National Association of Insurance Commissioners & The Center for Insurance Policy and Research

December 23, 2013

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Re: Loans in Areas Having Special Flood Hazards; RIN 1557-AD67; RIN 7100 AE-00; RIN 3064-AE03; RIN 3052-AC93; RIN 3133-AE18

Dear Sirs:

We write on behalf of the National Association of Insurance Commissioners (NAIC) regarding the joint notice of proposed rulemaking on "Loans in Areas Having Special Flood Hazards." Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

Our comments focus on the implementation of section 100239 of the Biggert-Waters Flood Insurance Reform Act of 2012[1] (the Act) relating to the acceptance of private flood insurance and, specifically, your proposed "safe harbor" whereby, a flood insurance policy would be deemed to meet the definition of private flood insurance if a state insurance regulator makes a determination in writing that the policy meets the definition in the Act. While the "safe harbor" proposal is well-intentioned and appropriately recognizes the states' authority to regulate the business of insurance, we have concerns that as currently drafted, it would not be feasible.

[1] Pub. L. 112-141, 126 Stat. 916 (2012).

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First, we are concerned that it may not be legally appropriate in this context for state insurance regulators to be solely responsible for interpreting a federal statutory provision in which Congress directed the federal banking regulators to issue implementing regulations. Undertaking this task could have the potential to place state insurance regulators, who operate within the framework of insurance laws enacted by their state legislatures, in a legally tenuous position under state law of fully enforcing the provisions of the proposed safe harbor that may otherwise conflict with any existing state law provisions they are charged with enforcing by operation of state law.

Second, it is our understanding that nonadmitted (or surplus lines) insurers may be providing much of the private flood insurance coverage at this time. When considering options for the acceptance of private flood insurance, it is important to note the regulatory differences that exist with regard to surplus lines insurers. Surplus lines insurers provide coverage for specialized or unique risks typically unavailable in the traditional insurance marketplace and, as a consequence, are regulated in a different manner than admitted (or licensed) insurers. While surplus lines insurers must be licensed in their home state or country and must comply with those jurisdictions' comprehensive solvency and regulatory requirements, they are not subject to the same level of regulatory scrutiny outside their home state; for example, surplus lines rates and policy forms are generally not subject to the same evaluation as is the case with the admitted market.

Third, the way the regulation is drafted, it appears a state could be required to opine on each individual private flood policy issued creating an administrative burden for regulators. Collectively state insurance regulators process roughly 550,000 rate and policy form filings each year. A generic policy form filing can be applied to one or many policyholders by granting approval to use the generic form and allowing the insurer to insert risk specific information (name and address of the insured, location of the dwelling, etc.). States could more effectively manage the number of filings needed if a generic policy form approval process were substituted for the individual risk approach in the proposed regulation.

In light of the considerations mentioned above and based on what we understand to be your proposed goals of providing certainty to lenders and ensuring that someone affirms that private flood insurance policies meet the criteria in the Act, we propose the following option for consideration. This proposal represents a conceptual overview and we would anticipate working through the specific details with you and other stakeholders should you decide to pursue this option.

- State insurance regulators, working through the NAIC, would collaborate with federal banking regulators and the Federal Emergency Management Agency (FEMA) to develop a list of acceptable minimum standards for a private flood insurance policy consistent with the definition in the Act.

- Federal banking regulators would require lenders to only accept private flood insurance policy forms that have been filed[2] with the state insurance regulator where the property is located, regardless if the policy is sold in the admitted or nonadmitted market (surplus lines). Such filings would include a cover sheet (checklist) that would detail how the insurer's policy form meets the minimum standards using citations and references.

- After reviewing the policy form and checklist, if the state insurance regulator believes that the policy form may not meet the definition in the Act consistent with the list of minimum standards referenced above, then the state insurance regulator would advise the federal banking regulators who would make a determination to take any action related to its lenders' acceptance of the policy.

[2] For the nonadmitted market, this would solely be for complying with the private flood definition under the Biggert Waters Flood Insurance Reform Act of 2012. This would not otherwise affect any requirements under relevant state law.

We appreciate the complexities of trying to balance legal and regulatory concerns in devising implementing regulations that are not burdensome to lenders, the banking agencies, insurers, or state insurance regulators, and we look forward to collaborating with you on developing a safe harbor. Should you wish to discuss this comment or any other matter relating to the NAIC's views on this proposed rule, please do not hesitate to contact Mark Sagat, Counsel and Manager, Financial Policy and Legislation, at (202) 471-3987, or Brooke Stringer, Financial Policy and Legislative Advisor, at (202) 471-3974.

Sincerely,

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