



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

March 12, 2007

The Honorable Barney Frank
United States House of Representatives
Chairman, Financial Services Committee
Washington, DC 20515

The Honorable Spencer Bachus
United States House of Representatives
Ranking Member, Financial Services Committee
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

We write to urge you to include a provision in flood insurance legislation that will soon be introduced that would prevent “write your own” insurance companies that provide flood coverage from shifting the cost of legitimate homeowner’s claims for wind damage to the taxpayer-supported National Flood Insurance Program (NFIP). This proposal might also help deter insurers from using egregious “anti-concurrent causation” (ACC) clauses to refuse to pay legitimate wind claims in the first place.

At a hearing held last month on insurance claim practices in the wake of Hurricane Katrina, members of the Subcommittee on Oversight heard the Attorney General of Mississippi testify that a number of insurance companies operating on the Gulf Coast had tried to escape paying legitimate homeowner’s claims through the use of ACC clauses. Although the ACC clauses were invalidated by a Mississippi judge for claims in that state, insurers intended to refuse to pay wind damage caused by the hurricane if flooding occurred at about the same time, even if the flood hit hours after a home was damaged by wind. (Insurers may still be using this anti-consumer practice in other states in the region.) In some cases, particularly those involving the complete destruction of a home down to a slab, insurers did not even seriously study or “adjust” the claim, declaring the wind coverage trumped by the flood. Such cases often lead to the payment of full NFIP coverage, even if all or some of the losses paid by the NFIP were really caused by wind damage that should have been paid by insurers under a homeowner’s policy.

Part of the problem is that “write your own” (WYO) insurers that are paid handsomely to service the NFIP have a conflict-of-interest when they also sell wind coverage. Consider a hypothetical example involving a \$200,000 home that is covered fully by both a WYO company’s homeowner’s policy and by a NFIP policy. Storm winds of well over 100-miles per hour strike the home for several hours, causing \$150,000 worth of damage. Two hours later a flood hits, causing an additional \$25,000 in damage for a total of \$175,000. If the WYO insurer has an ACC in the policy, the wind claim is denied and the NFIP will likely pay \$175,000 when it should have paid only \$25,000.

Taxpayers pick up \$150,000 in costs that they should not have had to pay, despite the significant deficit in the NFIP program. Further, the actuarial rates charged by the NFIP do not encompass such unrelated costs, meaning that rates would have to go up sharply, particularly near the coasts, to cover this new and unexpected risk.

The obvious solution to this problem that is both fair to taxpayers and humane to homeowners is to eliminate the conflict-of-interest that WYO insurers have. The federal government should declare that, in order to be a WYO company, an insurer must not have an ACC or similar provision in private policies that would cause taxpayers to pay any part of a claim that should have been paid under the private policy were it not for this sort of cost-shifting provision. As WYO insurers are among the biggest in the country, this solution has the extra benefit of prodding a large part of the homeowner's market in the direction of fairer, more understandable private contracts.

WYO companies should readily accept this law. They make a good income, with no risk, servicing the NFIP and they should recognize that it is inappropriate to transfer costs from risks their policies cover to the NFIP. Should these companies balk at such a requirement, the program has a direct servicing entity in place that could handle NFIP policies. In fact, the NFIP functioned smoothly from 1976 to 1984 without private insurer servicing at all. Moreover, the direct program costs about one-half as much per policy to administer as the expensive WYO insurers.

Sincerely,



J. Robert Hunter
(former Federal Insurance Administrator
and Texas Insurance Commissioner)



Travis Plunkett
Legislative Director

CC: Members of the House Financial Services Committee
The Honorable Christopher J. Dodd
The Honorable Richard C. Shelby