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SUBMITTED FOR THE RECORD TO

THE UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON HOMELAND SECURITY

HEARING TITLED

INSURING OUR FUTURE: BUILDING A FLOOD INSURANCE
PROGRAM WE CAN LIVE WITH, GROW WITH, AND
PROSPER WITH

JULY 23, 2014

Introduction

On behalf of its one million members involved in all aspects of commercial and residential real estate, thank you for inviting the National Association of REALTORS® (NAR) to testify regarding the implementation of recent reforms to the National Flood Insurance Program (NFIP).

On March 21, 2014, President Obama signed into law the Homeowner Flood Insurance Affordability Act after bipartisan super-majorities approved the measure. Congress was responding to the scattershot implementation and unintended consequences of the preceding Flood Insurance Reform Act of 2012 (“Biggert-Waters”). To make informed decisions, property owners must have clear, concise, timely and accurate information about flood risk. Yet when implementing Biggert-Waters, the Federal Emergency Management Agency (FEMA) was:

- Not timely in making required changes to flood insurance rates before thousands bought homes or businesses; most new owners did not find out about the rate increase until the renewal of their insurance policies one year after purchase.
- Not clear on what rate increases were appropriate, leaving most of the details to the “Write Your Own” (WYO) Companies that service the NFIP’s policies and mistakes were made.
- Not responsive to property owners who came forward with multiple, conflicting rate quotes for a single property (there should be only one each) or reported rates as high as \$87,000 per year.
- Not proactive in the outreach and education efforts to get ahead of the confusion and uncertainty which were stalling property sales in numerous real estate markets.

Our main concern can be summed up in a word, accuracy. Accuracy of the information that is distributed to consumers and FEMA’s industry partners. Accuracy of rates quoted to policy holders. Accuracy of maps and the mapping process. Because of flaws that we saw during Biggert-Waters implementation, like the \$87,000 rate quote, REALTORS® advocated for policies to assist in the distribution of accurate information.

The Homeowners Flood Insurance Affordability Act resolved these issues. Sections 3-6 required FEMA to stop relying on WYOs and set all rates for older properties. These sections also restored grandfathering of rates and limited the increases going forward. Sections 7-31 made longer-term reforms to ensure the accuracy of the flood maps and insurance rates, among other things. We are especially proud that the Act included a new Office of the Advocate to assist consumers in their dealing with FEMA and the WYOs, as well as including refunds for those who were overcharged, the repeal of faulty, exorbitant rate increases, more oversight over the mapping process, and the ability for homeowners to be reimbursed their expenses to fight incorrectly mapped properties.

Overview Evaluation of Early Implementation

Four months after the bill's signing, FEMA has already implemented most of the measure's short-term rate provisions:

1. Within one month, FEMA issued rate-relief guidelines directing WYOs to stop raising rates at the time of property sale and instead, use FEMA's October-2013 tables, so buyers will not pay more than the current owners at NFIP policy renewal.
2. FEMA went further and applied this guidance broadly, so it included all current owners who bought a new policy or let one lapse, not just those who bought property after Biggert-Waters.
3. One month later, FEMA announced it will hold the 2013 rates constant through 2015 and in some cases, reduce those rates.
4. FEMA also provided guidance to WYOs to issue refunds this fall for any amount that property owners over paid in excess of the 2013 rates.

Taken together, these early decisions have helped to stabilize and calm real estate markets where flood insurance is required for a mortgage. While this may change as refunds are issued this fall, since May 1, 2014, NAR has not received major complaints about flood insurance.

FEMA seems determined to get the law's implementation right, this time. The Agency reached out early and met with REALTORS[®], who have their fingers on the pulse of property owners. FEMA's staff asked questions and seemed genuinely interested in the feedback on how to smooth the roll-out of rate relief and refunds for property owners, who have been reeling from the wide swings in insurance rates over the past few years.

While there is still more work to do and a long way to go, the progress so far has been encouraging. NAR looks forward to keeping the dialogue open and working with the Committee, Congress and FEMA to build on these positive early efforts only four months into implementation of recent NFIP reforms.

Progress Report on Specific Reforms

Since the new law took effect on March 21, 2014, FEMA has already implemented the immediate rate relief provisions, and is on track to issue refunds this fall. FEMA must still implement long-term reforms (which provide for more accurate flood rates and maps), but the progress so far has been positive. The following sections provide the status and make recommendations regarding several key provisions of the new law.

Section 3 – Repeal of Certain Rate Increases

Subsection (a) required FEMA to issue amended rates and refund any amount paid in excess of these rates. It also established an eight month implementation schedule to deliver the refunds to property owners required under the law.

Subsection (b) provided interim rate relief by preventing an immediate jump to full-risk premiums at the time of property purchase. Instead, buyers were allowed to “assume” the existing insurance policies at the current rate paid by sellers.

Status: Reported near completion.

- Effective May 1, 2014, FEMA directed WYOs to stop raising rates at time of sale and instead use the October-2013 rates for older (pre-FIRM) properties.
- FEMA went further and applied this broadly, so it not only included buyers but also current owners who either a) bought a new flood insurance policy or b) let their policy lapse after Biggert-Waters.
- On May 30, 2014, FEMA announced it will hold 2013 rates constant through 2015, and in some cases, reduce those rates.
- On June 26, 2014, FEMA issued further guidance that WYOs are to refund any amount of paid in excess of 2013 rates. Refunds are to begin October 1 and be completed by December 31, 2014.

Recommendation: NAR applauds FEMA for acting quickly and decisively to implement the rate relief and refund provisions within the statutory deadlines. Taken together, these actions have stabilized and calmed real estate markets. While this may change as refunds are issued, since May 1, 2014, NAR has not received major complaints about flood insurance.

One issue still outstanding is whether the refund guidance applies to all buyers or just those who bought a primary residence. Buyers of second homes or commercial properties see their rates increase each year on January 1, not October 31. According to FEMA, under Biggert-Waters second-homes owners were not supposed to pay more than 25% annual increases – even if they purchased the property. However, NAR documented examples in earlier testimony,¹ where second home buyers paid well in excess of this.

NAR believes that the refund provision applies to all buyers, including those who bought a second home or commercial property and paid more than 25% annual increases since October of 2013. FEMA should refund the difference between what non-primary home buyers actually paid and what they should have (including the 25% increases). We recommend that FEMA clarify this issue through official guidance, so there is no confusion among WYOs that these property owners are also eligible for refunds.

Section 24 – Flood Insurance Advocate

Resetting and refunding rates back to October 2013 addresses only part of the problem. After gradual annual increases, property owners may still be facing excessive and inaccurate full-risk

¹ NAR testimonies may be found at <http://www.realtor.org/floodinsurance>

premiums. For this reason, provisions were added, including a new Office of the Advocate to ensure the longer-term accuracy of flood rates and maps.

Because FEMA did not provide an easy-to-use consumer point of contact, many homeowners turned to NAR, through their REALTORS[®], after FEMA did not help, and we simply were not equipped to evaluate the accuracy of these rate quotes. Most quotes were based on arcane submit-to-rate procedures. None were transparent about the judgments and calculations used to generate their estimates.

NAR did manage to locate outside consultants for hire who had the requisite expertise and background. However, these experts were limited in what they could do, unless the WYO fully cooperated. Without access to WYO or FEMA information, often they were forced to rely instead on information supplied by the homeowners, including the non-transparent rate quote. Some were able to partially fill-in data gaps by researching online tax records for instance, but without access, they could only raise questions and make educated assumptions about the basis of the rate estimates. Even if the consultants were able to provide compelling information, nothing in law required WYOs to correct rates and refund differences.

Given these circumstances, what homeowners need is an independent government advocate who has the expertise and access to fully investigate suspect rate quotes. The Advocate should also have FEMA's full weight and authority to compel WYOs if they don't fully cooperate when rating errors are found.

Status: In the early stage.

Currently, FEMA is conceptualizing how to structure and fund the Advocate's office. We understand that FEMA is considering a call-center concept that builds on FEMA's existing infrastructure including the regional offices and possibly state floodplain managers.

Recommendation: Respectfully, this call-center idea is NOT consistent with the provision's intent. If all FEMA had to do was supply a 1-800 number, there would have been no need for another law. A major part of the problem is that FEMA's regions and states are not equipped to investigate or correct faulty rate quotes, and NAR has documented several examples of this in our previous testimony.²

We urge FEMA to reassess the call-center approach and consider something more like the Taxpayer Advocate Service. The Advocate must be independent, a flood insurance expert, manage a qualified staff, have access to any WYO and FEMA data, have resources to fully investigate, and be given authority to compel WYO cooperation.

² NAR testimonies may be found at <http://www.realtor.org/floodinsurance>

Section 17 – Flood Insurance Rate Map Certification

Homeowners cannot make informed mitigation decisions without flood maps that are accurate and updated in a timely manner. Under this provision, FEMA must certify when the Technical Mapping Advisory Council has reviewed the maps and it has implemented a credible program based on the Council's recommendations.

Status: In Progress. FEMA has established the Council with 20 members and is currently determining the level of resources and expertise needed to evaluate the flood mapping program.

Recommendation: There is no one more familiar with the flood mapping challenges homeowners face than REALTORS®. NAR urges the Council to consult real estate practitioners as part of a full stakeholder process.

Section 18 – Reimbursement for Successful Flood Map Appeals

Due to budget constraints, FEMA is not able to map the flood risk on a property-by-property basis for more than 5.5 million in the NFIP. Instead, maps are issued at the community level, which means some properties technically fall within a “high-risk” flood zone but in fact, sit above base flood elevation and are low-risk. That is why there is an appeals process for property owners. However, to win an appeal, the owner must be able to spend out of pocket upfront to hire a state licensed surveyor who will drive out, measure the property's elevation, and provide the certification necessary for FEMA to consider an appeal. This can cost anywhere from several hundred to several thousands of dollars, according to FEMA.

Status: Unclear.

NAR's understanding is that FEMA must first go through a formal rulemaking process before it can begin reimbursing successful map appeals. There is a queue for regulations at the Department of Homeland Security and FEMA is only one of several agencies competing for limited rulemaking slots.

FEMA's General Council has also interpreted this provision narrowly, so the agency would not have to reimburse except when a property owner appeals within the first 90 days of a proposed flood map. Any property owner who appeals outside of this 90-day window could not be reimbursed, should they win.

Most property owners who contact NAR seem genuinely surprised when we inform them of this appeals process. They don't read the Federal Register or see the newspaper advertisements. Some have bought the property after the community adopted the map, and don't know why the previous owner didn't choose to appeal. If a property owner spends the money to go through the appeal's process and wins, they should be reimbursed.

Recommendation: Homeowners should not be shut out of the flood map appeals process just because they can't afford to go out of pocket. While technically 42 USC 4104(f) may reference the formal 90-day review process, NAR believes there is a public policy basis fully consistent with congressional intent for FEMA to broaden its interpretation beyond the 90-day window. We urge FEMA to reconsider.

Conclusion

To date, the implementation of the Homeowners Flood Insurance Affordability Act has gone much more smoothly than implementation of Biggert-Waters. NAR is pleased that FEMA learned from its past experience and chose to conduct early outreach with involved stakeholders. We hope they will continue in this vein and continue to make implementation decisions that provide stability in real estate markets.

While the early implementation of the law has been encouraging and positive, there is still more to do. FEMA has to set up an Advocate office and go through a rulemaking on other provisions before property owners can full benefit from the law's provisions.

The Association looks forward to continuing to work with this committee in its oversight role to ensure that these provisions are fully implemented, consistent with congressional intent, so that home and small business owners continue to have access to affordable flood insurance.