the specific map changes before the effective date of the map. This will allow the WYOs the opportunity to proactively reach out to affected policyholders and re-rate or grandfather the policy to the policyholder's benefit and/or to work with the policyholder to purchase the necessary coverages. Currently, WYOs only receive notice of map change dates, but are not given the new maps or specific map changes. The new maps are provided to the WYOs as of the effective date of the revision, which potentially could result in uninsured properties and/or higher premiums that could have been grandfathered at a lower rate.

3) Simplified and transparent claims handling

FEMA should adopt best practices for claim handling so that claimants are appropriately compensated for their losses as soon as possible. Specifically, FEMA claim guidelines should be changed to: (i) extend the time period for filing proof of loss, and (ii) clarify claim documentation requirements. Implementing these simple steps will provide additional time for claimants to file their claim, close claims more quickly at the appropriate amount, and establish a consistent process to ensure that claim payments are correct and supported by the appropriate documentation.

In the aftermath of Super Storm Sandy, several questions have arisen about the practices of engineering firms involved in adjusting flood insurance claims. To avoid potential confusion in the future, FEMA should adopt best practices that provide clear and consistent procedures and protocols regarding: (i) engineer qualifications and licensing, (ii) engineer selection process, (iii) procedures for causation investigation, (iv) requirements/contents for engineer's report, and (iv) distribution and retention of engineer's report.

We fully appreciate and understand that there are other ideas, proposals and issues that are inherently more complicated. For example, issues and concerns impacting rates and affordability, and concerns about the accuracy of flood maps. We offer the aforementioned suggestions as a starting point and look forward to continuing discussions to address these complex items.

Again, thank you for hosting us in Kansas City and we look forward to working with the Committee, Members of Congress, FEMA, and other stakeholders to develop viable short term and long term solutions to address the risks associated with flooding.

Respectfully,

American Bankers Association
American Insurance Association
Council of Insurance Agents and Brokers
Financial Services Roundtable
Independent Insurance Agents and Brokers of America
Mortgage Bankers Association
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
National Association of Professional Surplus Lines Office
Property Casualty Insurers Association of America

CC: The Honorable Blaine Luetkemeyer, Chairman, House Financial Services Committee,
Subcommittee on Housing and Insurance