



July 24, 2019

Ms. Sara Robben
National Association of Insurance Commissioners
1100 Walnut, Ste. 1500
Kansas City, MO 64106

Dear Sara,

Lisa Miller & Associates (LMA) has been on the front lines of encouraging a private flood insurance market with CEO Lisa Miller, as Florida's former Deputy Insurance Commissioner, engaging stakeholders during her tenure as a Florida regulator. As a result of our firm's efforts, LMA was asked to serve as one of Florida State Senator Jeff Brandes' advisors, leading to the passage of [Section 627.715](#), Florida Statutes, which was first enacted in 2015.

Florida was the first state to embrace a robust private residential flood insurance market with the passage of sensible and balanced guidelines aimed at encouraging an admitted market, with excess and surplus lines' (E & S) role of filling gaps where the admitted market wasn't available. The balance that has been struck in Florida can serve as a model for exactly the right protocol for a well-functioning and efficient private flood insurance market. In July of 2018, LMA approached the National Council of Insurance Legislators (NCOIL) to consider adopting an even simpler set of guidelines with one single guiding principle: Growing a private flood insurance market with the consumer protections afforded in an admitted, regulated marketplace.

Over the past four years, Florida's admitted insurance companies have responded by writing new flood insurance policies approaching 100,000 in number by year end – a 169% increase since 2017 alone. From the market intelligence LMA has gathered, the over 30 insurance companies offering private flood insurance are doing so as an endorsement to their current property insurance customers. This simple idea is designed not only to allow for consumer protections, but to simplify claims handling and perhaps rectify the wind vs flood debate, with one deductible and one adjuster for the property and flood insurance claim.

NAIC's draft guidance (["Actions for State Regulators in Building the Private Flood Insurance Market"](#)) underscores that while data is collected, there should be – in the opinion of a growing number of regulators - a simultaneous effort to have 2020 state legislatures adopt the [proposed NCOIL model](#) to eliminate regulatory uncertainty, and more importantly to give financial institutions providing home mortgages the greatest comfort possible as to the validity of policy forms. Many say that with the July 1 multi-financial agencies' final rule on mandatory acceptance requirement, there is no need for regulatory review or for that matter, a

certification that the policy form complies with 42 U.S.C. s. 4012a(b). It is LMA's considered opinion that the mandatory acceptance requirement doesn't mean the banks are jumping in feet first to accept private policies after 50 years of NFIP as practically the only flood insurance option. In fact, at the June 2019 APCA National Flood Conference, there was much discussion about how the mandatory acceptance rule works from a practical standpoint. When bankers were asked if, despite the new rule, they would have greater assurance of private policies' validity and federal compliance if they saw the stamp of approval from a regulator, there was a resounding "yes."

The [NCOIL model](#) has 5 components:

1. Prior form approval by regulators;
2. Unregulated rates, so long as certified as not excessive, inadequate, or unfairly discriminatory and with a 30-day notice of rate change;
3. Insurance commissioner notification if a company wants to enter a state's flood market, together with filing an operations plan with financial projections;
4. Mandatory agent education of their customers about flood insurance; and
5. Insurance commissioner certification that the policy form meets or exceeds NFIP coverage.

Of all the components of this 2-page model bill, the most important is the mandatory requirement that insurance agents "have a conversation" with their clients about the NFIP, what the customer's current NFIP does and doesn't cover, private market alternatives, and that property insurance policies do *not* cover flood claims. The result is a more aware and informed consumer and a more transparent transaction regardless of whether flood insurance is ultimately purchased. The NAIC's draft guidance on the subject of agent education says it all!

Under the NCOIL model, the agent must document that there was a conversation. Some agent representatives contend that this obligatory conversation is a "burden" while most proponents consider it a responsibility of the profession. One only needs to look at statistics from Hurricane Harvey where 70 percent of damaged homes did not have flood insurance; many weren't even in flood zones. On page 1 of NAIC's draft guidance, it says, "A Federal Emergency Management Agency (FEMA) analysis from 2018 indicates 69 percent of American homes in high flood risk zones do not have flood insurance." That fact alone underscores why agents should embrace the requirement that they be responsible to their customers to do everything in their power to encourage flood insurance purchase.

NAIC's draft guidance notes that the data in Table 1's premium in force does not distinguish between commercial and residential policies and that the residential private flood insurance market showed a slight decline from 2017. In Florida, we have had the opposite experience. The momentum that began with our 2015 & 2016 model laws ([SB 1094](#) and [SB 542](#)) has created a vibrant and growing private residential flood market in the Sunshine State. We believe that other states that actively promote a private marketplace will experience the same results.

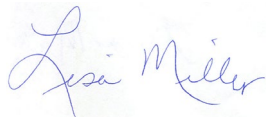
On page 8, the report lists the states that have waived the diligent search requirement. It cites Florida as one of the states but that is not the case. The 2019 legislature affirmed that the diligent search is still the law of the land with the sole focus to **strongly encourage** an admitted market with consumer protections. The admitted market will NOT grow if it must compete with, in essence, E&S markets that do not respond to regulator inquiries and can change their rates or forms at will, unlike their admitted counterparts. One commentator said that the reason Texas in its 2019 session eliminated the E & S diligent search requirement was that supporters contended that there were no admitted market entrants. Ironically, the admitted market, which must adhere to regulatory scrutiny, is discouraged to enter a market when they have to compete with E&S insurers who have little regulatory accountability. And as the NAIC guidance indicates, "It is important to note that surplus lines coverage may not meet lender requirements when flood insurance is required." If that is the case (and it is), why wouldn't we as a nation of state-based insurance regulation want to make encouraging the admitted market its highest priority?

Model legislation just makes sense to ease the way for a vibrant private flood market in all 50 states, offering more consumer availability and choice. We will always need the NFIP. But private insurance is a needed alternative and complement to NFIP policies. It also makes good economic sense. Doing so now becomes more crucial, given the obvious unsustainability of the NFIP without ever-growing multi-billion federal taxpayer subsidies and the dismal national participation rate in needed flood protection.

At the NCOIL/NAIC meetings in December 2019 in Austin, Texas, it is our hope that both organizations can partner and work collaboratively toward the concept of encouraging states to adopt guidelines such as those proposed by LMA. Working together, we can provide efficient and cost-effective solutions to insurance consumers across the country!

Thank you for your ongoing work and leadership in this crucial line of coverage!

With great respect,



Lisa Miller
CEO

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