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TO: CIAB

FROM: Scott Sinder
Kate Jensen

RE: House Financial Services Committee NFIP Reauthorization Legislation

The House Financial Services Committee recently marked up and passed several bills to reauthorize and reform the National Flood Insurance Program (“NFIP”). Taken together, the bills would:

- Reauthorize the program for 5 years;
- Attempt 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;
- Require 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);
- Eliminate the mandatory purchase requirement for all commercial properties, but preserve eligibility for NFIP coverage for voluntary purchase by such properties (incorporates the approach under Rep. Luetkemeyer’s bill);
- Eliminate the non-compete provisions under current law to allow Write Your Own (“WYO”) insurance companies to sell their own private policies outside of the NFIP; and
- Cap 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 (cap does not apply to “actual and necessary costs” or payments deemed necessary by FEMA).

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

Five-year reauthorization – The NFIP is reauthorized for five years (until September 30, 2022).

Private market development and enhanced consumer choice – 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 Committee adopted the Ross-Murphy/Ross-Castor approach to private flood insurance with a few additional provisions/reforms noted below.

- From Ross-Castor’s (H.R. 1422) private market provisions, the legislation:
 - 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 (provided private flood policies satisfy the additional criteria noted below—not in Ross-Castor));
 - Contains a much-simplified definition of “private flood insurance” (compared to Biggert-Waters current definition):
 - ❖ may be issued by an admitted or surplus lines insurer (not disapproved as a surplus lines insurer) (same as Ross-Castor);
 - ❖ coverage complies with state laws and regulations (same as Ross-Castor); and
 - ❖ provides flood coverage with respect to a property that is located in an area in which flood insurance coverage has been made available under the NFIP (not in original Ross-Castor);
 - 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];”
 - 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 bills contain the following:
 - “Private flood insurance” also is defined to include 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);

- Imposes a fee on private policies equivalent to the fee already assessed on NFIP policies;
- Eliminates the non-compete provisions under current law to allow Write Your Own (“WYO”) insurance companies to sell their own private policies outside of the NFIP;
- 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); and
- Calls for a GAO study regarding the feasibility of establishing optional Flood Damage Savings Accounts for policyholders who wish to reduce/eliminate NFIP premiums, and requires FEMA to submit a plan for a demonstration program based on GAO’s conclusions and recommendations.

Private market access to FEMA claims data – Related to and in support of the above-referenced private market 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;
- Identification of unmitigated multiple loss properties;
- 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.

Affordability and consumer costs – A Committee summary of the legislation notes that consumers must be protected from “sticker shock and unpredictable rate increases.”

Accordingly, the legislation will, among other things:

- Cap individual policyholder annual rate increases and limit the chargeable risk premium of any residential property;
- Eliminate the mandatory purchase requirement for commercial properties (but preserve eligibility for NFIP coverage for such properties to voluntarily purchase coverage);
- Authorize voluntary state affordability programs for policyholders who cannot afford premiums (based on income levels);
- Require use of replacement cost value in determining premium rates for NFIP coverage; and
- Allow FEMA to expedite implementation of the monthly installment payment provision in current law.

Taxpayer protections/actuarial and financial soundness of the NFIP – The legislation addresses concerns regarding the long-term financial soundness of the NFIP by:

- Incorporating the Rep. Luetkemeyer approach (reflected in H.S. 2246), which requires FEMA to use risk transfer tools (e.g., reinsurance, catastrophe bonds, other securities) to reduce direct taxpayer exposure to losses;
- Increasing funding for NFIP through various mechanisms (e.g., via higher surcharges and assessment rates, and charging more policyholders full actuarial rates);
- Simplifying FEMA’s designation and treatment of multiple loss properties;
- Beginning January 1, 2021, prohibiting NFIP coverage for certain high-risk properties that have affordable private flood insurance options, including: residential structures (1-4 units) where replacement cost of the building alone is greater than \$1 million multiplied by the number of dwelling units; and new construction in an area with special flood hazards;
 - To determine whether affordable private flood insurance is available under this provision, a Flood Insurance Clearinghouse (operated by a third party pursuant to a contract with FEMA) is established for the purpose of receiving applications from prospective insureds for whom NFIP coverage is prohibited and for private flood insurers to offer coverage to

such applicants (provided such coverage meets established premium, deductible and coverage requirements); and

- NFIP coverage may be provided to these properties if they do not receive at least one bona fide offer for private coverage through the Clearinghouse;
- Capping 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 (cap does not apply to “actual and necessary costs” or payments deemed necessary by FEMA), and 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; and
- Providing for satisfaction of the mandatory purchase requirement for properties located in a state that allows “all-perils” coverage that includes flood insurance.

Other general areas covered in the legislation – Other topics addressed in the legislation which may be of more general interest to Council members include:

- Required disclosure of flood risk information upon transfer of property as a condition for coverage under the NFIP (beginning September 30, 2022);
- Reform and modernization of the flood mapping process, including allowing localities to use their own resources to develop their own flood maps (subject to FEMA standards);
- Updates/reforms to the NFIP’s mitigation of frequent flood properties; and
- Claims processing and litigation reforms to better address and minimize fraudulent practices (the so-called “Superstorm Sandy Reforms”).