Temporary Extension of the NFIP in Wake of Hurricane Harvey

On September 8th, just days after Hurricane Harvey decimated the Houston metropolitan area, and while many Florida residents were evacuating as Hurricane Irma approached, President Trump signed into law the Continuing Appropriations Act, 2018. Among other things, the Act appropriates disaster funds to the Federal Emergency Management Agency ("FEMA") and temporarily extends the National Flood Insurance Program ("NFIP"), which was set to expire on September 30th, to December 8, 2017. Although the Act provides some much-needed relief in the short term, Congress has yet to reach consensus on a clear path forward for NFIP reform.

NFIP Reform Efforts in 2017

During the months leading up to the temporary extension's enactment, a slew of bills had been introduced in the United States Senate and House of Representatives seeking to reform the NFIP. And reform is sorely needed. As of March 2017, FEMA owed $24.6 billion to the Department of the Treasury (the "Treasury") in connection with NFIP claims and other expenses.[1]

Created in 1968 in response to the dearth of private insurers providing flood coverage in the United States,[2] the NFIP has been amended many times since its inception. Most recently, in 2012, the Biggert-Waters Flood Insurance Reform Act of 2012 ("Biggert-Waters") reauthorized the NFIP through Sept. 30, 2017, and introduced reforms aimed at improving the NFIP's solvency, which has been of significant concern for many years. Specifically, Biggert-Waters was meant to achieve premium rates that more accurately reflected a covered property's flood risk. Following public outcry about dramatically increasing NFIP rates in certain parts of the country, however, Congress passed the Homeowner Flood Insurance Affordability Act of 2014 to repeal and modify certain provisions of Biggert Waters to lower rate increases on some policies, prevent future rate increases in certain circumstances, and implement a surcharge on all policyholders. Since that time, Congress has struggled with the tension between the need to rein in the NFIP's debt, on the one hand, and to mitigate the problem of potentially skyrocketing premium rates, on the other.

The following are a sampling of NFIP bills currently pending in Congress. No vote has yet taken place on any of these proposed reform measures.

H.R. 1422

[1] United States Government Accountability Office, "Report to Congressional Addressees, Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resilience", April 2017.

[2] The American Institutes for Research, The Pacific Institute for Research and Evaluation, and Deloitte & Touche LLP, "A Chronology of Major Events Affecting the National Flood Insurance Program", October 2002.

H.R. 1422 was introduced in the House on March 8th and reported by the Committee on Financial Services on July 14th. This bill, entitled the Private Flood Insurance Market Development Act of 2017, would require federal agency lenders to accept private flood insurance as satisfaction of their flood insurance coverage requirement, including private flood insurance issued by surplus lines insurers. H.R. 1422 was placed on the Union Calendar on July 14th.

H.R. 1558

H.R. 1558 was introduced on March 16th and reported by the Committee on Financial Services on August 15th. This bill, entitled the Repeatedly Flooded Communities Preparation Act, would require repeatedly flooding communities that participate in the NFIP to assess the continuing risks to community areas repeatedly damaged by floods and develop and implement community-specific plans for mitigating flood risks. Under this bill, FEMA would be required to provide communities with data relevant to development of such a plan. FEMA would be permitted to consider whether a community has complied with the mitigation plan when making decisions regarding mitigation grants. A community that did not comply would be subject to sanctions, which could include suspension from the NFIP. H.R. 1558 was placed on the Union Calendar on August 15th.[3]

H.R. 2565

H.R. 2565 was introduced in the House on May 19th, and reported by the Committee on Financial Services on July 14th. This bill would require that premium rates for coverage under the NFIP take into account the replacement cost value of the structure insured. It also would require FEMA to conduct a study to further this purpose. H.R. 2565 was placed on the Union Calendar on July 14th.

H.R. 2874

H.R. 2874 was introduced in the House on June 12th and ordered to be reported by the Committee on Financial Services on June 15th. This bill, entitled the 21st Century Flood Reform Act, would make various reforms to the NFIP, including (1) lowering the annual limitations on premium increases, (2) requiring disclosure of premium rate calculation methodologies, (3) authorizing a monthly installment fee of $50 annually, (4) requiring disclosure to policyholders of new or renewed policies of their full risk determination, (5) supporting the private flood insurance market by preventing the government from restricting Write Your Own carriers from offering flood insurance and requiring refunds of NFIP premiums for policyholders cancelling their NFIP coverage for the purpose of replacing it with private flood insurance, (6) requiring the Comptroller of the Currency to conduct a feasibility study regarding a flood damage savings account option for property owners for the purpose of reducing premium rates or eliminating the need for insurance coverage, and (7) making certain NFIP data publicly available while protecting individually identifiable information about property owners. This bill also would create a Flood Insurance Availability Program to provide financial assistance, through programs run by participating states, for eligible low-income households residing in eligible properties.

In addition, H.R. 2874 would attempt to address NFIP solvency concerns by requiring that premium rates take into account the risk identified by the applicable flood insurance rate maps and by other risk assessment data and tools, and adding an independent actuarial review requirement. A new surcharge ($125 for residential policyholders and $275 for commercial policyholders) would be added for policies newly issued or renewed after the bill's effective date. A "multiple-loss property" would be charged a premium rate based on the current risk of flood reflected in the flood insurance rate map in effect at the time of rating, and there would be an annual minimum deducible of $5,000 for damage to a "severe repetitive-loss property" or "extreme repetitive-loss property." Further, future flood insurance coverage would not be available under the NFIP for any extreme repetitive-loss property for which a claim payment for flood loss is made after the bill's enactment if the property owner refuses an offer of

[3] Following favorable reporting by a House committee, general appropriations bills are assigned to the Union Calendar for consideration.

mitigation for the property. In addition, beginning 18 months after enactment, H.R. 2874 would prohibit coverage for any multiple-loss property for which the aggregate amount in claims payments that have been made exceeds twice the amount of the replacement value of the structure. Coverage also would be prohibited after January 21, 2021 for (1) new property with construction commencing after this date if it is located in an area with special flood hazards and (2) certain residential structures with a replacement cost of $1 million or more.

H.R. 2875

H.R. 2875 was introduced in the House on June 12th and reported by the Committee on Financial Services on July 18th. This bill would require new measures to "increase fairness and accuracy and protect the taxpayer from program fraud and abuse." It would, among other things, give policyholders the option to purchase a higher level of coverage under the "Increased Cost of Compliance" program, up to $30,000 aggregate liability for a single property, with an option for enhanced coverage up to $60,000. Increased Cost of Compliance coverage would be used to cover the cost of flood risk mitigation activities. H.R. 2875 also would require FEMA to monitor and oversee litigation conducted by Write Your Own companies, establish penalties for Write Your Own companies knowingly underpaying claims, and permit FEMA to direct litigation strategy for claims arising under a Write Your Own company policy.

S. 563

S. 563, entitled the Flood Insurance Market Parity and Modernization Act, was introduced in the Senate on March 8th. Hearings were held in the Committee on Banking, Housing, and Urban Affairs in May. This bill is aimed at developing the private flood insurance market by addressing definitional issues and conditions in Biggert-Waters that have been described as obstacles to the private insurance market.

S. 1571

S. 1571, entitled the National Flood Insurance Program Reauthorization Act of 2017, was introduced and read twice in the Senate on July 17th and referred to the Committee on Banking, Housing, and Urban Affairs. It would extend the NFIP until September 30, 2023. This bill also would require covered communities to identify high risk areas and develop a community-specific plan for mitigation. Coverage options under the "Increased Cost of Compliance" program would be increased to permit policyholders to purchase aggregate primary coverage up to $60,000 for any single property and enhanced coverage up to $100,000 in the aggregate. Further, FEMA would be required to conduct a study for the purpose of determining how best to include replacement cost in premium rates for flood insurance.

Future of the NFIP

Having temporarily extended the NFIP to December 8th, Congress has additional time to consider these and other bills, and to potentially make further amendments before enacting any longer-term NFIP solution that addresses NFIP solvency concerns while avoiding prohibitively high premium rates. Many have argued that greater private insurer or reinsurer participation in the flood insurance market would go a long way in addressing both of these concerns.

We will continue to follow these developments closely.

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