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STATEMENT OF

THE NATIONAL ASSOCIATION OF REALTORS®

TO THE

SENATE BANKING, HOUSING AND URBAN AFFAIRS SUBCOMMITTEE ON ECONOMIC POLICY

HEARING TITLED

IMPLEMENTATION OF THE BIGGERT-WATERS FLOOD INSURANCE ACT OF 2012: ONE YEAR AFTER ENACTMENT

SEPTEMBER 18, 2013

On behalf of the 1-million members of the National Association of REALTORS® thank you for this opportunity to comment on the implementation of the Biggert-Waters Flood Insurance Reform Act. The Biggert-Waters Act provided a critical 5-year reauthorization without which the National Flood Insurance Program (NFIP) would have continued to operate month-to-month or may have shut down altogether, stalling 40,000 home sales each month. We applaud your leadership and thank you for holding this important hearing to ensure access to affordable flood insurance nationwide. Based on the first year of implementation, Biggert-Waters has already raised legitimate questions about the continued affordability of flood insurance that warrant further investigation. We urge Congress to delay the rest of the rate provisions until FEMA complies with Sec. 236 of the Act and reports to Congress on their impact on flood insurance affordability.

Flood Insurance Affordability is in Question

Included in the long-term reauthorization were provisions to phase-out rate subsidies for the less than 20 percent of flood insurance policy holders who paid less than the full actuarial rate. At the time, the NFIP owed approximately $20 billion (now closer to $30 billion) in outstanding loans and interest to the federal treasury. REALTORS® understood that for this program to continue long-term, all property owners would eventually have to pay actuarially responsible rates on their properties, as long as the flood risk was accurately identified and assessed on property owners fairly. We worked to ensure that existing pre-Flood Insurance Rate Map (FIRM) policy holders would not see the full actuarial rate until Biggert-Waters was fully implemented over time. The subsidy phase-outs were designed to be gradual and spread out over 4 or 5 years if not longer.

In addition to availability, affordability is also a key policy concern when dealing with flood insurance. The insurance product must be priced appropriately to encourage widespread uptake. If too few floodplain residents buy into the program, taxpayers could be forced to spend more on federal disaster relief for uninsured properties after the next major flood.

Yet today, REALTORS® are reporting insurance rate quotes of $20,000 or more for flood insurance in many parts of the country. Others have received varying rate quotes from different insurers for the same property based on the same FEMA rate tables. Homeowners are understandably confused and concerned about flood insurance affordability. They do not know if they have a subsidized policy or will be next to see their insurance rate climb to unaffordable levels. They also have no way to check the accuracy of these rate quotes or appeal the result as they could if there were a mapping dispute. Most assume that the increases are due to Biggert-Waters because it is the most proximate change, but it is not clear to what extent a) flood map updates (an on-going FEMA initiative that is separate from but could have a major impact on Biggert-Waters implementation) or b) confusion among insurers over FEMA implementation is contributing to the increases. We will know more once FEMA submits the congressionally mandated report to Congress on flood insurance affordability under Biggert-Waters reforms.

FEMA Implementation of Biggert-Waters is creating Market Uncertainty

- Retroactively applying immediate rate increases. FEMA waited nearly nine months after the enactment of the Biggert-Waters law to issue the required Write-Your-Own directive eliminating rate subsidies for properties purchased after July 2012. Then the Agency retroactively applied it. In doing so, FEMA has not only added another layer of complexity to an already complicated law, but in effect, it has changed the rules in the middle of the game for many who bought their home over the past year. Those purchasing a home between enactment of Biggert-Waters and the directive's effective date of October 1, 2013, have received the subsidized rate but will see their rate jump to the full actuarial cost at the first policy renewal a year following purchase. Those purchasing after October 1 will see the actuarial rate at point of sale. As a result, some insurers are issuing two rate quotes for a single property – one showing the rate if the property goes to closing before October 1 and the other showing the rate afterward. Other insurers are apparently not aware of the Biggert Waters Act at all or this directive, as they are providing only the first rate quote and not the second; it will not be until the renewal notice comes in the mail that some home owners will learn of devastating increases.

- Implementing some reforms but not others.
    - By delaying the phase-out of grandfathered rates (Sec. 207) until late 2014 or later, FEMA is not providing the certainty that real estate markets require in the 20,000 communities where flood insurance is required for a mortgage. (A "grandfathered" property is one in area where the flood risk map has been updated but the owner has been allowed to keep lower rate associated with the older rate map, because the property was built and maintained in compliance with previous standard.) According to the GAO,[1] FEMA does not have the information it needs to implement the rate increases for grandfathered properties.
    - While NAR appreciates the fact that FEMA is, in effect, delaying the elimination of grandfathering, we have many concerns regarding this provision once FEMA begins the implementation phase. We do not know if once implemented, FEMA intends to apply Sec. 207 retroactively to properties in areas remapped since Biggert-Waters or only looking forward once FEMA is able to implement the provision. We also do not know if FEMA intends to apply this provision to principal residences. Under Sec. 205, principal residences are exempt from the subsidy phase-out until the

[1] GAO, "Flood Insurance: More Information Needed on Subsidized Properties," Report #GAO-13-607, July 3, 2013.

property is sold, the policy lapses or is newly issued, but Sec. 207 applies to "any" property upon remapping.

- FEMA has yet to implement Sec. 205(d) (providing installment payments for flood insurance, which might help with affordability), Sec. 246 (providing reimbursement of expenses for successful flood map appeals), and Sec. 236 (requiring a report to Congress on the impact of Biggert-Waters reforms on flood insurance affordability).

Insurance Companies are adding to the Rate Confusion

We investigated a number of the +$20,000 rate quotes but often there was not enough information to replicate these estimates. None were found in available FEMA rate tables; apparently, all used "Submit-to-Rate" procedures that required individual judgment and advanced training for properties two or more feet below the base flood elevation. Their assumptions were not transparent. Our calculations did not match theirs. One "quote" was not even for a real property; an insurance agent had simply generated a rate table for a hypothetical one-story home if it were built on slab from 4 to 10 feet below base flood elevation in a "V" (coastal highest risk) zone. We do not have data on the distribution of these properties by elevation so we do not know how many of them actually exist.

There also appeared to be confusion among insurers over implementing the Biggert-Waters Act. One REALTOR® reported six separate quotes all estimating $21,000 for a single property but the insurers all made the same mistake on the construction date; they had incorrectly categorized it as pre-FIRM and subject to the Act. When the date was corrected, the true rate was closer to $500/year. Another REALTOR® provided three quotes ranging from $2,700 to $8,200 for that property but when the elevation certificate was used, the true rate was not in the quoted range. One insurer admitted to quoting the rate based on false assumptions about the property, rather than the actual facts from the elevation certificate. Another did not seem to be aware of Biggert-Waters.

To our knowledge, insurers do not routinely re-underwrite old policies or even verify the accuracy of basic facts about a property before applying rate increases. At least one insurer was correcting a rate because the original agent writing the policy 10 years before had missed a basement. Another listed a basement on the declaration page even though one does not exist for the property. There does not appear to be a single federal point-of-contact or process for homeowners to verify or appeal rate quotes. There is no continuing education requirement on write-your-own agents and it is not clear what QA/QC is provided for their training.

More Accurate Flood Maps Are Complicating the Situation

The vast majority of the REALTOR® reports were from areas that were recently remapped or in the process of remapping, an on-going FEMA initiative that would have occurred regardless of Biggert-Waters' enactment. Virtually none had appealed or were aware that they could appeal the flood map determination. One in particular was about the owner of a principal residence that had not been sold and who had not allowed the policy to lapse therefore the quote could not be caused by Sec. 205 (which exempts such residents) or Sec. 207 (which has not been implemented). Some property owners may be seeing dramatically higher rates because the property was originally categorized in an "A" (high risk inland) or "X" (low risk) zone when it should have been categorized in the higher risk coastal velocity or "V" zone.

Conclusion

Thank you for the opportunity to share the views of the National Association of REALTORS® on such an important topic. We stand ready to work with you to ensure that affordable flood insurance remains widely available to American homeowners who need it.