

Proposal 14: Prohibit Coverage for New Construction in High-Risk Areas/Commercial Properties – Prohibits NFIP coverage for new construction in the highest-risk areas and commercial properties to promote the growth of the private market by creating an inventory for new flood risk properties for which private insurance companies could compete.

Legislative text:

SEC. __. PROHIBIT COVERAGE FOR NEW CONSTRUCTION IN HIGH-RISK AREAS.

The National Flood Insurance Act of 1968 is amended in section 1305 (42 U.S.C. 4012) by adding at the end the following:

“(e) PROHIBITION OF COVERAGE FOR NEW CONSTRUCTION IN HIGH-RISK AREAS.—

“(1) Except as provided in paragraph (2), and notwithstanding any other provision of this title, on or after two years after the enactment of this Act, the Administrator shall not make available flood insurance coverage under this title as follows:

“(A) NEW STRUCTURES BUILT IN THE FLOOD HAZARD ZONES.—For any property for which new construction is commenced on or after such date and that, upon completion of such construction, is located in an area having special flood hazards.

“(B) IMPLEMENTATION.—The Administrator may implement this subsection without regard to 5 U.S.C. Chapter 5, except that any such implementation shall include publication of notice in the Federal Register or by another comparable method, such as posting on an official website of the Administrator.

“(2) AVAILABILITY OF OTHERWISE PROHIBITED FLOOD INSURANCE.—

“(A) AUTHORITY.— Upon a determination under subparagraph (B), the Administrator may temporarily make available in participating NFIP communities for residential properties that are described in subparagraph (e)(1)(A), and are located in such area, coverage for flood insurance under this Act, notwithstanding paragraph (e)(1), during the period that begins upon such determination under paragraph (B) and ends upon the termination date with respect to such period determined under subparagraph (C) of this subsection.

“(B) DETERMINATION OF MARKET CONDITIONS.— A determination under

this subparagraph is a determination made by the State insurance regulator for the affected geographic area that the availability or affordability of private flood insurance coverage for properties described in subparagraph (e)(1)(A) in the geographical area does not exist.

“(C) TERMINATION.— The authority to make flood insurance coverage available pursuant to this subsection shall cease to exist for the affected geographic areas when the State insurance regulator for the affected area determines affordable private flood insurance is available for the area.”

“(f) PROHIBITION OF NEW COVERAGE FOR NON-RESIDENTIAL BUSINESS PROPERTIES.—

“(1) Except as provided in paragraph (2) and notwithstanding any other provision of this title on or after two years after enactment of the Act, the Administrator shall not make available flood insurance coverage under this title as follows:

“(A) NON-RESIDENTIAL BUSINESS PROPERTY POLICIES.— For any non-residential business properties, unless a newly issued policy covers a property with continuous flood insurance coverage.

“(B) IMPLEMENTATION.—The Administrator may implement this subsection without regard to 5 U.S.C. Chapter 5, except that any such implementation shall include publication of notice in the Federal Register or by another comparable method, such as posting on an official website of the Administrator.

“(2) AVAILABILITY OF OTHERWISE PROHIBITED FLOOD INSURANCE WHERE PRIVATE MARKET COVERAGE IS UNAVAILABLE.—

“(A) AUTHORITY.— Upon a determination under subparagraph (B) the Administrator may temporarily make available in participating NFIP communities for small business properties that are described in subparagraph (f)(1)(A), and are located in such area, coverage for flood insurance under this Act, notwithstanding paragraph (f)(1), during the period that begins upon such determination under paragraph (B) and ends upon the termination date with respect to such period determined under subparagraph (C) of this subsection.

“(B) DETERMINATION OF MARKET CONDITIONS.—A determination under this subparagraph is a determination made by the State insurance regulator for the

affected geographic area that the availability or affordability of private flood insurance coverage for properties described in subparagraph (f)(1)(A) in the geographical area does not exist.

“(C) TERMINATION.— The authority to make flood insurance coverage available pursuant to this subsection shall cease to exist for the affected geographic areas when the State insurance regulator for the affected area determines affordable private flood insurance is available for the area.”.

Analysis:

Congress should prohibit the NFIP from selling flood insurance policies on new structures built in Special Flood Hazard Areas on or after a statutorily mandated date, effectively creating an inventory of new flood risk properties that private property insurance companies could compete for in a marketplace without a subsidized government program. The private insurance market would likely find insuring new construction built in compliance with NFIP minimum standards an attractive business proposition. NFIP can work with private industry through its existing relationships with Write Your Own (WYO) companies and other partners to remove barriers to a robust private market. However, there must be ample time for the private market to develop products, receive necessary state approvals, and for communities and developers to adapt to the new flood insurance market. Allowing for a phasing in period by making the effective date be on or after a date two years after enactment could smooth the transition to a new flood insurance market and give citizens, insurers, communities, and the NFIP time to adjust. It is also important to provide a process to allow state insurance commissioners who identify a lack of a viable private flood insurance market to engage the Federal Government to seek an exception allowing NFIP coverage for new construction for a period of time.

Congress should likewise prohibit the NFIP from selling new flood insurance policies for commercial structures (regardless of date of construction or location in or outside Special Flood Hazard Areas). The NFIP should continue offering flood insurance for commercial properties with existing continuous flood coverage (running with the property versus the specific owner), but not take on any new business. Business owners seeking coverage could turn to existing commercial flood insurance markets. As with the new construction proposal above, allowing for a phasing in period, on or after a date two years after enactment of the legislation, would smooth the transition for business owners, private insurers, and the NFIP.

Comparative type:

NATIONAL FLOOD INSURANCE ACT OF 1968

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SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

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SEC. 1305. SCOPE OF PROGRAM AND PRIORITIES. (42 USC 4012)
(a)-(d) * * * * *

(e) PROHIBITION OF COVERAGE FOR NEW CONSTRUCTION IN HIGH-RISK AREAS.—

(1) Except as provided in paragraph (2), and notwithstanding any other provision of this title, on or after two years after the enactment of this Act, the Administrator shall not make available flood insurance coverage under this title as follows:

(A) NEW STRUCTURES BUILT IN THE FLOOD HAZARD ZONES.—For any property for which new construction is commenced on or after such date and that, upon completion of such construction, is located in an area having special flood hazards.

(B) IMPLEMENTATION.—The Administrator may implement this subsection without regard to 5 U.S.C. Chapter 5, except that any such implementation shall include publication of notice in the Federal Register or by another comparable method, such as posting on an official website of the Administrator.

(2) AVAILABILITY OF OTHERWISE PROHIBITED FLOOD INSURANCE.—

(A) AUTHORITY.— Upon a determination under subparagraph (B), the Administrator may temporarily make available in participating NFIP communities for residential properties that are described in subparagraph (e)(1)(A), and are located in such area, coverage for flood insurance under this Act, notwithstanding paragraph (e)(1), during the period that begins upon such determination under paragraph (B) and ends upon the termination date with respect to such period determined under subparagraph (C) of this subsection.

(B) DETERMINATION OF MARKET CONDITIONS.— A determination under this subparagraph is a determination made by the State insurance regulator for the affected geographic area that the availability or affordability of private flood insurance coverage for properties described in subparagraph (e)(1)(A) in the geographical area does not exist.

(C) TERMINATION.— The authority to make flood insurance coverage available pursuant to this subsection shall cease to exist for the affected geographic areas when the State insurance regulator for the affected area determines affordable private flood insurance is available for the area.”

(f) PROHIBITION OF NEW COVERAGE FOR NON-RESIDENTIAL BUSINESS PROPERTIES.—

(1) Except as provided in paragraph (2) and notwithstanding any other provision of this title on or after two years after enactment of the Act, the Administrator shall not make available flood insurance coverage under this title as follows:

(A) NON-RESIDENTIAL BUSINESS PROPERTY POLICIES.— For any non-residential business properties, unless a newly issued policy covers a property with continuous flood insurance coverage.

(B) IMPLEMENTATION.—The Administrator may implement this subsection without regard to 5 U.S.C. Chapter 5, except that any such implementation shall include publication of notice in the Federal Register or by another comparable method, such as posting on an official website of the Administrator.

(2) AVAILABILITY OF OTHERWISE PROHIBITED FLOOD INSURANCE WHERE

PRIVATE MARKET COVERAGE IS UNAVAILABLE.—

(A) AUTHORITY.— Upon a determination under subparagraph (B) the Administrator may temporarily make available in participating NFIP communities for small business properties that are described in subparagraph (f)(1)(A), and are located in such area, coverage for flood insurance under this Act, notwithstanding paragraph (f)(1), during the period that begins upon such determination under paragraph (B) and ends upon the termination date with respect to such period determined under subparagraph (C) of this subsection.

(B) DETERMINATION OF MARKET CONDITIONS.—A determination under this subparagraph is a determination made by the State insurance regulator for the affected geographic area that the availability or affordability of private flood insurance coverage for properties described in subparagraph (f)(1)(A) in the geographical area does not exist.

(C) TERMINATION.— The authority to make flood insurance coverage available pursuant to this subsection shall cease to exist for the affected geographic areas when the State insurance regulator for the affected area determines affordable private flood insurance is available for the area.

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