

NAR Issue Summary

Insurance / Private Flood Insurance Options

NAR Committee:

Insurance Committee

What is the fundamental issue?

In many parts of the country, the private market now offers better coverage at lower prices than the National Flood Insurance Program (NFIP). However, federal regulations prevent NFIP policyholders from considering these options because they must maintain "continuous coverage" with an NFIP policy in order to keep their grandfathered insurance rates.

I am a real estate professional. What does this mean for my business?

The private market for flood insurance could offer lower cost options for some properties, including those that are difficult to market or afford based on NFIP rates. This is because NFIP rates are based on national average risk, which would be too high in areas with below average risk. Unlike the NFIP which has only one rate table nationwide, the private market could offer individualized rates that would better align with the individual risk for a given property.

NAR Policy:

Supports:

- Development of private market options where cost effective, provided that NFIP remains a viable option for property owners;
- Expanding the definition of continuous coverage to include coverage under a private market policy or the NFIP;
- Removing duplicative, overlapping or unnecessary federal requirements for private flood insurance companies that the states already license and regulate; and
- Maintaining federal mortgage regulatory authority to set requirements on the financial strength of private flood insurers.

Opposition Arguments:

Opponents warn that the private market will "cherry pick" the low risks and leave the NFIP with less revenue to keep the program solvent over the long term. However, free market advocates point to private flood insurers who are targeting the highest risk properties that are net revenue losers to the NFIP.

Opponents also assert that the market could offer less coverage than an NFIP policy and expose Fannie Mae/Freddie Mac to risk as the market assumes a greater share of policies. Supporters counter that the legislation endorsed by NAR, the American Bankers Association and National Association of Insurance Commissioners specifically states: "Nothing in this subsection shall be construed to supersede or limit the authority of [GSEs, federal lenders or regulators] to establish requirements relating to the financial

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strength of private insurance companies ... provided that such requirements shall not affect or conflict with any State law, regulation, or procedure concerning the regulation of the business of insurance.”

Legislative/Regulatory Status/Outlook

Section 239 of the Biggert-Waters Reform Act of 2012 requires federally related mortgage lenders to accept private flood insurance, but only if it meets the statutory definition and is "as broad as" an NFIP policy.

On November 7, 2016, Federal regulators including the Federal Reserve and the Federal Deposit Insurance Corporation proposed a rule to clarify the Biggert-Waters definition of private flood insurance and terms like "as broad as." While these clarifications are helpful, as a practical matter, the current statutory definition is too narrow and the only private plan that would be "as broad" is if the private insurer simply offers the NFIP policy itself.

In the 115th Congress, Sens. Heller (R-NV) and Tester (D-MT) and Reps. Ross (R-FL) and Castor (D-FL) have reintroduced the Flood Insurance Market Parity and Modernization Act. (S. 563/HR 1422) to expand the Biggert-Waters definition and clarify that "continuous coverage" includes private flood insurance. Specifically, the bill:

- Reduce federal regulatory barriers to private market flood insurance;
- Require lenders to accept private flood insurance that meets the federal standard for the minimum amount of coverage but the state's standard for the rest (e.g., deductibles, exclusions, etc.) which is the "business of insurance" and thus the purview of the states and not the federal government.
- Clarify that property owners may satisfy the mandatory purchase requirement with either an NFIP policy or private market coverage that meets state law.
- Ensure that consumers can move freely between the NFIP and private coverage without penalty of losing grandfathered NFIP rates.
- Preserve the NFIP as a viable choice, keeping homeowners from becoming stranded should private insurance options contract or become more expensive after major floods.
- Maintain important consumer disclosures, as well as Fannie Mae/Freddie Mac's ability to examine the financial solvency of private insurers and protect taxpayers.

This legislation unanimously passed the House of Representatives in the last Congress and is likely to be included in broader NFIP reauthorization and reform legislation under development this year.

Current Legislation/Regulation (bill number or regulation)

S. 563/HR 1422, The Flood Insurance Market Parity and Modernization Act

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