



## Consumer Federation of America

May 6, 2016

Dear Senator,

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 urge your opposition to H.R. 2901, the Flood Insurance Market Parity and Modernization Act as passed by the House and similarly urge your opposition to S. 1679, introduced in the Senate. Changes made to H.R. 2901 in the House do not adequately address the risks posed to consumers and taxpayers. S. 1679 and H.R. 2901 are flawed measures that are in need of significant changes to adequately protect consumers and taxpayers.

CFA shares concerns with those raised by some House members that the current (NFIP is too costly and actuarially unsound. We agree that there is a role for private insurers and for state regulation in this insurance market. However, we also believe that allowing surplus lines insurers to write flood insurance, as S.1679/H.R. 2901 does, would put both consumers and taxpayers at great risk.

### Risk to Consumers

There are many risks to consumers from the proposal to allow surplus lines carriers into the flood insurance market. The lack of meaningful state regulation of the resulting policies is a primary concern and a reason that the already bad provisions of the bill are even worse in practice than on paper.

For example, H.R. 2901/S.1679 removes the 45-day notice of cancellation to consumers, which would allow private insurers to cancel a policy at will either immediately or with very little notice. This, coupled with the fact that the NFIP does not offer coverage until after 30 days have passed since application, presents a real concern that consumers in flood prone areas could be made uninsurable for a month at the whim of their surplus lines insurer, perhaps in advance of an approaching storm.

If a surplus lines insurer goes bankrupt, the consumer has no access to any state guarantee fund that pays claims in the event of an insurer's insolvency. How is a consumer to know about that?

These insurers are not regulated by the states in any meaningful way. Unlike consumers with auto or homeowner claims or other 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 since surplus lines carriers' claims and other practices are not regulated by the states.

H.R. 2901/S. 1679 would also put consumers at risk in several other ways: It would not give states the ability to regulate surplus lines policy language related, for instance, to clarity of minimum coverage requirements. The bill no longer requires the private insurers to offer coverage at least as strong as the NFIP, so it is open season for “competing” with the NFIP on price by gutting coverage for unsuspecting insurance shoppers. If a surplus lines insurer wrote ambiguous or even clearly misleading policy language there is no way for the state or FEMA to stop that under this bill.

The state insurance departments cannot help a consumer of a surplus lines carrier who denies or delays payment on a legitimate flood claim. The states cannot make sure rates are not excessive, inadequate or unfair like they do in other lines of property/casualty insurance.

### Risk to Taxpayers

H.R. 2901/S. 1679 would allow private insurers, including surplus lines carriers to cherry pick against the NFIP, leaving taxpayers with responsibility for covering the worst risks. Insurers would market to “overpriced,” lower-risk policies (and because of reserve rules imposed by Congress there will be many of these) that take into account the need of the NFIP to fairly price policies for everyone and also spread the cost of past losses over its entire book of business. These carriers, of course, will reject applications from higher-risk homeowners, and the NFIP would increasingly be left with the highest risk policies, increasing the need for federal subsidies and/or higher NFIP prices to cover losses for a higher risk portfolio of properties. 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.

### Recommendations to Make H.R. 2901/S. 1679 More Protective of Consumers and Taxpayers

H.R. 2901/S. 1679 can and should be amended to include consumer and taxpayer protections. First, it is critical that any expansion of private market flood insurance include a requirement that an insurer providing personal lines flood coverage must be licensed to do business in the state.

Second, H.R. 2901/S. 1679 removes the 45-day notice of cancellation requirement. That should be restored. If an individual’s coverage is cancelled during hurricane season, for example, she cannot obtain coverage from NFIP for 30 days. This restoration of the 45-day notice period would solve this type of problem.

H.R. 2901/S. 1679 also removes the requirement that coverage in a private policy be equivalent to the NFIP coverage. This should be restored. The removal of this provision would allow a private insurer to “compete” by slashing benefits. For example, if NFIP offers coverage actuarially priced at \$2,000 and a surplus lines carrier offers a policy for \$1,000 but slashes the benefits so it is really actuarially worth \$500, the consumer will be hurt if a flood hits. If the house is worth \$100,000 and NFIP would pay all of that, less

the deductible. The surplus lines policy would pay \$25,000 less the deductible. The consumer could either not rebuild or would require disaster relief, raising taxpayer costs. This also has the benefit of helping lower (not remove) the ability of surplus lines insurers to cherry-pick against the NFIP.

H.R. 2901, as passed by the House, and S. 1679 do not require a warning to consumers that a surplus lines flood insurance policy is not protected by a guarantee fund. This means that if the insurer goes bankrupt after a big storm, the consumer will not get paid for a claim. We, therefore recommend that a clear, prominent warning should be required at the point of sale of such policies and again when the policy is delivered to the consumer.

We also recommend that the warning include a statement that normal state regulation does not apply to this policy which means that the policy terms are not reviewed by the state, that the consumer should read the policy very carefully, and that if a claim is not paid promptly or is underpaid, the state cannot be of assistance in resolving the claim.

We urge your opposition to H.R. 2901, in its current flawed form, and to S. 1679 and urge your support for strengthening provisions to make the bill more protective of consumers and taxpayers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "J. Robert Hunter". The signature is written in a cursive, flowing style.

J. Robert Hunter, FCAS, MAAA  
Director of Insurance