



**STATEMENT BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND INSURANCE
UNITED STATES HOUSE OF REPRESENTATIVES**

November 19, 2013

The Big “I” is the nation’s oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of more than a quarter of a million agents, brokers, and employees. IIABA represents independent insurance agents and brokers who present consumers with a choice of policy options from a variety of different insurance companies. These small, medium, and large businesses offer all lines of insurance – property/casualty, life, health, employee benefit plans, and retirement products. In fact, our members sell 80% of the commercial property/casualty market and a sizeable portion of the homeowner’s market. It is from this unique vantage point that we understand the capabilities and challenges of the insurance market when it comes to insuring against flood risks.

Background

The Big “I” believes that the NFIP provides a vital service to people and places that have been hit by a natural disaster. The private insurance industry has been, and continues to be, largely unable to underwrite flood insurance because of the catastrophic nature of these losses. Therefore, the NFIP is virtually the only way for people to protect against

the loss of their home or business due to flood damage. Prior to the introduction of the program in 1968, the Federal Government spent increasing sums of money on disaster assistance to flood victims. Since then, the NFIP has saved disaster assistance money and provided a more reliable system of payments for people whose properties have suffered flood damage. It is also important to note that for almost two decades, up until the 2005 hurricane season, no taxpayer money had been used to support the NFIP; rather, the NFIP was able to support itself using the funds from the premiums it collected every year.

Under the NFIP, independent agents play a vital role in the delivery of the product through the Write Your Own (WYO) system. Independent agents serve as the sales force of the NFIP and the conduits between the NFIP, the WYO companies, and consumers. This relationship provides independent agents with a unique perspective on the issues surrounding flood insurance, yet also makes the role of the insurance agent in the delivery process of flood insurance considerably more complex than that of many traditional property/casualty lines. Agents must possess a higher degree of training and expertise than their non-NFIP participating counterparts, which requires updating their continuing education credits through flood conferences and seminars. This is done regularly and involves traveling to different regions of the country, costing personal time and money. Every agent assumes these responsibilities voluntarily and does so as part of being a professional representative of the NFIP.

Despite our strong support of the NFIP, we also recognize that the program is far from perfect, which was made all the more clear by the devastating 2005 hurricane season as well as Superstorm Sandy. The current \$24 billion dollar debt, incurred from both 2005 and Sandy, reveals some of the deficiencies of the program. While the Big “I” is confident that the NFIP will eventually recover, it was important that Congress shore up the NFIP’s financial foundation by enacting needed reforms to ensure the long-term sustainability of the program.

Additionally, the NFIP is a Congressionally-authorized program that requires periodic reauthorization. Unfortunately, in 2007 the NFIP authorization ran out, and Congress began a pattern of renewing the program on short-term extensions only. Since September 2008, Congress had approved nine NFIP extensions and allowed five lapses. During the June 2010 lapse, the National Association of Realtors estimated that 47,000 home sales were delayed or cancelled. A long term extension of the NFIP was critical to the U.S. economy, as well as to the individual policyholders that rely on the NFIP for flood protection.

For these reasons, the Big “I” strongly supported H.R. 1309, the “Flood Insurance Reform Act of 2011,” which passed the House of Representatives with over 400 votes in the 112th Congress. We also supported H.R. 4348, the MAP-21 Transportation legislation, that included a modified version of the Flood Insurance Reform Act in it. On June 29, 2012, H.R. 4348 passed the House by a margin of 373-52 and the Senate 74-19. On July 6, 2012, President Obama signed the measure into law and the “Biggert-Waters Act” took effect.

The Biggert-Waters Act included many important provisions that were critical to the NFIP. Chief among them was a long-term extension of the program, until 2017. Additionally, the law included important pieces meant to strengthen the financial footing of the program. These included increasing the “elasticity band” of annual rate increase from 10% to 20%, the phase-out of subsidies for commercial properties, vacation homes, and severe repetitive loss properties, and greater flexibility for FEMA to utilize private reinsurance for the NFIP.

However, despite the good intentions of the legislation and its authors, two specific provisions of the Biggert-Waters Act are now causing serious problems across the country as the law is being implemented.

Problems with Biggert-Waters Section 205

Section 205 of Biggert-Waters eliminates subsidies for second homes, business properties, severe repetitive loss properties, properties incurring flood damages that equal or exceed the fair market value (FMV) of the property, and properties that are substantially damaged (greater than 50 percent of the FMV) or substantially improved (greater than 30% of the FMV). Where subsidies are phased out, the annual premium increase is limited to 25% until premium levels are harmonized with unsubsidized properties.

Subsidies also cannot be extended when homes are sold to new owners, properties that were not insured or had a lapse in coverage after the enactment of Biggert-Waters, and insured owners of Severe Repetitive Loss (SRL) structures that refuse mitigation assistance after their structure is destroyed in a disaster. In each of these cases the subsidy removal is conducted immediately (there is no phase-in).

About 20% of NFIP policyholders receive subsidized NFIP policies. Only 5% of these policies fall into the category that will immediately begin to see their subsidies phased-out under this provision. FEMA estimates the remaining 15% are primary properties that will only lose their subsidies if they let their policy lapse, if they are bought/sold, or if they are remapped (see Sec. 207 below). The Big I strongly supported a phase-out of most subsidies from the program. Although it was a difficult decision to make and will leave some consumers paying significantly more in premiums for their flood insurance, the Association believes that phasing out most subsidies in the program slowly is the only way to put the NFIP on a path towards true financial stability.

However, despite our support of the intent of much of Section 205, the Big I is concerned about the provision that automatically and immediately eliminates a pre-Firm subsidy from any property that is bought/sold.

The provision eliminating subsidies for all properties bought/sold was added in the 111th Congress by an amendment offered at the House Financial Services Committee. It is important to note, however, that when the amendment was added to the legislation it allowed properties bought/sold to have their subsidies phased out by increases of 20

percent a year until full rates are realized. This phase-out for homes bought/sold remained in the language of the legislation throughout the next Congress as well, and was in the House-passed legislation in 2011, which was the basis for the final Biggert-Waters legislation. However, the phase-in of new rates for homes bought/sold was removed when the legislation was rolled into H.R. 4348, the MAP-21 Transportation legislation, which ended up being the vehicle used to get Biggert-Waters enacted into law.

Section 205's provision eliminating subsidies for pre-FIRM properties that are bought and sold was implemented by FEMA on October 1st, 2013. Unfortunately, FEMA has decided to implement this provision retroactive to enactment of the Biggert-Waters law (July 6, 2012). Therefore any purchase for a pre-FIRM property since July 6, 2012 will immediately result in a complete loss of the properties subsidy and a significant corresponding premium increase. In one widely reported example, a customer purchased a property after July 6, 2012 but before FEMA had announced any details of implementation of Biggert-Waters. The customer bought the property assuming the NFIP premiums would be approximately \$2,500 a year, but was subsequently informed, well after closing, that the new premium would be over \$20,000 per year.

The Big "I" is concerned about the impact that the bought/sold provision of Section 205 will have on individual consumers as well as the broader U.S. housing market. Examples such as the one above quite clearly indicate that there is a problem with this specific provision, and we urge the Committee to examine avenues of mitigating and fixing it.

Problems with Biggert-Waters Section 207

Section 207 of Biggert-Waters phases out the "grandfathering" of policies within the NFIP. Currently, the NFIP grandfather procedure provides eligible property owners the option of using risk data from previous flood maps if a policyholder maintained continuous coverage through a period of a FIRM revision or if a building was constructed "in compliance" with the requirements for the zone a previous map. Section 207, however, requires FEMA to use revised flood risk data (zone and base flood elevation or BFE) after a map revision. The legislation provides a 5-year mechanism to phase-in the new rates.

Because Section 207 will require risk-based, actuarial rates on all properties that experience remapping, eventually Section 207 could affect all 5.6 million NFIP policyholders. While FEMA estimates that remapping will result in just as many properties mapped into lower risk zones as those mapped into higher risk zones, the penalties incurred upon homeowners mapped into higher risk zones will be severe, especially for those properties that are primary pre-FIRM residences that have had their subsidies protected from Section 205 but will see them eliminated via Section 207.

The Big "I" has major concerns regarding the elimination of the "grandfather" process via Section 207. The fact is that this provision will end up punishing good actors, those responsible homeowners that built or purchased homes in compliance with the known risks at the time, took responsible steps towards mitigation based upon the government

maps in existence, and kept active NFIP policies.

As a real world example let's look at a house that was recently built in 1998, and the homeowner did the responsible and appropriate thing by building it fully to existing building codes. Additionally, this property was built at 2 feet above the existing base flood elevation (BFE). For the last 14 years, this property was paying \$600 a year in NFIP premiums, and it never experienced a flood event. Unfortunately for his property, the new FEMA flood maps were just released and they show his property is no longer 2 feet above BFE, but it is now 6 feet below BFE. Because of Section 207 of Biggert-Waters, along with FEMA's questionable remapping project, this property owner is now paying approximately \$17,000 a year in premiums. This is almost a 3,000% increase.

While the above example is extreme, it again serves to illustrate the real problems that Section 207 of Biggert-Waters has caused in the marketplace. The unfortunate nature of Section 207 is that it hurts only the good actors, or those responsible homeowners that have NFIP policies and have been playing by the rules all along. Again, we urge the Committee to explore ways to fix Section 207 to avoid punishing the NFIP's good actors.

Possible Solutions

Delay

One possible way to mitigate the harmful effects of Biggert-Waters would be to simply delay implementation of the bought/sold provision of Section 205 and the entirety of Section 207. A delay would accomplish two important goals. First, it would allow FEMA to complete their "affordability study" as required by Biggert-Waters. Second, and perhaps most importantly, a delay would allow Congress additional time to develop a broad legislative package to deal with the issues created by both these provisions as well as other unintended effects caused by Biggert-Waters.

The Biggert-Waters Act extended the authorization of the NFIP through September 30, 2017. Therefore a delay strategy would potentially allow Congress to address the fundamental issue of "affordability vs. actuarially soundness" during the debate for the next reauthorization.

The "Homeowner Flood Insurance Affordability Act" introduced in the House (H.R. 3370) by Reps. Michael Grimm (R-NY) and Maxine Waters (D-CA) and in the Senate (S. 1610) by Sens. Bob Menendez (D-NJ) and Johnny Isakson (R-GA) is one such proposal that deserves consideration by Congress. The proposed legislation would delay implementation of the bought/sold provision from Sec. 205 and the entirety of Sec. 207 until after FEMA completes the affordability study required by law. Upon completion of that study, the legislation would require FEMA to propose a draft regulatory framework to address any affordability issues identified by the study within 18 months. The legislation then establishes a six month period thereafter to provide for Congressional review. The House and Senate would hold up or down votes through a privileged motion on giving FEMA the authority to propose regulations in accordance with the regulatory

framework. If Congress approves this authority, the targeted freeze promulgated by this bill would continue until regulations are finalized. If not, the freezes would be lifted absent other Congressional action.

The “Homeowner Flood Insurance Affordability Act” would potentially mitigate some of the harmful effects of Biggert-Waters without undoing the numerous good provisions within the law.

Extending the Phase-Out Timeline

Section 207 of Biggert-Waters provides a 5 year phase-out of the “grandfathered policies.” Meanwhile, Section 205 of Biggert-Waters phases-out subsidies by increasing premiums 25% per year until the subsidy is eliminated. Unfortunately, homes bought/sold do not receive this phase-out but instead have their subsidy removed immediately.

Some stakeholders have suggested that a solution to the problems associated with Section 207 could be to lengthen the phase-out time period from the current 5 year window to something longer (perhaps 10 years). They have also suggested that the Section 205 bought/sold provision could be amended so that it too would have a phase-out of subsidies. The Big “I” believes both proposals warrant investigation and consideration by this Committee and Congress as a whole. One important consideration that the Big “I” would like to highlight for the Committee is that, if a “longer phase-out” strategy is pursued, the legislation must take into account those properties already affected by the immediate, and retroactive, loss of subsidy for those properties bought/sold since July 6, 2012.

Revert to Original House Language

One of the priorities of Biggert-Waters as it was originally written was actually protecting homeowners that had adverse actions as a result of remapping. Section 3 of H.R. 1309 (Biggert-Waters) that was introduced in the 112th Congress called for a suspension of the mandatory purchase requirement for properties that were newly mapped into a mandatory purchase zone if they met one of three requirements. These requirements were: that the area had never had a history of flood hazards before, that the area had flood protection systems under improvement, or that the area was appealing a new or revised map.

Similarly, in regards to the phase-in of rates for newly mapped areas (what later became known as Section 207 of Biggert-Waters), the legislation as introduced by Reps. Biggert and Waters in the 112th Congress very specifically only applied to properties that were newly mapped into a special flood hazard as a result of the remapping project (not ALL properties that have a new or revised map, as FEMA is currently implementing the law). Section 5 (b) of H.R. 1309 clearly states that the 5 year phase in of actuarial rates only applies for newly/revised maps in the case of “any area that was not previously designated as an area having special flood hazards and that, pursuant to any issuance,

revision, updating, or other change in flood insurance maps, becomes designated as such an area.”

Additionally, H.R. 1309 also quite clearly envisioned a phase-out of subsidies for all relevant categories of properties (commercial, second/vacation homes, homes bought/sold, severe repetitive loss properties, etc). However, and as previously mentioned, the final product (Biggert-Waters as signed into law in H.R. 4348) removed the phase-out for homes that are bought and sold and instead required the complete removal of the subsidy immediately. In regards to this provision, HR 1309 also quite clearly required the subsidy phase-out for homes bought or sold to begin 12 months after enactment of the law (as found in Section 5 (c)(3)(A)). Unfortunately the final legislation did not include this 12 month “buffer” and therefore FEMA is now implementing the bought/sold provision retroactive to July 6, 2012 (date of enactment).

Each of these provisions were included and unchanged in the legislation that ultimately was passed by the House of Representatives by a vote of 406 – 22.

In terms of a legislative solution to the issues presented by Sec. 205 bought/sold and Sec. 207, Congress could consider writing a “technical corrections package” that would restore each of these “protections” that were overwhelmingly supported by the House of Representatives in 2011.

The Committee could consider reverting the law back to the House-passed language by passing a “technical corrections” package. Such a package could include; applying Section 207 (grandfather removal) ONLY to properties newly mapped into special flood hazard areas, applying a phase-out to Section 205 bought/sold properties, and eliminating the retroactive nature of Section 205 bought/sold by changing enactment date to 12 months after passage of this technical corrections package. Please note that language must be included to retroactively “take care” of those properties that have been bought/sold between July 6, 2012 and implementation of any technical corrections package.

Means-based Subsidies

Some stakeholders have suggested that a potential remedy for the problems caused by Section 205 and 207 could be instituting a transparent means-based subsidy program into the NFIP. The proposal is that the subsidy would be clearly differentiated from the premium of the policy (therefore the policyholder would know their true risk of flooding), the program would be charging true actuarial prices, yet the policy would remain affordable for those low-income individuals that cannot afford the actuarial rates. These transparent means-based subsidies would also presumably go to significantly less policyholders than those currently receiving subsidies; therefore this approach could represent a significant source of financial savings for the program.

Unfortunately, in the Association’s view this means-based subsidy proposal, while worthy of discussion in the coming years, represents a radical departure from the current

operation of the NFIP and would therefore take a significant amount of time to vet through Congress. Additionally, it is unknown how FEMA itself would implement such an approach or their timeline for doing so. While we encourage the Committee and Congress to consider this proposal during the debate for the next reauthorization of the NFIP, we do not believe that this proposal represents the immediate fix that is required for the provisions of Sec. 205 and 207.

Conclusion

The IIABA is very pleased that the Subcommittee is conducting today's hearing on the impact of Biggert-Waters. Reforming and extending the NFIP via the Biggert-Waters Act of 2012 was essential to ensure the long-term stability of the NFIP. However, the Big "T" now recommends that Congress go back and make minor modifications to both Section 205 (bought/sold) and strongly recommends changes to Section 207 of the legislation to ensure that, while the efficacy of Biggert-Waters is protected, the law works for both individual policyholders and the U.S. economy at large. It is our sincere hope that agreement can be reached soon on legislation to accomplish these goals, and we thank the Committee for conducting today's hearing.