

## Specific Deficiencies in Certain Draft Bills We Have Studied

Some bills we have studied have problems, including:

### *A reauthorization that is too long*

CFA opposes the proposed call for a six- to ten-year reauthorization of the program. The program needs frequent rethinking as we try to move the program toward reform, and Congress must be engaged in oversight frequently. If we are ever to fix this program, it will have to be carefully reviewed while adjustments and reforms are developed and implemented. We recommend a three-year reauthorization. If reauthorization is for a longer period, we recommend that Congress set annual milestones that, if not met, would trigger Congressional oversight, intervention, hearings and possible action.

### *Having NFIP Purchase More Private Reinsurance*

The idea of having the NFIP buy reinsurance from private reinsurers will cost taxpayers significantly, about 50 percent more in dollars on the amounts reinsured than if these private reinsurers were not involved. Obviously, reinsurers will not offer their protection unless they make money doing so. These reinsurers will, over time, require overhead costs and profit amounting to at least one-third of the premium. That translates into a rate increase of at least 50 percent ( $1 / [1 - 0.333]$ ). Theoretically, a reinsurer should be the largest source of capital present in the market. A small insurer goes to a large reinsurer or groups of reinsurers for cover. The U.S. federal taxpayer base is huge, dwarfing even a combination of all reinsurers in the world. NFIP does not need to go to this much smaller financial base of private reinsurance for protection. The idea of private reinsurance backing up the federal taxpayer is the reverse of the normal, logical reinsurance arrangement. Private insurance needs to be at the bottom layers of the risk, not the top levels. Ultimately, as we work toward more of a private sector role, the private insurers should be taking the low levels of risk, starting with the first dollar of claims, and the government's role should become the reinsurer of very large events, perhaps, if cost-effective, with private reinsurers taking an intermediate layer of risk.

### *Allowing Some Credit for Obtaining an Elevation Certificate*

This concept gives a one-time rate credit (e.g., \$500) to obtain elevation data. This appears to be a dangerous provision since a cottage industry of trying to get everyone to seek flood rate relief (for free) will certainly develop in areas where there are many flood-prone homes. This idea is

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<sup>1</sup> This document is the Appendix to the July 18, 2017 letter from the Consumer Federation of America to leadership of the U.S. Senate Committee on Banking, Housing and Urban Affairs entitled "Principles for National Flood Insurance Program (NFIP) Reauthorization." It is on-line at <http://consumerfed.org/wp-content/uploads/2017/07/principles-for-national-flood-insurance-program-reauthorization.pdf>

understandable but some way to control likely rampant abuse of taxpayer dollars must be developed before being put into law.

***Data sharing should benefit the public and public agencies, not just private insurers***

FEMA is providing aggregated data about NFIP claims. But the private insurers should also share their claims data and should be required to do so. All such data should be made public but personally identifiable information must be kept private. Private insurer data is necessary for Congress, FEMA and the public to understand what is really happening in the new private market. Data must be sufficient to answer questions such as these: Are insurers cherry-picking risks and thereby undermining the overall program? Are insurers only writing in low risk areas? Are insurers providing appropriate levels of coverage? Undoubtedly many other important questions could be addressed with a mutually beneficial data sharing approach.

***Take a Stand for Better Mapping and Community Enforcement of Flood Risk Land Use and Construction Requirements***

As noted above, FEMA has been woefully behind on the updating of flood maps. Congressional action should be directed to put pressure on FEMA to keep maps current and for GAO or some federal body to periodically examine whether communities are actually enforcing NFIP required land use measures.

***Consumers and Taxpayers Need Forward Thinking on Affordability***

Grandfathering is a key reason for rate inadequacy and this approach to subsidies should not be allowed to continue. The practice of grandfathering flood policies undermines affordability of flood insurance, as it requires higher overall rates to make up for the grandfathering shortfall. However, grandfathering might be allowed only in exceptional cases such as a building built in accordance with a map later found to be in error. Grandfathering should not be allowed in cases of simple map updates reflecting changed conditions that are expected such as increase in flood levels from new construction or climate change. The current system of paying for the shortfall in premiums due to grandfathering by cross-subsidy from other NFIP policyholders cannot stand if private insurers are writing flood insurance. The overpriced NFIP policies are easy targets for "cherry-picking" by the private market, leaving the cost to be borne by taxpayers. Congress must enact smart subsidy strategies that are separate from the insurance program and aimed more precisely toward low- and moderate-income families and others who need a transition period to adjust to actuarially defensible rates. No other subsidies should be allowed.

**Brief Review of S. 563**

CFA generally supports the concept of increasing private sector involvement in flood insurance as incorporated in S. 563, but we have extensive concerns as addressed in our July 18, 2017 letter and briefly described below:

The bill appears to require private insurers to use the same limits of coverage as the NFIP uses. This is a relief to us since other drafts seem to allow lesser coverage. Our concern, however, is that the bill does not seem to control for possible exclusions and other coverage limitations that

could be included in a flood insurance policy being offered by a private insurer. The coverage should be required to be the same, including no exceptions, exclusions or other limitations not in the NFIP policy.

Private insurers should be freely allowed to expand, but not contract, the NFIP level of coverage. Coverage less than NFIP is a prescription for greater taxpayer disaster relief payouts.

The Definition of Private Insurer clearly allows surplus lines insurers to write coverage. The dangers to consumers and taxpayers of use of surplus lines insurers is discussed extensively above.

The bill allows for private insurers to count as “continuous coverage” under NFIP rules. This is dangerous for the reasons expressed in our July 18, 2017 letter.

### **Review of S. 1368**

CFA generally supports S. 1368. We raise the following concerns and identify provisions that we support:

The bill reauthorizes the flood insurance program for six years. We prefer a shorter reauthorization to ensure that Congress is engaged earlier to identify problems and implement solutions that protect consumers and taxpayers.

The bill has a very interesting and innovative way of helping lower-income people afford flood insurance that CFA supports.

The bill appears to expand coverage provided by the Program. These program increases will increase costs to the extent these costs are not appropriated separately. Examples include increasing coverage levels for homes and businesses, increases to Increased Cost of Compliance (“ICC”) coverage, \$1 billion per year more for mitigation, half a billion dollars more per year for pre-disaster mitigation, a one-time \$500 credit for an elevation certificate (discussed above) authorizing \$800 million per year for this, lower rates in levee zones immediately while study of such zones takes place, and it appears to add more mold coverage. Some of these are good additions to coverage but the costs will be significant, if not appropriated separately, and will raise premiums. Any increase to costs of the program would also raise the premiums of any private market policies that might now or in the future be authorized by Congress.

The bill offers cost savings but one such savings measure gives up interest to the Treasury on the debt for 6 years. While not a savings to taxpayers, other savings in the bill are significant. The bill limits WYO payments to 22.46 percent of premium for selling, writing and servicing flood insurance policies. This is a savings from current WYO levels (but still much higher than homeowners insurers costs, which were less than 17 percent in 2015 according to the NAIC).

The bill requires that WYO insurers pay agents “not less than 15 percent.” Fifteen percent is a high commission rate. Homeowners insurers paid agents only 12.6 percent in 2015 according to NAIC data. Since some insurers do not use agents or have agents in house with much lower payment than 15 percent this provision should be reconsidered. The bill also would charge private entities the cost of the Flood Insurance Rate Maps FEMA provides, CFA support this.

The bill limits premium and other cost increases to 10 percent a year. This is true regardless of the wealth of the homeowner, which is unnecessary. These limits should be reconsidered and the subsidies for affordability limited to and targeted at those needing such help.

The rather complex approach to determining site-specific flood risk information and making information on the site's cost of damage at various flood risk levels from a ten-year to a 500-year flood is very interesting and would be very helpful for homeowners and prospective homeowners to grasp the real risk they face. Explaining the full risk rate and comparing that to the rate being charged is very important information that would be very useful for consumers to have.

Expanded appeals on Base Flood Elevations could help consumers redress any mapping wrongs, but the methods outlined seem excessively costly and may allow too many subjective factors to be brought into play (e.g., vegetation, ditches, etc.)

The bill requires claims decisions to be made on 30-days, with a possible 15-day extension in "exceptional circumstances." We support a limit, but wonder, particularly in cases of huge floods like Katrina, if the dates are too restrictive.

Appeals are also expanded for those receiving claims denials or have other claims-related problems. This is a good idea generally, except that the 90-day limit on a decision with a deemed approved drop-dead end to the process may be too short in very complex cases. Perhaps, an exception could be created for complex time-consuming cases.

The bill also makes all claims-related documents available to a consumer upon request. A very good idea.

The bill increases transparency of the vendor costs paid out by WYO companies, including claims adjusters and engineers. This is a good provision that CFA supports.

CFA supports the idea of ending any manipulation of engineering reports created as part of a claim process. This was a serious problem during both Katrina and Sandy and must be resolved.

The bill includes an "Accountability of Underpayments" provision where the Administrator could find, on audit, that claims have been underpaid by WYO companies or private insurers. This is a good idea. But the amounts determined to be underpaid and collected by the Administrator are deposited into the National Flood Insurance Fund. We suggest an alternative approach in which these amounts would be paid to the underpaid homeowners/claimants and only deposited in the Fund if, for some reason, the homeowners cannot be determined or located.