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TO: CIAB

FROM: Scott Sinder  
Kate Jensen

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

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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:<sup>1</sup>

- 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

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<sup>1</sup> 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.