July X, 2019

The following document provides information regarding ways for a department of insurance to encourage the growth of private residential flood insurance.

Currently the Property and Casualty Insurance (C) Committee is considering enhancing the collection of private flood data. These efforts include collecting information that separates residential private flood insurance premiums from commercial private flood insurance premiums, breaking the information down by standalone policies, endorsements to homeowners insurance policies, by both first dollar and excess. Additionally, the proposed supplement will provide claims and policy data.

Furthermore, it has been proposed to collect lender-placed flood insurance data on the Credit Insurance Experience Exhibit and to collect private flood insurance data for the surplus lines market through the Surplus Lines (C) Working Group.

The Market Regulation and Consumer Affairs (D) Committee has developed a private flood insurance line for the MCAS, which will collect 2020 data in 2021. The data is expected to follow the same format as the homeowners' MCAS with a focus on private flood insurance.

Other considerations for the Property and Casualty Insurance (C) Committee include:

- Considering ways to incorporate a conforming conditions clause in the form approval process.
- Referring state law conflicts relating to statute of limitations and cancellation/renewal provisions to GRLC to resolve at the federal level.

National Association *of* Insurance Commissioners

ACTIONS FOR STATE REGULATORS IN BUILDING THE PRIVATE FLOOD INSURANCE MARKET

MONTH X, 2019

Table of Contents

BACKGROUND AND PURPOSE

State insurance regulators have first-hand experience with the devastating effects floods have on the constituents in their states and believe it is critical that flood insurance is both available and affordable in order to encourage purchase that thereby protects homes, businesses, and personal property. Although private flood insurance is being written largely in the commercial market, this paper will focus on the residential flood insurance market. For more than a half-century, the federal government's National Flood Insurance Program (NFIP) has been the primary player in the residential flood insurance market, underwriting most policies while private insurers have largely focused on a relatively small residential supplemental market. And while the NFIP has done a laudable job in making flood insurance available for millions of residential properties, a significant flood insurance gap exists across the U.S.[1] with flood event after flood event revealing substantial numbers of damaged properties being uninsured.[2] 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. Concurrently, there has been heightened interest amongst private carriers to expand their residential flood insurance offerings, greatly assisted by the development of more sophisticated flood mapping and risk modeling technologies.

Funding for continuation of the NFIP expired in September 2017 and since then Congress has passed more than 10 short-term extensions with the latest extension through September 30, 2019. The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) requires lenders to accept private flood insurance policies meeting certain requirements just as they would an NFIP policy to satisfy the federal mandatory purchase mortgage requirement. The NAIC has been engaged legislatively and with the federal banking regulators on their rulemaking.[3] In February 2019, after six years of deliberation, the federal banking regulators finalized their rule. The final rule requires insurers to certify that their private flood insurance policies meet certain requirements[4] set forth in the Biggert-Waters statute for lenders to be required to accept such policies. The rule also provides lenders the option to accept private flood insurance policies that did not meet the mandatory acceptance requirements set forth in Biggert-Waters subject to certain conditions.

State insurance regulators and the NAIC support a long-term NFIP reauthorization as well as facilitating increased private sector involvement in the sale of flood insurance, which can help ensure consumers have access to multiple options. In 2016, the NAIC developed "Guiding Principles for NFIP Reauthorization"[5] and has testified in the U.S. Congress on the importance of ensuring private flood insurance.[6]

[1] https://riskcenter.wharton.upenn.edu/wp-content/uploads/2019/02/Moving-the-Needle-on-Closing-the-Flood-Insurance-Gap.pdf
[2] http://www.pciaa.net/docs/default-source/industry-issues/4_lessonslearned.pdf
[3] https://www.naic.org/documents/government_relations_comment_letter_federal_banking_private_flood_insurance.pdf
[4] The key conditions in the final rule are a requirement that the policy provide sufficient protection for a designated loan, consistent with general safety and soundness principles, and a requirement that the regulated lending institution document its conclusion regarding the sufficiency of protection in writing. The final rule also allows regulated lending institutions to exercise their discretion to accept certain plans providing coverage issued by "mutual aid societies."
[5] https://www.naic.org/documents/government_relations_161019_nfip_guiding_principles.pdf
[6] https://www.naic.org/documents/government_relations_160113_testimony_private_flood_insurance.pdf

Following from this NAIC action, the purpose of this document is to provide state insurance regulators with concrete actions that can be and/or have been taken to assist with the development of the burgeoning private insurance market for residential flood insurance.

OVERALL STATE OF THE FLOOD INSURANCE MARKET

According to the most recent flood insurance data collected by the NAIC (Table 1), a total of approximately $644 million of direct premium was written in 2018 throughout the U.S. with the private flood insurance market representing 15 percent of the total flood insurance market. The private flood insurance market has been growing over the past few years with the $644 million in direct premium written in 2018 being an increase of 9 percent from 2017 direct written premiums, and an increase of 71 percent since 2016. In 2018, California, Florida, Texas, New York, New Jersey, Pennsylvania, Puerto Rico, and Louisiana each wrote $20 million or more of private flood direct premium (Table 1) with these 8 states/jurisdictions representing nearly 60 percent of the total private flood insurance market.

It is important to note that the NAIC Annual Statement data used in Table 1 and Table 2 does not differentiate between residential private flood insurance premium and commercial private flood insurance premium. The NAIC is exploring data collection via a supplement and/or data call to collect data for residential private flood insurance and commercial private flood insurance separately.

Beyond this aggregate view of premium being written by state, for a relative sense of market penetration and growth of the private flood market two other views of the NAIC data are presented: i) private flood as a percent of total flood written per state in 2018 (Table 1); and ii) private flood growth per state from 2016 to 2018 (Table 2).

Table 1: Private Flood as a Percent of Total Flood Written Per State in 2018

State	Direct Premium Written - Private	Direct Written Premium - NFIP	Total	Percent Private Flood
AK	$ 726,128	$ 2,173,734	$ 2,899,862	25%
AL	$ 4,717,310	$ 37,369,849	$ 42,087,159	11%
AR	$ 2,918,840	$ 13,387,226	$ 16,306,066	18%
AS	$ 17	$ 38,356	$ 38,373	0%
AZ	$ 13,616,250	$ 20,785,412	$ 34,401,662	40%
CA	$ 83,598,726	$ 184,728,154	$ 268,326,880	31%
CO	$ 6,815,467	$ 17,996,733	$ 24,812,200	27%
CT	$ 8,554,006	$ 52,057,947	$ 60,611,953	14%
DC	$ 2,023,055	$ 1,481,959	$ 3,505,014	58%
DE	$ 1,870,439	$ 19,394,560	$ 21,264,999	9%
FL	$ 79,664,174	$ 974,338,089	$ 1,054,002,263	8%
GA	$ 13,822,654	$ 59,793,148	$ 73,615,802	19%
GU	$ 23,475	$ 348,208	$ 371,683	6%
HI	$ 3,511,428	$ 40,778,877	$ 44,290,305	8%
IA	$ 9,261,662	$ 12,894,876	$ 22,156,538	42%
ID	$ 1,685,637	$ 4,443,509	$ 6,129,146	28%
IL	$ 15,571,396	$ 41,782,653	$ 57,354,049	27%
IN	$ 9,754,263	$ 22,122,449	$ 31,876,712	31%
KS	$ 5,619,810	$ 8,096,167	$ 13,715,977	41%

Table 1: Private Flood as a Percent of Total Flood Written Per State in 2018 (cont'd)				
State	Direct Premium Written - Private	Direct Written Premium - NFIP	Total	Percent Private Flood
KY	$ 5,562,791	$ 19,859,236	$ 25,422,027	22%
LA	$ 20,518,942	$ 332,451,130	$ 352,970,072	6%
MA	$ 17,035,775	$ 77,215,928	$ 94,251,703	18%
MD	$ 6,161,138	$ 38,179,561	$ 44,340,699	14%
ME	$ 1,826,143	$ 8,778,305	$ 10,604,448	17%
MI	$ 7,287,062	$ 20,395,079	$ 27,682,141	26%
MN	$ 6,072,364	$ 7,828,757	$ 13,901,121	44%
MO	$ 10,054,439	$ 21,828,499	$ 31,882,938	32%
MP	$ 1,406	$ -	$ 1,406	100%
MS	$ 5,401,764	$ 43,786,173	$ 49,187,937	11%
MT	$ 1,107,818	$ 3,679,000	$ 4,786,818	23%
NC	$ 10,477,327	$ 109,932,602	$ 120,409,929	9%
ND	$ 1,808,961	$ 6,508,148	$ 8,317,109	22%
NE	$ 3,426,045	$ 8,737,796	$ 12,163,841	28%
NH	$ 1,579,406	$ 8,531,507	$ 10,110,913	16%
NJ	$ 33,570,528	$ 215,735,820	$ 249,306,348	13%
NM	$ 2,025,523	$ 10,462,171	$ 12,487,694	16%
NV	$ 4,598,626	$ 8,083,596	$ 12,682,222	36%
NY	$ 47,243,273	$ 205,299,097	$ 252,542,370	19%
OH	$ 15,400,298	$ 33,185,859	$ 48,586,157	32%
OK	$ 3,076,462	$ 11,092,205	$ 14,168,667	22%
OR	$ 6,248,012	$ 23,928,017	$ 30,176,029	21%
PA	$ 22,141,354	$ 65,301,183	$ 87,442,537	25%
PR	$ 21,658,142	$ 7,645,531	$ 29,303,673	74%
RI	$ 2,317,465	$ 18,409,898	$ 20,727,363	11%
SC	$ 13,703,417	$ 137,792,886	$ 151,496,303	9%
SD	$ 834,247	$ 3,115,261	$ 3,949,508	21%
TN	$ 12,179,549	$ 24,574,361	$ 36,753,910	33%
TX	$ 63,221,041	$ 435,173,125	$ 498,394,166	13%
UT	$ 2,712,200	$ 2,509,861	$ 5,222,061	52%
VA	$ 9,475,832	$ 78,057,383	$ 87,533,215	11%
VI	$ 37,329	$ 2,185,181	$ 2,222,510	2%
VT	$ 698,550	$ 4,937,502	$ 5,636,052	12%
WA	$ 12,061,004	$ 31,765,783	$ 43,826,787	28%
WI	$ 5,896,222	$ 11,790,299	$ 17,686,521	33%
WV	$ 1,804,872	$ 16,683,897	$ 18,488,769	10%
WY	$ 899,933	$ 1,580,170	$ 2,480,103	36%
TOTALS	**$ 643,879,997**	**$ 3,571,032,713**	**$ 4,214,912,710**	**15%**

Table 2 - Private Flood Growth by State during 2016 to 2018					
State	**Direct Premium Written 2018**	**Direct Premium Written 2017**	**Direct Premium Written 2016**	**Percent Change Premium Written 2017 to 2018**	**Percent Change Premium 2016 to 2018**
AK	$ 726,128	$ 957,063	$ 555,129	-24%	31%
AL	$ 4,717,310	$ 4,799,724	$ 3,005,135	-2%	57%
AR	$ 2,918,840	$ 2,826,120	$ 1,607,656	3%	82%
AS	$ 17	$ -	$ -	N/A	N/A
AZ	$ 13,616,250	$ 11,068,965	$ 6,260,448	23%	117%
CA	$ 83,598,726	$ 71,951,648	$ 48,786,070	16%	71%
CO	$ 6,815,467	$ 6,097,813	$ 4,735,996	12%	44%
CT	$ 8,554,006	$ 9,810,824	$ 6,787,613	-13%	26%
DC	$ 2,023,055	$ 2,838,882	$ 1,829,183	-29%	11%
DE	$ 1,870,439	$ 1,669,426	$ 740,005	12%	153%
FL	$ 79,664,174	$ 84,491,040	$ 47,796,186	-6%	67%
GA	$ 13,822,654	$ 12,154,732	$ 6,953,126	14%	99%
GU	$ 23,475	$ 61,491	$ 9,396	-62%	150%
HI	$ 3,511,428	$ 4,707,292	$ 3,149,891	-25%	11%
IA	$ 9,261,662	$ 7,973,218	$ 6,739,156	16%	37%
ID	$ 1,685,637	$ 1,246,073	$ 842,501	35%	100%
IL	$ 15,571,396	$ 14,022,683	$ 9,770,834	11%	59%
IN	$ 9,754,263	$ 9,359,454	$ 5,834,525	4%	67%
KS	$ 5,619,810	$ 5,187,276	$ 3,519,857	8%	60%
KY	$ 5,562,791	$ 5,184,777	$ 3,636,333	7%	53%
LA	$ 20,518,942	$ 17,883,168	$ 11,495,497	15%	78%
MA	$ 17,035,775	$ 15,255,682	$ 8,980,394	12%	90%
MD	$ 6,161,138	$ 4,881,020	$ 3,004,956	26%	105%
ME	$ 1,826,143	$ 1,393,303	$ 1,449,308	31%	26%
MI	$ 7,287,062	$ 5,784,426	$ 3,112,100	26%	134%
MN	$ 6,072,364	$ 6,034,414	$ 4,382,496	1%	39%
MO	$ 10,054,439	$ 8,579,964	$ 5,611,173	17%	79%
MP	$ 1,406	$ 673	$ -	109%	N/A
MS	$ 5,401,764	$ 4,954,089	$ 3,545,564	9%	52%
MT	$ 1,107,818	$ 965,222	$ 546,157	15%	103%
NC	$ 10,477,327	$ 9,385,350	$ 5,916,463	12%	77%

Table 2 - Private Flood Growth by State during 2016 to 2018 (cont'd)					
State	Direct Premium Written 2018	Direct Premium Written 2017	Direct Premium Written 2016	Percent Change Premium Written 2017 to 2018	Percent Change Premium 2016 to 2018
ND	$ 1,808,961	$ 1,518,138	$ 1,033,168	19%	75%
NE	$ 3,426,045	$ 2,733,969	$ 1,819,577	25%	88%
NH	$ 1,579,406	$ 1,773,337	$ 1,516,804	-11%	4%
NJ	$ 33,570,528	$ 28,862,467	$ 17,035,409	16%	97%
NM	$ 2,025,523	$ 1,735,136	$ 662,921	17%	206%
NV	$ 4,598,626	$ 4,574,608	$ 2,440,079	1%	88%
NY	$ 47,243,273	$ 47,674,483	$ 27,419,308	-1%	72%
OH	$ 15,400,298	$ 14,202,904	$ 5,628,305	8%	174%
OK	$ 3,076,462	$ 3,507,498	$ 1,746,619	-12%	76%
OR	$ 6,248,012	$ 4,730,473	$ 2,910,035	32%	115%
PA	$ 22,141,354	$ 18,832,760	$ 13,240,946	18%	67%
PR	$ 21,658,142	$ 19,554,982	$ 19,436,229	11%	11%
RI	$ 2,317,465	$ 2,623,963	$ 1,286,538	-12%	80%
SC	$ 13,703,417	$ 12,726,603	$ 10,633,358	8%	29%
SD	$ 834,247	$ 770,092	$ 572,506	8%	46%
TN	$ 12,179,549	$ 8,584,856	$ 5,939,417	42%	105%
TX	$ 63,221,041	$ 53,512,832	$ 31,771,120	18%	99%
UT	$ 2,712,200	$ 1,958,666	$ 1,050,341	38%	158%
VA	$ 9,475,832	$ 8,527,381	$ 4,727,129	11%	100%
VI	$ 37,329	$ 43,449	$ 122,459	-14%	-70%
VT	$ 698,550	$ 520,374	$ 297,124	34%	135%
WA	$ 12,061,004	$ 11,566,163	$ 9,609,189	4%	26%
WI	$ 5,896,222	$ 4,140,377	$ 2,300,499	42%	156%
WV	$ 1,804,872	$ 1,986,325	$ 1,614,061	-9%	12%
WY	$ 899,933	$ 959,541	$ 713,965	-6%	26%
Total	**$ 643,879,997**	**$ 589,147,189**	**$ 376,130,254**	**9%**	**71%**

Clearly, this data suggests that there are considerable opportunities for private flood insurance placement and market development. However, it is important to note that in 2018, the majority of growth occurred in the private commercial flood insurance market. The residential private flood insurance market showed a slight decline from 2017.[7]

As insurers' familiarity with flood catastrophe models grows, as underwriting experience develops, and as state regulatory structures evolve, the number of private flood insurance policies in force could continue to grow, including among admitted carriers. It is therefore important to understand what states have done (or not done) to enhance this growth.

[7] https://www.insurancejournal.com/research/app/uploads/2019/06/FINAL-Private-Flood-Insurance-Report-2019.pdf

STATE ACTION

During the six years of uncertainty at the federal level, state insurance regulators began undertaking efforts to streamline the process for private insurance carriers to write flood insurance in their state. Florida's efforts to establish a private flood insurance market have been applauded as a potential model to be utilized in other states looking to expand their residential private flood insurance offerings. Florida has the largest flood insurance market in the country and accounts for roughly 35% of NFIP policies nationwide.[8] Florida has enacted legislation to create a statutory framework allowing private insurers to offer multiple types of flood coverage ranging from standard coverage, which mirrors the NFIP, to other enhanced coverages. This legislation includes streamlining the rate filing process for private flood insurers, eliminating the diligent search requirement for flood policies issued by surplus lines carriers until July of 2019, and providing for a certification by the Office of Insurance Regulation (OIR) that the policy equals or exceeds coverage provided by the NFIP. Florida's OIR issued an informational memorandum providing guidance on how private insurers will need to demonstrate the financial capacity to assume this risk as well as options for developing private flood rates and policy forms.

In addition to Florida, we can draw upon the existing experiences from other states in developing a robust flood insurance market along the key aspects of insurance regulation.

The NAIC reached out to the states on the drafting group to provide information that was not readily available on the state's website, as well as gathering information from the Wharton Study, "The Emerging Private Residential Flood Insurance Market in the United States", GAO reports, and a recently updated Congressional Research Report regarding private flood insurance and the NFIP. In the future the NAIC might want to consider sending a more detailed questionnaire to states gather more information regarding the developing private flood insurance market.

Overall, state experiences include:

Legislative and Regulatory Changes

- Supporting private flood insurance legislation
- Approving private flood insurance products
- Tailoring rate and form requirements for private flood insurance coverage
- Allowing private flood insurers to submit rates on an informational basis
- Removing diligent search requirements

Consumer Information

- Consumer outreach
- Listing private flood insurance products on a department of insurance's website
- Collecting residential private flood insurance data

[8] http://www.floods.org/ace-files/documentlibrary/committees/Insurance/Emerging_Flood_Insurance_Market_Report-Wharton-07-13-18.pdf

Agent and Lender Actions

- Implementing specific continuing education requirements for producers
- Increasing the weighting of flood insurance questions on producer licensing exams
- Agent education
- Lender education

LEGISLATIVE AND REGULATORY CHANGES

Supporting Private Flood insurance legislation

In addition to Florida's legislation, West Virginia has passed legislation requiring insurers to file their private flood insurance plan of operation with the commissioner and authorizing expedited processing of surplus lines policies for flood insurance.

Approving private flood insurance products

California, Mississippi, and Alabama are among the states approving new personal lines private flood insurance products for entry into the market. Additionally, the Insurance Services Organization (ISO) has developed a new private flood insurance form, for both personal and commercial flood, which states have been considering through their form filing process. As of March 2018, personal flood has been implemented in 43 jurisdictions and commercial flood in 45 jurisdictions. Approximately five states have independent rating bureaus; these states are not reflected in these numbers.

Tailoring rate and form requirements for private flood insurance coverage

States might consider permitting private flood insurers to file rates for approval or allowing them to use rates in accordance with rates, rating manuals, or schedules filed by the insurer allowing for a reasonable rate of return. For example, Florida law permits private flood insurance rates to be implemented without prior approval at the time of filing; however, insurers are required to keep supporting actuarial data for two years. Furthermore, Florida law allows insurers to request the state to certify that a private policy provides flood coverage which equals or exceeds that offered by NFIP. (See Appendix I for information on Florida's process)

New Jersey placed flood on their "exportable list" which has the effect of eliminating rate filing requirements. Maryland and South Carolina have not relaxed the rate and form requirements; however, they are committed to an efficient and swift overview of private flood insurance filings and will work with insurers to make the filing and approval process as smooth as possible.

Allowing Private Flood Insurers to Submit rates on an informational basis

Allowing insurers to submit rates on an informational basis in states with prior approval rate filing laws is another way to encourage the growth of the private flood insurance market. Two states that have taken this approach include Florida and New Jersey.[9] (See Appendix I for information on Florida's process)

Removing diligent search requirements

Many states require a consumer to first seek a flood insurance policy in the admitted market. If the consumer is denied coverage, they are then able to purchase a private flood insurance policy in the surplus lines market. At least 14 states have waived this diligent search requirement. These states include Alaska, Arizona, Connecticut, Florida, Idaho, Louisiana, New Jersey, Oklahoma, Oregon,

[9] https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/07/Emerging-Flood-Insurance-Market-Report.pdf and state departments of insurance

Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin. It is important to note that surplus lines coverage may not meet lender requirements when flood insurance is required.

CONSUMER INFORMATION

Consumer outreach

To aid in promoting a private flood insurance market, it is important to publicize the importance of purchasing flood insurance coverage. This task requires perseverance and a deep understanding of the various insurance products available. Consumers, insurance agents, real estate agents, mortgage lenders and banking associations need to be educated on the need for flood insurance, including both private flood insurance and that provided by the NFIP.

There are still many consumers who are under the misconception that flood damage will be covered by their homeowners insurance policy. They are therefore unaware of their actual flood risk and learn that they are uninsured for this catastrophic peril only after a flood event only following a flood event for which they have no coverage.

State departments of insurance, as well as the NAIC, are launching consumer educational outreach programs related to flood insurance to try to address this coverage gap. For example, the Pennsylvania Insurance Department developed a one-stop shop webpage for homeowners to get information on flood insurance options, including private flood insurance.

The NAIC Communications Department has also launched a flood campaign this year to inform consumers of the importance of purchasing flood insurance; either private flood insurance or flood insurance provided by the NFIP. Additionally, the NAIC recently released a special section of its website dedicated to educating consumers about the risks of flooding and what kinds of coverage options are available to protect against those risks.

Finally, the NAIC's Transparency and Readability of Consumer Information (C) Working Group has created both a basic flood insurance document, as well as several graphical materials containing flood facts, to be used by DOIs for consumer outreach via social media.

Listing private flood insurance writers on a department of insurance website

While many DOIs include information regarding NFIP policies on their website, some states including Florida, Louisiana, New Jersey, and Pennsylvania provide a list of private flood insurance writers and their contact information on their website.

It is worthwhile to note that surplus lines writers are generally not listed by the line of business they write; however, it has been suggested there would be value for states to provide information regarding which surplus lines writers are writing residential private flood insurance.

Collecting residential private flood insurance data

Florida and Texas both collect comprehensive data regarding residential private flood insurance.[10] As described previously, the NAIC has been collecting private flood insurance data since the data year 2016. Before that, the private flood insurance line was not a separate entry in the Annual Statement. While residential and commercial private flood insurance are not separated in the P/C Annual Statement Blank, the NAIC, through its Property and Casualty Insurance (C) Committee is currently considering enhancements to the Annual Statement that would require insurers to report the residential private flood insurance premiums and commercial private flood insurance premiums independently.

[10] https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/07/Emerging-Flood-Insurance-Market-Report.pdf

The Surplus Lines (C) Task Force is considering similar changes to alien surplus lines private flood insurance data that is reported to the International Insurance Department.

The Wholesale & Specialty Insurance Association (WSIA) is also providing the Reinsurance Association of America (RAA) with data regarding surplus lines insurance. The RAA is currently working on an open source database that provides information regarding private flood insurance.

These changes would allow regulators and FEMA to better measure the growth of the private residential flood insurance market.

AGENT AND LENDER ACTIONS

Continuing education and producer licensing requirements

FEMA requires all insurance producers licensed in property, casualty or personal lines of authority who sell flood insurance through the NFIP to complete a one-time course, as required by the NFIP Flood Insurance Reform Act of 2004. This is also the only educational requirement in many states.

At least one state has increased the weighting of the flood insurance questions on their producer licensing exam.

Agent Education

Selling flood insurance requires an agent to understand the intricacies of an NFIP of private flood insurance policy.[11] States continue to see large numbers of uninsured or underinsured consumers following a flood event.

When purchasing insurance, many times the insurance agent is the consumer's first point of contact; therefore, it would be valuable if an agent could explain the risks of flooding, even if a consumer does not own or rent property in a high-risk flood zone. Recent flood events remind us that where it can rain it can flood, and many floods occur outside of a high-risk flood zone If agents help to educate the consumer it will help eliminate the cost of inaction, as the occurrence of a flood event could be financially unbearable for a homeowner or renter if they are not insured, or are underinsured. It is critical for agents to make a special effort to educate homeowners' regarding the need for flood insurance, even if a business or home is not located in a high-risk flood zone.

DOIs can provide agents with information they have learned as a result of a flood event and can foster agent education by requiring continuing education requirements to improve an agent's knowledge of flood insurance.

Other states' adoption of such practices would likely improve agents' knowledge of flood insurance, therefore helping their clients to obtain more effective flood coverage, whether through the NFIP or the private sector.

Lender Education

A large percentage of Americans have a mortgage on their home; therefore, lender education is another opportunity for consumer flood insurance education. Recent catastrophic flooding events have illustrated floods can happen anywhere; therefore, it is in the best interest of the homeowner to purchase flood insurance even if they do not live in a high-risk flood zone.

While state insurance regulators do not have authority to regulate lenders, lenders should still be educated regarding the importance of flood insurance. When navigating the loan process lenders do

[11] http://www.floods.org/ace-files/documentlibrary/committees/Insurance/Emerging_Flood_Insurance_Market_Report-Wharton-07-13-18.pdf

not always discuss purchasing flood insurance unless the borrower's home is in a high-risk flood zone. A discussion about purchasing flood insurance even if the homeowner does not live in a high-risk flood zone should ideally be addressed with the borrower.

DOIs can raise awareness regarding flood insurance by bringing agents, consumers, lenders, FEMA, private flood insurance writes, etc. together in communities to discuss the importance of a homeowner purchasing flood insurance.

OTHER IDENTIFIED BARRIERS TO THE DEVELOPMENT OF A PRIVATE FLOOD INSURANCE MARKET

The May 2019 Congressional Research Service report, "Private Flood Insurance and the National Flood Insurance Program" identified some of the barriers to the development of a private flood insurance market. Some of the barriers identified in the report include: 1) regulatory uncertainty; 2) flood insurance coverage being "at least as broad as" the NFIP; 3) continuous coverage; 4) the NFIPs "non-compete" clause; NFIP subsidized rates; and 5) the ability to assess flood risk accurately and 6) adequate consumer participation.

Most directly relevant for the NAIC members is the notion of regulatory uncertainty, which is covered below. The remaining topics will be addressed in Appendix II.

Regulatory uncertainty

The CRS report emphasizes regulatory uncertainty at the state level. If states begin to see an increase of private flood insurance, one impediment worth mentioning is the additional regulatory burden of overseeing private flood insurance policies. The regulatory involvement of all the states and territories will conceivably increase costs and complexity to insurers, lenders, or property owners.

The possibility insurers will withdraw from the private flood insurance market exists if there is too much intervention by state insurance regulators to control rates.

On the other hand, states may develop their own state-specific insurance solutions. State solutions may be more suitable to their local social and economic conditions.

SUMMARY

In the past few years, many states have experienced excessive flooding. Following the flood events, it became apparent that a significant number of consumers were either uninsured or underinsured for the flood peril.

While the NFIP still writes a majority of the residential flood insurance policies, considerable opportunities for the development of the residential private flood insurance market.

This document provides details about how a few states have put procedures into place to enhance the private flood insurance market in a state. These procedures include supporting private flood insurance legislation and initiatives, tailoring rate and form requirements for residential private flood insurance products, relaxing rate requirements, consumer education, and agent and lender education.

It is noteworthy to say states experiencing large flooding events have seen growth in the private flood insurance market regardless of any other actions. For example, following Hurricane Harvey, Texas saw growth in their residential private flood insurance market. By nature, catastrophic events are a reminder to consumers concerning the devastation caused by flooding.

While there are several barriers for the residential private flood insurance market, the most important barrier for state insurance regulators is likely the regulatory uncertainty. The burden of overseeing private flood insurance policies will likely increase the regulatory burden for state insurance regulators.

The attached appendices discuss steps Florida has taken in its approach to cultivate the private residential flood insurance market and discussion of other barriers to the entrance of residential private flood insurers.

Appendix I – Actions Florida has Taken

FLORIDA'S FORM FILING PROCESS EXAMPLE

Florida reviews form filings providing flood coverage differently based on the type of flood coverage being provided.

Subject to the requirements of Florida's flood statute

The coverage provided under the policy must meet one of the definitions of type of flood coverage, as defined by s. 627.715, F.S. Of the five defined types, "standard", "preferred" and "customized" are defined to meet or exceed the coverage provided by the standard NFIP policy. "Flexible" flood insurance must cover losses from the peril of "flood" as defined by the statute but does not have to provide coverage comparable to the entire NFIP policy. "Supplemental" flood coverage is meant to supplement a NFIP or private flood policy. Policies that fall under these definitions may have certain provisions that differ from that which would otherwise be required if not written under the flood statute.

Items not subject to the requirements of Florida's flood statute

The coverage does not have to meet or exceed the coverage provided by the standard NFIP policy; however, the provisions of the flood statute which allow changes to the form and rate requiring requirements, as well as that allowing for a certification provided by the FLOIR, do not apply. This means forms and rates would be subject to all the requirements of Florida law nor does the coverage have to meet the definition of "flood" under the statute.

Florida's private flood insurance statute, S. 627.715 does not apply to the commercial lines market—forms providing commercial flood coverage must comply with all applicable Florida Laws

REVIEW OF FLORIDA'S FORM FILING PROCESS

How the Florida OIR reviews form filings subject to its flood statute"

The Florida OIR coordinates with FEMA about training to educate forms analysts about the details and nuances of a federal NFIP policy. Forms analysts:

- Review the policy or endorsement and compare to the NFIP policy
- Review the provisions of the underlying policy that are not superseded by changes made in the endorsement
- Make sure that the flood coverage in total (including definitions, deductibles, limits, conditions, property not covered, exclusions, etc.) are as broad as that provided under the NFIP policy
- Exclude provisions, specific to the NFIP, that would not make sense to be in a private company's policy

State Law Conflict

There are certain provisions in the federal private flood definition that may conflict with a state's law.

For example, the statute of limitations under the standard NFIP policy is one year after the date of denial. In Florida, the statute of limitations for most claims is five years from the date of loss. The insurer could utilize the standard NFIP provision or could use a provision such as one year after the date of denial of a claim or five years from the date of the loss, whichever is greater. The modified provision would be considered as providing better coverage.

Another potential area where there could be conflict between the standard NFIP policy and state law is the requirement for notice of cancellation. The NFIP requires 45 days, which may be more, or less, than state provisions.

In Florida, their statute requires a 10-day cancellation for non-payment of premium. In Florida, to comply with the flood statute, the insurer would have to give at least 45 days.

> ***The general filing requirement for forms is found in s. 627.410, Florida statutes which requires the FLOIR to approve forms before use.***
>
> **For commercial flood coverage, the insurer has the option to file the forms as informational pursuant to s. 627.4102, Florida Statutes**

FLORIDA RATE PROCESS EXAMPLE

Florida allows for insurers offering personal residential flood insurance coverage that meets the requirements of the flood statute, insurers may decide to either submit the rate filings subject to the normal filing requirements of review and approval or may (until Oct. 1, 2025) submit the filing for informational purposes.

Personal residential flood insurance rates submitted for informational purposes are subject to examination by the FLOIR for a period of two years from the effective date to determine if the rates are excessive, inadequate, or unfairly discriminatory.

If the coverage does not meet the requirements of the "flood statute" the rate filing is subject to the normal filing requirements of review and approval. Commercial non-residential property rates (including that for flood coverage) are informational due to a separate provision of Florida Laws and are an exception to these filing requirements.

FLORIDA FLOOD STATUTE – FLOOD POLICY TYPES

Florida's flood statute (S. 627.715) sets up five types of flood coverage that may be written using the special deviations allowed for flood insurance.

- *Standard flood insurance (equivalent to coverage provided under the standard flood policy under the NFIP*
- *Preferred flood insurance*
- *Customized flood insurance*
- *Flexible flood insurance*

Supplemental flood insurance Flexible and supplemental coverage are the only flood coverage type under the statute that does not require flood insurance coverage to meet or exceed what is provided under the standard NIFP policy. Flexible coverage must provide coverage for the peril of flood as defined by the statute (which mirrors that of the NFIP), however, there are ancillary coverages that are not required to be provided.

APPENDIX II – BARRIERS TO THE RESIDENTIAL PRIVATE FLOOD INSURANCE MARKET

Flood coverage being "at least as broad as" the NFIP

Biggert Waters (BW-12) specifies that private flood insurance satisfies the mandatory purchase mortgage requirement when a private flood insurance policy affords coverage that is at least "as broad as the coverage offered by an NFIP flood insurance policy.[12]

Since there was not a federal banking rule in place regarding private flood insurance following the passage of BW-12, it was challenging to implement the use of private flood insurance for the mandatory purchase mortgage requirement. Some lending institutions felt they did not have the knowledge necessary to assess whether a flood insurance policy met the definition of private flood insurance set forth in BW-12.

The Federal Banking rule is effective July 1, 2019; therefore the acceptance of private flood insurance is no longer a barrier.

Continuous coverage

If an NFIP policy holder lets an NFIP policy lapse, by either not paying premium or going to a private flood insurer, any subsidy the NFIP policy holder would have received is immediately eliminated.[13] Legislation currently being considered by Congress to reauthorize the NFIP includes the ability of policyholders to leave the NFIP in order to purchase a private flood insurance policy and then return to the NFIP without penalty.

Non-Compete clause

FEMA dropped its non-compete clause in 2018. FEMA now allows Write Your Own companies to sell NFIP policies; therefore, this is no longer a barrier.

NFIP Subsidized Rates

One of the hurdles facing private flood insurance growth involves the NFIPs subsidized rates, as NFIP premiums do not reflect the full risk of flooding. NFIP rates allow policyholders to have more affordable premiums; however, these rates do not incorporate profit, which is an important element for private flood insurers.[14] Private flood insurers would need to charge rates that represent the full risk of the peril.[15]

If the NFIP were to reform their rate structure to collect full-risk rates, it might result in the encouragement of more private insurers to write policies in the private flood insurance market. Full-risk NFIP rates would fall closer to what a private insurer would charge. It is important to note that full-risk rates would likely lead to higher rates than those that currently exist.[16]

Presently, FEMA is in the process of redesigning their rating system. The new NFIP rating system will be known as Risk Rating 2.0. This new rating structure will add replacement cost value and consider the distance between a property and a source of water. Additionally, Risk Rating 2.0 takes into consideration things such as intense rainfall, which are not currently reflected in the current rating structure.[17]

[12] 42 U.S.C §4012a(b).
[13] As required by §100205(a)(1)(B) of BW-12 (P.L. 112-141, 126 Stat. 917), only for NFIP policies that lapsed in coverage as a result of the deliberate choice of the policyholder.
[14] http://www.floods.org/ace-files/documentlibrary/committees/Insurance/Emerging_Flood_Insurance_Market_Report-Wharton-07-13-18.pdf
[15] ibid
[16] ibid
[17] ibid

Ability to Assess Flood Risk Accurately

Just last week, the NFIP released data on flood losses and claims. Prior to the release of this data, insurers viewed the lack of access to NFIP data on flood losses and claims as a barrier for private companies offering flood insurance.

For private flood insurers to manage and diversify their risk exposure requires consumer participation to manage and diversify their risk exposure. Many private insurers have expressed the view that broader participation in the flood insurance market would be necessary to address adverse selection and maintain a sufficiently large risk pool.[18]

An established goal of the NFIP is to increase the number of flood insurance policies in force. Even though there is a mandatory purchase requirement for homeowners to purchase flood insurance in certain flood zones, this does not always occur.

As more insurers begin to write private flood insurance it is likely consumers will be offered more choices. Private flood insurers may also offer coverages not available through the NFIP. These coverages might include coverage such as, basement coverage, business interruption, additional living expenses, etc. Private insurers might also be able to offer higher coverage limits than those offered by the NFIP.

Private flood insurance offered as an endorsement to a standard homeowners insurance policy could possibly eliminate instances where it is necessary to differentiate between flood and wind damage.[19]

[18] GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, 14-127, January 2, 2014, p. 14, https://www.gao.gov/products/GAO-14-127.
[19] Congressional Research Service, "*Private Flood Insurance and the National Flood Insurance Program,*" May 7, 2019, p.15, https://www.everycrsreport.com/files/20190507_R45242_968aced5ccda33b36e57f26022e80552ffa6f32d.pdf

