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Legislative Bulletin……………………..July 8, 2011

Contents:

Key Take Away Points

-- **Full-Risk Rates for Certain Subsidized Properties** – The bill requires that full actuarial rates would be phased-in for roughly 350,000 properties currently receiving National Flood Insurance Program (NFIP) subsidies. The measure also provides for a five-year phase-in of flood insurance rates for newly mapped areas.

--**No Guaranteed Mechanism for Paying Back Debt –** The legislation does not include any mechanism to guarantee that the NFIP will repay the $18 billion it currently owes the Treasury.

-- **Temporary Mandatory Purchase Suspensions** –The bills suspends mandatory purchase requirements on a community-by-community basis for one year at the request of a local governing authority.

-- **Privatization Initiatives –** The bill requires a variety of reports by Federal Emergency Management Agency (FEMA) and the Government Accountability Office (GAO) regarding various privatization initiatives.

-- **Technical Mapping Advisory Council –** The bill establishes a new Technical Mapping Advisory Council.

-- **Optional Coverage for Additional Living Expenses/Business Interruption (ALE/BI)** – The bill authorizes FEMA to offer optional coverage for additional living expenses ($5,000 maximum) and coverage for the interruption of business operations ($20,000 maximum).

For more details on these points, see below.

H.R. 1309— Flood Insurance Reform Act (Biggert, R-IL)

Order of Business: The bill is scheduled to be considered on July 8, 2011 under a structured rule that provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill. The legislation also provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services shall be considered as an original bill for the purpose of amendment and shall be considered as read. The bill waives all points of order against the committee amendment in the nature of a substitute. The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The rule waives all points of order against the amendments printed in the report. The rule also provides that the chair of the Committee on Financial Services or his designee may offer amendments en bloc consisting of amendments printed in the Rules Committee report not earlier disposed of, which shall be considered as read, shall be debatable for 10 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their designee, shall not be subject to amendment, and shall not be subject to a demand for division of the question. Lastly, the rule provides one motion to recommit with or without instructions.

Summary: Highlights of H.R. 1309:

Extension of the Flood Insurance Program:

- The National Flood insurance Program (NFIP) will be reauthorized for five years from October 1, 2011, through September 30, 2016.

Mandatory Purchase:

- **Temporary Mandatory Purchase Suspensions** –The bill suspends mandatory purchase requirement on a community-by-community basis for one year at the request of a local governing authority if FEMA finds at least one of the following conditions apply to the community:
  - (1) it has never been mapped as a high-risk area;
  - (2) it is taking specific steps to rebuild/repair a dam or levee that has been decertified and is making adequate progress in securing financial commitments and completing that work; or
  - (3) it has filed a formal appeal of the accuracy of a dam or levee decertification or flood risk map revision. This suspension could be extended for a maximum of 2 additional one-year periods (for a total of three years) at FEMA’s discretion.

- **Termination of Force-Placed Insurance** – The bill requires mortgage lenders/servicers to terminate any force-placed insurance and refund any premiums paid for coverage overlap periods once property owners have obtained their required flood insurance.

- **Equal Treatment of Private Flood Insurance** – The legislation encourages greater private sector participation by requiring lenders to accept non-NFIP backed flood insurance coverage provided by a private entity if that coverage meets all the same requirements as NFIP-backed flood insurance.

Phase-in of Full Rates:

- **Annual Limit on Premium Rate Increases** – The legislation increases the annual cap on premium rate increases from 10 percent to 20 percent.

- **Phase-in of Full-Risk Rates for Newly-Mapped Areas** – The legislation requires for primary residence properties mapped into a mandatory purchase area to phase-in full-risk rates. The initial rate will be set at a 50 percent discount from full-risk rates and increase by 20 percent each year thereafter.

- **Full-Risk Rates for Certain Subsidized Properties** – The bill requires that full actuarial rates would be phased-in for roughly 350,000 properties currently receiving NFIP subsidies including commercial properties, second and vacation homes, homes sold to new owners, homes substantially damaged/improved, Severe Repetitive Loss Properties (SRLPs) with multiple flood claims, and property owners who allowed their policies to lapse by choice.

- **Use of State and Local Funding Considerations in Setting Flood Rates** – The bill requires FEMA to update their standards for evaluating eligibility for special flood insurance rates by considering several factors including state and local funding of flood control projects and other flood control reconstruction and improvement projects.

- **Actuarial Rates for Severe Repetitive Loss Properties Refusing Mitigation or Purchase Offers –** The bill requires owners of SRLPs who refuse government offers of mitigation, or purchase assistance for their properties, to forfeit their subsidized rates and pay full actuarial rates.

Reports and Studies:

- **Report on Write-Your-Own Program –** The bill requires FEMA to report on the policies and procedures that it can implement to limit the size of the NFIP Direct to less than 10 percent of all flood insurance policies in order to address the rapid increase in the number of policies administered under the FEMA's NFIP Direct policy servicing program.

- **Studies of Voluntary Community-Based Flood Insurance Options –** The bill requires FEMA and GAO to conduct a study to assess options, methods, and strategies for offering voluntary community-based flood insurance policy options, and report their findings to Congress within 18 months.

- **Report on Inclusion of Building Codes in Floodplain Management Criteria –** The bill directs FEMA to study the impact, effectiveness, and feasibility of including widely used and nationally recognized building codes as part of its floodplain management criteria and to report its findings to Congress within 18 months.

- **Study on Graduated Risk –** The bill requires the National Academy of Sciences to study methods for understanding graduated risk for properties of residential and commercial structures behind levees, and report their findings to Congress within one year.

- **Privatization Initiatives –** The bill requires a variety of reports by FEMA and the Government Accountability Office (GAO) regarding various privatization initiatives, including: investigating options to begin privatizing the NFIP over time; determining the capacity of private insurers, reinsurers, and financial markets to underwrite NFIP flood risk; and assessing new ways to strengthen the NFIP's ability to pay claims without having to borrow from the Treasury.

- **FEMA Annual Report on Insurance Program –** The bill requires FEMA to report annually to Congress on the status of the NFIP with detailed information about the financial status of the program.

Flood Mapping:

- **Technical Mapping Advisory Council –** The bill establishes a new Technical Mapping Advisory Council made up of federal, state, and local experts to review flood hazard risk mapping standards and propose new mapping standards to FEMA.

- **FEMA Incorporation of New Mapping Protocols –** The bill requires FEMA to update its flood maps according to the Technical Mapping Advisory Council's recommendations within six months, or report to Congress why it rejected them.

Flood Mitigation:

- **Mitigation Assistance –** The bill clarifies that the demolition and rebuilding of flood-damaged properties should be considered by FEMA as an eligible activity for the purpose of mitigation assistance, which must be cost-effective.

- **Grants for Direct Funding of Mitigation Activities for Individual Repetitive Claims Properties –** The bill allows for mitigation grants for repetitive flood loss properties to be provided directly to homeowners.

Required Notifications:

- **Notification to Homeowners Regarding Mandatory Purchase Requirement Applicability and Rate Phase-Ins –** The bill establishes an annual notification process to inform individuals who reside in an area having special flood hazards that they are subject to the mandatory purchase requirement and provide estimates of what other homeowners in similar areas pay for their flood insurance.

- **Notification of Establishment of Flood Elevations –** The legislation requires FEMA to notify Members of the House and Senate whose districts or states are affected when it changes or updates floodplain areas or flood risk zones.

- **Notification to Tenants of the Availability of Contents Insurance –** The bill requires FEMA to develop a notice to landlords to inform tenants if they live in an area that contains special flood hazards and details about NFIP insurance for the contents of their apartment.

- **Notification to Policy Holders Regarding Direct Management of Policy by FEMA –** The bill requires FEMA to annually notify all holders of policies transferred to the NFIP Direct program of their options to purchase flood insurance directly from another Write-Your-Own (WYO) insurance company.

Reform of Coverage Terms:

- **Minimum Deductibles** – The legislation requires minimum deductible be set at $1,000 for properties with full-risk rates and $2,000 for properties with discounted rates.

- **Maximum Coverage Limits** – The bill requires limits to be indexed for inflation, starting in 2012. The current limit is $350,000 ($250,000 for structures and $100,000 for contents) for a residential policy and $1 million ($500,000 for structures and $500,000 for contents) for a non-residential policy. CBO estimates that the new coverage limits would be about $520,000 and $1.5 million, respectively.

- **Optional Coverage for Additional Living Expenses/Business Interruption (ALE/BI)** – The bill authorizes FEMA to offer optional coverage for additional living expenses ($5,000 maximum) and coverage for the interruption of business operations ($20,000 maximum) if FEMA: (1) charges full-risk rates for such coverage; (2) finds that a competitive private market for such coverage does not exist; and (3) certifies that the NFIP can offer such coverage without borrowing additional funds from the Treasury. FEMA has the power to still deny coverage even if these conditions are met. **Some Members may be concerned that though this new program is cost neutral, this proposed expansion of NFIP coverage could increase costs to taxpayer in a catastrophic event.**

- **Installment Payments** – The bill allows policyholders to pay their premiums in installments for one-year policies.

Other Provisions:

- **Treatment of Levees –** The bill prohibits FEMA from issuing or updating flood insurance maps that do not factor in the actual protection afforded by existing levees regardless of their FEMA accreditation status (i.e., FEMA's maps must award partial credit to existing dams and levees).

- **Notice of the Availability of Flood Insurance and Escrow in RESPA Good Faith Estimate –** The bill amends the Real Estate Settlement Procedures Act (RESPA) to disclose as part of RESPA's good faith estimate that flood insurance is generally available from the NFIP for all homes. The escrowing of flood insurance payments is required for many loans and may be an option available under other loans.

- **Reimbursement for Costs Incurred by Homeowners Obtaining Letters of Map Amendment –** The bill allows homeowners to be reimbursed for certain costs associated with a successful challenge to a bona fide mapping error made by FEMA resulting in a Letter of Map Amendment (LOMA), not including legal fees.

- **Treatment of Swimming Pool Enclosures Outside of Hurricane Season –** The bill allows certain properties with swimming pools that are enclosed with non-supporting breakaway walls outside of hurricane season (November 20 through June 1) to be eligible for participation in the NFIP.

- **CDBG Eligibility for Flood Insurance Outreach Activities and Community Building Code Administration Grants –** The legislation allows communities to use Community Development Block Grant (CDBG) funds for local building code enforcement, as long as local matching funds are provided. It would also allow CDBG funds to be used by local governments for flood risk outreach and education activities.

- **Technical Corrections –** The bill also makes a technical correction to the underlying National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 to update references in those statutes to the head of FEMA as its "Administrator" rather than its "Director."

Background: The National Flood Insurance Program (NFIP) was created by Congress in 1968 to provide insurance as an alternative to direct federal disaster assistance for individuals living in flood-prone areas. The program is administered by the FEMA, and the NFIP provides financial protection by offering flood insurance to homeowners, renters and businesses if their community participates in the NFIP. Flood insurance is mandatory for properties financed by a federally regulated lending institution, a government sponsored enterprise (GSE) for housing, or a federal lender. Additionally, flood insurance is mandatory for properties located within an area designated as having at least a one percent chance of being flooded in any year, and these areas are known as Special Flood Hazard Area (SFHA).

Throughout the NFIP's history, FEMA has charged premiums well below the full-risk or actuarial cost for properties built before a community's Flood Insurance Rate Map (FIRM) was completed. The NFIP is not actuarially sound, meaning that its premiums will not cover the average claims and expenses expected over the long run. According to Congressional Budget Office (CBO), pre-FIRM properties, make up over 20 percent of all NFIP policies, and FEMA estimates that pre-FIRM policyholders pay average premiums that are about 40 percent to 45 percent of the full-risk cost. Post-FIRM properties, in the past, also receive discounted premiums under current law, but they only account for less than 1 percent of all NFIP policies.

As of February 2011, CBO reports that the NFIP insured approximately 5.6 million policies with written annual premiums in force of $3.4 billion. Most of the NFIP's expenses include payments for insured claims resulting from outstanding coverage in force for a total of roughly $1.2 trillion. FEMA estimates that claims payments in 2011 will total about 43.5

percent of premium income, based on the historical experience of policies and coverage amounts currently insured by the program.

CBO estimates that the program will—on average—have greater annual expenses than revenue. This differential became apparent in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005. Because of the severe and widespread damages experienced during those storms, the program borrowed an unprecedented $16.7 billion in fiscal year 2006 to cover claims and interest expenses. According to the committee report, Congress made up for the shortfall by increasing the program's borrowing authority three times between September 2005 and January 2007 (from $1.5 billion to $20.8 billion). NFIP's current debt to the Treasury stands at $17.8 billion. It is highly unlikely that the program will have sufficient income to repay those borrowed funds within the next 10 years.

According to the committee report, "Congress last passed a long-term NFIP reauthorization and reform bill in 2004 (P.L. 108-264). The House and Senate each passed significant reform measures during the 110th Congress but could not agree on final legislation. Since September 2008, the NFIP has been extended eleven times; the program authorization has lapsed three times during that same time period. Last year, after several short-term extensions and three temporary lapses in the program, Congress extended the current program through September 30, 2011. These short-term extensions and lapses in the program have created needless uncertainty in the residential and commercial real estate sectors in communities across the country."

Potential Conservative Concerns: Some conservatives may be concerned that the program currently owes the Treasury more than $17.8 billion—and H.R. 1309 would extend the program for another 5 years without guaranteeing that the Treasury would be paid back this debt. Though H.R. 1309 takes steps in the right direction by providing a phase-in of full rates and studies to privatize the program, some conservatives may be concerned that the legislation does not protect the taxpayer from another NFIP bailout in the event of catastrophic loss.

Committee Action: H.R.1309 was introduced on April 1, 2011 and referred to the House Committee on Financial Services. The Committee on Financial Services met in open session on May 12, 2011 and ordered H.R. 1309, as amended, favorably reported to the House by a record vote of 54 yeas and 0 nays.

Administration Position: The Administration supports House passage of H.R. 1309 to reauthorize the National Flood Insurance Program (NFIP). According to the SAP, "the Administration is pleased that the bill would provide the Federal Emergency Management Agency (FEMA) with greater flexibility to set premium rates. The bill provides improved protection for American taxpayers by requiring FEMA to use actuarial principles in determining full flood risk rates for certain properties. The bill would also phase in changes to let policyholders and communities adjust. The bill would authorize studies and pilots to test alternative approaches to flood insurance that is sustainable and cost-effective."

Cost to Taxpayers: CBO "estimates that implementing H.R. 1309 would cost $317 million over the 2012-2016 period and $749 million over the 2012-2021 period, subject to appropriation of the necessary amounts. Under both current law and this legislation, the NFIP may borrow an additional $3 billion from the Treasury (the program's current debt stands at $17.8 billion). Assuming a small probability of a rare catastrophic event, CBO expects that this additional borrowing authority will be exhausted in 2014. The changes made by this legislation would reduce the need to borrow from the Treasury—a source of direct spending—by a total of $165 million in 2013 and 2014, CBO estimates. However, because the program would continue to operate with an annual net deficit, reduced borrowing in those years would be offset by increased borrowing in 2015, resulting in no net effect on direct spending over the next 10 years."

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation creates new programs and offices. However the bill includes actuarial provisions that reduces the size of government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 1309 would impose intergovernmental and private-sector mandates, as defined in UMRA, on public and private mortgage lenders. Because the mandates would require only small changes in existing industry practice, CBO expects that the cost to comply with the mandates would be small relative to the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($71 million and $142 million in 2011, respectively, adjusted annually for inflation).

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 1309 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article I, section 8, clause 1 (relating to the general welfare of the United States); and Article I, section 8, clause 3 (relating to the power to regulate interstate commerce).

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