

## Comparison of the Ross-Murphy Private Flood Insurance Legislation with Current Law

	Current Law	Ross-Murphy
<b>Broad Lender Discretion</b>	<ul style="list-style-type: none"> <li>• May accept any private flood insurance that offers equivalent or better coverage than an NFIP policy.</li> <li>• Provides a safe harbor from federal enforcement for private insurance that meets six conditions and is also issued by a licensed insurer.</li> </ul>	<ul style="list-style-type: none"> <li>• Provides a safe harbor for any private flood insurance issued by an insurer that is at minimum, “not disapproved” by the State regulator.</li> </ul>
<b>Safe Harbor Immunity</b>	<p><b>Requires lenders to accept private flood insurance that is:</b></p> <ol style="list-style-type: none"> <li>1) Issued by an insurer “that is licensed, admitted or otherwise approved to engage in the business of insurance in the State in which the property is located, by the State insurance regulator;” with an exception<sup>1</sup>;</li> <li>2) Provides coverage which is “at least as broad as” an NFIP policy;</li> <li>3) Contains cancellation provisions that are “as restrictive” as NFIP;</li> <li>4) Provides “45 days’ written notice” of cancellation or nonrenewal;</li> <li>5) Requires insureds to “file suit not later than 1 year” after claim denial;</li> <li>6) Includes a mortgagee clause “similar to” NFIP’s; and</li> <li>7) Provides information about the availability of NFIP coverage.</li> </ol>	<p><b>Requires lenders to accept private flood insurance that is:</b></p> <ol style="list-style-type: none"> <li>1) Issued by a             <ol style="list-style-type: none"> <li>a) Licensed (admitted) insurer; or</li> <li>b) Non-admitted insurer “that is not otherwise disapproved as surplus lines insurer by the State insurance regulator where the property to be insured is located.”</li> </ol> </li> </ol>
<b>Proponents say...</b>	<ul style="list-style-type: none"> <li>• Limiting the safe harbor to licensed insurers and NFIP-or-better coverage protects consumers.</li> <li>• Setting minimum national standards on each building<sup>2</sup> frees consumers to shop for better private coverage and worry less about the fine print.</li> <li>• Restricting the list of reasons for cancellation<sup>3</sup> (e.g., a policyholder can’t be dropped because there’s a flood) is in the consumer’s best interest.</li> </ul>	<ul style="list-style-type: none"> <li>• Encouraging private market alternatives to NFIP will spur innovation and reduce taxpayer exposure.</li> <li>• Private insurers will not enter the market if they are limited to the NFIP’s coverage terms and cancellation restrictions.</li> <li>• Lenders will not accept an alternative as long as there’s a risk of federal enforcement for private flood insurance covering less than NFIP.</li> </ul>
<b>Opponents say...</b>	<ul style="list-style-type: none"> <li>• States already regulate the licensed insurers and are in the best position to determine coverage terms and restrictions that protect consumers.</li> <li>• Smaller lenders won’t accept private flood insurance because they don’t have the expertise to determine whether it’s <i>as broad as</i> an NFIP policy.</li> <li>• Some insurers may be able to beat NFIP rates if they’re allowed to limit coverage or raise deductibles and still qualify for the safe harbor.</li> </ul>	<ul style="list-style-type: none"> <li>• If the bill were limited to the licensed insurers, that would be one thing.</li> <li>• But the safe harbor extends to “surplus lines” insurers whose rates and coverage terms are not reviewed or approved by any State regulator.</li> <li>• There may be limited regulations in another state or on the free agent who brokers for these insurers, but this doesn’t help with their rates or terms.</li> <li>• Going to court or back to NFIP could be the only resource for disputes, but see the footnote for a recent court case in favor of the surplus line.<sup>4</sup></li> </ul>

<sup>1</sup> May also be issued by a “surplus lines” insurer “in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property...”

<sup>2</sup> [http://www.fema.gov/media-library-data/1398950546439-c78022cefaa410c9f902076846a0a5a5/F-122\\_NFIP\\_DwellingForm\\_June2014.pdf](http://www.fema.gov/media-library-data/1398950546439-c78022cefaa410c9f902076846a0a5a5/F-122_NFIP_DwellingForm_June2014.pdf)

<sup>3</sup> [http://www.fema.gov/media-library-data/1424449220323-bb7205810d5846304d08073e294d3cc7/14\\_cancellations\\_508\\_apr2015.pdf](http://www.fema.gov/media-library-data/1424449220323-bb7205810d5846304d08073e294d3cc7/14_cancellations_508_apr2015.pdf)

<sup>4</sup> <http://www.propertyinsurancelaw.com/2012/07/articles/insurance/care-must-be-taken-to-be-sure-surplus-insurance-policies-meet-the-consumers-needs-and-do-not-contain-surprises/>