Consumer Federation of America

March 1, 2016

Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

As a former Federal Insurance Administrator who ran the National Flood Insurance Program (NFIP), I am writing on behalf of the Consumer Federation of America (CFA) to express our opposition to HR 2901, the Flood Insurance Market Parity and Modernization Act, which will be marked up tomorrow.

We share the concerns of many Committee Members that the current program is too costly and actuarially unsound. We also agree with many of you that there is a role for private insurers in this insurance market. However, we also believe that the legislation, with recent amendments as we understand them, would put both consumers and taxpayers at risk.

Risk to Consumers

The bill removes the 45-day notice of termination, which would allow private insurers to cancel a policy at will immediately with short notice. A private insurer who, because of an imminent storm in an area with many insurance policies, could cancel those policies in order to avoid claims. The cancelled policyholder would, of course, be unable to secure a NFIP policy in time to be protected from the impending storm because of the Program's sensible 30-day waiting period for coverage (the 30-day rule is the reason for the 45-day cancellation notice requirement in current law that this bill would remove).

Even if the insurer did not cancel the policies, if a surplus lines insurer goes bankrupt, the consumer has no access to any state guarantee fund, which pays claims in the event of an insurer insolvency.

The legislation would allow surplus lines insurers to enter this market with possible significant market share. However, these insurers are not regulated by the states in any meaningful way. Unlike consumers with auto or homeowner complaints who can seek a remedy from their state insurance department, consumers with flood insurance through a surplus lines insurer would be unable to seek effective assistance from their state or from FEMA since their claims practices are not regulated by the states. We remember, for example, that after the 1992 Los Angeles riots, surplus lines insurers walked away from claims, leaving many small businesses without coverage and forced into bankruptcy.

The bill would also put consumers at risk in several other ways: It would not give states the ability to regulate policy language related, for instance, to clarity of minimum coverage requirements. If a surplus lines insurer wrote ambiguous or even clear policy language that would mislead consumers into thinking they had full flood insurance coverage when, in fact, they did not, there is no way for the state or FEMA to stop that under this bill. As former Texas Insurance Commissioner, I can assure you that state regulation of forms frequently finds and removes many misleading, unclear, unfair, illegal. and ambiguous clauses from policies prior to their use.

The bill also appears to remove the requirement allowing policyholders up to one year for bringing suit. And by allowing less coverage than the NFIP policy, it would allow private insurers to use higher deductibles and other coverage loopholes to reduce their risk and increase those of both consumers and taxpayers.

Risk to Taxpayers

The legislation would allow private insurers to cherry pick against the NFIP, leaving taxpayers with responsibility for covering the worst risks. Insurers would seek to identify "overpriced" policies that take into account the need of the NFIP to fairly price policies for everyone and also cover past losses. The NFIP then would increasingly be left with the very highest risk policies, increasing the need for federal subsidies and/or higher NFIP prices to cover losses. If prices were raised to make up for this shortfall, that would open the door for even greater cherry picking by the private insurers, creating a death spiral of higher losses and premium charges for the NFIP.

An Alternative Program

There are ways to allow private insurers into the flood insurance market that would greatly minimize these risks. For example, the Write Your Own companies could be required to take a small percentage of the risk of the actuarially rated policies they insure. They would then have an incentive to help ensure that the NFIP's actuarial rates are based on actual risk and not outdated flood maps or other factors allowing government inertia. Over time, the small risk these insurers bore could be gradually raised, increasingly allowing the federal government to play less of an insurance role and more of a reinsurance role in the event of a major catastrophe. In any such transition, special consideration must be given to the needs of low- and moderate-income homeowners, who could be forced to drop policies with rapidly increasing premiums. You have wisely required FEMA to undertake analysis of affordability, which should assist you in crafting an appropriate plan to protect low- and moderate-income homeowners.

Sincerely,

J. Robert Hunter
Director of Insurance