

March 11, 2019

Sen. Dan Morrish
Chairman
National Council of Insurance Legislators

via email

RE: Proposed Private Flood Amendments to NCOIL State Flood Disaster Mitigation and Relief Model Act

Chairman Morrish:

At the NCOIL meeting in Salt Lake City last summer, the Property and Casualty Committee considered possible amendments pertaining to private flood insurance to the Flood Disaster Mitigation and Relief Model Act.

Since our last report to you on October 25, we note that the group of agencies that oversee lending institutions issued a final rule making implementing a provision in a 2012 law that is expected to provide a boom to the already-growing private flood market. The five agencies, the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and Farm Credit Administration, issued the rule implementing Section 100239 of the Biggert-Waters Act of 2012, which will require lenders to accept private flood insurance policies as defined by Biggert-Waters and also includes a streamlined compliance provision designed to help regulated lending institutions evaluate whether a flood insurance policy meets the definition of private flood insurance.

The Federal Deposit Insurance Corporation and the Comptroller of the Currency approved the new rule to increase the organic growth of the private flood market. In January, the Wall Street Journal reported that the number of flood insurance policies underwritten by private companies could triple under the new rule. We expect this provision will go into effect in July 2019. If the private flood market's offering is at least as comprehensive as the NFIP product, a lender would be required to accept the private flood market policies. In addition, financial institutions could elect to accept private flood policies that offer less coverage than the NFIP policy – a facet we believe will allow insurers to create innovative products to meet the needs of a diverse marketplace.

The two national property and casualty trades – the American Property and Casualty Insurance Association and the National Association of Mutual Insurance Companies - have visited with their respective members. We can report the vast majority of our members are not seeking a national legislative model to foster entry into the private flood market. Of particular concern,

the National Flood Insurance Program (NFIP) creates barriers to entry – e.g., inadequate rates – that simply cannot be overcome by state legislation. Furthermore, state laws have long permitted private insurers to write flood insurance and other “allied lines” of insurance. If state legislators want to encourage growth of the private flood insurance market – a market for insuring highly volatile, catastrophic risk – it is time to avoid additional regulations and, instead, provide incentives for capital creation and market entry.

Necessary elements

Private insurers writing flood insurance – providing coverage for this catastrophic, high severity peril – face different challenges than those writing personal auto or homeowners’ coverage. NFIP’s existence and dominance as the largest flood insurer demonstrates not only the historical reluctance of insurers to take on such a catastrophic risk, but also a barrier to entry – overly competitive pricing by the NFIP – that cannot be corrected by state law. Any NCOIL actions should recognize both the history and the current effects of the federal government’s role in flood insurance markets.

Any model law should acknowledge the unique challenges to writing flood insurance that led to the creation of the NFIP. Many insurers report they are reluctant to engage more capital in the private flood market in those states that impose restrictions on the insurer’s ability to create, price and market such policies.

To acknowledge these unique challenges, we believe there are four critical elements to any model bill purporting to enhance the private flood insurance market.

Insurers should have rating freedom to price products accurately. Given the tremendous exposure insurers writing flood insurance face, the ability to price the product free of a government approval process remains a paramount concern. Unfortunately, the proposed amendments submitted to NCOIL in Salt Lake City would steer the states in the opposite direction by creating a prescriptive set of parameters dictating to insurers writing flood insurance how to properly rate their policies.

We would submit such a prescription would restrict entrants into the private flood market. In a market dominated by the Federal Government, a private insurer’s filed rates should be shown to be not excessive, inadequate or unfairly discriminatory. Furthermore, each insurer should be able to determine its own rating credits or deviations to recognize superior or adverse risk characteristics. Only in such an environment will a private flood insurance market grow and flourish; any restrictions or limitations beyond these will hamper and inhibit more capital from entering the private flood insurance market.

Insurers should have underwriting freedom to appropriately select those risks most suitable for private flood insurance. In addition to being able to price the product accurately, insurers need the flexibility to choose which risks to insure. Many states have significant restrictions on cancellation and non-renewal of homeowners' insurance. Some states outright prohibit cancellation or non-renewal, absent very rare circumstances, after a policy has been in effect for a certain period of time. Other states currently prohibit weather claims from being used to cancel or non-renew a homeowners' policy.

If states wish to foster a private flood insurance market, they should exempt flood insurers from these underwriting restrictions. Here, as well, the proposed amendments to the NCOIL model are not helpful, as they are silent on removing such restrictions.

Insurers should have policy form freedom to design products which best meet consumer needs. Restrictions on form freedom make insurance more expensive and inhibit innovation in the marketplace. Insurers contemplating risking their capital in the flood market should have the ability to design the product to meet the needs of a diverse community. In exchange for more affordable coverage, some consumers may choose higher deductibles, limitations on coverage, or coverage only in excess of the minimum NFIP. Other consumers who do not have mortgages may want product choices beyond those that are "approved" by the mortgage industry.

Insurers are more likely to enter the flood market if they can design the products based upon their own market research and internal expertise. The proposed amendments submitted to NCOIL in Salt Lake City would impose prior approval of forms on insurers writing flood products. We believe legislation purporting to "encourage a robust private flood insurance market to provide consumer choices to the existing NFIP" (as advocates of the amendments claim) should remove barriers to market entry, rather than impose them.

Insurers should be able to require significant loss mitigation efforts from policyholders as a condition precedent to coverage. Given the possibility of catastrophic losses, insurers should be able to require policyholders undertake or maintain loss mitigation efforts as a condition of coverage within the policy form to reduce the odds of damage to the insured risk. Loss mitigation provides insurers a way to offer lower premiums; it also provides incentives to policyholders to make the effort to avoid the damage before disaster strikes.

The proposed amendments are silent on this. We believe the requirement for prior approval of forms would effectively restrict such loss mitigation requirements.

Moving Forward

We believe the best approach to increasing the size of the private flood market is to promote more open competition and less regulation of private flood insurance products. Each state can determine how best to accommodate such an approach. Passing an NCOIL resolution urging the states to create an open and competitive market for flood insurance – congruent with the four necessary elements outlined above – may be a more appropriate step than the current proposal.

We remain open and available to discuss with the Committee. Please let us know how we can be of assistance.

Sincerely,

Paul Martin
Regional Vice President – Southwest Region
National Association of Mutual Insurance Companies

Frank O'Brien
Vice President, State Government Relations
American Property Casualty Insurers Association