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TO: CIAB

FROM: Scott Sinder
Kate Jensen

RE: House NFIP Reform Legislation (H.R. 2874)

Today, the House is expected to vote on its comprehensive reforms and reauthorization of the National Flood Insurance Program (NFIP). The latest text, reflected in an omnibus substitute amendment from Rep. Duffy (R-WI), compiles major provisions from various bills passed by the House Financial Services Committee earlier this year. Several amendments to the substitute were offered by Democrats and Republicans (a list of relevant proposed amendments is attached), but only one additional amendment from Rep. Duffy was accepted by the House Rules Committee. No further amendments will be considered on the House floor. Prospects for the legislation's passage are not clear, given significant opposition to the package by coastal lawmakers in both parties.

With respect to The Council's core NFIP issues, the Duffy substitute retained many of the provisions on which we previously reported:

- Reauthorizes the program for 5 years;
- Attempts to grow the private flood insurance market by adopting the Ross-Castor approach, which:
 - treats private coverage on par with NFIP coverage (by including both in definition of "flood insurance," which satisfies the mandatory purchase requirement); and
 - contains a much-simplified definition of "private flood insurance" vis-à-vis the current Biggert-Waters definition;

- Requires FEMA to share certain program data with the private market (detailed below, including The Council’s suggested amendments to the legislation to strengthen this provision);
- Eliminates the mandatory purchase requirement for commercial properties beginning in 2019; and
- Includes Write Your Own (“WYO”) program reforms, such as elimination of non-compete provisions under current law and capping compensation for WYO companies.

Below is a more detailed overview of the final bill’s contents.

Five-year reauthorization

The NFIP is reauthorized for five years (until September 30, 2022).

Private market provisions

The legislation aims to grow the private market for flood insurance (and with it, consumer choice)—an objective long supported by the Council. Generally, the bill follows the Ross-Murphy/Ross-Castor approach to private flood insurance:¹

- Treats private flood insurance on par with NFIP insurance (i.e., both fall within the definition of “flood insurance,” which satisfies the mandatory purchase obligation if other requirements for the coverage are met);
- Contains a much-simplified definition of “private flood insurance” (compared to Biggert-Waters’ current definition); such policies are defined as:
 - Coverage issued by an admitted or surplus lines insurer (not disapproved as a surplus lines insurer) that complies with state laws and regulations; or
 - An agreement with a mutual aid society to cover expenses arising from flood damage to property of its members (unless disallowed by the State in which the property is to be insured);
- Clarifies that all “other covered Federal mortgage entities” (defined to include HUD, Department of Agriculture, and Ginnie Mae) must ensure that the mandatory flood insurance purchase requirement is satisfied;
- Unlike Biggert-Waters, there is no explicit private insurance-specific mandatory acceptance requirement (i.e., no “lenders must accept private coverage” language), but all federal agency lenders and federal mortgage entities “shall accept flood insurance as satisfaction of the flood insurance coverage requirement...if the flood insurance coverage meets the requirements [laid out in the bill];” and

¹ Notably, Ross-Castor (H.R. 1422) passed the House in September 2017 as part of the House’s FAA reauthorization bill. The Senate, however, stripped the flood provisions out of the final FAA bill.

- Requires the Federal Housing Finance Agency (in consultation with all relevant Federal mortgage entities) to develop and implement requirements relating to the financial strength of private insurance companies from which the public entities/agencies will accept private flood insurance (requirements must not affect or conflict with any State insurance laws).

Beyond the Ross-Castor private market provisions, the text requires FEMA to refund premiums on a pro-rated basis when policyholders cancel NFIP policies during the middle of a policy term and replace them with private funds (if the property has not been mitigated with NFIP funds).

It also calls for a GAO study regarding the feasibility of establishing optional Flood Damage Savings Accounts for residential policyholders. These accounts (proceeds from which would only be allowed for covering flood losses) would be in lieu of the NFIP's mandatory purchase obligation. If the Comptroller General determines such accounts would be feasible, FEMA would be required to submit a plan for a demonstration program based on GAO's conclusions and recommendations.

Finally, the bill would allow private lenders (in addition to state and local governments) to require flood insurance for structures not located in special flood hazard zones.

Private market access to FEMA claims data

Related to and in support of the above-referenced private market expansion provisions, the legislation requires FEMA to share certain program information with the public. Specifically, the legislation instructs FEMA to develop and make public an open-source data system with "all data, models, assessments, analytical tools, and other information" in the possession of FEMA related to the NFIP "that is used in assessing flood risk or identifying and establishing flood elevations and premiums," including:

- "Data relating to risk on individual properties" and loss ratio information and other information identifying losses under the program ("loss ratio" means, with respect to the National Flood Insurance Program, the ratio of the amount of claims paid under the Program to the amount of premiums paid under the Program);
- "Current and historical policy information," limited to the amount and term only, for properties currently covered by flood insurance and for properties that are no longer covered by flood insurance;
- "Current and historical claims information," limited to the date and amount paid only, for properties currently covered by flood insurance and for properties that are no longer covered by flood insurance;
- Identification of whether a property was constructed before or after the effective date of the first flood insurance rate map for a community;
- Identification of properties that have been mitigated through elevation, a buyout, or any other mitigation action; and

- Identification of unmitigated multiple loss properties.

In addition to the above information related to flood risks, FEMA would be required to establish a searchable database with the following community information:

- Status of the community's compliance with the National Flood Insurance Program, including any findings of noncompliance, the status of any enforcement actions initiated by a State or by the Administrator, and the number of days of any such continuing noncompliance;
- The number of properties located in the community's special flood hazard areas that were built before the effective date of the first flood insurance rate map for the community;
- The number of properties located in the community's special flood hazard areas that were built after the effective date of the first flood insurance rate map for the community;
- Total number of current and historical claims located outside the community's special flood hazard areas;
- Total number of multiple-loss properties in the community; and
- The portion of the community, stated as a percentage and in terms of square miles, that is located within special flood hazard areas.

The legislation specifies that the above information shall be based on data that identifies properties at the zip code or census block level, and shall include the name of the community and State in which a property is located. Further, the information shall be disclosed in a format that does not reveal individually identifiable information about property owners in accordance with the Privacy Act.

The Council has weighed in with congressional staff regarding the need for greater private-sector access to FEMA claims data so that the private market can effectively underwrite flood policies. Based on feedback from Council members, we specifically requested that the Committee require FEMA to disclose to properly licensed insurers and their authorized agents and representatives, at least annually and upon request, certain claims and exposure data, including—for residential and commercial properties:

- Property address;
- Building value;
- Amount of insurance coverage;
- Date of loss;
- Amount of claim(s);
- Depth of water in the building during flood event(s); and
- Any other data or information agreed upon by the Administrator and industry participants that is relevant to underwriting private flood insurance policies.

We further proposed a provision requiring such information/data to be used only for aggregate underwriting of flood policies, and not to identify any individual for underwriting purposes.

Based on the foregoing, The Council has recommended the following amendments to the legislation's current data sharing provisions:

- Remove the requirement that data identify properties at the zip code or census block level;
- Clarify that “data relating to risk on individual properties” includes property address and building value;
- Clarify that “current and historical claims information” includes depth of water in the flooded structure; and
- Revise the language to clarify that any FEMA data sharing in accordance with this section *does not* violate the Privacy Act (5 U.S.C. 552a).

Further, to address any concerns regarding protection of individually identifiable information, the Council has suggested that Congress could –

- Require that FEMA publish all data and information in an aggregated, anonymized format; and/or
- Limit sharing of certain property-specific data (e.g., property addresses, building value, etc.) to properly licensed private insurance companies and their authorized agents and representatives (rather than the general public); and/or
- Require that private company recipients of property-specific data provide adequate advance written assurances or other certification that the data will be used only for aggregate underwriting of flood insurance policies and not to identify any individual for underwriting or other purposes.

WYO program reforms

The latest text eliminates the non-compete provisions under current law to allow WYO insurance companies to sell their own private policies outside of the NFIP. It also caps WYO compensation at no more than 27.9% of chargeable premium for coverage made available under the NFIP, imposed by equal reductions over the 3-year period following enactment of the law. The cap does not apply to “actual and necessary costs” or payments deemed necessary by FEMA. Finally, it requires FEMA to reduce costs and unnecessary burdens on WYO companies (e.g., eliminating unnecessary communication requirements, simplifying the rating system, etc.) by an amount equal to at least half of the cost savings achieved by the compensation cap.

The final bill also establishes a pilot program for WYO companies, which would allow them to investigate insured and potential insured properties for pre-existing conditions that could result in later denial of a claim.

Other notable reforms of more general interest to The Council

- So-called “Superstorm Sandy reforms” regarding claims processing and litigation (e.g., deadlines for processing claims, enhanced appeals rights, more litigation oversight, etc.);
- Elimination of the mandatory purchase requirement for commercial properties as of 2019;
- Requires the NFIP to cede a certain amount of risk to private market solutions (i.e., reinsurance and/or capital markets);

- Allows FEMA to expedite implementation of the monthly installment payment provision in current law;
- Prohibits NFIP coverage for multiple-loss properties with lifetime claims payments of more than 3 times the value of the structure;
- Provides for satisfaction of the mandatory purchase requirement for properties located in a state that allows “all-perils” coverage that includes flood insurance;
- Generally, increases information and disclosures to property owners regarding flood risks (e.g., required disclosures with transfer of property, mandatory “clear communication” disclosures with NFIP and private insurance policies, and FEMA-provided historical flood information upon request from a property owner);
- Establishes a pilot program for purchase of a single, community-wide NFIP policy, which would cover all residential and non-residential properties in a community and satisfy their mandatory purchase obligations; such policies would have to include, among other things: mapping requirements, premium caps, deductibles, community mitigation plans, etc.;
- Creates a federal flood insurance advisory committee with private insurance sector representation to advise FEMA on all aspects of the NFIP;
- Contains accountability provisions (e.g., obligation to develop mitigation plans and make progress toward mitigating risk), including FEMA sanctions authority, for communities with a certain number of repetitive loss or severe repetitive loss properties; and
- Instructs GAO to study enforcement of the mandatory purchase requirements and provides for increased penalties for non-compliance with such requirements.

Overview of Relevant Amendments Submitted to Rules Committee

- **PASSED** - Rep. Duffy (R-WI) (will be considered as part of the bill text on the House floor):
 - delays applicability date of the commercial property carve-out from mandatory purchase requirement until Jan. 1, 2019; and
 - strikes prohibition of NFIP coverage for structures with high-value replacement costs;
- **SUBMITTED** - Rep. Garret Graves (R-LA): would impose a fee on all private flood insurance policies equal to the fees on NFIP policies;
- **SUBMITTED** - Rep. Pallone (D-NJ): would cap WYO compensation at 22.46% of premiums, and require insurers to pay a portion of that compensation to agents as commissions in an amount not less than 15% of the premiums sold by the agent;
- **SUBMITTED** - Rep. LoBiondo (R-NJ): would, among other things, remove altogether the provision carving commercial properties out of the mandatory purchase obligation;
- **SUBMITTED** - Rep. Garret Graves (R-LA): would require FEMA to assess, quantify and publish in the Federal Register:
 - for WYO coverage—the portion of premiums paid for the coverage in excess of the costs and expenses attributable to administering the program;
 - increased flood risk (not attributed to the actions of a policyholder) taken into account in setting premium rates; and
 - other costs associated with “inefficiencies in the program.”
- **SUBMITTED** - Rep. Pallone (D-NJ): would cap increases on policyholder premiums, surcharges and mapping fees (together, “covered costs”) at 10% per year.

Overview and Comparison of Flood Insurance Reform/Reauthorization Proposals

	NFIP Reauth. Prd.	Private Flood Insurance Provisions	FEMA Claims Data Sharing	Mandatory Purchase Requirements	NFIP Long-Term Solvency/Financial Stability Measures	NFIP Policy Affordability/Accessibility Measures	Other Notable NFIP Reforms and Innovations
Biggert-Waters (Current Law)	Exp. 12/8/2017	"Private flood insurance" = (1) issued by admitted insurer or for multi-peril/all risk/blanket insuring nonresidential property issued by recognized SL insurer, (2) coverage "at least as broad as" SFIP, (3) includes requirement that insurers provide 45 days' written cancellation/non-renewal notice, info about the NFIP, a SFIP-like mortgage interest clause, and 1-year SOL provision for insured suits, and (4) cancellation provisions are as restrictive as SFIP policies; regulated lending institutions, Federal agency lenders and GSEs must accept "private flood insurance" if coverage meets minimum amount/term requirements (and, for GSEs, financial strength requirements)	Subject to Privacy Act restrictions (per FEMA)	Mandatory purchase requirement applies to residential and commercial properties in flood hazard zones; coverage must satisfy minimum amount and term/duration requirements	N/A	N/A	N/A
Ross-Murphy (H.R. 2901, 2016)/Ross-Castor (H.R. 1422,2017)	N/A	Federal agency lenders and GSEs must accept "flood insurance" as satisfaction of the mandatory purchase requirement if the coverage meets minimum amount and term requirements (and, for GSEs, if a private insurer meets financial strength requirements); "Flood Insurance" = federal and private flood insurance; "Private Flood Insurance" = (1) issued by a an admitted insurer or a SL insurer eligible under the NRRRA (insurer may not be disapproved as SL insurer); and (2) provides flood coverage that complies with the laws and regs of the State; private flood insurance coverage counts as a period of continuous coverage	N/A	N/A	N/A	N/A	N/A
House NFIP Bill (H.R. 2874; compilation of HFSC-passed bills)	Until 9/27/2022	Incorporates Ross-Castor definitions; clarifies that all federal agency lenders and federal mortgage entities "shall accept flood insurance as satisfaction of the flood insurance coverage requirement...if the flood insurance coverage meets the requirements [laid out in the bill];" in addition to Ross-Castor definition, adds mutual aid societies to definition of "private flood insurance;" eliminates current non-compete restriction to allow WYO companies to sell private policies outside of the program	Rquires FEMA to share with public: data relating to risk on individual properties and loss ratio information; current and historical policy information (amount and term only); current and historical claims information (date and amount paid only); identification of mitigated properties and unmitigated multiple loss properties; and information on communities' overall NFIP profile; data may only ID property at zip code or census block level; info must be disclosed in a manner that does not reveal individually identifiable information about property owners in violation of the Privacy Act	Effective in 2019, repeals mandatory purchase requirement for commercial properties located in flood hazard areas (but retains ability for commercial properties to get NFIP coverage if they want it)	Requires FEMA to annually cede a portion of the risk of NFIP to the private reinsurance and/or capital markets in an amount sufficient to maintain NFIP ability to pay claims and that limits exposure of the NFIP to flood losses in accordance with a probable maximum loss target established for the year; prohibits NFIP coverage for multiple-loss properties with high lifetime claims payments (compared to replacement value of property); caps WYO compensation at 27.9% of premium; increases penalties for violation of mandatory purchase requirements; allows for "all-perils" coverage satisfaction of mandatory purchase requirement	Caps individual annual rate increases; allows FEMA to expedite implementation of montly installment payment provision in current law; requires use of replacement cost value of property in setting rates; increases information and disclosures to property owners regarding flood risks (e.g., requires disclosures with transfer of property, mandatory "clear communication" disclosures with NFIP and private insurance policies, and FEMA-provided historical flood information upon request from a property owner)	Creates pilot NFIP program that would allow WYO companies to do pre-inspections on structural conditions that may impact future flood claims; includes "Superstorm Sandy Reforms" related to fraud, claims processing, and litigation; establishes a pilot program for purchase of a single, community-wide NFIP policy, which would cover all residential and non-residential properties in a community and satisfy their mandatory purchase obligations (such policies would have to include, among other things: mapping requirements, premium caps, deductibles, community mitigation plans, etc.); creates a federal flood insurance advisory committee with private insurance sector representation to advise FEMA on all aspects of the NFIP; contains accountability provisions (e.g., obligation to develop mitigation plans and make progress toward mitigating risk), including FEMA sanctions authority, for communities with a certain number of repetitive loss or severe repetitive loss properties; and instructs GAO to study enforcement of the mandatory purchase requirements and provides for increased penalties for non-compliance with such requirements.
Cassidy-Gillibrand (S. 1313)	Until 9/27/2027	Incorporates Ross-Castor definitions; requires FEMA report in 2 years on any adverse selection issues; WYO non-compete reforms "phased in" over two-years by applying only to certain risk classifications: second homes, severe repetitive loss properties, properties that have incurred flood-related damage in excess of the property's fair market value, and business property--after the two-year phase-in period, FEMA will revisit WYO non-compete rules based on whether provision of private flood insurance by WYO insurers adversely impacts the NFIP	Requires FEMA to study and report to Congress on the feasibility of selling or licensing the use of NFIP claims data to the private market; upon completion of study, FEMA may sell or license NFIP claims data and promulgate rules to implement such transactions if certain findings are made by FEMA regarding legality, feasibility and benefit to the public	N/A	Requires FEMA to annually cede a portion of the risk of NFIP to the private reinsurance and/or capital markets in an amount sufficient to maintain NFIP ability to pay claims and that limits exposure of the NFIP to flood losses in accordance with a probable maximum loss target established for the year; mandates 5-year risk-sharing Pilot Program under which WYO companies or other qualified insurance companies would assume a first-loss position for claims \$50K or less for structures covered by the pilot program, and NFIP would assume a secondary loss position	Requires FEMA to provide affordability vouchers (scaled based on area median income) to offset the cost of flood coverage if covered housing costs, including flood insurance, exceeds 40% of household income; increases coverage limits from \$250K to \$500K for residential structures and from \$500K to \$1M for multifamily and business structures	FEMA shall use premium surcharges to help fund mitigation programs; provides a mitigation credit to reduce risk premium rates for policyholders by at least 10%; ensures equal treatment of cooperative building owners and condo owners; Agreed Value Pilot Program: for 8 years after enactment, policies will make payments on agreed schedule determined by flood height in covered structures, policies satisfy mandatory purchase requirement, placed by state-licensed agents/producers, nondiscrimination provision (based on location), designated program reserve fund; modernizes flood mapping with high-resolution technology provisions; sets a 30-day deadline for flood insurance claim determinations (w/ a one-time 15-day extension for extraordinary circumstances); calls for a report from the NFIP Transformation Task Force within 1 year on recommendations and timelines; reforms the statute of limitations for instituting claims-related actions to be 2 years after the date of the loss or 90 days after a claim is denied, whichever is later
Menendez-Kennedy (S. 1368)	Until 9/30/2023	N/A	N/A	N/A	Caps WYO compensation at 22.46%, but requires agent commissions be at least 15% of written premium; freezes interest accrual on NFIP debt for 6 years; charges private companies for use of flood insurance rate maps; adds transparency and reimbursement requirements for WYO vendors	Caps annual premium, surcharge and fee increases at 10%; increases policy coverage limits; provides for increased affordability assistance and mitigation funding; requires FEMA to implement provision under current law for monthly installment payments of premiums	Incorporates Senator Kennedy bill (S. 1058) below on FEMA WYO contract cancellation authority; various claims process, litigation, and policyholder experience reforms under the NFIP, including enhanced WYO agent, engineer and claims adjuster training and certification requirements
Sen. Kennedy (S. 1058)	N/A	N/A	N/A	N/A	N/A	N/A	Allows FEMA to terminate a contract or other agreement between a covered entity (defined as any attorney, law firm, consultant, or third-party company that provides services to a WYO company) and a WYO company if the Administrator determines: (1) the covered entity has engaged in conduct "that is detrimental to the flood insurance program," and (2) not later than 14 days before termination of the contract/agreement, provides notice to the covered entity of the termination (NOTE: no other standards/requirements for termination are included); an appeals process shall be established by FEMA; applies to any contract/agreement entered into on or after the date of enactment