PROPERTY AND CASUALTY INSURANCE (C) COMMITTEE

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Property and Casualty Insurance (C) Committee
Washington, DC
September 23, 2009

The Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 23, 2009. The following Committee members participated: Michael T. McRaith, Chair (IL); Scott H. Richardson, Vice Chair (SC); Linda S. Hall represented by Sarah McNair-Grove (AK); Thomas R. Sullivan represented by Mark Franklin (CT); Kevin McCarty (FL); J.P. Schmidt represented by Gordon Ito (HI); James J. Donelon (LA); Joseph G. Murphy (MA); Mila Kofman represented by Robert Wake (ME); Mike Chaney represented by David Browning (MS); Morris J. Chavez (NM); James J. Wrynn represented by Anne Kelly (NY); and Merle D. Scheiber represented by Randy Moses (SD). Also participating were: John Kissling (IN); and Alan Seeley (NM).

1. Presentation on Cost Saving Auto Safety Devices

Peter Goelz (former Managing Director of the National Transportation Safety Board—NTSB) discussed how auto safety devices impact the insurance industry. He said the NTSB is responsible for investigating aviation, railroad, highway, marine and pipeline accidents and issuing safety recommendations with the goal of preventing similar future accidents. He said the NTSB work on distracted driving should be of great interest to the insurance industry and its regulators.

Mr. Goelz defined a driving distraction as anything that diverts a driver’s attention away from the primary task of driving. He said that roughly 25% of crashes involve some form of distracted driving. He cited several sources of distractions including: animals, children, cell phones, the radio, passengers, eating, drinking, smoking, reading and rubber-necking. He said recent attention has focused on cell phone use and specifically texting while driving. He said a recent survey by Nationwide demonstrates the extent of the problem. Nationwide found that over 80% of drivers admit to talking on the cell phone while driving and that over 45% report having been hit someone while on a cell phone or have been nearly hit by someone on a cell phone. Yet 98% of those surveyed believe they are safe drivers.

Mr. Goelz recognized that complete bans on cell phone use are impractical and suggested that there are two broad approaches to address the distracted driving problem, both involving downloads to global positioning satellite (GPS) enabled phones. The first approach is one that detects motion such as a vehicle traveling on a roadway and blocks incoming and outgoing calls and text messages while the vehicle is in motion. This solution is often accompanied by management software for commercial fleets that provide the business owner with information about the speed of operators and location information to assist with expediting deliveries. The second approach is one that uses a location-based services platform for crash avoidance that relies on GPS and traffic data to issue alerts to a driver when he is approaching a signaled intersection such as a traffic light, a school zone or railroad crossing. The device sends an audible alert to the driver to warn of the impending hazard and refocus the driver’s attention. He said that Global Mobile Alert™ is an example of this type of technology.

Mr. Goelz said a Distracted Driver Summit would be convened by Secretary of Transportation Ray LaHood Sept. 30–Oct. 1. He said the conference would explore a number of areas related to risk, including the role of technology and possible legislative or regulatory solutions, and will have special emphasis on youthful drivers.

Mr. Goelz said data suggests that legislation alone will not solve the distracted driving problem and cited several statistics in support if his contention. He observed that the District of Columbia has a total ban on use of cell phones while driving, yet he saw at least six people talking on cell phones while he was traveling to the meeting site. He said some businesses have taken proactive steps to ban the use of cell phones by employees who drive as a part of duties during working hours. He expected that more would do so in the coming years.

Mr. Goelz advised of several key NTSB recommendations in recent years. The recommendations include: 1) Highway Recommendation H-03-8 to 48 states suggesting that they enact legislation to prohibit holders of learner’s permits and intermediate licenses from using interactive wireless communication devices while driving; 2) Highway Recommendation H-63-27 to Federal Motor Carrier Safety Administration—FMCSA that it publish regulations prohibiting cellular telephone use by commercial driver’s license holders with a passenger-carrying or school bus enforcement except in emergencies; 3) Railroad Recommendation R-03-001 that new or amended regulations be promulgated that will control the use of cellular telephones and similar wireless communication devices by railroad operating employees while on duty so that such use does not affect operational safety; and 4) a Sept. 16 memo to NTSB employees advising that they may not use their agency-issued cell phones while driving.

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Director McRaith asked what the term “risk” means in relationship to the upcoming summit. Mr. Goelz said the term was being used to describe how a variety of risky practices affect drivers. He added that there would be academics and representatives from the insurance industry discussing the issues. He said there will be some simulations explored and there will be a focus on texting, which many believe is the worst distracter. Director McRaith said that in Illinois, there is a total ban on texting while driving, and the city of Chicago has enacted a ban on the use of hand-held cell phones. Mr. Goelz noted that a limitation on hand-held devices might help some, but talking remains a distraction with a hands-free device.

Mr. Kissling asked about the possibility of controlling the car instead of the driver. He wondered if it was now technologically feasible to use electronic devices to keep cars from crashing. Mr. Goelz said while it is technologically feasible, it would be enormously expensive to implement such a system and would take many years to do so. He observed that in our lifetime, it is likely that there will be highway sensors installed to alert a driver if there is lane shift. He said this technology is currently available in some high-end vehicles.

2. Presentation on Nationwide Enhanced Homeowner Insurance Policy

Larry Mirel (Wiley Rein LLP), Craig Barrington (Wiley Rein LLP) and Craig Zimpher (Nationwide Insurance) presented information on a Nationwide Enhanced Homeowner Insurance Policy (EHIP) proposal. He distributed draft federal legislation (Attachment Six), a section-by-section analysis of the legislation (Attachment Seven), a document with a bulleted list of topical information (Attachment Eight), and an overview of the proposal (Attachment Nine).

Mr. Zimpher said Nationwide, in recent months, had been exploring ways to address the feasibility of including the flood peril in an enhanced homeowner policy without a mandate to do so. He noted that most insurers currently do not write coverage for the flood peril and as a result, there are sometimes disputes over whether wind or water was the proximate cause of a loss. This results in costly and unnecessary litigation and expense for policyholders and insurers. The problem has grown more acute as more people move into areas prone to hurricane and flood losses. He said the Nationwide EHIP policy proposal attempts to respond to these issues in a creative way that would not be mandatory on either the part of the insurer or the consumer.

Mr. Mirel noted that the Joint Executive (EX) Committee/Plenary had adopted the Property and Casualty Insurance Committee white paper that notes the need to provide a single policy covering both the wind and flood perils. He said the Nationwide EHIP plan would address many of the issues that surfaced following Hurricane Katrina in a way that does not obligate the consumer to buy it or the insurer to sell it—it would be completely voluntary for all parties and would be priced in the marketplace. He observed that the acrimony over the wind and water disputes made the insurance industry and the regulators look bad.

Mr. Barrington described the EHIP to the Committee. He said the EHIP program has two principal purposes. The first is to provide a practical way for homeowners and their insurers to include flood insurance within a homeowners insurance policy, while neither requiring homeowners to buy such a policy nor insurers to sell one. The second purpose is to eliminate the uncertainties, expense and litigation that arise from homeowners insurance policies not including flood insurance within them.

Mr. Barrington described several of the basic concepts on which the EHIP program is based. He said homeowners are permitted, but not required, to purchase EHIP, which include flood insurance; and insurers are permitted, but not required, to sell EHIP, but must be approved by the U.S. Treasury Department before doing so. Insurers approved by the Treasury Department become “Participating Insurers” and may sell EHIP in any state where they are otherwise authorized to sell homeowners insurance under state law. Participating Insurers must provide flood insurance coverage in their EHIP at least as broad as the coverage provided in the National Flood Insurance Program (NFIP). Participating Insurers must charge exactly the same premium for the flood portion of their EHIP as the NFIP stand-alone policy would cost for that same property, but shall otherwise price their EHIP in the marketplace.

Mr. Barrington said the Treasury Department would be statutorily established as the flood reinsurer and sole regulator of EHIP policies and of insurer participation in the program, with the Treasury authorized to promulgate regulations, including policy form filing and approval procedures. Each participating insurer would be required to purchase Treasury flood-coverage reinsurance for the amount of flood coverage that is equal to the flood coverage available for that home under an NFIP stand-alone policy, and at premiums established by the Treasury Department. Participating insurers would be allowed to sell additional flood coverage in excess of the NFIP-equivalent amount, but any such additional coverage would be priced by the individual insurer in the marketplace and would not be part of the Treasury reinsurance program.

Mr. Barrington said premiums for the flood portion of a participating insurer's EHIP, up to the NFIP-equivalent amount, would not be treated as income by the insurer, but rather would be placed in a separate, special account established by the insurer that may only be used to pay flood claims, related expenses and the Treasury reinsurance premium. Monies deposited in the insurer's special account may only be invested in Treasury marketable securities, with all interest earned on those securities going into the insurer's special account instead of flowing through the income statement. He said the Treasury Department's reinsurance obligations are triggered when the amount of money in an insurer's special account has been reduced by 90% from the amount in it at the end of the prior calendar year through flood claims and related expenses.

Mr. Barrington said states are encouraged to play an important role in the program by including EHIP policies in their wind pools and other similar residual markets; including EHIP-participating insurers in their guaranty funds; providing for individual Treasury Department agreements with each state authorizing each state to exercise day-to-day responsibility for EHIP consumer protection and complaint resolution matters; and providing premium tax revenues for EHIP policies to each state that undertakes all these responsibilities. He briefly described sanctions in the unlikely event that a state decides not to treat EHIP policies and insurers equally in the state's residual markets or guaranty fund, or chooses not to enter into a "program responsibility" agreement with the Treasury Department.

Mr. Barrington advised that, except for Treasury-regulated EHIP policies, states would be permitted to continue to regulate homeowners insurance policies as they currently do and to permit homeowners to continue to purchase their homeowners insurance through state-regulated policies that do not include flood coverage. He added that the NFIP is not statutorily affected by the draft EHIP legislation and continues to operate, as it does today, offering stand-alone federal flood insurance policies. He said Nationwide believes this is a pragmatic approach to address long-standing issues such as the disputes over the cause of loss and litigation over wind vs. water claims and concurrent causation clauses.

Director McRaith observed that the NFIP now is a part of the Department of Homeland Security reporting through the Federal Emergency Management Agency (FEMA). He found it curious that Nationwide thought it best to house the EHIP reinsurance program in the Treasury. Mr. Barrington responded that the Treasury already has the Terrorism Risk Insurance Program and is building its insurance expertise, so Nationwide thought the Treasury would be the ideal place for the reinsurance program.

Director McRaith wondered how different the EHIP proposal would be from the current experience of consumers. Mr. Barrington responded that the NFIP market penetration is woefully low. He cited the recent floods in the southeastern states, where few flood victims had purchased flood insurance policies. Since the majority of flood victims do not have flood insurance coverage, the taxpayers will be once again called upon to help them out. He added that not all insurers participate in the NFIP Write Your Own Program. He thought most Americans would prefer to have a single policy covering all the necessary perils to avoid dealing with two claims adjusters and being in the middle of disputes regarding whether wind or water caused the loss.

Director Richardson questioned Mr. Barrington's contention that the Treasury had a great deal of insurance expertise. He observed that the NFIP participation level is low and contended that this was primarily a result of other federal disaster assistance polices that encourage citizens to take a chance on receiving federal grants rather than spending the money up front to buy adequate flood insurance coverage. He said the single-policy concept is a good idea and suggested it could be implemented by changing the NFIP from a primary insurer to a reinsurer without the necessity of creating a separate program in the Treasury Department. He said the EHIP approach resembled the Risk Retention Act in structure. He said the notion was that states would retain ownership of consumer complaints and market conduct without the ability to address them because of preemption. Mr. Barrington said the proposal would work and offered to continue to pursue the dialogue with the Committee about the details.

Commissioner McCarty commended the Nationwide representatives for breaking away from traditional thought. However, he said, adoption by the NAIC of the white paper on natural disasters with a recommendation to move to a single "all-perils" policy that includes flood exposures, should not be taken as an endorsement of the EHIP proposal. He said the EHIP proposal has many flaws. Mr. Mirel said the EHIP proposal is strictly voluntary on the part of the insurer, the consumer and the state regulator. No one is compelled to do anything. It adds an option without taking anything away.

Commissioner Donelon said conversations with Rep. Gene Taylor (D-MS) at a recent event in Mississippi have led him to conclude that politics and insurance do not mix very well. He said it is very hard for an elected official to charge an actuarial rate for insurance coverage. As evidence, he cited the NFIP, a federal program with a substantial deficit. He suggested an alternative that is much simpler than the EHIP. He said the key to increasing the level of flood insurance coverage is to allow private insurers to require flood insurance as a prerequisite to issuance of wind and hail insurance coverage. This would be accompanied by a requirement on the NFIP to notify the wind insurer of a lapse in coverage as they do now for lenders.

Mr. Mirel said Nationwide makes no claim that the EHIP is a single answer. He said the proposal would have the market, rather than politicians, setting the rates charged for the enhanced homeowners product. Commissioner Donelon observed that the NFIP is also required to establish actuarial rates.

Mr. Barrington clarified that insurers would set the rates under the EHIP proposal. Director McRaith said more clarity is needed on the matter. He observed that if the sum of the two parts is more than the two parts separately, not many people would buy it.

Scott Gilliam (Cincinnati Insurance Companies) said the Cincinnati Insurance Companies do not favor any federal involvement. He added that the disputes over wind or water would not be addressed by the EHIP proposal. Instead, it would be replaced by arguments over whether it was the federal dollars at risk or the insurer's dollars at risk.

Thomas Hayes (FEMA—NFIP) said he was the chief actuary for the NFIP. He said the National Flood Insurance Act of 1968 had a broader purpose that just providing flood insurance. He said the NFIP is also asked to play a role in flood hazard identification and education. Further, the program is required to work with states and local communities to help them adopt laws that are consistent with federal requirements and standards to reduce future flood loss exposures. He said the cost of servicing the debt incurred following Hurricane Katrina has been a drain on NFIP resources. He expressed concern over whether the EHIP proposal would eliminate the disputes over wind or water claims. He said the issues related to consistency of terms and conditions between flood coverage and standard homeowners coverage would remain with the EHIP.

Birny Birnbaum (Center for Economic Justice—CEJ) said disputes over whether the primary cause of a loss was wind or water cause real problems for the nation's consumers. He said the EHIP proposal would not help because it ignores an illogical system and instead of fixing it, layers another system on top of it without addressing the underlying problems. He favored the single-policy concept within the EHIP, but observed that the underlying NFIP system is inefficient and costly to the public. He said the EHIP proposal would result in insurers using adverse selection to select against the interests of the NFIP and, thus, the taxpayer. He added that earthquake coverage is purchased even less often than flood, yet could cause catastrophic losses for many people. He said including all the catastrophe perils in a single policy would make more sense to the public and be more equitable.

Director McRaith said natural disasters are a problem for the nation's taxpayers. Collectively, people are encouraged to build where they probably should not because the wrong signals are sent either through cheap insurance or disaster assistance to rebuild in harm's way. He said the Committee would welcome written comments on the EHIP proposal and related draft legislation by Oct. 31. Comments should be sent to Eric Nordman (NAIC).

3. Update on Catastrophe Model Feasibility Study

Mr. Nordman reported that the 2009 NAIC budget included funding for a group of eight pilot states (Alaska, California, Connecticut, Florida, Illinois, Louisiana, South Carolina and Washington) to form a study group to investigate the scope, timeline and costs of building a national multi-peril catastrophe model administered by the NAIC for use by states potentially affected by natural catastrophes. He said Karen Clark and Company, leading experts in catastrophe risk and catastrophe models, was chosen to lead the drafting of a feasibility study with assistance from SPA Risk, a firm with expertise in earthquake modeling. The resulting study, *Feasibility Study for Developing a National Catastrophe Loss Estimation Model*, was submitted to the NAIC June 15. Much of the pilot-states study group's final report, particularly the sections on the model's scope, inputs/outputs, feasibility and costs, was derived from the *Feasibility Study*.

In its final report, the group considered not only the possibility of adapting the Florida Model, but also leveraging FEMA HAZUS models and the possibility of building a new model (hurricane and earthquake risks separately or combined). The group decided to focus mainly on the building of hurricane and earthquake models, though other perils could be added later as described in the report.

The final report discusses the numerous benefits that state regulators would achieve through the building of a national catastrophe model. The report details the costs and timeline derived by the consultants in their study (approximately $7.5 million per year for two years of development, with $6.2 million in annual maintenance costs thereafter). The group also explains in the report that the exact costs and time schedule may differ from what the consultants found, due to the unique nature of the NAIC and its structure. In addition to analyzing the various options of building a national catastrophe model, the study group's report describes several alternatives that could meet regulators' needs in lieu of building a national catastrophe model at this time.

Mr. Nordman said the report was provided to the Internal Administration (EX1) Subcommittee. He advised that the Subcommittee plans to continue its review of the feasibility study and evaluate options, including considering additional options not included in the Study Group's report. He said the Subcommittee recognized the need for further transparency of proprietary catastrophe models to regulators while balancing these needs with significant operational and financial impacts of developing a national regulatory model. He said the Subcommittee will continue its evaluation into 2010. He said there would be no budget item for the development of a national catastrophe model in the NAIC 2010 budget when it is released for public comment.

4. Consider Recommendation to Change Title Insurance Issues Working Group to Title Insurance Issues Task Force

Mr. Seeley reported that when New Mexico took over as chair of the Title Insurance Issues Working Group in 2008, the Working Group had experienced a lull in activity. Since then, the Working Group has been very active and accomplished a number of things, including development of a State Page for the Title Insurance Annual Statement Blank; development of a national statistical plan; and beginning work on updating the two NAIC model laws related to title insurers and title insurance agents. He said important work is also under way with the U.S. Department of Housing and Urban Development related to overlapping compliance responsibilities. He suggested that the Committee consider adopting a recommendation to elevate the Working Group to a task force to reflect the importance of its continuing work.

Commissioner Donelon made a motion to recommend that the Title Insurance Issues Working Group be changed from a working group to a task force. Director Richardson seconded the motion.

Mr. Birnbaum asked about the significance of the recommendation. Director McRaith explained that a task force is generally appointed when an issue is of such importance that it calls for a broader scope, and a task force has its own charges while a working group's charges are derived from its parent committee or task force. Justin Ailes (American Land Title Association—ALTA) expressed concern over the recommendation. He wondered why it was necessary, as the Working Group had accomplished a number of positive results as a working group. Director McRaith informed him that it should be viewed as a matter of emphasis rather than a threat. The motion passed.

5. Update on Credit-Based Insurance Scoring Activity

Director McRaith said the Committee would be meeting jointly with the Market Regulation and Consumer Affairs (D) Committee. He said the agenda included a discussion of whether to regulate credit scoring vendors as advisory organizations and next steps in addressing issues surrounding credit-based insurance scores. He added that this might be the last of the joint meetings, as the Committee would look at the impact of various rating factors, including credit-based insurance scores, on the public. (Attachment One)

6. Consider Motion to Adopt *A Consumer's Guide to Homeowners Insurance*

Mr. Seeley reported that the Consumer Guides Working Group spent six months updating the NAIC consumers guide to homeowners insurance. After initially attempting to update the prior document, the Working Group decided it would be best to start form scratch. He said there were many conference calls culminating with a call last week to adopt the consumer guide.

Upon motion by Superintendent Chavez, and second by Commissioner McCarty, the Committee adopted *A Consumer's Guide to Homeowners Insurance* (Attachment Ten).

7. Information on Exposure to Chinese Drywall

Mr. Nordman reported that a problem surfaced recently that bears watching by insurance regulators. He said that between 2004 and 2007, over 500 million pounds of Chinese drywall was imported and installed in over 100,000 homes in the U.S. He said the Consumer Product Safety Commission has recorded over 600 reports of defective drywall in 21 states. This has resulted in both bodily injury and property damage claims. Common property damage claims, in addition to replacing the drywall, are failure of air conditioning equipment; corrosion of pipes, coils and wiring; and damage to furniture, fixtures and jewelry. He said common bodily injury claims include respiratory problems, sinus infections, headaches, persistent cough, bloody noses, asthma attacks and fatigue.

Mr. Nordman said people are making claims to insurers for costs to repair the house, costs of health effects, legal fees and some indirect costs associated with loss of use and, in some states, diminished value. He estimated that total costs would be in the $15 billion to $25 billion range, not including unknown health effects.

Commissioner McCarty said Florida had received a series of filings from insurers related to the Chinese drywall claims. He said it was time for regulators to assess the extent of the problem and to make recommendations, if appropriate, for regulatory action. Director McRaith wondered if the claims were concentrated in certain states. Commissioner McCarty responded that many are concentrated in hurricane-prone states; however, there are over 20 states with the Chinese drywall exposure.

8. Consider Proposed 2010 Committee Charges

Director McRaith stated that the proposed 2010 charges would be considered at the next meeting of the Committee, due to lack of time for discussion.

9. Consider Motion to Adopt Reports of the Task Forces and Working Groups

Upon motion by Director Richardson and second by Commissioner McCarty, the reports of the task forces and working groups were adopted (Attachments Two, Three, Four and Five).

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.

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Joint Meeting of Property and Casualty Insurance (C) Committee
and Market Regulation and Consumer Affairs (D) Committee
Washington, DC
Sept. 23, 2009

The Property and Casualty Insurance (C) Committee and Market Regulation and Consumer Affairs (D) Committee met in a joint session in Washington, DC, Sept. 23, 2009. The following Property and Casualty Insurance (C) Committee members participated: Michael T. McRaith, Chair (IL); Scott H. Richardson, Vice Chair (SC); Linda S. Hall represented by Sarah McNair-Grove (AK); Thomas R. Sullivan represented by Mark Franklin (CT); Kevin McCarty represented by Steve Parton (FL); J.P. Schmidt represented by Gordon Ito (HI); James J. Donelon (LA); Joseph G. Murphy represented by Matt Regan (MA); Mila Kofman represented by Robert Wake (ME); Mike Chaney represented by David Browning (MS); Morris J. Chavez represented by Alan Seeley (NM); and James J. Wrynn represented by Anne Kelly (NY). The following Market Conduct and Consumer Affairs (D) Committee members participated: Kim Holland, Chair (OK); Ralph S. Tyler, III, Vice Chair (MD); Jay Bradford represented by William Lacy (AR); Sharon P. Clark (KY); Scott J. Kipper (NV); Neil N. Jasey represented by Anne Marie Narcini (NJ); Wayne Goodwin represented by Ernest Nickerson (NC); Mary Jo Hudson represented by Mary Miller (OH); Mike Kreidler (WA); Sean Dilweg (WI); and Ken Vines (WY). Also participating was: John Kissling (IN).

1. Opening Comments

Commissioner Holland said the hearing would focus on regulating entities that provide credit-based insurance scores and whether they should be classified as advisory organizations for the purpose of state-based insurance regulation. Comments were received from American Insurance Association (AIA) (Attachment One-A); supplemental comments from AIA (Attachment One-B); Consumer Data Industry Association (CDIA) (Attachment One-C); Center for Economic Justice (CEJ) (Attachment One-D); Fair Isaac Corporation (FICO) (Attachment One-E); Indiana Department of Insurance (Attachment One-F); and Lexis/Nexis—Reed Elsevier (Attachment One-G).

2. Testimony of AIA

David Snyder (AIA) said the automobile and homeowners insurance markets are extremely competitive because of the use of credit-based insurance scores. To support this statement, Mr. Snyder pointed out that residual markets are at 1% or below and that the percentage of median family income spent on automobile insurance has decreased in the past decade. Contrary to newspaper articles indicating that most consumers' credit-based insurance scores have declined due to the current economy, Mr. Snyder said that credit-based insurance scores have not declined and, in some cases, have improved. Mr. Snyder said these newspaper articles are really focusing on credit scores for lending and not credit-based insurance scores. He said the current definition of "advisory organizations" does not apply to those entities providing credit-based insurance scores. Mr. Snyder said the NAIC should work on refining the complaint process to identify readily emerging issues. Mr. Snyder said the AIA does not see any emerging issues or large volume of complaints. Finally, Mr. Snyder referenced the credit scoring model adopted by the National Conference of Insurance Legislators (NCOIL), and the consumer protections afforded under this model, which most states have enacted.

Director McRaith asked if Mr. Snyder knew what percent of consumers are aware that credit scores are used for insurance rating. Mr. Snyder said consumers receive adverse action notices under federal law and are notified of its use. Despite this notification, Mr. Snyder said complaints are few. Director McRaith said regulators can quantify complaints but, before they do this, they should quantify how many consumers understand how credit information is used in insurance. Mr. Parton suggested the better measure for complaints would be the number of complaints submitted to credit-scoring companies and not to insurance departments.

Director McRaith questioned whether credit-based insurance models are developed to benefit a certain segment of consumers. Mr. Snyder said he did not think this was the case, noting that the data drives the outcome. Director McRaith suggested that the algorithms used in credit-based insurance scoring models might lead to a base premium from which a conclusion can be drawn that credit-based insurance scores benefit a certain segment of consumers.

In response to Director McRaith's questions about whether the AIA sees any consumer harm in regulating entities that provide credit-based insurance scores as advisory organizations, Mr. Snyder said this raises questions on how the regulation

would be administered. Mr. Snyder said he believes there is a role for regulation, but was not sure how the regulation of these entities would occur.

3. Testimony of CEJ

Birny Birnbaum (CEJ) said the activities in which credit scoring modelers engage are the same activities in which advisory organizations engage. Mr. Birnbaum said advisory organizations collect data from insurers and then release loss costs. Advisory organizations, such as the Insurance Services Office (ISO), permit insurers to use these loss costs if they subscribe to ISO services. Mr. Birnbaum questioned why the Committees were focusing on the regulation of credit-scoring modelers as advisory organizations, because these entities already make their models available to regulators.

Mr. Birnbaum said the state with the largest reduction in residual markets is California, where credit-based insurance scores are not allowed. Because of this, Mr. Birnbaum said the use of credit-based insurance scores is not the cause of reduced residual markets, as Mr. Snyder suggested. Mr. Birnbaum said companies now have the ability to conduct all types of "data–mining," and he disagreed with Mr. Snyder's assertion that rates would go up if the states prohibit the use of credit-based insurance scores. Mr. Birnbaum said this is because insurers would make adjustments to other data used to determine the rates for insurance.

Mr. Birnbaum said the uninsured-motorist rate has increased recently, and this is not consistent with more availability and affordability of insurance. In addition, Mr. Birnbaum said the amount of creditor-placed insurance has increased three-fold, from 1.5 billion in 2004 to 4 billion in 2008. Mr. Birnbaum said delinquencies are at an all-time high and that credit limits have been reduced. According to Mr. Birnbaum, consumer borrowing is also down 5% to 9 %. Mr. Birnbaum said this means that the ratio of debt to credit limits, which is part of credit-based insurance models, has increased. Mr. Birnbaum said the objective facts reflect that credit-based insurance scores are getting worse.

Mr. Birnbaum said that state insurance regulators should not focus on regulating credit-scoring modelers as advisory organizations unless they start refusing to share their models with state regulators. Mr. Birnbaum also said that state insurance regulators should start collecting data independently to verify the claims of insurers and modelers that credit-based insurance scores have not changed.

4. Testimony of FICO

Lamont Boyd (FICO) said FICO does not provide the same services than an advisory organization provides to the insurance industry. Director McRaith asked if FICO is regulated by any governmental agency. Mr. Boyd said FICO is regulated by a number of federal agencies, but that the insurance-related activities of FICO are not regulated. Director McRaith asked Mr. Boyd if FICO would be receptive to oversight by state insurance regulators. Mr. Boyd said FICO does not know what this oversight would mean and that FICO would need to review any specific state proposal in more detail.

Director McRaith asked whether FICO products vary by state. Mr. Boyd said their models have been open to review by state insurance regulators and that FICO has 27 national models. Mr. Boyd said the models are adjusted depending on what a company or state requests, based on an individual state market characteristics and state regulatory requirements.

In response to Commissioner Tyler's question about what FICO does, Mr. Boyd said FICO looks at different data sets and helps determine which items within those data sets are of value to insurers. Mr. Boyd said FICO conducts data-mining to help companies make better decisions. Mr. Boyd said FICO also develops predictive models based on data, but that FICO does not set rates, does not set underwriting guidelines and does not provide statistics.

Commissioner Tyler asked if FICO provides information to insurance companies. Mr. Boyd said FICO provides, through predictive models, a score based on a consumer credit report that an insurance company uses as part of its overall underwriting strategy. Commissioner Tyler asked if Mr. Boyd understands that this information is used in ratemaking. Mr. Boyd said he believes FICO scores are used as part of a rating algorithm. Commissioner Tyler asked if Mr. Boyd would agree that the information FICO provides assists insurers in ratemaking. Mr. Boyd said the FICO models are one of the tools insurers might use, but that FICO does not set guidelines on their use. Commissioner Tyler asked if FICO excludes the use of their models for ratemaking. Mr. Boyd said they have never been asked to exclude the use of their models for ratemaking.

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Director McRaith asked for clarification on the statement that the 27 models of FICO are modified based on state ratemaking law. Mr. Boyd said they are refined based on state law regarding which characteristics may be used in a model, such as the use of credit inquiries within a model.

Ms. Miller asked if the states would consider a state's department of motor vehicles (DMV) an advisory organization if its data is used for ratemaking. Mr. Wake said the closest the DMV would come to a modeling system is if they have a point system for the purpose of determining when a consumer is going to lose his/her license.

Commissioner Holland asked Mr. Boyd about data-integrity oversight by federal agencies. Mr. Boyd said he does know the detail of this, but said he believes data quality is important. Mr. Boyd added that FICO does not collect statistical information. Mr. Boyd said FICO uses identifying information of policyholders, incurred-loss information and the premium charged by an insurance company or group of insurance companies. At the same time, Mr. Boyd said FICO does not collect statistics as defined under the NAIC Property and Casualty Model Rating Law (#1775). Commissioner Holland said that the collection of data from insurers suggests statistical collection.

In response to Director McRaith's questions about the FICO market, Mr. Boyd said FICO has approximately 300 insurance companies that use FICO credit-based insurance scores. Mr. Boyd said the gross revenue is probably around $10 million, but was not able to confirm this.

Mr. Parton asked what process FICO has in place for consumer complaints. Mr. Boyd said FICO has no records of complaints, because FICO is not a consumer-reporting agency. Commissioner Tyler asked whether, in principle, Mr. Boyd is opposed to regulation. Mr. Boyd said he is not opposed.

Mr. Kissling asked if FICO has evidence on what the change in risk is with a change in a credit-based insurance score. Mr. Parton asked Mr. Boyd if the economic downturn has led to lower credit-based insurance scores and whether a consumer with a lower score is a higher risk. Mr. Boyd said FICO would not have this information on an individual basis, but that FICO does have access to aggregate information on credit-based insurance scoring. On this point, Mr. Boyd said, the credit-based insurance scores have not decreased. Mr. Boyd added that FICO does not know why a company would choose to use a consumer's score at initial issuance and not at renewal.

Director McRaith asked Mr. Boyd about the fee arrangement between FICO and the credit-reporting agencies. Mr. Boyd said this is contractual, but there is no fee from FICO to credit-reporting agencies.

5. Testimony of Lexis/Nexis—Reed Elsevier

Director McRaith asked John Burton (Reed Elsevier) if Lexis/Nexis is currently subject to any regulation. Mr. Burton said Lexis/Nexis is subject to regulation at the federal and state level. Mr. Burton said that when credit-based insurance models are submitted for use, they are reviewed by state insurance departments. Director McRaith asked if there would be any consumer harm due to regulation. Mr. Burton said that regulation is already ongoing.

6. Testimony of Mid-Minnesota Legal Assistance

Bonita Kallestad (Mid-Minnesota Legal Assistance) urged the implementation of a moratorium on the use of credit-based insurance scores. Ms. Kallestad said credit scores are decreasing, based on recent newspaper articles.

7. Testimony of PCI

Alex Hageli (PCI) said that PCI is opposed to regulating credit scoring modelers as advisory organizations and that the use of credit-based insurance scores is already regulated at the state and federal level. Director McRaith asked for further clarification on how the federal government regulates the use of credit-based insurance scores. Mr. Hageli said the use of credit-based insurance scores is a permissible practice under the federal Fair Credit Reporting Act (FCRA), which also requires the notification of adverse actions.

Director McRaith asked whether PCI-member companies use marital status in their ratemaking, whether marital status should be used, and whether there is a difference between the use of credit scores and marital status. To the extent it is actuarially justified, Mr. Hageli said the use of marital status should be permitted. Commissioner Tyler asked if, in principle, the use of

race should be permitted, if actuarially justified. Mr. Hageli responded that the use of race would be appropriate, if actuarially justified.

Commissioner Holland asked for clarification regarding how credit scores or credit-based insurance scores are regulated by the federal government. Mr. Hageli said the FCRA is more concerned with the permissible use of credit-based insurance scores and that restrictions on their use are more at the state level. Commissioner Holland asked why the PCI cares about the regulation of credit-scoring modelers. Mr. Hageli said the PCI position is that the best result for consumers and companies is the use of actuarially justified information. Commissioner Holland said the Committees were not debating the use of credit-based insurance scores, but were addressing how data is gathered and the models are created. Mr. Hageli said he believed that the existing regulatory framework is sufficient to address issues in the marketplace and there is not a need for an unnecessary layer of regulation. Director McRaith said that the collection of information for necessary oversight is not an "unnecessary layer of regulation."

8. Concluding Remarks

Director McRaith said an argument could be made that credit-based insurance scores are reflective of a particular behavior, regardless of whether a person agrees with this argument. Director McRaith said marital status is not reflective of behavior. For example, Director McRaith said married individuals might be subject to spousal abuse but might stay in a relationship to avoid higher premiums or might face a change in marital status because of the death of a spouse. Director McRaith said he would like to see marital status included on the agenda as the Committees evaluate credit-based insurance scores.

Director McRaith suggested the collection of data from companies to determine the extent to which credit-based insurance scores can affect rates charged to an individual policyholder. Director McRaith said that answer might be a range, but that regulators do not have a definitive answer.

Commissioner Holland recognized the lack of information on how credit-based insurance scores impact consumers. Commissioner Holland pointed out that while it appears industry has provided adequate evidence that credit-based insurance scores are predictive, it is troublesome that regulators are not able to independently verify this. Commissioner Holland said the Oklahoma Insurance Department would be working with an anti-poverty agency to determine the cause of why certain consumers do not purchase automobile insurance. Commissioner Holland the possible impact of credit-based insurance scores on consumers' ability to purchase mandatory automobile insurance is very important.

Director McRaith said the Property and Casualty Insurance Committee, working together with the Market Regulation and Consumer Affairs Committee, would conduct additional outreach to individual companies and industry associations asking for certain data points to collect. Director McRaith also indicated that the Committees would not be looking for any data that is proprietary. As part of this effort, the Committees would coordinate with the states conducting existing data calls regarding credit-based insurance scores to help eliminate duplicative inquiries to companies. Finally, Director McRaith indicated that the Committees would collect additional detail regarding FICO's 27 credit-based insurance scoring models. The Committees have planned a conference call in four weeks with all interested parties to review a specific proposal on what information should be requested.

Robert Detlefsen (National Association of Mutual Insurers—NAMIC) asked how treating credit scoring modelers as advisory organizations would help protect consumers. Mr. Detlefsen said there should not be additional regulation to simply satisfy the curiosity of regulators. Mr. Detlefsen said the starting premise is that companies should be free of regulation, unless there is a good public-policy reason for regulation. Commissioner Holland said regulators have an obligation to consumers to ensure that rates are fair, adding that regulators are not confident they can do this without additional detail. Commissioner Holland said the collection of information is not to simply satisfy curiosity. Director McRaith stressed that regulators should be able to obtain data independent of the regulated entity.

Having no further business, the Property and Casualty Insurance (C) Committee and Market Regulation and Consumer Affairs (D) Committee adjourned.

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September 19, 2009

(Via E-mail: Eric Nordman, enordman@naic.org)

Director Michael McRaith, (IL) Chair
Property and Casualty Insurance (C) Committee
Commissioner Kim Holland (OK) Chair
Market Regulation and Consumer Affairs (D) Committee
National Association of Insurance Commissioners
2301 McGee Street
Kansas City, MO 64108-2662

Dear Director McRaith and Commissioner Holland:

The American Insurance Association represents more than 300 insurers that write personal lines insurance in all U.S. jurisdictions. Consistent objectives of ours include the prevention of unnecessary losses through improved safety and risk based pricing, maximization of competition and achieving regulation that assures solvency and encourages competition.

Credit Based Insurance Scoring Has Improved Risk Based Pricing and Helped Create A Competitive Personal Lines Market.

The vast preponderance of the evidence from private, state and federal studies documents the value of insurance scoring in improving the accuracy of loss prediction and providing rating and underwriting that more closely track the risk of loss. See the attached list of study highlights that support this point.

The current competitiveness of the personal lines markets, in part due to insurance scoring, is well illustrated by several points. Using the HHI, a widely applied standard for determining market concentration, where a market with a score of less than 1000 is "not concentrated", personal auto insurance's countrywide 2008 HHI score is 671.4 with 333 competing companies and homeowners is 743.2, with 386 competing companies. Auto residual markets have also declined to 1.11%, down from 4.02% in 1994, and the vast majority of states without large coastal catastrophe exposures have homeowners residual markets of 1% or less.

Consumers Benefit from Insurance Scoring and Recent Economic Conditions Have Not Materially Changed That.

The majority of consumers (59% in the FTC study and higher for some companies) benefit from insurance scoring. In addition, over-all availability has been enhanced, resulting in both more competition and pressure to lower premiums.

Based on evidence from the NAIC's April hearing and the latest trends, insurance scores have been very stable with some improvement, even in the current economic climate. In addition, even for the small percentage of people whose insurance scores have declined, the average decline is only several points.

Based on the Evidence, Extensive New Regulation of Insurance Scoring Is Neither Warranted Nor Beneficial.

We have consistently argued for pro-competitive regulation of insurance scoring. For this reason, we have supported reforms such as additional notices, regulator access to information and measures to address scenarios that created concerns, as embodied in the National Conference of Insurance Legislators (NCOIL) model law that has been adopted by the majority of states.

There are some additional actions state regulators could take when they feel additional steps are necessary, but these actions will not endanger the benefits to consumers or the competitiveness of the markets. This summer, NCOIL has approved some additional language on life circumstances exceptions that regulators might consider. In addition, we have suggested that state complaint systems better identify insurance scoring related complaints, consider their importance in the context of the number of transactions that have not given rise to complaints and work with insurers and their representatives to address any legitimate issues that might emerge from this analysis.

However, we have concerns regarding a proposal to regulate scoring modelers and providers as "advisory organizations." Our initial impression is that the vendors may not fit well under the prevailing definitions of advisory organization contained within state law. In addition, the practical value of the change is unclear. Today, regulators have the ability to review model changes as insurers prepare to implement them. This would mean that the models would be considered even without anyone having opted to use them. Also, it would seem that by treating the vendors as advisory organizations a tracking or monitoring-type structure would need to be developed (consider ways loss costs are handled today). This may not be efficient, especially given that the current system is adequate for regulatory review. We expect that there may also be concerns with confidentiality and other practical issues, which we respectfully ask to reserve the right to raise in the future (given the short deadline). We also suspect that the modelers, themselves, will share additional concerns.

Conclusion

Current positive personal lines market conditions benefiting consumers have resulted in part from insurance scoring. We do not see a proven need for new regulation; we do believe regulators have access to tools – new and existing - if they feel action is necessary.

Sincerely,

David F. Snyder
Vice President & Associate General Counsel, Public Policy

Attachment

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CONCLUSIONS FROM MAJOR CREDIT-BASED INSURANCE SCORING STUDIES

- "…87% of consumers either received a discount for credit or it had no effect on their premium" and "for those policies in which credit played some role in determining the final premium, those receiving a decrease outnumbered those who received an increase by 3.21 to 1."
  Source: "Use and Impact of Credit in Personal Lines Insurance Premiums Pursuant to Ark. Code Ann. §23-67-415"; A report to the Legislative Council and the Senate and House Committees on Insurance & Commerce of the Arkansas General Assembly by the Arkansas Insurance Dept. June 2009. The Arkansas Insurance Dept. examined more than 2 million auto and over 600,000 homeowners policies. Arkansas enacted the National Conference of Insurance Legislators Model Act on Credit in 2003.

- "Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims." and "Scores also may make the process of granting and pricing insurance quicker and cheaper, cost savings that many be passed on to consumers in the form of lower premiums." Also, when scoring is used "…more consumers (59%) would be predicted to have a decrease in their premiums than an increase (41%)."
  Source: "Credit-based Insurance Scores: Impacts on Consumers of Automobile Insurance," A Report to Congress by the Federal Trade Commission, July 2007. The FTC examined more than two million insurance policies.

- "A survey of Oregon insurers indicates that nearly 60 percent of personal auto policyholders…pay lower rates than they would if credit information was not used. In addition, many insurers report writing policies that they would not have written had they not had access to credit information."
  Source: "The Use of Credit Information by Insurers," ECONorthwest, October 2006. This study was commissioned during the November 2006 elections when Oregon voters were asked to consider a statewide ballot initiative (Measure 42) that would have banned insurer use of credit. The measure was defeated with citizens voting more than 2-1 (65.6% to 34.4%) against it, rejecting "mass subsidization."

- "These results [impact of using credit information] corroborate the insurance industry's contention that the majority of policyholders benefit from the use of credit scoring."
  Source: "Report on the Use of Consumer Credit and Loss Underwriting Systems," Nevada Dept. of Business & Industry, Division of Insurance, July 2005. Insurers representing 60% of the auto and homeowners market were surveyed for this report.

- As part of the Michigan insurance industry's successful legal efforts to stop a regulatory ban on credit, multiple companies reported in lawsuit filings that a ban would produce premium increases up to 68% for both auto and homeowner policies, with individual rates rising hundreds of dollars.
  Source: In the case of *Insurance Institute of Mich., et. al. v Commissioner of the Office of Financial and Insurance Services*, (2005) Case #05-156-CZ, Barry County (MI) Circuit Court. There the Judge issued a clear and definitive opinion saying in part credit "clearly shows an actual effect on losses and expenses" (Judge's emphasis). The case is now on appeal (#262385).

- "For both personal auto liability and homeowners, credit score was related to claim experience even after considering other commonly used rating variables. This means that credit score provides insurers with additional predictive information distinct from other rating variables. By using credit score, insurers can better classify and rate risks based on differences in claim experience." Also, "[C]redit scoring…is not unfairly discriminatory…because credit scoring is not based on race, nor is it a precise indicator of one's race."

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Source: "Use of Credit Information by Insurers in Texas: The Multivariate Analysis," Supplemental Report to the 79th Legislature by Texas Department of Insurance (TDI), January 2005. The study analyzed scores and rating factors for over two million auto and homeowners insurance policies in Texas.

- "…the lowest range of insurance scores produce indicated pure premiums 33% above average and the highest range of insurance scores produce indicated pure premiums 19% below average."; and "…insurance scores significantly increase the accuracy of the risk assessment process."
  Source: "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity," EPIC Actuaries, LLC, June 2003. The EPIC study reviewed more than 2.7 million auto policies.

- "The correlation between credit score and relative loss ratio is .95, which is extremely high and statistically significant. The lower a named insured's credit score, the higher the probability that the insured will incur losses on an automobile insurance policy, and the higher the expected loss on the policy."
  Source: "A Statistical Analysis of the Relationship Between Credit History and Insurance Losses," University of Texas Bureau of Business Research at the McCombs School of Business, March 2003.

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Writer's Direct Dial: 202-408-7407
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September 18, 2009

The Honorable Michael McRaith
Chair, NAIC Property and Casualty Insurance Committee
The Honorable Kim Holland
Chair, NAIC Market Regulation and Consumer Affairs Committee

Dear Commissioners McRaith and Holland:

I write on behalf of the Consumer Data Industry Association (CDIA) to offer comments regarding the concept of regulating entities that provide credit-based insurance scores as advisory organizations. We are happy to be asked to provide a comment, although we regret we only had four days notice in which to offer that comment.

CDIA was founded in 1906 and is the international trade association that represents over 200 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services. Our members help their customers more effectively manage risk using precise, current, and reliable information.

CDIA members are consumer reporting agencies and the regulation that goes along with being a consumer reporting agency means that no further regulation as an advisory organization is necessary. Further, there has not been a demonstrated need to warrant further regulation of consumer reporting agencies as advisory organizations.

Consumer reporting agencies are regulated by the federal Fair Credit Reporting Act (FCRA) and by a majority of states which have laws also regulating these agencies. The touchstone of the FCRA is the accuracy obligation of consumer reporting agencies. The law requires that consumer reporting agencies maintain reasonable procedures to assure maximum possible accuracy.

In addition to the accuracy obligations imposed upon consumer reporting agencies by federal and state law, federal law imposes restrictions on those that furnish data to consumer reporting agencies. For example, furnishers cannot provide data they know or have reasonable cause to believe is inaccurate. Furnishers are required to correct and update information. Consumers have a right to dispute information on their credit reports with consumer reporting agencies and the laws require dispute resolution in not more than 30 days (45 days in certain circumstances). If a dispute cannot be verified then the information must be removed in the consumer's favor. Under the FACT Act, consumers will soon be able to file disputes directly with the data furnisher. In 2004 the FTC reported to Congress that the FACT Act "imposed a host of new requirements that, when fully implemented, should further enhance the accuracy and completeness of credit reports."

There is a substantial body of federal and state consumer reporting regulation and corresponding judicial interpretations from federal and state jurisdictions. All of this regulation is more than sufficient for consumer reporting agencies and no further regulation as an advisory organization is necessary. Further, there has not been a demonstrated need to warrant further regulation of consumer reporting agencies as advisory organizations.

We hope that this comment is helpful to you. We welcome questions any time.

Sincerely,

Eric J. Ellman
Vice President, Public Policy and Legal Affairs

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Via email from Birny Birnbaum, Friday, September 18, 2009
To: Kim Holland; McRaith, Michael
Subject: Credit Scoring Modelers as Advisory Organizations

Commissioners Holland and McRaith,

The Center for Economic Justice (CEJ) offers the following in response to the request for comments on whether insurance scoring modelers should be regulated as advisory organizations.

Advisory organizations, also called rating organizations or rate service organizations, have historically been regulated because they provide a mechanism for collaborative ratemaking among insurers. The prototype advisory organization is the Insurance Services Office, which, among other things, collects data from insurers, analyzes those data and publishes, for use by subscribers, ratemaking information. The subscribers then use or adopt the "advisory" loss costs and rating manual. In the case of ISO, subscribers adopt rating manuals -- including risk classifications and rating factor relativities -- as well as overall expected loss costs.

Regulation of advisory organizations is necessary because the activities involve collusion on pricing -- through the vehicle of the advisory organization.

There are two obvious conclusions to be drawn from a review of the various statutes regarding advisory organizations. First, it is clear that insurance scoring modelers, as well as other third-providers of information used in pricing or claims settlement such as catastrophe modelers and claims payment modelers, carry out the activities of advisory organizations. Insurance scoring modelers collect information from insurers, combine it with consumer credit information and provide pricing tools to subscribers. There is no functional difference between the activities of FICO or TransUnion in their insurance scoring model practices and ISO in its loss cost and rating manual practices.

Second, the statutes governing advisory organizations are outdated and reflect long-abandoned historical practices related to insurer ownership of advisory organizations.

It is obvious that insurance scoring modelers are acting as advisory organizations and should be regulated as such, but CEJ asks why has this become the focus of the NAIC's action regarding insurance credit scoring? In most states, the credit scoring models of third-party vendors must be filed with the Department and are subject to review by the regulator. The question arises, what regulatory oversight do regulators want to do that is not being done because the insurance scoring modelers are not licensed as advisory organizations?

CEJ is profoundly disappointed that the NAIC continues to do nothing to address the problems of insurance scoring. We do not understand why regulators refuse to at least specify substantive and detailed data collection of insurer market performance -- including applications -- to obtain independent and reliable information about the impacts of insurance scoring, education, occupation and other questionable risk classifications on insurance availability and affordability. The regulators' steadfast refusal to collect data and acquiescence to NCOIL and insurers on insurance scoring and risk classification issues is an abdication of regulatory responsibility.

We continue to urge the NAIC to take action on insurance scoring -- the problem for consumers remains urgent. Foreclosures have risen to new records with nearly ten million foreclosures over the past several years. Unemployment continues at extremely high levels with associated high levels of late payments and delinquencies. We continue to urge the NAIC to work with member states to push a moratorium on insurance credit scoring. NCOIL recently adopted a life events provision in its credit scoring model. Putting aside the fact that the provision will not result in any substantial consumer benefit, the provisions will not be enacted until next year at the earliest in some states and until 2011 in other states.

We also urge the NAIC to develop a data call for states to use as soon as possible to collect data from insurers about the impact of credit scoring on insurance availability and affordability. Such a data call requires application level data so regulators can independently determine the impact of current economic conditions on insurance scores and insurance availability and affordability. In contrast to a survey of risk classifications, the detailed data call would provide regulators with information that regulators do not currently have.

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Thanks for your consideration,

Birny Birnbaum

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September 17, 2009

Director Michael McRaith, (IL) Chair
The Property and Casualty Insurance (C) Committee
Commissioner Kim Holland (OK) Chair
The Market Regulation and Consumer Affairs (D) Committee
National Association of Insurance Commissioners
444 N. Capitol Street, NW, Suite 701
Washington, DC 20001-1509

(Via Email – Pam Simpson, *PSimpson@naic.org*)

RE: NAIC Hearing on Credit-Based Insurance Scores – September 23, 2009

Dear Director McRaith, Commissioner Holland,

FICO is pleased to respond to the following questions…..

1) Why is FICO not an "advisory organization"?

FICO is not an "advisory organization" as defined by the NAIC Model Property and Casualty Model Rating Law or as defined in state statutes.

NAIC Model
Property & Casualty Model Rating Law (File and Use Version)
Model 775
Section 2. Definitions
A. "Advisory organization" means any entity . . . which assists insurers in ratemaking related activities such as enumerated in Sections 10 and 11.

Section 10: "consumer information system(s) which will provide and disseminate
price and other relevant information on a readily available basis to purchasers of insurance".

Section 11: "any service relating to statistical collection or the rates of any insurance subject to this Act".

Oklahoma Statute
Title 36, Chapter 1, Article 11B, Section 1140
Defining Advisory Organizations
A. "Advisory organization" means a corporation, an unincorporated association, a
partnership or an individual, whether located inside or outside of this state, organized and
licensed for the purpose of making rates, loss costs, rating plans, statistical collection,
furnishing statistical data, policy forms and endorsements or rating systems.
B. The term "advisory organization" shall be synonymous with the terms "bureau",
"statistical agent" and "rating organization".

Illinois Statutes
215 ILCS 5/123A-2
Definitions. As used in this Article, unless the context requires otherwise:
(a) "Advisory Organization" means every person, other than an insurance company who as

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its primary functions (i) compiles insurance statistics, or (ii) prepares insurance policies, bond forms, and underwriting rules, and (iii) furnishes that which it compiles and prepares to insurance companies who are its only members and subscribers.

FICO is certainly not "synonymous with the terms 'bureau', 'statistical agent' [or] rating organization'" as set forth in the Oklahoma statute. FICO does not make rates, loss costs, rating plans, and FICO does not furnish rates or rating manuals to the insurance industry, nor does FICO act in an advisory capacity with respect to ratemaking activities.

FICO does none of the activities prescribed by the Illinois statute: FICO does not compile insurance statistics, prepare insurance policies, bond forms, or underwriting rules; FICO does not collect and furnish loss or expense statistics to insurers or rating organizations; and FICO has no member insurers participating in our management or exclusive subscribers.

FICO does not come within the purview of the NAIC Model Act, as we do not assist insurers in providing and disseminating price or other information to purchasers of insurance; and we perform no services relating to statistical collection of information used to make insurance rates. FICO does not provide guidance regarding the specific business decisions and processes of insurance companies. Each insurance company determines how they will use credit-based insurance scores in their underwriting and/or pricing processes, based on their particular appetite for risk and the regulations of the states in which they do business.

FICO is a decision management software developer specializing in predictive modeling. We develop and maintain credit-based insurance score (CBIS) models that rank orders loss potential for homeowner and personal auto insurance applications and policies. Underwriters use FICO CBIS scores as an accurate and efficient tool in conjunction with other risk characteristics to make decisions in accordance with their underwriting programs. FICO is not involved in any of the underwriting or rating decisions made by insurance companies.

2) What factors are considered and are not considered by FICO Credit-Based Insurance Score models?

FICO Credit-Based Insurance Scores
Key information category impact (with minor exceptions driven by individual state statute or rule)

* Payment History (40% impact on a score)

While the majority of consumer credit reports historically show no late payments at all, payment history has proven to be predictive of more frequent or higher insurance losses and is one piece of information used in calculating a FICO CBIS score.

With minor exceptions required by some state laws, a FICO CBIS model considers payment information on many types of accounts, including credit cards, retail accounts, installment loans, finance company accounts and mortgage loans. Also considered are public record reports such as bankruptcies, judgments, suits, liens, wage attachments and collection items.

Consideration is given to how late missed payments were, how much was owed, how recently they occurred and how many there are.

* Amounts Owed (30% impact on a score)

Owing a great deal of money on many accounts can indicate that a person is overextended, and this has been found to correlate with more frequent or higher insurance losses.

With minor exceptions as required by some state laws, a FICO CBIS model may consider the amount owed on all accounts and the amount owed on specific types of accounts, such as credit cards and installment loans. Also considered is how many accounts have balances, and how much of the total credit line is being used on credit cards and other "revolving credit" accounts,

Note that even if credit cards are paid off in full every month, a credit report may still show balances on those cards. The total balance on the last statement is generally the amount that will show in a credit report.

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In some cases, having a very small balance without missing a payment shows that credit is being managed responsibly, and may be slightly better than no balance at all. On the other hand, closing unused credit accounts that show zero balances and that are in good standing will not generally raise a score.

* Length of Credit History (15% impact on a score)

In general, a longer credit history correlates with fewer and less severe insurance losses and results in a higher score. However, even people who have not been using credit long may get high scores, depending on what the rest of the credit report looks like.

With minor exceptions as required by some state laws, a FICO CBIS model can consider how long credit accounts have been established, viewing both the age of the oldest account and the average age of all accounts.

* New Credit (10% impact on score)

Research has shown that opening several credit accounts in a short period of time, increasing financial obligation — especially for people who do not have a long-established credit history – corresponds to higher or more frequent insurance losses. This is also true of multiple “inquiries” by consumers seeking credit.

FICO CBIS models distinguish between searching for many new credit accounts and “rate shopping”, which is generally not associated with higher risk. This is handled by treating mortgage or auto loan inquiries that occur within a 30-day period as just a single inquiry.

With minor exceptions as required by some state laws, a FICO CBIS model may consider how many new accounts have been opened, how long it has been since new accounts were opened, and how many recent requests a consumer has made seeking credit. Note that while “inquiries” remain on your credit report for two years, FICO CBIS models only consider inquiries from the last 12 months.

* Types of Credit in Use (5% impact on score)

FICO CBIS models consider the mix of credit cards, retail accounts, installment loans, finance company accounts and mortgage loans. It is not necessary to have one of each, and it is not a good idea to open credit accounts not intended to be used. The credit mix usually won't be a key factor in determining a score but it may be more important if a credit report does not have a lot of other information on which to base a score.

NOTE: Factors not considered, tracked or otherwise available in the FICO Credit-Based Insurance Score models:

Ethnicity, religion, gender, familial status, national origin, age, marital status, salary, occupation, title, employer, and location.

Any interest rate being charged on any account, and any items reported as child/family support obligations or rental agreements.

FICO CBIS models do not consider – consumer disclosure inquiries a consumer has made for their own credit report, promotional inquiries made by lenders to make “pre-approved” credit offers, administrative or account inquires made by lenders to review your account with them, employer inquiries or insurance inquiries.

FICO CBIS models also do not consider any information not found in a consumer’s credit report or any consumer credit information that is not proven to correlate to future insurance losses.

3) Are consumers’ FICO Credit-Based Insurance Scores being impacted negatively during the current economic climate?

In spite of the current economic climate, recent analysis of FICO CBIS scoring models shows that average CBIS scores have remained virtually the same over time for the general population. This is especially noteworthy when the number of people who are delinquent in repaying creditors has grown in recent months.

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We believe the overall stability of FICO CBIS scores may be caused by a greater number of consumers becoming even more credit conscious—making certain to pay all bills on time, paying down outstanding balances, and not seeking additional credit obligations.

While a small but growing number of consumers have experienced recent financial hardship, it is impossible to generalize about the impact of such an event on an individual's credit-based insurance score. FICO CBIS models consider the interrelationship of all credit information in a consumer's credit report, including any negative information. Scores may change when lenders reduce credit limits, but FICO CBIS models assess a wide variety of data on credit reports, so the impact from a single factor like credit limit reductions will depend on what other data is on the credit report and the amount of line reduction taken by a lender.

Recent FICO analysis shows that while the number of credit limit reductions has increased over the past year, FICO credit risk scores have dropped minimally for some, not at all for others and some have even seen FICO credit risk score increases. While, in many cases, credit cardholders don't control their credit limits, they can control their account balances. Recent data shows that a notable number of consumers have reduced their revolving credit usage, helping to minimize any effect from lenders reducing their account limits.

Interestingly, while general population average scores have remained stable during the current economic downturn, the average FICO CBIS scores for the lowest scoring quadrant show a very slight increase in score. As noted previously, we suspect this can be attributed to many consumers' efforts to be more "credit conscious" at all levels of the scoring population.

While FICO CBIS scores have remained stable through a variety of movements in the economy over the past 16 years, our research will continue as the economic climate changes. FICO CBIS score stability is important in helping insurers make objective, consistent and accurate underwriting and pricing decisions.

4) Would the use of "non-traditional" credit data provide greater insight to future insurance loss relativities?

Efforts to identify and readily access "non-traditional" credit data to aid in insurance underwriting and pricing decisions have proven very difficult.

While credit reporting agencies continue to pursue access to such data as utility payments, rental/lease agreement payments and payday loan payments, those managing "non-traditional" credit relationships have apparently not yet fully bought into the value of sharing that data. Given very limited availability of the data for analysis, there has been only limited testing of its predictive value for the insurance industry. and utilization of this data has had very limited application, if any, in credit-based insurance scores.

Until a much larger segment of "non-traditional" credit providers agree to provide their consumer relationship data to the credit reporting agencies, or in other successfully aggregated data methods, the predictive value and the overall viability of such data with respect to consumer benefits and industry benefits cannot not be fully understood.

5) Would the use of a "standardized credit-based insurance scoring model" by the insurance industry benefit consumers?

Competition within the insurance industry is vital to consumers' interests. The competitive nature of the industry provides consumers with multiple and significantly varied products and services to meet their needs. Restricting an insurer's ability to utilize marketing, underwriting, pricing and book management tools in the way that helps that insurer make the best possible decisions, given their guiding market strategy, severely limits that competitive nature, also limiting the wide variety of product and service options available to consumers.

Disregarding or limiting the desire, focus and efforts of insurers and their analytic partners to constantly seek and uncover new sources of accurate and reliable data, enhanced data analysis techniques and expanding modeling technologies by forcing the use of a "standardized approach" would surely not benefit consumers. Consumers are best served when Insurance companies are able to make underwriting and pricing decisions based on the best available information supported by efficient and proven technologies.

A "standardized approach" would lead to less-informed, poorer decisions, severely limiting the competitive desire of the insurance industry that now serves consumer needs by offering greater affordability and availability of insurance in expanding markets. Should such a restriction be forced upon insurance companies, their desire and appetite to offer more

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affordable products and services to a wider range of consumers will be severely limited, as well. Such restrictions and limitations on the competitive nature of the industry could not possibly benefit insurance consumers.

FICO Credit-Based Insurance Scores were developed by the industry's leading predictive analytics company, utilizing modeling techniques and technology that have proven successful over past decades for the consumer credit, mortgage lending, retail credit, insurance and other industries

As FICO is an analytics, decision management firm and not a credit reporting agency, we've partnered over the years with the three major CRAs (Equifax, Experian and TransUnion), analyzing and pulling the best value from the consumer information datasets owned by those firms to build the best possible models for each industry.

It is that strength of analytics, data knowledge and modeling skills that allowed FICO to introduce credit-based insurance scores to the insurance industry in 1993 and to remain the leading provider of CBIS scores to the insurance industry today. While insurers have choices among predictive analytic and modeling firms, FICO is pleased to have offered the product strength, ongoing innovation and analysis, as well as the value and market support insurers demand to remain competitive and profitable while expanding their products, services to ever-growing numbers of consumers

Thank you for the opportunity to present this information. I look forward to responding to any additional questions from your Committees.

Sincerely,

Lamont D. Boyd, CPCU, AIM
Director, Product Management
Insurance Scoring Solutions
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602-485-9858

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Comments Received from: Commissioner Carol Cutter
Indiana Department of Insurance

September 17, 2009

We do not believe that state insurance departments should get into the business of regulating these entities for several reasons:

1) Credit bureaus are not insurance companies.
2) Credit bureaus are not advisory organizations. A parallel example would be the BMV. The BMV provides insurance companies with information that certainly has an impact on rates, but we do not regulate the BMV or the accuracy of the data it provides. Another example would be Marshall & Swift/Boeckh building cost estimators. Marshall & Swift building cost estimators definitely have an impact on insurance rating, but we don't regulate Marshall & Swift.
3) It is also our opinion that Indiana does not have adequate resources to take on regulation of credit bureaus at this time.
4) We do provide regulation of the use of credit information by reviewing rate filings and data that supports the use of credit information in a way that does not result in rates that are excessive, inadequate or unfairly discriminatory.
5) We do not currently have a way to verify accuracy of credit data, nor have we been charged with doing so. However, if inaccurate data is used, consumers certainly have methods of recourse established by the FCRA along with state statutes addressing the use of credit.

The model law appears primarily directed towards personal P&C products, but could include commercial. The attachment includes statute language excerpts from Illinois and Oklahoma.

The model law includes regulatory action and services to be provided by the Department, and requirements for advisory organizations.

Aside from the controversial issue that credit scoring is, in and of itself, credit scoring measures credit worthiness. Advisory organizations deal with actual dollar losses and trends in determining rates, or loss costs. Insurers essentially use credit scores as a loss predictor. They apply no modification factor, a credit or debit factor to the rate.

Used in commercial products, there are rating agencies that develop their opinion of a company's ability to meet financial obligations. The Securities and Exchange Commission designates certain organizations as Nationally Recognized Statistical rating organizations. Of these A.M. Best and Weiss focus on the insurance industry. Credit Bureaus focus on the credit worthiness of small businesses. And then the Big 3 for personal credit scores. These organizations provide data at request, and usually for a fee.

The model law appears to be concerned with regulating the Big 3 for personal P&C products, much as internal statistics developed by insurers are currently regulated by Departments of Insurance.

Indiana's statute relative to advisory organizations states:

Advisory Organizations are discussed in IC 27-1-22; Rate Regulation.
Specifically, IC 27-1-22-13 is the definition, filing and regulation requirements, including Section 15 of the statute regarding examination of these organizations.

Rating organizations are defined in IC 27-1-22-8, including licensing requirements. Information regarding rating organizations is also found in several(many) sections of the statute, including section 4, and suspension and revocation of licenses in Section 24.

In addition, the Indiana Compensation Rating Bureau is a ratemaking, advisory/statistical organization for Workers Compensation insurance; as outlined within IC 27-7-2.

As a result of our discussions, and these thoughts from our P&C Policy Analysts and Deputy Commissioner for Company Compliance, Indiana would not recommend NAIC or state DOI oversight of the credit bureaus.

Thank you for the opportunity to provide comments on this concept.

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Jon Burton, Senior Director
State Government Affairs

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September 18, 2009

Director Mike McRaith, Chair
Commissioner Kim Holland, Chair
Joint Property and Casualty Insurance (C) Committee and
Market Regulation and Consumer Affairs (D) Committee
National Association of Insurance Commissioners

Re: “advisory organizations” / credit-based insurance score

Dear Chairman McRaith and Holland:

I am writing to you on behalf of LexisNexis to provide comment regarding the concept of regulating entities that provide credit-based insurance scores as “advisory organizations,” as referenced in NAIC Model, Property & Casualty Model Rating Law (File and Use Version), Model 775, and related Oklahoma and Illinois state statutes.

Since 1997, LexisNexis has been a leading provider of decision-making technology and information that helps reduce fraud and mitigate risk. LexisNexis provides information, identification, verification, and fraud prevention tools to business, government, and law enforcement customers. Specifically, LexisNexis is a market leading provider of credit-based insurance scoring services to the property and casualty insurance market.

LexisNexis appreciates the opportunity to provide the below information, and welcomes the continued opportunity to work with NAIC on this issue.

“Advisory Organization” status

LexisNexis does not operate or market products or services as an “advisory organization” as such term is recognized and utilized in the marketplace today. LexisNexis is regulated and operates as a consumer reporting agency (CRA) as defined by the federal Fair Credit Reporting Act (FCRA) and comparative state FCRA statutes.

There is a clear and fundamental difference in the advisory rating and pricing services offered and provided to insurers by those entities recognized and operating as an “advisory organization,” and a credit-based insurance score provided to an insurer on an individual consumer by a third-party CRA like LexisNexis.

A credit-based insurance score is not an advisory rate. An insurance score is but one variable of multiple variables that an insurer considers to make underwriting and/or rating decisions about a particular consumer – based on the insurer’s overall approved rating plan.

LexisNexis, as a third-party information provider, does not advise insurers how to use the data it provides.
LexisNexis is not involved in insurer rate setting determinations or rate decisions on the individual consumer. LexisNexis does not research and develop insurer rate or rating plans, it does not offer rate setting forms or services, and does not develop consumer or market rates or rating plans whatsoever.

Further, unlike advisory organizations that pool insurer data to develop advisory rates, credit-based insurance scoring utilizes credit and other public record data not received from insurance companies.

Lastly, LexisNexis itself is not created, funded, or owned by an insurer or its subsidiaries.

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Jon Burton, Senior Director
State Government Affairs

The insurance scoring process is wholly dissimilar in application and function to the products and services provided by an "advisory organization" as that term is recognized and utilized in the marketplace today. There is no business model or marketplace relationship similarity that necessitates or warrants similar classification.

Current Regulatory Protections

The credit-based insurance scoring process is currently regulated at multiple levels and steps. The insurance scoring process and the entities that provide it are regulated by the federal FCRA and comparative state FCRA statutes. Furthermore, pursuant to existing statute or regulation in virtually every state, a third-party vendor like LexisNexis must file its model for review and approval with each state Insurance Commissioner either directly or through individual carriers before it can be used by an insurer as a component of the insurer's overall filing. Finally, the insurer itself must gain approval of its rate filing that may include an insurance scoring component.

The statutory and regulatory checks and balances for information services like insurance scoring are legion at the state and federal level. If regulators expand the definition of an "advisory organization" to include third-party information providers that do not provide advisory rating services, it will mandate regulation far beyond any logical purpose or market benefit.

As an example, to extend the "advisory organization" licensing mandate to a third-party information provider would mandate that state Department of Motor Vehicles be licensed as an "advisory organization" before any driver data can be used by an insurer as part of its overall underwriting and rating decisions

The role that insurance scoring, as well as other third-party information, serves in the insurance marketplace is regulated by a wealth of federal and state oversight appropriate for its content and use in the marketplace. The insurance scoring process is wholly dissimilar in application and function to the products and services provided by an "advisory organization" as regulated in the marketplace today. There is no absence of regulation, or similarity whatsoever, to necessitate or warrant duplicate regulation.

Thank you for this opportunity to provide our comments. Please do not hesitate to contact me if I can be of further assistance. I can be reached at 678-694-3383 during the day, and by email at Jon.Burton@LexisNexis.com.

Sincerely,

Jon Burton, Senior Director
State Government Relations

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Title Insurance Issues (C) Working Group
Washington, DC
September 22, 2009

The Title Insurance Issues (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 22, 2009. The following Working Group members participated: Morris J. Chavez, Chair, represented by Alan Seeley (NM); Woody Girion, Vice Chair (CA); Sarah McNair-Grove (AK); Bill Lacy (AR); Peg Brown (CO); Jim Bennett (FL); Doug Webber (IN); Dudley Ewen (MD); Paul Hanson (MN); Angela Nelson (MO); Bruce Ramge (NE); Susan Donnellan and Larry Levine (NY); Cindy Fillman (PA); Mickey Braun and Suzette Green-Wright (UT); Brian Gaudiose (VA); and Lee Barclay (WA). Also participating were: Jim Guidry and Eileen Mallow (WI).

1. Overview of New Real Estate Settlement Procedures Act (RESPA) Rule

Ivy Jackson (U.S. Department of Housing and Urban Development, Office of RESPA and Interstate Land Sales) provided a brief overview of revised RESPA rules that were published in November 2008 and become effective Jan. 1, 2010. The rules allow for more standardized price comparisons by consumers when purchasing a home and include a revised Good Faith Estimate form. The standards include the combination of different costs into one category of settlement charges and information on the loan product. More than 200 frequently asked questions will be added to the RESPA Web site. If requested, RESPA Division staff will travel to any state to help explain the rule changes. RESPA Division staff subsequently held a regulator-to-regulator meeting at the conclusion of the Working Group meeting to review the rule changes in detail with states.

2. Update on State and RESPA Collaborative Enforcement Effort

Laura Gipe (HUD) reported on recent enforcement efforts regarding fraud and title shams. Staff from the RESPA Division conduct monthly collaborative enforcements with states in regulator-to-regulator conference calls. Approximately 20 states currently participate in the calls. Other states were encouraged to join the efforts, which include information-sharing, referrals and joint investigations.

3. Overview of Wisconsin Average Premiums Survey of Title Insurers for Comparison Shopping

Mr. Guidry and Ms. Mallow provided the Working Group with an overview on Wisconsin's average premiums of title insurance survey initiative. The newly created initiative is just beginning and is being implemented based on a recommendation from the Wisconsin Title Advisory Council. The goal is to help and encourage consumers to make price comparisons when purchasing a home and selecting from the 21 title insurance companies in the state. The consumers in Wisconsin, as in many states, do not know they have a choice in selecting their carrier, and it is anticipated that this initiative—coupled with increased public service announcements—will provide additional information to consumers. The initiative also will help collect premium information statewide and identify marketplace trends.

4. Overview of Closing Protection Letters

Bruce Davis (American Land Title Association—ALTA) provided an overview of the closing protection letter (CPL), which help protect a lender and others against risk of settlement agent misconduct. Specifically, the CPL covers the settlement agent's failure to follow the lender's written closing instructions or the settlements agent's fraud, dishonesty or negligence in handling the lender's funds and/or documents. A CPL protects 1) the lender; 2) the lender's assignee and warehouse lender, as if the letter were addressed to them; and also 3) the borrower, if the borrower is purchasing or leasing property and has ordered title insurance. A CPL does not protect the seller, the seller's lender or a borrower in a refinancing transaction. Without a CPL, a lender would bear the risk that its loan funds might be lost due to settlement agent misconduct; as such, the lender would need to restrict the borrower's choice of settlement agents to agents the lender had scrutinized and approved. Title insurance companies issue CPLs to encourage lenders to order title insurance through the insurance company's issuing agents and approved attorneys. CPLs vary by state, and ALTA has forms available for use wherever a state has no specific requirements. Some states require the CPL to be reviewed by an attorney before it is issued. A CPL might be considered insurance, depending on statutory definitions and whether a fee is charged for issuing the CPL.

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5. HR 3126: Consumer Financial Protection Agency Act of 2009

The Working Group heard a report from Avery Brown (NAIC) on H.R. 3126, the Consumer Financial Protection Agency (CFPA) Act of 2009. The Obama Administration has proposed sweeping reforms of the financial services regulatory system. The Proposal seeks to meet five objectives: 1) Promote robust supervision and regulation of financial firms; 2) Establish comprehensive supervision and regulation of financial markets; 3) Protect consumers and investors from financial abuse; 4) Improve tools for managing financial crises; and 5) Raise international regulatory standards and improve international cooperation. To implement these goals, the CFPA would have authority over a vast array of financial activities, including mortgage, title and credit insurance. It is likely the Obama Administration will offer specific legislative proposals that would implement each of these five objectives. On June 30, the Obama Administration made available the first such legislative proposal, called the CFPA Act of 2009. The act would establish a new executive agency, the CFPA, to protect consumers of financial products and services. On July 8, Rep. Barney Frank (D-MA), Chairman of the House Financial Services Committee, introduced similar legislation, H.R. 3126, which also is titled the CFPA Act of 2009.

The CFPA would be established to "seek to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products and services" to ensure that consumers are able to make educated decisions regarding financial products and services. The act would not preempt state consumer-protection laws that provide greater protections to consumers, but would preempt otherwise conflicting state laws. The CFPA would decide whether particular state laws conflict with the act, with specific decisions subject to judicial review.

Commissioner Ralph Tyler (MD) testified on behalf of the NAIC earlier this year, trying to have insurance exempted from the Act. A revised version is expected in the next few months, and it is hoped that insurance will be exempted. There is also the possibility that a council would be established rather than an agency, as presently proposed.

6. Update on Proposals Submitted to Blanks (E) Working Group

Mr. Seeley said the three proposals developed by the State Page Subgroup, led by David Cox (MO), to revise the title annual statements were approved by the Blanks (E) Working Group during their Sept. 21 meeting.

7. Preliminary Results of Survey of State Laws on Collectability of Title Agent Data

Mr. Seeley said that 22 states have responded to the Working Group survey of state laws on the collection of title agent data and other information. NAIC staff will send a reminder to the other states next week and remind them that the deadline to complete the survey is Sept. 30.

8. Consider 2009/2010 Work Plan Draft Components and Prioritization

The Working Group agreed to consider the work plan and prioritize the various components during the Winter National Meeting.

Having no further business, the Title Insurance Issues (C) Working Group adjourned.

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Draft: 10/5/09

Crop Insurance (C) Working Group
Washington, DC
September 21, 2009

The Crop Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 21, 2009. The following Working Group members participated: Merle D. Scheiber, Chair (SD); Bill Lacy (AR); John Kissling (IN); Ted Clark (KS); Mary Kempker (MO); Bobby Perkins (MS); Peg Jasa (NE); Mary Miller (OH); and Kathie Stepp (OK).

1. Update on States Avoiding Federal Preemption for Adjuster Licensing

Joe Bieniek (NAIC) provided an update on the states' efforts to avoid federal preemption of crop adjuster licensing. The U.S. Congress, through the federal Risk Management Agency (RMA), could preempt the states' licensing authority in this area, on a state-by-state basis, beginning as early as July 1, 2011. The NAIC previously surveyed all of the states to assess whether they could allow a third party to test crop adjusters to obtain a crop insurance license. These results appear to indicate that as many as 14 states could be preempted. NAIC staff and the Working Group continue to work with the states to assist those that have questions or problems. All 14 states plan to implement changes so that federal preemption will not occur. NAIC staff will look into investigating changes that might be needed to the NIPR Producer Database (PDB).

2. Update from the Risk Management Agency (RMA)

Dave Miller (RMA) said that RMA subject-matter experts have reviewed the Crop Adjuster Proficiency Program (CAPP) test questions of the National Crop Insurance Services (NCIS), which requires specific approval from RMA. Recommendations have been sent to NCIS on modifying the test questions and NCIS has indicated they will make the necessary revisions. The RMA chief of the Information Security Branch has reviewed CAPP from a security point of view and determined the NCIS system is compliant with the Federal Information Security Act of 2002 and with Privacy Act requirements. In addition, CAPP is compliant with Section 508 of the Rehabilitation Act.

Mr. Miller said the 16 companies writing multi-peril crop insurance signed the Standard Reinsurance Agreement (SRA) amendment beginning July 1 for the 2010 reinsurance year, and RMA is working on the SRA for the 2011 reinsurance year.

3. Update from National Crop Insurance Services (NCIS)

Laurence Crane (NCIS) reported that CAPP has three parts to the program, and 60 hours of training is required before taking the online examination. There is a bank of questions that are randomly chosen each time an exam is generated, and every question in the system is reviewed for technical accuracy. NCIS has added additional questions in areas suggested by RMA. The exam is open book, because there are many changes each year and there are many technical-related issues. There is no fee for the adjusters in CAPP, as the costs are included in the general assessments to the insurance companies. To date, 2,862 adjusters have successfully completed the CAPP examinations and received their accreditation cards. Approximately 100 adjusters are passing the examinations on a weekly basis. There is a seven-day waiting period for adjusters who might fail an exam before they can retake the exam. The continuing-education requirement is 18 hours per year, with six hours required in a classroom. The number of hours can change in future SRAs; it is doubtful the number of hours would decrease. The NCIS board of directors last week approved a policy to require all CAPP exams be proctored effective Feb. 1, 2010. Mr. Crane said the NCIS welcomes the opportunity to meet or visit with any state interested in learning more details about the CAPP system.

Having no further business, the Crop Insurance (C) Working Group adjourned.

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Draft: 10/2/09

Earthquake (C) Study Group
Washington, DC
September 21, 2009

The Earthquake (C) Study Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Sept. 21, 2009. The following Study Group members participated: Michael T. McRaith, Chair, represented by Bill McAndrew (IL); Bill Lacy (AR); Ron Dahlquist and Bruce Patton (CA); Warron Byrd (LA); Mary Kempker and Angela Nelson (MO); Marie Holt (NV); Mary Miller (OH); and Lee Barclay (WA).

1. Update on Earthquake Consumer Guide

Ms. Nelson reported that the drafting group met for the first time Sept. 3 to begin work on a consumer guide for earthquake insurance. During the meeting, participants reviewed various educational materials for earthquake insurance and preparedness that the NAIC staff had compiled. The group requested copies of various earthquake coverage forms to use as a reference in the drafting process. The group discussed various topics that should be covered or included within the brochure and decided that an introductory section would be drafted for review by the group. The group decided to meet in person during the Fall National Meeting to review that draft introductory section and to discuss further the outline and content of the brochure.

Mr. McAndrew asked if a consumer guide for earthquake insurance would need to be transitioned at some point for finalization through the Consumer Guide Working Group. Anne Obersteadt (NAIC) said a consumer guide for earthquake insurance would not need to be transitioned to the Consumer Guide Working Group.

2. Discuss Earthquake Education Event

Mr. Patton stated that the California Department of Insurance, in coordination with Glenn Pomeroy (California Earthquake Authority─CEA), was developing an agenda that included speakers on public preparedness, including the latest social science research on how to educate and motivate the public to prepare for an earthquake. He noted that this research was partially funded by the CEA. The tentative agenda also includes a presentation from a catastrophe modeler on how incorporation of the latest scientific research into earthquake models is showing a significant decrease in modeled losses. As mitigation is the best means of loss prevention, the tentative agenda also includes discussion on solutions to overcoming the hurdles to mitigation. Mr. Patton stated that on Oct. 15 California would be hosting its first annual statewide earthquake drill, the Great California ShakeOut (www.shakeout.org). The tentative agenda includes details of the coordination activities involved in producing the Great California ShakeOut.

Mr. McAndrew thanked Mr. Patton and Mr. Pomeroy for taking the lead in planning the Earthquake Education Event. He stated that the Earthquake Education Event was scheduled for Dec. 8, during the Winter National Meeting.

3. Presentation: "Seismic Hazards in the Central and Eastern U.S.: 2009"

Gary Patterson (University of Memphis Center for Earthquake Research and Information—CERI) stated that he would be discussing seismic hazard in the central and eastern United States. He stated that while most people are familiar with the New Madrid Seismic Zone (NMSZ), there are other source zones—like the Wabash Valley, East Tennessee and North Carolina seismic zones—that key in heavily into seismic hazard assessments for the region.

Mr. Patterson stated that CERI employs about 15 people who specialize in seismic monitoring in the central United States. CERI participates with the West Tennessee Seismic Safety Commission, which has representation from the insurance industry embedded in its bylaws. Mr. Patterson serves as executive director of this Commission, whose biggest project to date is to understand mass shelter and care planning for the greater Memphis area and west Tennessee—the closest major metropolitan area to the NMSZ.

Mr. Patterson presented the Study Group with a map illustrating that about 4,500 earthquake events have occurred between 1974 and 1996 in the NMSZ, with more than 90% of them too small to be felt by humans. The NMSZ has about 200 earthquake events per year, while California has between 2,000 and 3,000 earthquake events per year. While the probability of an earthquake event is higher in California, it should be noted that earthquakes are different in the central United States. He explained that the NMSZ is actually a system of faults that stretches from Arkansas in a zigzag fashion through northwest

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Tennessee, northeast Arkansas, the Missouri boot heel, Kentucky and southern Illinois. Not much is known of the earthquake risk in the NMSZ, except that over the past 1,500 years, there have been large earthquakes—and the risk remains for them to occur again, leading to the prudence to prepare.

Mr. Patterson presented a "probability of loss hazard" map to the Study Group. He pointed out that the modern seismicity shows the same type of shape as the 1811–1812 NMSZ earthquakes. He pointed out that while an NMSZ earthquake is a low-probability event, it would have a national, and possibly global, impact. For instance, an NMSZ earthquake could destroy natural gas pipelines that run through the NMSZ into the New England area.

There are many lessons to be learned from recent earthquakes. Mr. Patterson illustrated this by showing the Study Group pictures of the devastation that occurred in China after the Sichuan earthquake that struck May 12, 2008. Much of the damage stemmed from unreinforced masonry buildings on the sides of hills, illustrating the need for building codes and quality assurance. The insurance industry instigated the use of building codes after fires in the New York garment district. As such, Mr. Patterson said it is important that the insurance industry participate and support discussions on building codes, because they are the most effective way to limit future losses from earthquakes. For instance, it is important that unreinforced masonry buildings originally built for cotton bales in southwest Tennessee be required to conform to modern codes when converted for use by people.

Mr. Patterson stated that he has seen NMSZ earthquake loss estimates that range from $40 billion – $400 billion, explaining that the large spread in these loss estimates is due to the large uncertainty in this area. Mr. Patterson presented an article from the *Memphis Business Journal* that reported Hurricane Katrina losses of $1.5 billion had prompted Allstate Insurance Company to reassess its earthquake exposure and cancel earthquake insurance policies nationwide, with more than 35,000 policies canceled in Tennessee alone. An earthquake in the central United States will affect an area 10–20 times larger than an earthquake of similar magnitude in California. The NMSZ varies from other seismic zones in that it is subject to infrequent large earthquake sequences, not just one earthquake. The system of faults in this region triggers one another to generate large earthquakes on separate faults over periods of months or years. The last large earthquake in this zone, with a magnitude of 6, was in 1895 in Charleston, MO. Earthquakes travel greater distances in the deep part of the crust of the central United States. Most buildings and infrastructure elements were not designed for earthquakes, or even significant wind damage. Approximately 11 million people live in the NMSZ today, compared to an estimated 4,000–60,000 in 1811.

Grand motions in soft-soiled sites can amplify significantly. Mr. Patterson stated that he had experienced places in the deserts of India in 2002 that had soft soils at the very surface of the ground that amplified the ground motions by a factor of 5. Therefore, he said, soils at the near surface—in contrast to the low attenuation in the deep crust—can amplify an earthquake greatly. In an analogy, Mr. Patterson said to imagine a box of sand with no sides. If the sandbox were to be shaken rapidly, the sand just sits there. However, if the frequency is slower, the sand has time to react and the displacement amplifies. This can be seen in certain hazard maps, where frequency relates to certain damage predictions, depending on building height and weight.

Mr. Patterson said public awareness is generally low. CERI has done a lot over the years with State Farm Insurance and other insurers to increase awareness in this region, but there are many socially vulnerable areas. As Hurricane Katrina illustrated, the greatest devastation occurs—and the need for mitigation is intensified—where structural and social vulnerability overlap. He illustrated this by overlaying the seismic hazard map onto a demographic map of the largest metropolitan area near the NMSZ. The most socially vulnerable areas (where annual household income was less than $10,000) were also the most structurally vulnerable areas (full of old unreinforced masonry buildings and aged fire departments).

In the 1600s through the 1800s, the central United States was the most active earthquake region east of the Rocky Mountains. Approximately 1,800 earthquakes were documented in 1811–1812. On March 25, 1976, the Memphis area was hit by a magnitude 5 earthquake, damaging critical facilities 40 miles away and felt over five states. This substantiates reports that the 1811–1812 NMSZ earthquakes could be felt 1,200 miles away in Canada. An earthquake of similar size in California would be felt up to 300 miles away, due to the differences in earthquakes between the two regions.

Earthquakes can be measured in two ways: magnitude and intensity. Magnitude never changes, but the intensity is a qualitative representation of what people feel at varying distances. What has scientists most concerned about the NMSZ is the uncertainty of damage-loss modeling, an uncertainty driven by the geological difference that involves much larger areas. A magnitude 7.1 earthquake in California would shake like a magnitude 4.6 earthquake in the central United States.

Historically, plate tectonic forces were pulling the central United States apart; these tensional forces caused the ground to subside. Normally large earthquakes result in rifts, volcanoes and mountains. However, earthquakes in the central United

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States resulted in the creation of the Mississippi River. A geological look at the Mississippi River would show what looks like inverted mountains from eons of sediment settling and oceans coming and going. These ancient cracks were formed by tensional plate tectonic forces. Today, the Atlantic Rift is pushing west and the Pacific Rift is pushing to the east, squeezing North America. Under current science, earthquakes should only be occurring at plate boundaries, like California. The NMSZ is an enigma, and there is no consensus as to why earthquakes occur in the central United States. Therefore, Mr. Patterson said, it is a mistake to jump ahead and make definitive modeling based on these scientific uncertainties.

The shape of the Mississippi River has been influenced by multiple ruptures on faults in the NMSZ. In older maps, earthquakes are shown to have an epicenter. With large earthquakes, the whole fault line is the epicenter, with ground motion spreading out uniformly from the fault—and new maps under developments will reflect this. Normally, faults scar and a measure for predicted movement can be found after a major earthquake. However, the offsets from the 1811–1812 central U.S. earthquakes are subtle for many reasons, including being smoothed out by the Mississippi River, farmers, etc.

Scientists view liquefaction—when the ground becomes like quicksand—as one of the most disastrous things that can occur with a large earthquake. If wet sandy soil is shaken, the water pore-pressure between the packed grains of sand increases and needs to escape. The Mississippi River Delta has, over time, been putting down 60 feet of sand and gravel. Every time the river floods, it catches those previously deposited grains of sand and gravel from clay. Shaking from an earthquake would result in the creation of an impermeable membrane that allows pressures to build. If the earthquake is large enough, the sand and water will burst through the clay and cause what is called a sand-blow. An earthquake of at least magnitude 6 is needed to create liquefaction. Identifying geological features created due to liquefaction helps to geologically date earthquakes. Major earthquakes in the NMSZ are estimated to occur every 500 years. This does not fit the California frequently/magnitude relationship model, which estimates that large earthquakes should occur every 10,000 years in the NMSZ.

How the ground shakes at the surface depends on the varying density layers below the surface. Each layer beneath the earth's surface serves as a type of polarized glass system that filters out some frequencies and amplifies others. At higher frequencies, sand layers dampen the motion and lower the hazard. Future hazard maps will incorporate this decreasing hazard for higher frequency earthquakes. The impact of this understanding on building codes in the NMSZ is that it will be better to build shorter structures, worse to build taller structures.

California earthquakes also have a time-dependent probability. Through time, the probability of an earthquake event increases. The Californian earthquake cycle is much like a rubber band; i.e., when it is stretched too thin, it breaks and an earthquake occurs—and the cycle begins again. In contrast, earthquake faults in the central United States have a beginning and an end, but scientists do not yet understand if all of the tension is released after each earthquake. The large sequence of earthquakes in the central United States over time indicates that residual tension probably remains after an earthquake. The largest consensus of scientists indicates that California earthquake models cannot be applied to the central United States.

West central India, where the 2001 Gujarat earthquake occurred, has many of the same geological similarities as the central United States. West central India is part of the prehistoric rift zone, with a lot of loose sediment at the surface, and far from any of the plate boundaries. The 2001 Gujarat earthquake was a large earthquake, yet no fault was found at the surface. The last large earthquake in this region occurred in 1819. This is almost an exact analogy to the NMSZ, which is why the Indian government invited CERI to study the region. Like the 1811 NMSZ earthquake that was felt 1,200 miles away in Canada, the 2001 Gujarat earthquake (of similar magnitude) was felt 1,200 miles away in Calcutta. During the CERI study of the Gujarat area, it was discovered that 1) liquefaction occurred within 80 miles of the fault, in all directions; 2) structures collapsed up to 300 kilometers (about 186 miles) away from the main rupture; and 3) rivers formed in the desert due to liquefaction. The west central area of India used to be under the ocean, but in about 1000 A.D., a large earthquake raised the area out of the ocean and it is now used for salt farming.

In summary, Mr. Patterson explained that seismic monitoring and public awareness, which are fundamental focuses of CERI, are important components to understanding and mitigating earthquakes. Building codes are the most effective way to prevent loss; however, most infrastructural elements, particularly unreinforced masonry buildings, were not designed to withstand earthquakes. Thus, it is critical to understand the inventory of unreinforced masonry structures, because they are the first structures that are damaged in an earthquake, yet they are the buildings that house critical facilities like fire departments, schools and public buildings. Furthermore, as most people remain near their homes after an earthquake, the need for earthquake preparedness is high.

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4. Presentation: "Federal and State Initiatives to Address the Earthquake Threat, Including Details on a 2011 National Level Exercise

Jim Wilkinson (Central U.S. Earthquake Consortium—CUSEC) stated that in 1999 the Federal Emergency Management Agency (FEMA) defined four hazards deemed to be catastrophic in the United States: 1) an earthquake in California; 2) a hurricane in Miami; 3) a hurricane in New Orleans; and 4) an earthquake in the New Madrid Seismic Zone. This led to the NMSZ Catastrophic Planning Project, which is to create a comprehensive preparedness plan for a catastrophic earthquake in the NMSZ. The Catastrophic Planning Project is based on the most advanced impact-assessment techniques and new response and recovery methodologies. The project is scenario-driven and, with the support of FEMA, it involves the eight CUSEC states of Alabama, Arkansas, Illinois, Indiana, Kentucky, Mississippi, Missouri and Tennessee. It encompasses the following CUSEC multi-state planning priorities: 1) multi-state coordination; 2) communications; 3) search and rescue; 4) emergency medical; 5) transportation; 6) public information and education; and 7) response coordination. The planning project is to culminate with a national-level exercise, set for May 2011, to test the various plans developed over the course of the planning initiative at the local, state and federal levels.

To prepare for the national-level exercise, CUSEC held state and regional workshops and plans to integrate these at the national level in December. Mr. Wilkinson noted that the White House is interested in the NMSZ events, and that the White House chief of staff has provided objectives to address in the exercise. In addition, there is a working group meeting in Little Rock, AR, in September to define which entities will be participating in the exercise and to what degree. Mr. Wilkinson suggested that the NAIC members might want to participate.

An NMSZ catastrophic event would have a tremendous impact on infrastructure, because it was not until the 1990s that building codes did not begin taking into account the seismic hazard in the area. The highest seismicity in the United States is east of the Rocky Mountains, with an average of 150–200 events a year. The NMSZ has significant fault systems and high catastrophic exposure, with 44 million people living in the eight states included in the region. An earthquake in the central United States would be nationally significant, because it is the crossroads for a lot of river commerce, interstate system shipping, warehousing and banking. Unfortunately, most of the current earthquake impact assessment has only been conducted at a local level and not the national level.

The NMSZ Catastrophic Planning Project took a "bottom up" approach by starting with helping local communities build their plans for responding to a seismic event, then took those plans and applied them to the state and, now, national level. Recovery plans are also being developed. In looking at some of the large disasters, such as Hurricane Katrina, recovery is an area where not much has been developed. Most recovery plans are geared for up to a year, but the recovery time for large disasters, like Hurricane Katrina, will take 15–20 years.

In looking for a starting point, CUSEC asked the U.S. Geological Survey (USGS) to provide the most credible large catastrophic earthquake event with which to base their risk models, which was an earthquake of magnitude 6.2 and 7.7. The Mid-American Earthquake Center (MAE) was the lead in the earthquake risk modeling, working with Virginia Polytechnic Institute and State University and George Washington University on the social aspects. There are two phases to this project, with Phase I complete and available for review; Phase II is nearing completion. Phase II looked at the regional impacts and how to prepare between states and regions. The CUSEC board of directors established a list of multi-state priorities that served as a starting point in assessing priorities that were shared between the eight state members. CUSEC works in partnership with many organizations; however, Mr. Wilkinson said, working with insurance industry is a "missing link." For instance, a state's catastrophic plan might include evacuation; in contrast, a company's catastrophic plan might include how to best continue business operations. This difference in priorities can result in conflicting catastrophic planning. As with Hurricane Katrina, insurance is another potential problem area.

The NMSZ Catastrophic Planning Project goals included exceptional response and recovery plans, as well as mitigation and risk-reduction measures. Mr. Wilkinson stated that, although much has been done with response and recovery, not much outside of modeling has been accomplished with mitigation and risk reduction. CUSEC is looking forward to the next set of multi-state planning priorities, including long-term recovery and secondary hazards, which will need the involvement of the insurance industry.

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5. Presentation on the Modeling Results of the FEMA Phase I and Phase II Projects

Dr. Teresa Jefferson (Virginia Polytechnic Institute and State University) stated that the modeling projects focused on scenarios that were used as a way to identify response requirements. The objective of the projects is to enhance the readiness for response to a catastrophic event by providing the most realistic estimates possible of losses and social impacts, as well as guidance on response and recovery planning. Phase I, completed about one year ago, focused on worst-case scenarios of each of the eight individual CUSEC states. Because the scenarios differ by state, the impact results from each state cannot be combined. Phase II focused on the impact for the four FEMA regions and on a national level. The estimated earthquake losses were based on modeling factors that included identifying the hazard specifics (magnitude, location) and the infrastructure inventory (locations, construction of buildings and roads). The modeled losses were then converted into the social impacts (damage impact to critical buildings, bridges, etc.). Within the eight CUSEC states, 141 counties were identified to be critically impacted counties.

The models were based on the 1811–1812 earthquakes, with a date of occurrence of 2 a.m. Feb. 7. The time of 2 a.m. was chosen because 1) the model does not predict injuries to people outside of buildings accurately; and 2) that is a time when most people are still in their homes. The winter was chosen for the additional complications that would occur during that time of year. Although there would be aftershocks, the scenario did not capture those results. Specific findings of the impact of a sequential earthquake rupture similar to the 1811–1812 series of earthquake events to the eight-state region included:

- 80,000 injuries and 3,500 deaths.
- 4.5 million chronic illness cases in the total “at risk” population.
- More than 7 million people requiring some level of support, with 2 million seeking shelter by day three.
- 35 truckloads of essentials to support the 2 million people seeking shelter.
- Almost 3 million people without water: 1 million on day one, 2.7 million on day two.
- 1.1 million homes without water service, 2.6 million homes without electric power.
- 715,000 damaged buildings and 3,600 damaged bridges.
- Due to the aged electrical infrastructure, the electrical grid will require rebuilding with new parts.
- The impacted area has a high concentration of people living in poverty.
- The impacted area speaks a low to moderate level of English.

The modeling data was adjusted to fit the types of buildings found in the central United States. It provides a mapping system that assumes buildings of a certain type and square footage to be constructed of certain materials. The mapping was originally done for California, then was adjusted to be a national average and has since been slightly adjusted for the central United States. However, it should be noted that these adjustments are not perfect, but they help provide the best tool available for doing large-scale projections. Injuries and fatalities are based on structural and bridge damage only; i.e., they do not include secondary events, such as fires, or subsequent consequences, such injuries to first responders and complications from people living in shelters.

Mr. Patton asked Mr. Wilkinson if the national-level exercise CUSEC was planning for May 2011 would involve the public. Mr. Wilkinson stated that the assumption was that there would be some involvement with the public; however, the specifics are still being determined, with the results being mixed throughout the region. Mr. Patterson stated that in west Tennessee and Arkansas, there would be a lot of earthquake awareness and preparation. The focus will be in trying to get drills in schools and other public places.

Mr. Wilkinson stated that CUSEC would be kicking off the bicentennial celebration on February 2011. The celebration ends in February 2012, so there will be a year’s worth of activities. He invited the NAIC to hold a meeting in the central United States, possibly St. Louis, during that time-frame.

Dr. Jefferson stated that the Phase II report would be released in October. Mr. McAndrew requested that Dr. Jefferson or Mr. Wilkinson provide the NAIC with a link to the Phase II report when it becomes available.

Having no further business, the Earthquake (C) Study Group adjourned.

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Draft: 10/5/09

Consumer Guides (C) Working Group
Conference Calls
September 2 and August 26, 2009

The Consumer Guides (C) Working Group met via conference call Sept. 2 and Aug. 26, 2009. The following Working Group members participated: Alan Seeley, Chair (NM); Sarah McNair-Grove (AK); Clarissa Preston (LA); Tina Armstrong (MN); Angela Nelson (MO); and Lee Barclay (WA).

1. Consider Draft *Consumer's Guide to Homeowners Insurance*

The Working Group reviewed a July 24 draft of *A Consumer's Guide to Homeowners Insurance*, which was proposed by the Consumer Guides Drafting Subgroup. Mr. Seeley reminded the Working Group that the intent has been to update and improve the current NAIC version of the homeowners guide by starting anew. The Subgroup used information contained in the current guides of some states.

Various edits to the draft were discussed by the Working Group during the two conference calls. Members and interested parties were encouraged to submit additional comments. During the conference calls, the Working Group agreed to: 1) Delete the section called "Additional Coverages" that appears on Page 3; 2) Consider including a disclaimer that this document is only a general representation of a standard policy and the actual policy issued by insurance companies will be different; 3) Eliminate references to days, numbers or limits wherever possible, as policies differ among insurance companies; 4) Remove "power surge" as a peril in Table 1 on Page 5; 5) Change Table 2 reference of "Normal Limit of Coverage" to "Typical Limit of Coverage;" 6) Add a reference to the "Smart Shopping" section to check the financial strength of an insurance company; 7) Consider adding a reference to the Insurance Information Institute in the "Other Helpful Tips" on Page 13.

On Page 10 under "The characteristics of your home," a suggestion was made to change "Whether your home is made of brick or wood" to "Whether your home is made of masonry or brick or wood." The Working Group agreed with Brenda Cude (University of Georgia) and Karrol Kitt (University of Texas at Austin) to leave the reference to brick, as consumers are more apt to understand "brick," rather than "masonry or brick."

Mr. Seeley said the Subgroup would try to have another draft completed soon for the Working Group to consider.

Having no further business, the Consumer Guides (C) Working Group adjourned.

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A Bill

To authorize Participating Insurers to provide Enhanced Homeowners Insurance Policies that include coverage for flood losses; that provide for such insurers to purchase reinsurance for flood losses from the United States Department of the Treasury; and to provide for insurance to be sold in the national marketplace subject to regulation by the Treasury Department, in coordination with the States; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the “Enhanced Homeowners Insurance Act of 2009”.

(b) TABLE OF CONTENTS.—

Sec. 1. Short Title; Table of Contents.
Sec. 2. Findings and Purpose.
Sec. 3. Definitions.
Sec. 4. Treasury Department’s Enhanced Homeowners Insurance Policy Program.
Sec. 5. Enhanced Homeowners Insurance Policy Rates and Forms.
Sec. 6. Additional Flood Coverage in an Enhanced Homeowners Insurance Policy.
Sec. 7. Cancellation and Non-renewal of an Enhanced Homeowners Insurance Policy.
Sec. 8. Treasury Department Reinsurance Program for Flood Coverage in Enhanced Homeowners Insurance Policies.
Sec. 9. Coordination with Other Federal Agencies and the States.
Sec. 10. Personnel Matters, Agreements with Other Federal Agencies, and Contracting Authority.
Sec. 11. Authorization of Appropriations and Borrowing Authority.
Sec. 12. Regulations.
Sec. 13. Secretary’s Annual Report to the Congress.
Sec. 14. Advisory Committee.
Sec. 15. Administrative and Enforcement Actions by the Secretary; Federal Jurisdiction; Judicial Review.
Sec. 16. Effective Date and Program Implementation.

SECTION 2. FINDINGS AND PURPOSE.
(a) FINDINGS.—The Congress finds that:

(1) Homeowners often do not have the flood insurance they need. Their failure to have flood insurance causes large-scale, preventable financial loss from floods and from hurricane-driven flooding. This financial loss creates crises for individual families and communities, substantially burdens commerce, and gives rise to emergency Congressional appropriations to provide assistance for affected homeowners;

(2) Except in rare circumstances, homeowners insurance policies do not cover flood losses. Although homeowners may purchase a separate, stand-alone flood insurance policy from the National Flood Insurance Program (NFIP), established in 1968, most homeowners do not do so. If flood insurance were available to homeowners as part of one easy-to-purchase Enhanced Homeowners Insurance Policy, this would encourage many more homeowners to obtain it than currently do so through the separate policies;

(3) Flood coverage is not included in homeowners insurance policies because insurers cannot do so without either incurring great risk to their financial integrity or charging very expensive risk-based premiums that are significantly higher than the federally-supported NFIP premiums. If insurers were to charge risk-based premiums for flood insurance, those premiums would make flood insurance unaffordable for most homeowners living in flood-prone areas;

(4) The twin impediments of both the threat to insurer financial integrity and the price of risk-based premiums have essentially inhibited the development of a private homeowners insurance market for flood coverage;

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(5) The NFIP also presents unique and difficult problems of its own, especially the issues that arise from the need to split insurance coverage between one policy that only covers flood and another policy that covers most other losses;

(6) The hurricanes of recent years, especially Hurricane Katrina, have dramatically demonstrated the problems that can be caused by splitting flood coverage from general homeowners insurance coverage, with the resulting disputes and litigation between insurers and their customers over whether specific losses were caused by flooding or by hurricane winds, and the extent of the damage by each;

(7) The disputes and litigation between homeowners and insurers caused by "wind vs water" issues would be greatly diminished if homeowners insurance policies included flood coverage within them, so that neither homeowners nor their insurers would need to be concerned about separate policies or disputes about whether damage was caused by flooding or by hurricane wind, or by both;

(8) As important as it is to reduce disputes and litigation between homeowners and their insurers, the creation of an Enhanced Homeowners Insurance Policy that includes flood coverage will have other positive effects, as well, including an overall strengthening of the insurance marketplace, the stabilization of the broader economy after a major flood or hurricane, and a potentially dramatic reduction in the need for post-flooding federal assistance that is an avoidable burden on all taxpayers; and

(9) An Enhanced Homeowners Insurance Policy will only be provided by Insurers if there is an appropriate statutory, economic and financial structure for doing so, including—

(i) specific federal statutory authority to make the Enhanced Policy available on a national basis and at market rates;

(ii) voluntary participation by both Insurers and homeowners in the Program;

(iii) coverage of flood losses and related costs by federal reinsurance for the Enhanced Policy through the U.S. Department of the Treasury;

(iv) the pricing of the Enhanced Policy's flood coverage at exactly the same price as an NFIP stand-alone policy for the same risk;

(v) the opportunity for homeowners to obtain greater amounts of flood coverage within their Enhanced Policy, but outside the federal Reinsurance Program; and

(vi) federal regulation of the Program by the Treasury Department.

(b) PURPOSES.—The Purposes of this Act are to provide:

(1) homeowners with a viable option for purchasing a single Enhanced Homeowners Insurance Policy that includes flood coverage within it, by either including flood coverage within a homeowners insurance policy or use of an endorsement providing for flood coverage attached to a homeowners insurance policy;

(2) Insurers with a financially feasible way to provide flood coverage in the private marketplace, within a single Enhanced Homeowners Insurance Policy;

(3) homeowners, Insurers, and the public with the protection of full Treasury Department flood reinsurance for the Enhanced Homeowners Insurance Policy; and

(4) effective, uniform national regulation of the Enhanced Homeowners Insurance Policy and Reinsurance Program through the Treasury Department, in coordination with States that have entered into agreements with the Secretary.

SECTION 3. DEFINITIONS.

(1) AGENT.—The terms "Agent" and "Producer" mean any insurance producer licensed to sell homeowners insurance in a State.

(2) APPLICABLE FLOOD COVERAGE.—The term "Applicable Flood Coverage" means the flood coverage in an Enhanced Homeowners Insurance Policy that is identical to the coverage that a stand-alone NFIP policy would provide for

the same Eligible Property, and does not include any flood coverage afforded by an Enhanced Policy that exceeds the coverage that would be available for that Eligible Property in an NFIP policy.

(3) ATTORNEY GENERAL.—The term "Attorney General" means the Attorney General of the United States.

(4) DEPARTMENT.—The term "Department" means the United States Department of the Treasury.

(5) ELIGIBLE PROPERTY.—The term "Eligible Property" means residential property which is designed for the occupancy of one to four families.

(6) ENHANCED HOMEOWNERS INSURANCE POLICY.—The terms "Enhanced Homeowners Insurance Policy" and "Enhanced Policy" mean a homeowners insurance policy that includes flood coverage at least as broad as that available under the NFIP stand-alone policy for dwelling and contents, and which has been filed with the Secretary and reviewed as required under the Act. An Enhanced Homeowners Insurance Policy may include such flood coverage as an endorsement to a homeowners insurance policy that includes flood coverage at least as broad as that available under the NFIP stand-alone policy for dwelling and contents, and which has been filed with the Secretary and reviewed as required under the Act.

(7) ENHANCED HOMEOWNERS INSURANCE POLICY PROGRAM.—The terms "Enhanced Homeowners Insurance Policy Program" and "Program" mean the program established in the Treasury Department to carry out the Act.

(8) INSURER.—The term "Insurer" may include the affiliates and subsidiaries of an insurer, including the affiliates and subsidiaries of a Participating Insurer.

(9) NATIONAL FLOOD INSURANCE PROGRAM.—The terms "National Flood Insurance Program" and "NFIP" mean the federal flood insurance program for Eligible Properties established under the National Flood Insurance Act and include such insurance for both the dwelling and for contents.

(10) NATIONAL FLOOD INSURANCE STAND-ALONE POLICY.—The terms "National Flood Insurance Stand-Alone Policy" and "NFIP stand-alone policy" mean the flood insurance policy made available for Eligible Property under the National Flood Insurance Program, 42 U.S.C. §4001 et seq.

(11) PARTICIPATING INSURER.—The term "Participating Insurer" means a Qualified Insurer that has applied to the Secretary for participation in the Program and has been certified by the Secretary for such participation.

(12) PARTICIPATING STATE.—The term "Participating State" means a State that has entered into an agreement with the Secretary to participate in the Program, including application of the State's market conduct and consumer protection activities to Enhanced Homeowners Insurance Policies issued to policyholders in that State by Participating Insurers.

(13) PERSON.—The term "person" means any natural person, any insurer, any other corporation, and any other non-governmental entity.

(14) POLICYHOLDER.—The term "Policyholder" means the person who is the legal owner of an Enhanced Policy.

(15) QUALIFIED INSURER.—The term, "Qualified Insurer" means an insurer that is domiciled and licensed in at least one state, and is authorized to sell homeowners insurance in at least one state.

(16) REINSURANCE PROGRAM.—The term "Reinsurance Program" means the program established under the Act, administered and regulated by the Secretary, to fully reinsure Applicable Flood Coverage losses and Related Expenses, including adjustment costs, arising under Enhanced Policies, and which guarantees that the financial obligation of a Participating Insurer for such losses and Related Expenses does not exceed its Special Account obligations under the Act.

(17) REINSURANCE THRESHOLD.—The term "Reinsurance Threshold" means the trigger for Treasury Reinsurance payments to be initiated with regard to a Participating Insurer's Applicable Flood Coverage losses and Related Expenses. The Reinsurance Threshold shall be met when a Participating Insurer's Special Account has been reduced by 90 percent of the funds that were in the Special Account at the end of the prior calendar year. Prior to the completion of one full calendar year of a Special Account's operation, the threshold shall be met when the Account has been reduced by 90 percent of the funds

that had been deposited in it immediately prior to the Participating Insurer's initial request to the Secretary for reinsurance payments.

(18) RELATED EXPENSES.—The terms "Related Expenses" and "Related Expenditures" mean those sums expended by a Participating Insurer to adjust or settle claims for the Applicable Flood Coverage in an Enhanced Policy; payments to Agents consistent with those available under the NFIP; payments of premium taxes to Participating States; and other related expenditures set forth in the Act or determined by the Secretary.

(19) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(20) SPECIAL ACCOUNT.—The term "Special Account" means the segregated account that a Participating Insurer establishes on its books for the deposit of all premiums from the Applicable Flood Coverage in its Enhanced Policies and which shall not be considered as income to the Participating Insurer for any purpose, including for any federal or State tax.

(21) STATE.—The term "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Samoa, and the Marianas Islands.

(22) TREASURY PROGRAM.—The term "Treasury Program" means the program established under the Act to provide for Enhanced Homeowners Insurance Policies and the Reinsurance Program.

(23) UNIFORM ENHANCED HOMEOWNERS INSURANCE POLICY.—The terms "Uniform Enhanced Homeowners Insurance Policy" and "Uniform Enhanced Policy" mean an Enhanced Policy, or Policies, made available by a Participating Insurer in every State in which it makes those Enhanced Policies available, where those policies are substantially identical for all the States, except as otherwise required by the Act, or as necessary to coordinate coverage under a specific State program for identified coverages such as wind, hail, or earthquake, or as otherwise required or approved by the Secretary. A Participating Insurer may have two or more Uniform Enhanced Policies, in order to offer customers additional options for coverage and deductibles.

SECTION 4. ESTABLISHMENT AND OPERATION OF THE ENHANCED HOMEOWNERS INSURANCE POLICY PROGRAM.

(a) PROGRAM ESTABLISHMENT.—The Secretary shall establish the Enhanced Homeowners Insurance Policy Program in the Department.

(b) AUTHORITY.—The Program shall be carried out under the authority and direction of the Secretary, and shall include—

(1) the provision by Participating Insurers of Enhanced Homeowners Insurance Policies, either through such an Insurer's Uniform Enhanced Policy forms or through its separate Enhanced Policy forms tailored by it to one or more different States;
(2) the Reinsurance Program for Applicable Flood Insurance coverage in Enhanced Policies;
(3) the sole regulation by the Secretary of the Program and all matters arising under or related to the Act, including the regulation of the actions of Participating Insurers under the Act;
(4) the participation in the Program by States that are willing to do so, as provided in agreements with the Secretary; and
(5) the preemption of any State law or action inconsistent with the Act or its operation, and the authority of the Secretary to determine that any such law or action shall be preempted.

(c) DESIGNATION AS A QUALIFIED INSURER.—Pursuant to the request of an Insurer, the Secretary shall designate it as a Qualified Insurer for the Program if the Insurer is—

(1) domiciled and licensed in at least one State; and

(2) is authorized to sell homeowners insurance in at least one State.

(d) APPLICATION TO BECOME A PARTICIPATING INSURER.—A Qualified Insurer may apply to become a Participating Insurer by—

(1) seeking certification in such manner and in such form as directed by the Secretary;

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(2) listing the States where it will offer an Enhanced Policy and certifying that it is authorized under the law of each such State to provide homeowners insurance in it, or by describing the reasons that it is not so authorized;

(3) filing its Enhanced Policy form or forms with the Secretary, as required by section 5;

(4) satisfying the financial integrity standards established by the Secretary, pursuant to regulation under the Act;

(5) describing appropriate procedures for promptly responding to inquiries and complaints from customers and Policyholders with regard to its Enhanced Policies, including its procedures designed to achieve, where reasonable, the prompt resolution of complaints;

(6) describing appropriate procedures for satisfying the consumer protection standards of the States in which it will be providing its Enhanced Policies; and

(7) meeting any additional requirements that the Secretary may establish by regulation, consistent with the Act.

(e) CERTIFICATION AND SUPERVISION OF PARTICIPATING INSURERS.—The Secretary shall review, certify, and take necessary actions with regard to Participating Insurers, as follows—

(1) The Secretary shall promptly review every application filed under subsection (d) and shall certify an Insurer as a Participating Insurer, if the Secretary determines that the Insurer's filing under subsection (d) demonstrates that the Insurer meets the requirements of the Act, including the establishment of procedures designed to achieve, where reasonable, the prompt resolution of complaints, as set forth in section 4(d)(5).

(2) An Insurer certified by the Secretary as a Participating Insurer may provide its Enhanced Policy in any State where the Insurer is licensed and authorized to sell homeowners insurance, but a Participating Insurer shall not be required to provide its Enhanced Policies in any specific State or provide it on a basis that is not consistent with financially prudent underwriting. The Secretary may further certify a Qualified or Participating Insurer to provide the Enhanced Policy in a State where it is not licensed and authorized to provide homeowners insurance if the Secretary determines, upon application by the State, that such certification would substantially further the purposes of the Act to provide the Enhanced Policy nationally, and if the State has entered into an agreement with the Secretary under sections 4(b) and 9(h) that will protect the interests of consumers and Enhanced Policy Policyholders in that State.

(3) A Participating Insurer shall file with the Secretary an amended certification when the circumstances under its certification have materially changed or when the Insurer seeks a change to its certification. The Secretary shall promptly review any such filings and inform the Insurer of the Secretary's approval or disapproval, and the reasons for it.

(4) A Participating Insurer may terminate its participation in the Program after the approval of the Secretary, which assures that the termination is carried out in a manner and over a period of time that is consistent with protecting the interests of Policyholders and the Program, and that requires the withdrawing Participating Insurer to—

(i) send written notice to all affected Policyholders;

(ii) provide all affected Policyholders with a list, as determined by the Secretary, of other Participating Insurers offering Enhanced Policies in the affected Policyholder's State;

(iii) continue to fully service all of its current Enhanced Policies; and

(iv) return to the Secretary, at a time designated by the Secretary, all funds remaining in its Special Account after paying covered losses and Related Expenses for its current Policyholders.

(5) The Secretary may determine, at any time, that a Participating Insurer no longer meets the requirements for certification and may suspend or terminate, in whole or in part, an Insurer's designation as a Participating Insurer. Prior to such a determination, the Secretary shall provide the Participating Insurer with reasonable notice and an opportunity to cure its deficiencies, provided that the Secretary has not further determined that an immediate

suspension or termination of the certification is required. In any action under this paragraph the Secretary shall provide the Participating Insurer with a written explanatory statement.

(6) When the Secretary suspends or terminates an Insurer's designation as a Participating Insurer, that Insurer shall, pursuant to the Secretary's discretion, continue to fully service its current Enhanced Policies, but shall cease writing new Enhanced Policies and will return to the Secretary, at a time and in a manner designated by the Secretary, all funds remaining in its Special Account after paying covered losses and Related Expenses for its current Policyholders. The Secretary may take such additional action as the Secretary deems appropriate to protect the Program and Policyholders, including requiring a Participating Insurer that has been suspended or terminated from the Program to—

(i) send written notice to all affected Policyholders; and

(ii) provide all affected policyholders with a list provided by the Secretary of other Participating Insurers offering Enhanced Policies in the affected Policyholder's State.

(f) ENHANCED POLICY STATE COVERAGE INCLUSIONS.—A Participating Insurer shall make available to its policyholders in every State the same coverage that would apply to a homeowners insurance policy subject to regulation by that State for wind losses or hail losses, and for earthquake coverage, including participation in a State wind pool, and for any other specified type of coverage for other similar risks, as determined by the Secretary through regulation.

(g) STATE RESIDUAL MARKET AND GUARANTY FUND PARTICIPATION.—A Participating Insurer shall be a member of a State guaranty fund and participate in State residual markets for purposes of its Enhanced Policies on Eligible Properties in that State to the same extent as if the policies were provided under State law. Enhanced Policy premiums in that State may be included in assessment bases and subject to recoupment to the same extent as if the policies were provided under State law, provided, however, that the premiums for Applicable Flood Coverage shall not be so included.

(h) ANNUAL AND SPECIAL REPORTS.—A Participating Insurer shall file annual and special reports with the Secretary, as follows—

(1) A Participating Insurer shall file with the Secretary an annual report providing such information to the Secretary as the Secretary deems necessary to assess the Participating Insurer's operations under the Act and the Insurer's certification.

(2) The Secretary may require any additional reports or information from a Participating Insurer with regard to its operations under the Act as the Secretary deems necessary to carry out the Act.

(3) For the purpose of assuring the integrity of operations under the Act, the Secretary may audit a Participating Insurer, have access to and examine any relevant books, documents, papers, records, claims files, and personnel. A Participating Insurer that does not fully cooperate with the Secretary under this section may be subject to immediate termination under subsection (e)(5) of this section.

(i) APPLICABLE FLOOD COVERAGE AND THE NATIONAL FLOOD INSURANCE ACT.—The purchase of an Enhanced Policy, with Applicable Flood Coverage, shall satisfy any requirement under the National Flood Insurance Act for the purchase of equivalent coverage under that Act, including the requirement for the purchase, under 42 U.S.C § 4012a, of such coverage when the Eligible Property has a mortgage.

(j) HOMEOWNERS POLICIES UNDER STATE LAW.—Nothing in this Act shall be read to preclude a Participating Insurer from continuing to provide homeowners insurance policies under State law.

SECTION 5. ENHANCED HOMEOWNERS INSURANCE POLICY RATES AND FORMS.

(a) ESTABLISHMENT AND USE OF RATES AND PREMIUMS.—

(1) A Participating Insurer shall charge exactly the same premium for the Applicable Flood Coverage in an Enhanced Policy as the customer would pay for an NFIP stand-alone policy for the same Eligible Property.

(2) When a Participating Insurer provides flood coverage in an Enhanced Policy that is greater than the Applicable Flood Coverage for the same Eligible Property, the rates and premiums for the additional coverage shall be established as provided in paragraph (3).

(3) Except as provided in paragraph (1), the rates and premiums for an Enhanced Policy shall be established in the marketplace and shall not be subject to rate regulation.

(4) A Participating Insurer that is a member of a State authorized and regulated advisory organization may participate in the activities of that organization with regard to all rating matters pertaining to the development and use of an Enhanced Policy, including any homeowners insurance policy that has previously been approved for use under a State law and is being modified to include flood coverage either within the policy or through an endorsement to the policy. Such participation, and the information derived from such participation, shall be subject to regulations promulgated by the Secretary but shall not be subject to any other law.

(b) USE AND FILING OF FORMS.—

(1) A Participating Insurer shall file every Enhanced Policy form with the Secretary.

(2) A Participating Insurer may file a Uniform Policy or Policies with the Secretary, or may file separate policies designed to be used for Enhanced Policies in a specific State or group of States.

(3) When an Enhanced Policy form filed by a Participating Insurer is a homeowners insurance policy form previously approved and available to the Insurer in a State, but solely modified to conform with the Act and to include Applicable Flood Coverage, the Participating Insurer may use that Enhanced Policy form in that State immediately upon filing the form and an explanatory statement with the Secretary.

(4) When an Enhanced Policy form filed with the Secretary by a Participating Insurer does not meet the requirements of paragraph (3)—

(A) the form shall be filed with the Secretary, accompanied by an explanatory statement and shall be subject to the Secretary's approval; and

(B) the Secretary shall approve such form if the Secretary determines that the form is consistent with the applicable requirements of the Act and, in addition—

(i) is similar to a generally available homeowners insurance policy in any State; or

(ii) the differences between the filed policy and a generally available homeowners insurance policy in any State will provide an additional deductible option or coverage option for homeowners; or

(iii) the filed policy meets the requirements of (i) or (ii) and, in addition, will make it possible for the Participating Insurer to provide the same Enhanced Policy form in more than one State or as a Uniform Policy in all the States where the participating insurer will provide the Enhanced Policy; and

(iv) clearly describes the coverage provided under the policy.

(C) A policy filed pursuant to this paragraph (4) shall be deemed approved if the Secretary does not disapprove it within 60 days after filing, or within an additional 30 days if the Secretary determines, in writing and so notifies the Qualifying or Participating Insurer, that the additional 30 day period is necessary to make an appropriate decision.

(5) The Applicable Flood Coverage may be included in a Participating Insurer's Enhanced Policy through the language of the policy or by an endorsement to the policy, which is materially the same as the NFIP stand-alone policy or materially incorporates the coverage of such policy.

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(6) A Participating Insurer that is a member of a state authorized and regulated advisory organization may participate in the activities of that organization with regard to all matters pertaining to the development and use of an Enhanced Policy form. Such participation shall be subject to implementing regulations by the Secretary, but shall not be subject to any other law.

(7) The premium for the Applicable Flood Coverage shall be clearly Stated for the Policyholder of the Enhanced Homeowners policy, as directed by the Secretary's regulations.

(8) Every Enhanced Policy form shall contain a notice on the front stating that "This Policy is an Enhanced Homeowners Insurance Policy established pursuant to federal law and in cooperation with Participating States. It is subject to regulation and oversight by the United States Department of the Treasury."

(c) STATE REGULATED ADVISORY ORGANIZATIONS.—A State regulated and authorized advisory organization may undertake, on behalf of its members, all activities required of a Participating Insurer in this section and file with the Secretary all forms and related materials that are otherwise required of a Participating Insurer.

(d) USE OF MULTIPLE ENHANCED POLICY FORMS.—Nothing in this section shall be read as prohibiting a Participating Insurer from filing and using multiple Enhanced Policy forms, with different options, coverages, and deductibles, provided that each form includes Applicable Flood Coverage and, as set forth in section 6, flood coverage where NFIP coverage is not mandated or available.

(e) PRESUMPTION OF COMPLIANCE.—For all purposes under the Act pertaining to a Participating Insurer's adherence to the Act, including for reimbursement under section 8, it shall be conclusively presumed (i) that the Insurer properly provided the Enhanced Policy to the Policyholder; (ii) that the Policyholder's property was eligible for an Enhanced Policy and for the Applicable Flood Coverage under the Act; and (iii) that the premium charged for the Applicable Flood Coverage was appropriate; provided, however, that the Participating Insurer did not act with gross negligence with regard to the provisions of the Act as determined by the Secretary after providing the Participating Insurer with an opportunity for a hearing.

SECTION 6. ADDITIONAL FLOOD COVERAGE IN AN ENHANCED HOMEOWNERS INSURANCE POLICY.

(a) FLOOD COVERAGE IN AN ENHANCED POLICY WHEN NFIP INSURANCE IS NOT MANDATED OR AVAILABLE.—A Participating Insurer shall provide flood coverage as part of its Enhanced Policy, even if that coverage is not mandated or available for that Eligible Property under the NFIP program. Such coverages shall be in amounts approximating coverage if NFIP standalone coverage was available.

(b) ADDITIONAL ENHANCED POLICY FLOOD COVERAGE.—A Participating Insurer may provide flood coverage as a part of its Enhanced Policy that is in addition to the maximum amount of coverage that is available for that Eligible Property under the NFIP program.

(c) PRICING AND REINSURANCE OF MANDATORY OR ADDITIONAL ENHANCED POLICY FLOOD COVERAGE.—When a Participating Insurer provides flood coverage pursuant to subsection (a) or (b), the coverage shall not be included in the Treasury Reinsurance Program and shall be priced by the Insurer in the marketplace.

SECTION 7. CANCELLATION AND NON-RENEWAL OF ENHANCED POLICIES.

(a) CANCELLATION.—The cancellation requirements applicable to an Enhanced Policy shall be the same as those applicable to a homeowners policy subject to State regulations in the State where the risk is located.

(b) NON-RENEWAL.— The non-renewal requirements applicable to an Enhanced Policy shall be the same as those applicable to a homeowners policy subject to State regulations in the State where the risk is located.

SECTION 8. TREASURY REINSURANCE PROGRAM.

(a) IN GENERAL.—

(1) A Reinsurance Program is hereby established in the Department to provide reinsurance for Applicable Flood Coverage losses under the Enhanced Policies of Participating Insurers.

(2) The Reinsurance Program shall be carried out under the authority of the Secretary and pursuant to the Secretary's direction and control.

(3) The reinsurance provided under the Reinsurance Program shall—

(A) cover all Applicable Flood Coverage losses and Related Expenses in excess of the Reinsurance Threshold in a Participating Insurer's Special Account;

(B) protect Participating Insurers from making any payments for Applicable Flood Coverage losses and Related Expenses in excess of the Reinsurance Threshold of their Special Accounts; and

(C) promptly reimburse Participating Insurers for any payments made by them for Applicable Flood Coverage losses and Related Expenses in excess of the Reinsurance Threshold of their Special Accounts;

(b) REINSURANCE PROGRAM STRUCTURE.—

(1) A Participating Insurer shall be required to purchase reinsurance from the Reinsurance Program.

(2) The reinsurance purchased by a Participating Insurer from the Reinsurance Program shall cover all the losses and Related Expenses of the Applicable Flood Coverage provided by a Participating Insurer through its Enhanced Policies when its Reinsurance Threshold has been met.

(c) PARTICIPATING INSURER SPECIAL ACCOUNT.—

(1) Each Participating Insurer shall establish a Special Account where it shall promptly deposit that portion of the premium from each Enhanced Policy that relates to the Applicable Flood Coverage in that policy.

(2) A Participating Insurer's Special Account shall be subject to the requirements established by the Secretary under the Act to assure the financial integrity of such accounts, including:

(A) The amounts that a Participating Insurer deposits in its Special Account may only be used to pay premium to the Secretary for the Reinsurance Program, Applicable Flood Coverage losses and Related Expenses arising under its Enhanced Policies, including—

(i) expense reimbursements covering the direct, actual, and necessary expenses incurred in connection with selling and servicing Enhanced Policies;

(ii) reasonable compensation payable for selling and servicing Enhanced Policies, or commissions or service fees paid to producers;

(iii) loss adjustment expenses;

(iv) premium taxes; and

(v) other direct, actual, and necessary expenses which the Secretary finds are incurred in connection with selling or servicing Enhanced Policies;

(B) The amounts deposited by a Participating Insurer in its Special Account shall be invested solely in United States Government marketable securities, as directed by the Secretary;

(C) If an Insurer ceases being a Participating Insurer under the Act, the funds in its Special Account shall be paid to the Treasury at such time and in such manner as directed by the Secretary, except for those funds the Secretary reasonably determines are necessary to pay Applicable Flood Claims, including incurred but not reported losses, and Related Expenses of the Participating Insurer;

(D) The amounts deposited by a Participating Insurer under paragraph (A), and the amounts earned on such deposits under paragraph (B), shall not be considered or treated as income to the Participating Insurer for any purpose under federal, State, or municipal law and may not be subject to any federal, State, or municipal tax based on income. Any State law to the contrary is preempted.

(E) A Participating Insurer shall provide quarterly reports to the Secretary on the financial condition of its Special Account, including all deposits and expenditures, and shall have an annual independent audit of the Special Account performed to the specifications established by the Secretary.

(F) A Participating Insurer shall immediately notify the Secretary when it reasonably believes that the amount of funds in its Special Account have been or are likely to be reduced by 50 percent of the funds in it at the end of the prior calendar year, and the reasons therefore. It shall make a similar report when its Special Account is likely to be reduced by 75 percent of the amount in it at the end of the prior calendar year. As part of the "75 percent Report", the Participating Insurer shall notify the Secretary of the likelihood that the Reinsurance Threshold will be reached, the approximate date of that occurrence, and the approximate amount of reinsurance payments that will be necessary to make certain that the Special Fund retains the minimum level of funds required by the Act and that claims and Related Expenses can be paid without interruption. For a Special Account that has been in existence for less than one calendar year, the Secretary shall establish, through guidelines, appropriate notification procedures.

(3) All funds in a Participating Insurer's Special Account shall be subject to regulation by the Secretary and shall not be available for contribution or assessments by a State guaranty fund.

(d) REINSURANCE PROGRAM PREMIUM.—

(1) The Secretary shall establish the premium for the Reinsurance Program as a uniform percentage of the interest earned on the amounts in Participating Insurer Special Accounts.

(2) In determining the premium under paragraph (1), the Secretary shall take into account the goal of the Act to maximize Participating Insurer Special Account funds and to, thereby, reduce the need for Treasury reinsurance payments.

(3) The maximum premium under paragraph (1) shall be 5% of the interest earned in the prior calendar year in a Participating Insurer's Special Account.

(4) A Participating Insurer's first reinsurance premium shall be based on the amount of interest earned in its Special Account at the end of its first full calendar year as a Participating Insurer.

(5) The Secretary shall deposit all reinsurance premiums received from Participating Insurers in the Treasury general fund.

(e) CLAIMS PAYMENT RESPONSIBILITIES.—

(1) A Participating Insurer shall be responsible for processing all flood loss claims and making all flood loss payments and related costs from its Special Account until that account has been reduced by 90% of the total amount in it at the end of the prior calendar year or as otherwise provided under the Act for circumstances where a Special Account had not been in effect for a calendar year.

(2) The Reinsurance Program shall be responsible for covering all of a Participating Insurer's Applicable Flood Coverage losses and Related Expenses in excess of the amount in paragraph (1). The Secretary shall make such payments from the Treasury general fund without regard to the amount of reinsurance premiums that have been paid into the Program.

(3) In order to assure the effective and continuous operation of the Reinsurance Program, the Secretary shall make advance payments to a Participating Insurer when the Participating Insurer certifies to the Secretary that it believes there is a reasonable likelihood that its Special Account will be reduced by the amount in paragraph (1) due to current and likely flood claims from events that have already occurred or are reasonably anticipated to occur

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imminently. Upon receipt of the Participating Insurer's certification, the Secretary shall promptly advance such funds to the Participating Insurer's Special Account as are necessary to fulfill the Secretary's obligations under this paragraph.

(4) A disagreement between the Secretary and a Participating Insurer about whether a claims payment or Related Expense is properly treated as an Applicable Flood Coverage claim payment or Related Expense under an Enhanced Policy, or about a disagreement over the amount of such expenditure, shall be resolved through negotiation or mediation between the parties. If the parties cannot resolve the disagreement within 180 days of either party notifying the other, in writing, that such a disagreement exists, the disagreement shall be finally resolved through an arbitration process, established through regulation, that uses nationally recognized arbitrators, arbitration associations or organizations, as determined by the Secretary. Except as provided in paragraph (5), the arbitration decision shall constitute final agency action under the Administrative Procedure Act, section 704 of chapter 7 of title 5, for purposes of judicial review.

(5) If a Participating Insurer's solvency is threatened as a result of a disagreement arising under Paragraph (4), the Participating Insurer may appeal the to Secretary for a review of the determination. The Secretary's review shall constitute final agency action under the Administrative Procedure Act, section 704 of chapter 7 of title 5, for purposes of judicial review.

(6) If a disagreement arising under Paragraph (4) relates to a difference between the Secretary and another reinsurer on the proper categorization of losses or Related Expenses under an Enhanced Policy or the reasonableness of the amount of such expenditure, the other reinsurer shall participate in the resolution process under Paragraph (4), including the arbitration process, unless that reinsurer informs the Secretary and the Participating Insurer of its decision not to participate.

(7) If it is determined under this section that a Participating Insurer made inappropriate expenditures from its Special Account or from an Advance Payment by the Secretary, the Participating Insurer shall make full reimbursement as directed by the Secretary.

SECTION 9. COORDINATION WITH OTHER FEDERAL AGENCIES AND THE STATES.

(a) COORDINATION WITH THE NFIP.—The Secretary shall coordinate the implementation and operation of the Act with the NFIP and any other federal agency, as necessary and appropriate, and may utilize such expertise and services on a reimbursable basis from the NFIP and other federal agencies as will further the goals of the Act.

(b) COORDINATION WITH THE STATES.—The Secretary shall coordinate with the States to the maximum extent feasible, consistent with the Act, in order to promote the efficient operation of the Act and the protection of Enhanced Policy Customers and Policyholders.

(c) NONDISCRIMINATION FOR PARTICIPATION IN ACT.—A State shall not discriminate against a Participating Insurer or any of its affiliates based on its participation in the Act and its provision of Enhanced Policies in its State.

(d) ENHANCED POLICY PARTICIPATION IN STATE GUARANTY FUNDS.—A State shall include Participating Insurers in its guaranty fund on the same basis as if the Enhanced Policies were being provided under State law, except that the Applicable Flood Coverage shall not be so included.

(e) ENHANCED POLICY PARTICIPATION IN STATE POOLING MECHANISMS.—A State that has a pooling or similar mechanism, or reinsurance program, for specified types of homeowners insurance losses, including, but not limited to wind or hail losses, shall include Enhanced Policies on the same basis as if the policies were being provided under State law.

(f) ENHANCED POLICY PARTICIPATION IN STATE EARTHQUAKE PROGRAMS.—A State that has an earthquake coverage program shall include Participating Insurers on the same basis as if the Enhanced Policies were being provided under State law.

(g) COMPLIANCE WITH STATE CREDIT USE REGULATIONS.—A Participating Insurer shall adhere to the same law in a State pertaining to the use of credit history in the underwriting and pricing of its Enhanced Policies as is otherwise applicable to homeowners insurance policies subject to the jurisdiction of the State.

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(h) PARTICIPATING INSURER COMPLIANCE WITH STATE MARKET CONDUCT AND CONSUMER PROTECTION ACTIVITIES.—A State may enter into a coordination agreement with the Secretary pursuant to which the State includes a Participating Insurer's Enhanced Policies in its market conduct and consumer protection activities, as if the Enhanced Policies were homeowners policies provided under State law. Such an agreement shall also include the handling of consumer complaints as provided under State law, consistent with the prompt resolution provisions of section (4)(d) of the Act. The Secretary shall enter into such an agreement when the Secretary determines that the purposes of the Act would be furthered by doing so.

(i) PARTICIPATING INSURER PAYMENT OF PREMIUM AND RELATED TAXES AND FEES ON ENHANCED POLICIES.—A Participating Insurer shall collect and pay premium tax and related taxes and fees to a State on its Enhanced Policies, as if the policies had been sold pursuant to State law, provided that the State is carrying out an agreement with the Secretary under subsection (h) and is otherwise in compliance with this section.

(j) SECRETARY'S AUTHORITY IN THE ABSENCE OF STATE COOPERATION.—

(1) If a State does not adhere to the requirements of this section and also has an agreement with the Secretary under subsection (h), the Secretary shall direct Participating Insurers to cease paying premium and related taxes and fees under subsection (i) to that State. The Secretary shall direct Participating Insurers in that State to collect an equivalent amount for each Enhanced Policy and deposit that amount with the Secretary, pursuant to the Secretary's regulations, to defray, in whole or in part, the costs of the Secretary carrying out the activities under this section that would have otherwise been the responsibility of the State. Participating Insurers acting in compliance with the regulations and directions of the Secretary under this subparagraph shall have immunity from State action for nonpayment of premium and related taxes and fees as specified in Section 15 Paragraph (c) of the Act.

(2) If a State refuses to permit a Participating Insurer to participate on an equal basis in any pooling or similar arrangement for wind, hail or other similar risk, as determined by the Secretary, the Secretary shall provide the same coverage and claims payment obligations through the Reinsurance Program under section 8 and shall direct the Participating Insurer to provide Policyholders with the same coverage, at the same premium, as would have applied if the coverage had been provided under the State mechanism. Such premium shall be deposited into the Participating Insurer's Special Account and shall be treated in all respects in the same manner as if the premium had been obtained for Applicable Flood Coverage, including the payment of claims and reinsurance premium to the Secretary.

(k) PREEMPTION.—Any State law, regulation or action contrary to or inconsistent with the Act, shall be preempted and may not be enforced; provided, however, that nothing in the Act shall be read as preempting:

(1) the authority of a State to regulate any homeowners insurance policy, other than an Enhanced Policy, otherwise subject to State regulation, and Insurer actions related to such policies; or

(2) any otherwise applicable State contract or tort law pertaining to any matter arising under an Enhanced Policy, provided that in an action against a Participating Insurer by a customer or policyholder in any State or federal court, the complaint shall plead with specificity that the customer or policyholder properly invoked and fully utilized the Insurer's prompt resolution procedures, under section 4(d)(5) of the Act, prior to initiating the lawsuit, and that those procedures failed to resolve the complaint. A complaint that fails to make or support such a pleading shall be dismissed, without prejudice, and may be reinstituted if section 4(d)(5) is subsequently invoked and fully utilized, but does not resolve the complaint. A State court's requirement to dismiss and a federal court's subsequent obligation shall be the same as provided under section 15(c) of the Act.

SECTION 10. PERSONNEL MATTERS; AGREEMENTS WITH OTHER FEDERAL AGENCIES; AND CONTRACTING AUTHORITY.

(a) PERSONNEL MATTERS.—The Secretary may employ such personnel as necessary to carry out the Act, including, but not limited to, accountants, actuaries, analysts, examiners, statisticians and lawyers.

(b) COMPENSATION OF EMPLOYEES.—The Secretary shall fix the compensation and number of employees without regard to chapter 51 or subchapter II of title 53 of title 5, United States Code.

(c) AGREEMENTS WITH OTHER FEDERAL AGENCIES AND PROGRAMS.—The Secretary may enter into agreements with other federal agencies and programs, including, but not limited to the Federal Emergency Management Administration and NFIP, to assist in the implementation, operation and coordination of the Act with other federal programs, and to obtain expertise and assistance in the implementation and operation of the Act. Such agreements may include the use of personnel and services on a reimbursable basis., as provided in section 9(a).

(d) AGREEMENTS WITH OUTSIDE ENTITIES TO FACILITATE ADMINISTRATION OF PROGRAM.—The Secretary may obtain through contract or agreement such assistance and expertise, as the Secretary deems necessary, from persons and States, in order to carry out the provisions of the Act. The Secretary may enter into an agreement or contract with a State to provide, on behalf of the Secretary, the consumer protection, complaint handling and market conduct oversight for Enhanced Policies in another State that has not entered into an agreement to carry out these activities under section 4(e).

(e) ASSISTANCE AND EXPERTISE.—The assistance and expertise under this section shall include, but not be limited to, the assistance and expertise necessary to determine the granting of certification to Participating Insurers, and to determine the adherence of States to the coordination and preemption provisions of the Act;

(f) EXEMPTION FROM FEDERAL PROCUREMENT LAWS.—The Secretary may enter into a contract under this section without regard to the requirements of the Federal Acquisition Regulations. However, the Secretary shall make every reasonable effort to use principles of competitive bidding consistent with the timely implementation and operation of the Program. In no case may the Secretary waive any provision of the Federal Acquisition Regulations pertaining to women, minority or small business contracting.

(g) PROGRAM ADMINISTRATIVE EXPENSES.—The Secretary may pay for administrative expenses, including personnel and contracting costs, from reinsurance premiums paid into the Treasury general fund.

SECTION 11. ANNUAL APPROPRIATIONS; BORROWING AUTHORITY; REINSURANCE AND RELATED PAYMENTS FROM THE DEPARTMENT OF THE TREASURY.

(a) ANNUAL APPROPRIATIONS.—In addition to such sums as may be available from the reinsurance premiums paid by Participating Insurers under the Reinsurance Program, there is authorized to be appropriated to the Secretary annually such sums as may be necessary to compensate personnel and administer this Act, including those sums necessary for obtaining assistance and expertise under sections 8(c) and 9.

(b) BORROWING AUTHORITY.—The Secretary may borrow from the general fund of the United States such amounts as may be necessary to administer this Act, including such funds as may be necessary to administer the Act during the first 36 months after the Act's enactment. All funds borrowed shall be repaid from sums available, including reinsurance premiums, under subsection (a) in a manner and over a period of time consistent with the effective administration of the Act and the maximum feasible growth of Participating Insurer Special Accounts.

(c) REINSURANCE CLAIMS AND RELATED PAYMENTS.—Reinsurance claims payments, Related Expenses, reimbursements and other payments to Participating Insurers shall be made by the Secretary from the Treasury and shall not be subject to appropriations by the Congress.

SECTION 12. REGULATIONS.

(a) RULES AND REGULATIONS.—The Secretary shall issue such rules and regulations, pursuant to the Administrative Procedure Act, as the Secretary determines necessary and appropriate to carry out the Act and to assure its effective operation.

(b) SCHEDULE OF REGULATIONS.—The Secretary shall issue interim final regulations within 180 days of enactment. The Secretary shall issue final regulations within eighteen months of enactment.

(c) GUIDELINES.—The Secretary may issue guidelines for the purpose of carrying out the Act prior to the issuance of interim final regulations and as otherwise necessary.

SECTION 13. SECRETARY'S ANNUAL REPORT TO CONGRESS.

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(a) COMMUNICATIONS WITH CONGRESS.—The Secretary shall provide a report annually, and no later than June 30th, to the Financial Services Committee of the House of Representatives and the Senate Banking Committee describing the implementation, operation and financial condition of the Program during the prior calendar year.

(b) ANNUAL REPORT.—The report shall include (i) a listing of all Participating Insurers and a summary of their activities under the Act, including the number and location of Enhanced Policies they each provided during the year and the funding status of their Special Accounts; (ii) the name of any Insurer whose application to participate in the Program had been approved or denied during the prior year, and the reasons for each decision; (iii) the amount of reinsurance that had been paid during the year, the amount paid to each Participating Insurer, and the amount of reinsurance premiums collected; (iv) the status of the administration of the Program, the funding of the Program, and any amounts that had been borrowed or repaid during the year; (v) the status of coordination efforts with the States; (vi) any recommendations for legislation to improve the operation of the Program; and (vii) any additional matters that the Secretary believes would be useful to fully describe activities and issues arising under the Act during the year.

SECTION 14. ADVISORY COMMITTEE.

(a) ESTABLISHMENT OF ADVISORY COMMITTEE.—The Secretary shall establish an Advisory Committee, pursuant to the procedures of the Advisory Committee Act, 5 U.S.C. § 1 *et seq.* to provide the Secretary with analysis of the implementation of the Act, as well as with advice and recommendations about improvements to operations under the Act and potential amendments to it.

(b) ADVISORY COMMITTEE.—The Advisory Committee shall have such members as the Secretary deems appropriate, but not in excess of 13, to serve for such terms as the Secretary shall determine at the time of the appointment or reappointment of each member, but in no case shall a single term exceed a period of 4 years. The Secretary shall select a chair person for the Committee, who shall serve at the Secretary's pleasure.

(c) APPOINTMENT.—The members of the Advisory Committee shall be appointed without regard to the provisions of title 5 of the United States Code governing appointments to the competitive service, but shall represent a cross section of those groups having an important interest in the successful implementation of the Act, including, but not limited to: Participating Insurers; regulators from States with coordination agreements under the Act with the Secretary; experts in the economics of homeowners insurance and reinsurance; experts in flood prevention; experts in the adjustment of flood losses; Enhanced Policy Policyholders who reside in various parts of the country that are particularly at risk of severe flooding; Agents; and the general public.

(d) COMPENSATION.—While attending meetings or conferences at the request of the Secretary, Advisory Committee members shall be compensated at a rate fixed by the Secretary not to exceed the daily equivalent of the maximum salary under the General Schedule for a GS-15 employee of the federal government. Calculation of compensation shall include travel time. Travel expenses shall be reimbursed, as approved by the Secretary, and a per diem payment shall be made as authorized by section 5703 of title 5 of the United States Code for persons employed intermittently by the federal government.

(e) TERMINATION.—The Secretary may terminate a member of the Advisory Committee for cause, including—

(1) continuous failure to participate in Advisory Committee work; or

(2) misconduct.

SECTION 15. ADMINISTRATIVE AND ENFORCEMENT ACTIONS BY THE SECRETARY; FEDERAL JURISDICTION; JUDICIAL REVIEW.

(a) FINAL AGENCY ACTION.—A decision by the Secretary under the Act, including the promulgation of a final regulation, shall be considered final agency action under the Administrative Procedure Act, chapter 7 of title 5, United States Code 5 U.S.C. § 704 and, except as specifically stated to the contrary in the Act, may be appealed as follows:

(1) A Person or State adversely affected by a decision of the Secretary under the Act may appeal that decision, as provided in paragraph (2).

(2) The Secretary shall establish informal procedures for administrative reviews under this subsection. The administrative review procedures established under this subsection shall provide, at a minimum, for the right of a Person or State to fully set forth its position and to receive a prompt, written decision by the Secretary stating the Secretary's determination and the reasons for it.

(3) The Secretary's decision on an appeal under paragraph (2) shall be a final agency action and may be further appealed to the United States Court of Appeals for the District of Columbia, within 60 days of the decision.

(A) The Secretary's decision may only be reversed if the court determines that the decision was arbitrary and capricious, or not reasonably authorized under the Act.

(B) No court may stay the Secretary's determination pending an appeal to the United States Court of Appeals for the District of Columbia.

(b) INJUNCTIVE AND OTHER RELIEF.—When the Secretary determines it necessary to protect the interests of the United States under the Act, the Secretary may obtain an injunction and other relief in any United States District Court in which venue and jurisdiction are proper. Such circumstances shall include, but not be limited to, enforcing the preemption provisions of the Act and obtaining relief against a Participating Insurer when the suspension or termination of the Insurer under section 4(e) is insufficient to protect those interests.

(c) ADHERENCE TO THE ACT.—A Participating Insurer shall not be liable in any federal or State court for its adherence to the Act or to a decision by the Secretary under the Act. Any action filed in any such court shall, upon motion, be promptly dismissed, with prejudice. In the event of the failure or refusal of any State court to promptly dismiss such an action, that action shall be subject to removal to any United States District Court in which venue and jurisdiction are proper, which shall assume jurisdiction of the matter as pertaining to a federal question pursuant to 28 U.S.C. § 1441(b) without regard to the amount, if any, in controversy, and shall promptly dismiss the action, with prejudice.

(d) REMEDIAL ACTION.—Any complaint against a Participating Insurer alleging the failure of that Insurer to adhere to the requirements of the Act shall be solely made to the Secretary, who shall investigate the complaint, decide it and direct remedial action by the Participating Insurer, if required. The actions of the Secretary under this subsection, and any appeal of those actions, shall be governed by the provisions of subsection (a).

(e) ACTIONS AGAINST A PARTICIPATING INSURER.—

(1) An action brought against a Participating Insurer that arises, in whole or in part, in relation to the Applicable Flood Coverage provisions in the Participating Insurer's Enhanced Policy shall be brought solely in any United States District Court in which venue and jurisdiction are proper. Any action brought in any other court, including a State court, shall be promptly dismissed, without prejudice to filing in the appropriate District Court. Any damages, costs or attorneys fees reasonably incurred by a Participating Insurer pertaining or related to Applicable Flood Coverage shall be reimbursed by the Secretary.

(2) In any action brought pursuant to paragraph (1):

(A) the Secretary shall be joined as a defendant for that part of the litigation that pertains to the Applicable Flood Coverage of the Enhanced Policy; and

(B) the Secretary shall reimburse the Participating Insurer for any damages, costs and attorneys fees reasonably incurred arising out of that part of the litigation that pertains to or is related to the Applicable Flood Coverage of the Enhanced Policy, unless the Secretary determines that the Participating Insurer's actions at issue in that part of the litigation had been taken without a reasonable belief that they were in compliance with the Act.

(f) EXEMPTION FROM ANTI-INJUNCTION ACT.—An action brought by the Secretary under this section shall not be subject to any limitation under the Anti-Injunction Act, 28 U.S.C. § 2283.

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(g) REFERRAL TO THE ATTORNEY GENERAL OF THE UNITED STATES.—The Secretary shall refer to the Attorney General any action which the Secretary believes may have violated the criminal laws of the United States or may have constituted fraud against the Program.

SECTION 16. EFFECTIVE DATE AND PROGRAM IMPLEMENTATION.

(a) EFFECTIVE DATE.—The Act shall become effective immediately upon signature by the President.

(b) PROGRAM IMPLEMENTATION.—The Secretary may begin certifying Insurers as Participating Insurers 30 days after the Secretary's promulgation of interim final regulations, but no later than 210 days after the Effective Date.

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Enhanced Homeowners Insurance Act of 2009

SECTION-BY-SECTION ANALYSIS

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This section provides a short title and table of contents.

Section 1. Short Title; Table of Contents.

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Section 16. Effective Date and Program Implementation.

Section 2. Findings and Purpose

This section lists the Congress' findings and states the purpose of the Act.

Section 2(a) explains the challenges that homeowners encounter when attempting to secure sufficient coverage for their homes through traditional homeowners insurance policies that do not include flood coverage or through the purchase of a separate stand-alone flood policy through the National Flood Insurance Program.

Section 2(b) indicates the Act is designed to authorize Enhanced Homeowners Insurance Policies that include flood coverage and are subject to uniform national regulation and federal reinsurance by the U.S. Department of the Treasury.

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Section 3. Definitions

This section provides definitions for terms used in the Act.

Section 3(1) defines the terms "Agent" and "Producer" as any insurance producer licensed to sell homeowners insurance in a State.

Section 3(2) defines the term "Applicable Flood Coverage" as the flood coverage in an Enhanced Homeowners Insurance Policy that is identical to the coverage that a stand-alone NFIP policy would provide for the same Eligible Property, and does not include any flood coverage afforded by an Enhanced Policy that exceeds the coverage that would be available for that Eligible Property in an NFIP policy.

Section 3(3) defines the term "Attorney General" as the Attorney General of the United States.

Section 3(4) defines the term "Department" as the United States Department of the Treasury.

Section 3(5) defines the term "Eligible Property" as a residential property which is designed for the occupancy of one to four families.

Section 3(6) defines the terms "Enhanced Homeowners Insurance Policy" and "Enhanced Policy" as a homeowners insurance policy that includes flood coverage at least as broad as that available under the NFIP stand-alone policy for dwelling and contents, and which has been filed with the Secretary and reviewed as required under the Act. An Enhanced Homeowners Insurance Policy may include such flood coverage as an endorsement to a homeowners insurance policy that includes flood coverage at least as broad as that available under the NFIP stand-alone policy for dwelling and contents, and which has been filed with the Secretary and reviewed as required under the Act.

Section 3(7) defines the terms "Enhanced Homeowners Insurance Policy Program" and "Program" as the program established in the Treasury Department to carry out the Act.

Section 3(8) defines the term "Insurer" to include the affiliates and subsidiaries of an insurer, including the affiliates and subsidiaries of a Participating Insurer.

Section 3(9) defines the term "National Flood Insurance Program" and "NFIP" as the federal flood insurance program for Eligible Properties established under the National Flood Insurance Act and include such insurance for both the dwelling and for contents.

Section 3(10) defines the terms "National Flood Insurance Stand-Alone Policy" and "NFIP stand-alone policy" as the flood insurance policy made available for Eligible Property under the National Flood Insurance Program, 42 U.S.C. §4001 et seq.

Section 3(11) defines the term "Participating Insurer" as a Qualified Insurer that has applied to the Secretary for participation in the Program and has been certified by the Secretary for such participation.

Section 3(12) defines the term "Participating State" as a State that has entered into an agreement with the Secretary to participate in the Program, including application of the State's market conduct and consumer protection activities to Enhanced Homeowners Insurance Policies issued to policyholders in that State by Participating Insurers.

Section 3(13) defines the term "person" as any natural person, any insurer, any other corporation, and any other non-governmental entity.

Section 3(14) defines the term "Policyholder" as the person who is the legal owner of an Enhanced Policy.

Section 3(15) defines the term "Qualified Insurer" as an insurer that is domiciled and licensed in at least one state, and is authorized to sell homeowners insurance in at least one state.

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Section 3(16) defines the term "Reinsurance Program" as the program established under the Act, administered and regulated by the Secretary, to fully reinsure Applicable Flood Coverage losses and Related Expenses, including adjustment costs, arising under Enhanced Policies, and which guarantees that the financial obligation of a Participating Insurer for such losses and Related Expenses does not exceed its Special Account obligations under the Act.

Section 3(17) defines the term "Reinsurance Threshold" as the trigger for Treasury Reinsurance payments to be initiated with regard to a Participating Insurer's Applicable Flood Coverage losses and Related Expenses.

Section 3(18) defines the terms "Related Expenses" and "Related Expenditures" as those sums expended by a Participating Insurer to adjust or settle claims for the Applicable Flood Coverage in an Enhanced Policy; payments to Agents consistent with those available under the NFIP; and other related expenditures set forth in the Act or determined by the Secretary.

Section 3(19) defines the term "Secretary" as the Secretary of the Treasury.

Section 3(20) defines the term "Special Account" as the segregated account that a Participating Insurer establishes on its books for the deposit of all premiums from the Applicable Flood Coverage in its Enhanced Policies and which shall not be considered as income to the Participating Insurer for any purpose, including for any federal or State tax.

Section 3(21) defines the term "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Samoa, and the Marianas Islands.

Section 3(22) defines the term "Treasury Program" as the program established under the Act to provide for Enhanced Homeowners Insurance Policies and the Reinsurance Program.

Section 3(23) defines the terms "Uniform Enhanced Homeowners Insurance Policy" and "Uniform Enhanced Policy" as an Enhanced Policy, or Policies, made available by a Participating Insurer in every State in which it makes those Enhanced Policies available, where those policies are substantially identical for all the States, except as otherwise required by the Act, or as necessary to coordinate coverage under a specific State program for identified coverages such as wind, hail, or earthquake, or as otherwise required or approved by the Secretary. A Participating Insurer may have two or more Uniform Enhanced Policies, in order to offer customers additional options for coverage and deductibles.

Section 4. Treasury Department's Enhanced Homeowners Insurance Program

Section 4(a) directs the Secretary to establish the Enhanced Homeowners Insurance Policy Program in the Department of the Treasury.

Section 4(b) describes the Secretary's authority to regulate the Program, federal preemption of state laws that are inconsistent with the Act, and features of the Program, including the provision of Enhanced Homeowners Insurance Policies and federal reinsurance for Applicable Flood Insurance, as defined in the Act.

Section 4(c) provides that if an insurer is domiciled and licensed and authorized to sell homeowners insurance in at least one state, the Secretary may designate it a Qualified Insurer, as defined in the Act.. A Qualifying Insurer may apply to be a Participating Insurer, as defined in the Act.

Section 4(d) states the requirements to be a Participating Insurer under the Program.

Section 4(e) requires the Secretary to review, certify, and oversee a Participating Insurer's compliance with the Act and specifies that the Secretary may suspend or terminate an insurer's participation in the Program.

Section 4(f) requires a Participating Insurer to make available to its policyholders the same coverage that would apply to a homeowners policy subject to state regulation for wind losses or hail losses, and for earthquake coverage, including participation in a state wind pool, and for any other specified type of coverage for other similar risks as specified by the Secretary.

Section 4(g) requires a Participating Insurer to be a member of state guaranty funds, on the same basis as if the Enhanced Policy was being sold under state regulation, and provides that policy premiums for Applicable Flood Coverage shall not be included in a guaranty fund's assessment base for a Participating Insurer's Enhanced Policies.

Section 4(h) requires a Participating Insurer to file annual and special reports with the Secretary regarding its operations and certification under the Act and as required by the Secretary. It also provides that the Secretary may audit a Participating Insurer.

Section 4(i) provides that the purchase of an Enhanced Policy shall satisfy any requirement under the National Flood Insurance Act for the purchase of equivalent coverage under that Act.

Section 4(j) indicates that nothing in this Act precludes a Participating Insurer from continuing to provide homeowners insurance policies under state law.

Section 5. Enhanced Homeowners Insurance Policy Rates and Forms

Section 5(a) specifies the premiums that a Participating Insurer may charge for the Applicable Flood Coverage in an Enhanced Policy.

Section 5(b) requires a Participating Insurer to file its Enhanced Policy forms with the Secretary for approval. It also requires that the forms include the premium charged for the Applicable Flood Coverage and notice that the policy is subject to regulation and oversight by the Secretary. A form shall be deemed approved if the Secretary has not disproved it within sixty days of filing or within an additional thirty days if the Secretary notifies the insurer in writing that such additional time is necessary.

Section 5(c) authorizes a state regulated advisory organization to file on behalf of its Participating Insurer members all forms and related materials that are otherwise required of a Participating Insurer to be filed with the Secretary.

Section 5(d) authorizes a Participating Insurer to file and, subject to approval by the Secretary, use multiple Enhanced Policy forms with varying coverage options, provided that each form contains Applicable Flood Coverage.

Section 5(e) states that, for purposes of the Act pertaining to a Participating Insurer's adherence to the Act, it shall be conclusively presumed that the Participating Insurer complied with the Act; provided that it did not act with gross negligence as determined by the Secretary after a hearing.

Section 6. Additional Flood Coverage in an Enhanced Homeowners Insurance Policy

Section 6(a) requires a Participating Insurer to provide flood coverage even when that coverage is not available for that Eligible Property, as defined in the Act, under the National flood Insurance Program. In such a circumstance, the amount of flood coverage provided in a Participating Insurer's Enhanced Policy must approximate the coverage that would be provided if NFIP stand-alone coverage were available.

Section 6(b) authorizes a Participating Insurer to provide flood coverage as part of its Enhanced Policies that is in addition to the maximum amount of coverage available for an Eligible Property under the National Flood Insurance Program.

Section 6(c) states that when a Participating Insurer provides flood coverage that is either not available for that Eligible Property under the National Flood Insurance Program or is in addition to the maximum amount of coverage available for an Eligible Property under the NFIP, the coverage shall not be included in the Treasury Reinsurance Program and shall be priced by the Participating Insurer in the marketplace.

Section 7. Cancellation and Non-renewal of an Enhanced Homeowners Insurance Policy

Section 7(a) provides that the cancellation requirements applicable to an Enhanced Policy are the same as those applicable to a homeowners policy subject to state regulation of the state in which the insured risk is located.

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Section 7(b) provides that the non-renewal requirements applicable to an Enhanced Policy are the same as those applicable to a homeowners policy subject to state regulations of the state in which the insured risk is located.

Section 8. Treasury Department Reinsurance Program for Flood Coverage in Enhanced Homeowners Insurance Policies

Section 8(a) establishes the Treasury Reinsurance Program to reinsure Applicable Flood Coverage losses under the Enhanced Policies of a Participating Insurer in excess of the Reinsurance Threshold in a Participating Insurer's Special Account, as this term is defined in the Act and discussed in Section 8(c).

Section 8(b) requires a Participating Insurer to purchase reinsurance from the Reinsurance Program to cover the losses and Related Expenses of the Applicable Flood Coverage provided by its Enhanced Policies when the Participating Insurer's Reinsurance Threshold has been met.

Section 8(c) requires a Participating Insurer to establish a Special Account where it shall deposit that portion of the premium from each Enhanced Policy that relates to the Applicable Flood Coverage in that policy. The Special Account may only be used to pay premium for the Reinsurance Program, Applicable Flood Coverage Losses, and Related Expenses.

Section 8(d) establishes the maximum premium for the Reinsurance Program as 5% of the interest earned in the prior calendar year in a Participating Insurer's Special Account. Reinsurance premiums received by the Treasury Department from a Participating Insurer shall be deposited in the Treasury general fund.

Section 8(e) specifies the claims payment responsibilities for Participating Insurers and the Reinsurance Program. A Participating Insurer shall be responsible for processing all flood loss claims and making all flood loss payments and related costs from its Special Account until that account has been reduced by 90% of the total amount in it at the end of the prior calendar year. Thereafter, the Reinsurance Program shall cover all of a Participating Insurer's Applicable Flood Coverage losses and Related Expenses. The Secretary shall make advance payments to a Participating Insurer when the Participating Insurer certifies to the Secretary that it believes there is a reasonable likelihood that its Special Account will be depleted by 90% because of current and likely flood claims from events that have occurred or are reasonably anticipated to occur imminently. Any disagreement between the Secretary and a Participating Insurer about whether a claims payment or Related Expense is properly treated as an Applicable Flood Coverage claim payment or Related Expense or a disagreement about the amount of such expenditure shall be resolved through negotiation or mediation. If the parties are unable to resolve the disagreement within 180 days of either party notifying the other, in writing, that such a disagreement exists, the disagreement shall be resolved through an arbitration process as determined by the Secretary, which shall constitute final agency action for purposes of judicial review. If a Participating Insurer's solvency is threatened as a result of a disagreement, the Participating Insurer may appeal to the Secretary for a review of the determination, which shall constitute final agency action for purposes of judicial review. If a disagreement arises between the Secretary and another reinsurer on the proper categorization of losses or Related Expenses under an Enhanced Policy or the reasonableness of such expenditure, the reinsurer shall participate in negotiation or mediation or arbitration, unless the reinsurer informs the Secretary and the Participating Insurer of its decision not to participate in the dispute resolution procedure. If a Participating Insurer made inappropriate expenditures from its Special Account or from an Advance Payment by the Secretary, the Participating Insurer shall make full reimbursement as directed by the Secretary.

Section 9. Coordination with Other Federal Agencies and the States

Section 9(a) requires the Secretary to coordinate the implementation and operation of the Act with the National Flood Insurance Program and any other federal agency, as necessary and appropriate, and provides that the Secretary may utilize such expertise and services on a reimbursable basis from the NFIP and other federal agencies as will further the goals of the Act.

Section 9(b) directs the Secretary to coordinate with the States to the maximum extent feasible, consistent with the Act, in order to promote the efficient operation of the Act and the protection of Enhanced Policy Customers and Policyholders.

Section 9(c) prohibits a State from discriminating against a Participating Insurer or any of its affiliates based on its participation in the Act and its provision of Enhanced Policies in the State.

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Section 9(d) requires a State to include Participating Insurers in its guaranty fund on the same basis as if the Enhanced Policies were being provided under State law, except that the Applicable Flood Coverage shall not be so included.

Section 9(e) requires a State to include Enhanced Polices in pooling or similar mechanisms, or reinsurance programs, for specified types of homeowners insurance losses, including, but not limited to wind or hail losses, on the same basis as if those policies were being provided under State law.

Section 9(f) requires a State to include Enhanced Polices in earthquake coverage programs on the same basis as if those policies were being provided under State law.

Section 9(g) directs a Participating Insurer to adhere to the same law in a State pertaining to the use of credit history in the underwriting and pricing of its Enhanced Policies as is otherwise applicable to homeowners insurance policies subject to the jurisdiction of the State.

Section 9(h) provides that the Secretary may enter into a coordination agreement with a State when the Secretary determines that the purposes of the Act would be furthered by doing so, pursuant to which the State includes a Participating Insurer's Enhanced Policies in the State's market conduct and consumer protection activities, as if the Enhanced Policies were homeowners policies provided under State law. Such an agreement shall also include the handling of consumer complaints as provided under State law, consistent with the prompt resolution provisions of Section (4(d) of the Act.

Section 9(i) directs a Participating Insurer to collect and pay premium tax and related taxes to a State on its Enhanced Policies , as if the policies had been sold pursuant to State law, provided that the State is carrying out a coordination agreement with the Secretary under subsection (h) and is otherwise in compliance with this section.

Section 9(j) provides that if a State does not adhere to the requirements of this section and also has an agreement with the Secretary under subsection (h), the Secretary shall direct Participating Insurers to cease paying premium or related taxes under subsection (i) to that State but to deposit an equivalent amount for each Enhanced Policy with the Secretary, pursuant to regulation, to defray the costs of the Secretary carrying out activities under this section that otherwise would have been the responsibility of the State. If a State refuses to permit a Participating Insurer to participate on an equal basis in any pooling or similar arrangement for wind, hail or other similar risk, as determined by the Secretary, the Secretary shall provide the same coverage and claims payment obligations through the Reinsurance Program under section 8 and shall direct the Participating Insurers to provide Policyholders with the same coverage, at the same premium, as would have applied if the coverage had been provided under the State mechanism. Such premium shall be deposited into the Participating Insurer's Special Account.

Section 9(k) specifies that any State law, regulation or action contrary to or inconsistent with the Act, shall be preempted and may not be enforced; provided, however, that nothing in the Act shall be read as preempting (1) the authority of a State to regulate any homeowners insurance policy, other than an Enhanced Policy, otherwise subject to State regulation, and (2) Insurer actions related to such policies; or any otherwise applicable State contract or tort law pertaining to any matter arising under an Enhanced Policy, provided that in an action against a Participating Insurer by a customer or Policyholder in any State or federal court, the complaint shall plead with specificity that the customer or policyholder properly invoked and fully utilized the Insurer's prompt resolution procedures, under section 4(d)(5) of the Act, prior to initiating the lawsuit, and that those procedures failed to resolve the complaint.

Section 10. Personnel Matters, Agreements with Other Federal Agencies, and Contracting Authority

Section 10(a) authorizes the Secretary to employ such personnel as necessary to carry out the Act, including, but not limited to, accountants, actuaries, analysts, examiners, statisticians and lawyers.

Section 10(b) directs the Secretary to fix the compensation and number of employees without regard to chapter 51 or subchapter II of title 53 of title 5, United States Code.

Section 10(c) authorizes the Secretary to enter into agreements with other federal agencies and programs, including, but not limited to the Federal Emergency Management Administration and National Flood Insurance Program, to assist in the implementation, operation and coordination of the Act with other federal programs, and to obtain expertise and assistance in the implementation and operation of the Act.

Section 10(d) authorizes the Secretary to enter into contracts or agreements to obtain assistance and expertise in order to carry our the Act. The Secretary may enter into an agreement or contract with a State to provide, on behalf of the Secretary, the consumer protection, complaint handling and market conduct oversight for Enhanced Policies in another State that has not entered into an agreement to carry out these activities under section 4(e).

Section 10(e) clarifies that the assistance and expertise under this section shall include, but not be limited to, the assistance and expertise necessary to determine the granting of certification to Participating Insurers, and to determine the adherence of States to the coordination and preemption provisions of the Act.

Section 10(f) exempts the Secretary from the requirements of the Federal Acquisition Regulations when entering into a contract under this section, but directs the Secretary to make every reasonable effort to use principles of competitive bidding and consistent with the timely implementation and operation of the Program. The Secretary may not waive any provision of the Federal Acquisition Regulations pertaining to women, minority or small business contracting, without a particularized determination of the necessity to do so.

Section 10(g) authorizes the Secretary to pay for administrative expenses, including personnel and contracting costs, from reinsurance premiums paid into the Treasury general fund.

Section 11. Authorization of Appropriations and Borrowing Authority

Section 11(a) authorizes, in addition to sums that may be available from Participating Insurer reinsurance premiums, the annual appropriation to the Secretary of such sums as may be necessary to compensate personnel and administer the Act, including those sums necessary for obtaining assistance and expertise under sections 8(c) and 9.

Section 11(b) authorizes the Secretary to borrow from the general accounts of the United States such funds as may be necessary to administer the Act, including such funds as may be necessary to administer the Act during the first 36 months after enactment. The Secretary is also directed to repay any funds borrowed from sums available, including reinsurance premiums, in a manner and over a period of time consistent with the effective administration of the Act and the maximum feasible growth of Participating Insurer Special Accounts.

Section 11(c) provides that reinsurance claims payments, Related Expenses, reimbursements and other payments to Participating Insurers shall be made by the Secretary from the Treasury and shall not be subject to appropriations by the Congress.

Section 12. Regulations

Section 12(a) directs the Secretary to issue such rules and regulations, pursuant to the Administrative Procedure Act, as the Secretary determines necessary and appropriate to carry out the Act and to assure its effective operation.

Section 12(b) specifies that the Secretary shall issue interim final regulations within 180 days of enactment and final regulations within eighteen months of enactment.

Section 12(c) authorizes the Secretary to issue guidelines for the purpose of carrying out the Act prior to the issuance of interim final regulations and as otherwise necessary.

Section 13. Secretary's Annual Report to the Congress

Section 13(a) requires the Secretary to provide an annual report, no later than June 30, to the Financial Services Committee of the House of Representatives and the Banking Committee of the Senate describing the implementation, operation and financial condition of the Program during the prior calendar year.

Section 13(b) specifies that the annual report shall include (i) a listing of all Participating Insurers and a summary of their activities under the Act, including the number and location of Enhanced Policies they each provided during the year and the funding status of their Special Accounts; (ii) the name of any Insurer whose application to participate in the Program had been approved or denied during the prior year, and the reasons for each decision; (iii) the amount of reinsurance that had been

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paid during the year, the amount paid to each Participating Insurer, and the amount of reinsurance premiums collected; (iv) the status of the administration of the Program, the funding of the Program, and any amounts that had been borrowed or repaid during the year; (v) the status of coordination efforts with the States; (vi) any recommendations for legislation to improve the operation of the Program; and (vii) any additional matters that the Secretary believes would be useful to fully describe activities and issues arising under the Act during the year.

Section 14. Advisory Committee

Section 14(a) directs the Secretary to establish an Advisory Committee, pursuant to the procedures of the Advisory Committee Act, 5 U.S.C. § 1 *et seq.* to provide the Secretary with analysis of the implementation of the Act, as well as with advice and recommendations about improvements to operations under the Act and potential amendments to it.

Section 14(b) provides that the Advisory Committee shall have such members as the Secretary deems appropriate, but not in excess of 13, to serve for such terms as the Secretary shall determine at the time of the appointment or reappointment of each member, but in no case shall a single term exceed a period of 4 years. The Secretary shall select a chair person for the Committee, who shall serve at the Secretary's pleasure.

Section 14(c) specifies that the members of the Advisory Committee shall be appointed without regard to the provisions of title 5 of the United States Code governing appointments to the competitive service, but shall represent a cross section of those groups having an important interest in the successful implementation of the Act, including, but not limited to,: Participating Insurers; regulators from States with coordination agreements under the Act with the Secretary; experts in the economics of homeowners insurance and reinsurance; experts in flood prevention; experts in the adjustment of flood losses; Enhanced Policy Policyholders who reside in various parts of the country that are particularly at risk of severe flooding; Agents; and the general public.

Section 14(d) provides that Advisory Committee members, when attending meetings or conferences at the request of the Secretary, shall be compensated at a rate fixed by the Secretary not to exceed the daily equivalent of the maximum salary under the General Schedule for a GS-15 employee of the federal government. Travel expenses shall be reimbursed, as approved by the Secretary, and a per diem payment shall be made as authorized by section 5703 of title 5 of the United States Code for persons employed intermittently by the federal government.

Section 14(e) authorizes the Secretary to terminate a member of the Advisory Committee for cause, including continuous failure to participate in Advisory Committee work or misconduct.

Section 15. Administrative and Enforcement Actions by the Secretary; Federal Jurisdiction; Judicial Review

Section 15(a) clarifies that a decision by the Secretary under the Act shall constitute final agency action under the Administrative Procedure Act, chapter 7 of title 5, United States Code 5 U.S.C. § 704 and, except as specifically stated to contrary in the Act, may be appealed through informal procedures established by the Secretary, including a written decision by the Secretary stating the determination and reasoning for such determination. Such a decision shall be a final agency action and may be further appealed to the United States Court of Appeals for the District of Columbia, within 60 days of the decision, subject to arbitrary and capricious review.

Section 15(b) authorizes the Secretary to obtain an injunction and other relief in any United States District Court in which venue and jurisdiction are proper when the Secretary determines it necessary to protect the interests of the United States under the Act.

Section 15(c) provides that a Participating Insurer shall not be liable in any federal or State court for its adherence to the Act or to a decision by the Secretary under the Act. Any action filed in any such court shall, upon motion, be promptly dismissed, with prejudice and shall be subject to removal to any United States District Court in which venue and jurisdiction are proper, which shall assume jurisdiction of the matter as pertaining to a federal question pursuant to 28 U.S.C. § 1441(b) without regard to the amount, if any, in controversy, and shall promptly dismiss the action, with prejudice.

Section 15(d) directs any complaint against a Participating Insurer alleging the failure of that Insurer to adhere to the requirements of the Act to be made solely to the Secretary, who shall investigate the complaint, decide it and direct remedial action by the Participating Insurer, if required.

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Section 15(e) provides that actions against a Participating Insurer that arise, in whole or in part, in relation to the Applicable Flood Coverage provisions in a Participating Insurer's Enhanced Policy shall be brought solely in any United States District Court in which venue and jurisdiction are proper and the Secretary shall be joined as a defendant for that part of the litigation that pertains to the Applicable Flood Coverage of the Enhanced Policy. The Secretary shall reimburse the Participating Insurer for any damages, costs and attorneys fees reasonably incurred arising out of that part of the litigation that pertains to or is related to the Applicable Flood Coverage of the Enhanced Policy, unless the Secretary determines that the Participating Insurer's actions at issue in that part of the litigation had been taken without a reasonable belief that they were in compliance with the Act.

Section 15(f) exempts an action brought by the Secretary under this section from any limitation under the Anti-Injunction Act, 28 U.S.C. §2283.

Section 15(g) directs the Secretary to refer to the Attorney General any action which the Secretary believes may have violated the criminal laws of the United States or may have constituted a fraud against the Program.

Section 16 Effective Date and Program Implementation

Section 16(a) provides that the Act shall become effective immediately upon signature by the President.

Section 16(b) directs the Secretary to begin certifying Insurers as Participating Insurers 30 days after the Secretary's promulgation of interim final regulations, but no later than 210 days after the Effective Date.

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HOMEOWNERS INSURANCE
ENHANCED HOMEOWNERS INSURANCE ACT OF 2009
COVERAGE AND STRUCTURE

I Summary Description

(A) ***Policy Coverage*** The Enhanced Homeowners Insurance Policy (EHIP) would be a homeowners policy, established under federal law, that would be based on current homeowners policies, but would be enhanced to also cover flood.

(B) ***Totally Voluntary*** The policy would be wholly voluntary on the part of both insurers and customers. Thus, insurers would not be required to sell it, and customers would not be required to buy it.

(C) ***Sold Pursuant to Federal Law*** The EHIP policy would be made available pursuant to federal law. Major elements of the federal law would provide for:

(1) Treasury regulation of the entire EHIP policy;

(2) Treasury reinsurance for the flood portion of the policy up to NFIP limits;

(3) For the Treasury reinsurance, a separate segregated Special Account established by each EHIP insurer on its own books (a) where all NFIP-equivalent flood related EHIP premiums would be deposited; (b) where all such deposited flood premiums would be excluded from the EHIP insurer's income and would grow tax free; and (c) which would be used exclusively to pay Treasury reinsurance premiums, flood claims, and related expenses equivalent to NFIP-related expenses.

(4) Treasury implementation of EHIP insurer certification standards and procedures, with the insurer not being eligible to seek certification if it is not licensed and eligible to sell homeowners insurance in a state;

(5) Treasury authority to establish financial integrity standards for EHIP insurers that exceed state law requirements;

(6) Treasury review and approval procedures for EHIP policy forms;

(7) Statutorily mandated "prompt complaint resolution" procedures for EHIP insurers;

(8) Statutorily incorporated state cancellation and non-renewal laws for EHIP policies;

(9) Statutorily guaranteed EHIP pricing in the market, except for the flood portion of the EHIP policy, which would be at exactly the same price as a stand-alone National Flood Insurance Program (NFIP) policy for the same risk; and

(10) Statutorily authorized agreements between Treasury and willing-States on State enforcement of consumer protection laws and complaint handling for EHIP policies.

(D) ***Federal Flood Reinsurance*** The EHIP flood coverage would be reinsured by the federal government through the U.S. Treasury Department. The purpose of the federal flood reinsurance would be twofold:

(1) To allow the EHIP flood coverage to be priced at the identical price of an equivalent stand-alone NFIP flood policy; and

(2) To establish federal financial reinsurance responsibility for all flood claims costs and expenses in excess of each EHIP insurer's flood claims "Special Account". The Special Account would be comprised of (a) total flood premiums and (b) the tax free interest earned on the investment of those flood premiums in Treasury approved government securities.

(E) ***Additional Flood Insurance*** An EHIP insurer could include flood insurance in its policies that exceeded the NFIP-equivalent amount for a risk. If it did so, that additional coverage would be individually priced by the insurer in the

marketplace, but the premium it collected would be income and would neither go into the insurer's segregated account nor come within the Treasury reinsurance program.

(F) ***Treasury Regulation*** The Treasury Department would have regulatory authority, but the states would be encouraged to play a major role in consumer protection and handling consumer complaints. If a proposed EHIP form merely added NFIP-equivalent flood coverage to a form previously approved in the relevant state, then Treasury approval would be automatic. If the form made additional substantive changes, the form would be subject to a 60-day approval time period. The proposal authorizes EHIP insurers to participate in advisory organization activities pertaining to rates and forms, and subjects such activities to sole Treasury regulation. Disputes arising as to federal flood reinsurance coverage would be arbitrated in a neutral system.

II Federal Flood Reinsurance Mechanism

(A) ***Purpose*** The purpose of the flood reinsurance mechanism would be to:

(1) Encourage insurers to offer flood insurance;

(2) Encourage more homeowners to purchase flood insurance;

(3) Eliminate disputes over the "wind vs. water" and "concurrent cause" issues that have become so problematic for both insurers and customers;

(4) Maintain the current federal flood insurance program, but to reduce federal expenses over time through voluntary marketplace movement to the EHIP approach, thus substantially altering the federal role to that of a reinsurer from its current sole role as a primary flood insurer; and

(5) Make it possible for insurers to offer flood insurance by both allowing for pre-event flood reserve accounts and by limiting insurer financial responsibility to the value of premiums collected and interest earned on those premiums.

(B) ***Program Operation*** The program would work in the following way:

(1) Insurers would be statutorily guaranteed the right to price EHIP (the entire policy) in the marketplace, without any government price controls;

(2) EHIP flood coverage would be priced to exactly match what a stand-alone NFIP policy would cost for the same property, thus eliminating any artificial marketplace advantage to an NFIP policy caused by federal subsidies to the NFIP program. Insurers would be authorized to offer additional flood insurance at whatever price they individually thought appropriate for the risk.

(3) EHIP "flood premium" would be excluded from income for the insurer. Instead, each insurer would deposit all of its "flood premium" in its own segregated tax free Special Account, which would be invested in Treasury marketable securities, and be allowed to grow on an unlimited basis over the years. If an EHIP insurer discontinued its program, all of the monies remaining in its "flood premium" account would be surrendered to the Treasury.

(4) Each EHIP insurer would pay for the federal flood reinsurance from the interest earned by its Special Account, starting one year after the insurer began offering the policy. Treasury would establish the reinsurance premium as a uniform percentage of the interest earned on an insurer's Special Account, but in no case greater than 5% of the interest earned in a special Account in the prior year.

(5) The Treasury's federal flood reinsurance obligations would reimburse an EHIP insurer for the amount of its flood-related claims and related expenses that exceeded 90% of the amount of money in the insurer's Special Account at the end of the prior calendar year.

(6) EHIP policy forms would be submitted to Treasury for review and approval, with EHIP insurers authorized to use the same EHIP in every state, but also permitted to use different EHIP policies for different states.

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III **Benefits of the Plan**

(A) ***Customer Peace of Mind*** Customers would get peace of mind, knowing that they were fully covered whether their loss was from wind or water.

(B) ***Insurer Peace of Mind*** Insurers would be encouraged to offer EHIP because they would not be held financially responsible for a risk that they cannot—and will not—otherwise cover.

(C) ***Reduced Government Expenditures*** The costs to the federal government of the NFIP program could well be reduced over time if federal reinsurance replaced federal primary flood insurance within a legal structure that allowed insurers to build tax-free reserves exclusively for the purpose of paying flood claims.

(D) ***Earthquake*** The EHIP proposal would not include a similar federal reinsurance program for earthquake, but would require insurers to cover earthquake (earth movement) to the same extent that policies sold under state law require it. A federal reinsurance program for earthquakes could be included if there was political consensus to do so.

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WENHANCED HOMEOWNERS INSURANCE POLICY ACT OF 2009
EXPLANATORY STATEMENT

Purposes.

The Enhanced Homeowners Insurance Policy Act of 2009 (EHIP) has two principal purposes: (1) to provide a practical way for homeowners and their insurers to include flood insurance within a homeowners insurance policy, while neither requiring homeowners to buy such a policy nor insurers to sell one; and (2) to eliminate the uncertainties, expense and litigation that arise from homeowners insurance policies not including flood insurance within them.

Background.

With few exceptions, insurers today do not provide flood insurance coverage as part of their homeowners insurance policies. The financial risk is just too great to do so. But while their decision to exclude flood coverage is financially appropriate, their inability to include this coverage results in millions of homeowners being dangerously uninsured.

This critical lack of insurance arises in two circumstances. The first is flooding that arises from the accumulation of ground water from heavy and persistent rains or from a body of water overflowing its banks. The second arises in relation to a hurricane. In the first circumstance, there is little doubt that the damage has been caused by the flood waters. In the second circumstance, however, disputes can arise about whether the house was damaged by hurricane winds, which then made the water damage possible, or whether the water damage had been caused by flooding unrelated to any wind damage. If the damage was caused by hurricane winds, that damage will be covered by a homeowners insurance policy or a separate wind policy attached to it. If the water damage did not have its origin in damage to the house from hurricane winds, however, the damage will not be covered by a homeowners policy. In either case, millions of homeowners will not have insurance protection.

This lack of insurance further results in a critical need for enormous post-flooding federal expenditures to help the uninsured rebuild their homes and their lives after the catastrophe. Even after the flood tide recedes, a litigation tide often comes crashing ashore. This litigation tide brings expensive, acrimonious lawsuits with it that pit insurers and their policyholders against each other, arguing about whether a specific customer's loss was covered by that customer's policy.

While including flood insurance coverage in homeowners policies would be highly desirable, currently, it is not possible—as a practical matter—to do so. Indeed, if flood coverage were generally included in homeowners insurance policies, there would be one of two inevitable results. Either those policies would be unaffordable in those locations most in need of the protection or, alternatively, those policies would have affordable premiums that would be wholly inadequate to cover the flood risk at hand. These two unpalatable options are the Sylla and Charybdis of flood insurance: the Sylla of policies that no one can afford to buy, and the Charybdis of policies that no insurer can afford to sell.

This problem has been well known for decades, which is the reason that Congress created a separate federal flood insurance program, the NFIP, in 1968 through the enactment of the National Flood Insurance Act. The NFIP provides stand-alone government subsidized flood insurance policies that customers can buy separately from their homeowners policy. There is no doubt that NFIP stand-alone insurance has made flood insurance available for millions of homeowners who otherwise would not have been able to obtain it. But it is also true that the need to buy separate flood policies has resulted in many other homeowners not obtaining the coverage they need.

In addition, the need to mesh the coverage provided by two separate policies invariably causes confusion among consumers about their coverage. It also often results in uneven coverage, where the amount of insurance protection depends on the cause of loss in circumstances where that cause can be open to dispute. And it has resulted in suspicions that—although never substantiated—insurers determine the cause of loss by first determining which cause will be more financially advantageous to them.

Most of these issues can be described in short-hand fashion as the "wind-water" dichotomy. If the cause of loss is "wind," then the loss will be covered by the homeowners insurance policy or a wind insurance rider. If the cause of loss is "water," then the loss will either be covered by an NFIP stand-alone policy, or it will not be covered at all because the homeowner has not bought an NFIP policy. Most homeowners insurance policies also have "anti-concurrent cause" provisions which, as a general matter, state that if a loss is caused by both wind and water, the loss will not be covered by the

policy. Although sometimes criticized, these anti-concurrent cause provisions have been upheld in litigation arising out of Hurricane Katrina.

These problems have festered for decades. Now they have become acute, both because the United States has become more prone to hurricanes and flooding in recent years, and because the population in hurricane and flood prone areas has increased dramatically. Until now, however, no workable resolution of these problems has been proposed. Now there is a proposal to do so; the Enhanced Homeowners Insurance Policy Act of 2009 (EHIP), decisively addresses this deadlock by making it possible to include flood coverage in homeowners policies, while enhancing options for homeowners and insurers, alike, and ameliorating the problems that have defied solution for so long.

Implementing Concepts.

To carry out these broad purposes, the bill establishes these critical implementing concepts:

1. Homeowners are permitted, but not required, to purchase Enhanced Homeowners Insurance Policies which include flood insurance;

2. Insurers are permitted, but not required, to sell Enhanced Homeowners Insurance Policies, but must be approved by the Treasury Department before doing so;

3. Insurers approved by the Treasury Department become "Participating Insurers" and may sell Enhanced Homeowners Insurance Polices in any state where they are otherwise authorized to sell homeowners insurance under state law;

4. Participating Insurers must provide flood insurance coverage in their Enhanced Policies at least as broad as the coverage provided in the National Flood Insurance Program;

5. Participating Insurers must charge exactly the same premium for the flood portion of their Enhanced Policies as the NFIP stand-alone policy would cost for that same property, but shall otherwise price their Enhanced Homeowners Policies in the marketplace;

6. The Treasury Department is statutorily established as the flood reinsurer and sole regulator of EHIP policies and of insurer participation in the program, with Treasury regulation including policy form filing and approval procedures;

7. Each participating insurer is required to purchase Treasury flood-coverage reinsurance for the amount of flood coverage that is equal to the flood coverage available for that home under an NFIP stand-alone policy, and at premiums established by the Treasury Department;

8. Participating insurers may sell additional flood coverage in excess of the NFIP-equivalent amount, but any such additional coverage shall be priced by the individual insurer in the marketplace and shall not be part of the Treasury reinsurance program;

9. Premiums for the flood portion of a Participating Insurer's Enhanced Policies (up to the NFIP-equivalent amount) shall not be treated as income by the insurer, but, rather, shall be placed in a separate, Special Account established by the insurer that may only be used to pay flood claims, related expenses and the Treasury reinsurance premium;

10. Monies deposited in the insurer's Special Account may only be invested in Treasury marketable securities, with all interest earned on those securities going into the insurer's Special Account;

11. Treasury's reinsurance obligations are triggered when the amount of money in an insurer's Special Account has been reduced by 90% from the amount in it at the end of the prior calendar year through flood claims and related expenses;

12. States are encouraged to play an important role in the program by: (i) including EHIP policies in their wind pools and other similar residual markets; (ii) including EHIP participating insurers in their guaranty funds; (iii) providing for individual Treasury Department agreements with each State authorizing each State to exercise day-to-day responsibility for EHIP consumer protection and complaint resolution matters; and (iv) providing premium tax revenues for EHIP policies to each State that undertakes all these responsibilities;

13. The Treasury Department may use back-up mechanisms in the unlikely event that a State decides not to treat EHIP policies and insurers equally in the State's residual markets or guaranty fund, or chooses not to enter into a "program responsibility" agreement with the Treasury Department;

14. Except for Treasury-regulated EHIP policies, States are permitted to continue to regulate homeowners insurance policies as they currently do and to permit homeowners to continue to purchase their homeowners insurance through State regulated policies that do not include flood coverage; and

15. The National Flood Insurance Program is not statutorily affected by the EHIP legislation and continues to operate, as it does today, offering stand-alone federal flood insurance policies.

Benefits of the Legislation.

The EHIP legislation provides a practical answer to a critical problem for millions of homeowners and for their insurers. For the first time, homeowners insurance policies will be generally available to the public with flood insurance included within them, thus eliminating the dangerous and expensive coverage gap that exists today.

This general availability of the Enhanced Policies will almost certainly increase—perhaps dramatically—the number of homeowners who obtain protection from flood losses. At the same time, it will also dramatically decrease the amount of litigation between homeowners and their insurers based on the question of whether the loss came from "wind" or "water"—because both "wind" and "water" will be covered in the policy.

Under the EHIP legislation, insurers will be prohibited from making any profit on the flood portion of their EHIP policies, but will have the option of developing homeowners insurance policies designed for specific States or for the country-as-a-whole, and providing new alternatives for consumers.

With the Treasury Department undertaking a reinsurance role under the EHIP legislation, the burden placed on the federal government, today, of being the primary provider of flood insurance under the NFIP program is likely to be reduced over the years, as an increasing number of homeowners choose to purchase the integrated Enhanced Policy.

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A Consumer's Guide to Homeowners Insurance

Final draft for Vote by the NAIC Consumer Guides (C) Working Group

This guide provides information on how to make decisions when you buy homeowners insurance. You have a choice in coverages and prices will differ between insurance companies.

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Why You Need Insurance

Homeowners insurance is an important purchase for many people. There are two major reasons to buy homeowners insurance.

- To protect your assets.
    - Homeowners insurance covers the structure of your home and your personal property, as well as your personal legal responsibility (or liability) for injuries to others or their property while they're on your property.

- To satisfy your mortgage lender.
    - Most mortgage lenders require you to have insurance as long as you have a mortgage and to list them as the mortgagee on the policy. If you let your insurance lapse, your mortgage lender will likely decide to have your home insured on your behalf. Compared to a policy you would buy on your own, the premium might be much higher and the coverage will be limited to damage to the structure of your home. The lender can require you to pay this higher premium until you get your own homeowners insurance again.

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Coverages in a Homeowners Policy

Most homeowners insurance policies provide a package of coverages. The main types of coverage are described below. Keep in mind that you are covered only if the loss is caused by a peril your policy covers. For example, if your home becomes unlivable due to an earthquake and your homeowners policy doesn't cover earthquakes, your policy won't pay for loss of use of your home. Review your policy for the limits of your coverage.

- **Dwelling**. Pays for damage to your house and to structures attached to your house. This includes damage to fixtures, such as plumbing, electrical wiring, heating and permanently installed air-conditioning systems.
- **Other Structures**. Pays for damage to fences, tools sheds, freestanding garages, guest cottages and other structures not attached to your house.
- **Personal Property**. Reimburses you for the value of your possessions, including furniture, electronics, appliances and clothing, damaged or lost even when they aren't on your property, such as those at an off-site storage locker or with your child at college.
- **Loss of Use**. Pays some of your additional living expenses while your home is being repaired.
- **Personal Liability**. Covers your financial loss if you are sued and found legally responsible for injuries or damages to someone else.
- **Medical Payments**. Pays medical bills for people hurt on your property or hurt by your pets.

Peril is an insurance term for a specific risk or reason for a loss. Some policies cover all perils except ones specifically excluded. At the other extreme are policies that cover only the perils named in the policy.

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Types of Homeowners Policies

To be reimbursed for damage to your property, a covered peril (such as fire, theft or windstorm) must have caused your loss. Which perils your policy covers depends on the type of policy you buy. The most common types of homeowners policies are listed below. All of the policy types **except** the dwelling fire form cover your dwelling and its contents, as well as personal liability and medical payments. Read Table 1 to learn the specific perils each type of policy covers.

A type of homeowners policy is called a **Form**

- The **Dwelling Fire Form** covers only your dwelling. It does **not** cover your personal property, personal liability or medical payments. It also covers only a few perils. It's the type of policy your mortgage lender will buy for you if you let your homeowners policy lapse. It's also used for vacation homes and when you can't find other coverage.
- The **Basic Form** insures your property against only the list of perils shown in Table 1.
- The **Modified Coverage Form** is for older homes, where the cost to rebuild is greater than the market value. It covers the same set of perils as the Basic Form.
- The **Broad Form** insures your property against the perils shown on Table 1.
- The **Special Form** is the most popular of all homeowners forms. It insures your property against all perils, except those the policy specifically names as **not** covered. Perils commonly excluded are flood and earthquake.
- The **Tenants Form** is for renters. It insures your personal property against all of the perils in the Broad Form.
- The **Condominium Unit Owners Form** is for owner-occupants of condominium units. It insures your personal property and your walls, floors and ceiling against all of the perils in the Broad Form.

There are other types of insurance for other types of residences. If you own a **townhouse,** you may insure it through either an individual homeowners policy or an association master policy. If you live in a **mobile home** that has wheels and doesn't rest on blocks or a permanent foundation, in most states you'll buy a form of automobile insurance. This insurance offers far less coverage than homeowners policies. If your home is on land used for farming or raising livestock, ask about a **farmowners** policy.

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Table 1. Perils Covered by Different Types of Homeowners Policies

Peril	*Type of Policy*: Dwelling Fire	Basic Form and Modified Coverage Form	Broad Form	Special Form	Tenants Form	Condominium Unit Owners Form
Fire, smoke, windstorm, hail, lightning, explosion, vehicles, civil unrest						
Theft, vandalism						
Trees and other falling objects						
Weight of ice, snow, sleet						
Freezing, rupturing or sudden and accidental overflow of a plumbing, heating, air-conditioning or fire-sprinkler system or a household appliance						
All perils except flood, earthquake, war, nuclear accident and other perils specifically excluded in your policy						

Dwelling *Contents*

Flood Insurance

Homeowners policies **don't** cover flood damage. Depending on where your home is, you may qualify for flood insurance through the National Flood Insurance Program or through a private insurer. Contact an insurance agent for more information. If your home is in a flood plain, your mortgage lender will usually require you to buy flood insurance.

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Limits of Coverage

Your insurance agent usually will help you decide how much dwelling coverage to buy when you first get homeowners insurance. Your coverage should equal the full replacement cost of your home. Note that replacement cost and market value are **not** the same. The market value, which includes the price of your land, depends on the real estate market.

You should review your dwelling coverage from time to time to be sure it doesn't drop below the cost to replace your home. If it drops below 80% of the full replacement cost of your home, your insurance company may reduce the amount that it will pay on a claim.

The limits of your coverage for other structures, for personal property and for loss of use of your home are expressed as percentages of your dwelling limit. The coverage is usually a set percentage (see Table 2). For example, if your dwelling coverage limit is $150,000 and your coverage for personal property is limited to 50% of your dwelling coverage, your coverage for personal property would be $75,000. Check your policy, as coverage limits might be based on percentages different from those in Table 2. You choose your coverage limits for your personal liability and for medical payments.

Table 2. Policy Limits

Coverage Component	Typical Limit of Coverage
Dwelling	You Choose
Other Structures	10% of Dwelling Coverage Limit
Personal Property	50% of Dwelling Coverage Limit
Loss of Use	20% of Dwelling Coverage Limit
Personal Liability	You Choose
Medical Payments	You Choose

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Deductibles

A deductible is the money you have to pay out-of-pocket on a claim before the policy pays the loss. The deductible applies to coverage for your home and personal property and is paid on each claim. Higher policy deductibles mean lower policy premiums. A policy with a $1,000 deductible will have a lower premium than the same policy with a $500 deductible. In some locations, there are also catastrophe deductibles, which are expressed as a percentage instead of a dollar amount.

Having a higher deductible can be a good way to save money on your homeowners insurance premium and to submit fewer claims. However, be sure you can afford the deductible in case you have a loss.

Replacement Cost and Actual Cash Value

You can choose to insure your home and its contents for either replacement cost or actual cash value. **Replacement cost** is the cost to rebuild your home or repair damages using materials of similar kind and quality. **Actual cash value** is the value of your home considering its age and wear and tear. Actual cash value coverage pays you for your loss, but often doesn't pay enough to fully repair or replace the damage.

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Optional Coverages

You can add other coverages. Sometimes, you can add coverage by buying an endorsement; other times, you must buy another policy to cover a specific peril or a specific item of property. Some reasons you might want to add coverages are:

- **To cover perils most homeowners policies don't cover.** The National Flood Insurance Program writes most *flood insurance policies*, although some insurance companies also sell it. Many insurance companies sell *earthquake insurance* as a separate policy or as an endorsement to your homeowners policy. While homeowners policies in most states cover damage caused by *windstorm and hail,* policies in coastal areas often exclude this coverage, in which case you would need to buy a separate policy to protect from this risk. You might be able to buy endorsements to cover damage caused by *mold* or by *sewer or drain backups* and *sump pump overflow*, because most homeowners policies offer limited or no coverage for these types of occurrences.

- **To increase your current coverage.** *Guaranteed replacement cost coverage* pays to completely rebuild your home, while a *personal property replacement cost endorsement* pays to replace your personal property. An *inflation guard endorsement* raises your dwelling coverage limit annually in line with inflation. *Personal umbrella liability insurance* increases your liability coverage above the level available in a homeowners policy. A *scheduled personal property endorsement* (or "personal article floater") covers jewelry, furs, stamps, coins, guns, computers, antiques and other items whose value might be greater than the normal limits in your homeowners policy. An *ordinance or law endorsement* pays for the extra expense to rebuild your home in compliance with building codes and other ordinances or laws that didn't exist when your home was originally built.

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Business Use of Your Home

While homeowners insurance isn't designed to cover most business uses of your home, some policies might cover some business uses, at least partially. For example:

- **Computers and laptops.** If you use your home computer or laptop for business purposes, it's often covered, but you should check your policy limits. Your laptop might be covered, even if it's lost, damaged or stolen away from your home.
- **Daycare coverage.** Most homeowners policies provide a limited amount of liability coverage if you care for a friend's children and aren't paid. But if you're paid to provide daycare in your home, you must buy more insurance to cover your related liability.

Other Types of Home-Related Insurance

You might hear about other types of insurance, especially when you buy your home. Lenders usually require **private mortgage insurance (PMI)** if your down payment is less than 20% of the home's purchase price. PMI protects the lender if you default on your mortgage. The PMI premium is often included in your monthly mortgage payment.

Title insurance protects you and the lender against any monetary loss due to errors in the title. You usually pay for title insurance as a one-time fee when you buy a home.

A **home warranty** covers the mechanical breakdown of individual parts of a home, such as the electrical and plumbing systems. A warranty doesn't cover the home's structure, may or may not cover appliances, ends at a specific point in time (for example, one year) and has exclusions and limitations that you should review. Home warranties might not be regulated as insurance in your state.

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How Insurers Determine Your Premium

Many factors affect the premium you pay, including which insurance company you choose. Different insurance companies charge different premiums for similar coverage. Decisions you make about how much insurance coverage to buy also affect your premium. Some of the other things that are likely to affect your premium are:

- The characteristics of your home
  - The cost to rebuild your home. This is not the same as the purchase price (which includes the cost of the land). You insurance agent might help you estimate replacement cost using information about your home and its contents.
  - Whether your home is made of brick or wood. The premium usually is lower for homes that are primarily brick or masonry than for wood frame homes.
  - The distance from your home to a water source or fire department and the quality of your community's fire protection services.
  - The age and condition of your home. The premium often is higher for older homes and homes in poor condition than for newer homes and homes in good condition.
  - The claims history of your home and of homes in your area.

- Your choices and characteristics
  - The coverages you choose, including optional endorsements.
  - The deductible you choose.
  - Insuring your home and autos with the same insurance company.
  - The length of time you've been with your current insurance company.
  - Your credit history. To access your credit report, the insurance agent might ask you for your Social Security number. In many states, insurers use your credit history as a factor to decide whether to sell you insurance and what price to charge you.
  - Your history of filing claims for water damage, fire, theft or liability on homes you've owned.

- Other characteristics
  - Having protection devices in your home, such as smoke detectors, a burglar alarm, a sprinkler system, deadbolts on doors, or security devices for windows. Many insurers offer a discount if you have any of these.
  - Having a wood furnace or wood stove.
  - Having a swimming pool, trampoline or playscape that could cause injuries.
  - The types of pets you have. Some insurers won't insure you if you own certain breeds of dogs.
  - Operating a business from your home.

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Smart Shopping

Different insurance companies charge different rates for the same coverage. Also, not all insurance companies provide the same level of claims service. Therefore, it makes sense to shop around for the best insurance company for your needs.

Insurance companies use one of three methods to sell their products.

- **Independent agents** represent several companies and can give you several quotes.
- **Exclusive agents** only sell the products of one insurance company.
- **Direct market** sales are over the Internet or by mail or telephone.

You can find insurance companies and agents through the phone book, on the Internet and television and/or by asking friends and neighbors. You should also check with your state insurance department to see if it publishes premium comparison guides for homeowners insurance.

Customer service is important to most consumers, particularly when they have a claim. You can get a sense of how well an insurer serves its customers from a complaint index. Many state insurance departments post complaint index information on their Web sites. A complaint index measures how many complaints your state insurance department receives relative to the size of the company.

It’s illegal for unlicensed insurers to sell insurance. Business cards aren’t proof that an agent is licensed. If you do business with an unlicensed agent or company, it might not pay your claims or refund your premiums if you cancel your policy. If an unlicensed agent or company contacts you, check with your state insurance department immediately, so it can investigate. Your actions may protect someone else from being victimized.

You also want to buy insurance from a company that’s financially sound. You can check the financial health of an insurance company by using ratings from independent ratings agencies such as Standard and Poor’s, A.M. Best and Moody’s.

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Getting Premium Quotes

Getting premium quotes is a good way to compare different companies' prices. But, first you should decide what coverages and policy limits you need. It's important that you know how much it would cost to rebuild your home. An insurance agent or a contractor might be able to help you estimate the cost to rebuild your home.

When you get quotes, it's crucial that you ask for the same coverages and limits and give the same information to each agent or company. To give you an accurate quote, the insurance agent or company will usually ask for a description of your house (such as where it's located, its square footage, when it was built and the type of construction). He or she also might ask about items that increase your insurance needs, such as owning pets and expensive possessions. An agent might visit your home to take a photo or ask you for other information (such as the distance from the nearest fire department and the general condition of your home). Be sure to get rate quotes and key information in writing.

Make sure you ask the insurance agent if you qualify for any discounts. Some insurers offer a discount if you also buy your auto insurance from them or if you disaster-proof your home (for example, add storm shutters), update the home's electrical or plumbing systems, get a new roof or add home security devices (for example, a burglar alarm).

Also, be sure to find out how much your premium will change if you choose different deductibles.

While you're getting quotes, you should also ask the agent some of these questions:

- Are the agent and the insurance company licensed by my state insurance department? For how long? (Your state insurance department can confirm the answers to these questions.)
- How can I find out the claims history of the home before I buy it? The claims history of the home might affect your premium.
- If I submit a claim, how will it affect my premium when I renew the policy?
- How will my credit history affect my premium?
- What does the policy cover? What doesn't it cover? What are the limits to the coverages?
- How much coverage do I need for my personal property?
- How much liability coverage should I buy?
- Should I buy flood insurance or earthquake coverage? Your homeowners insurance policy doesn't cover either.
- What types of water damage are **not** covered? Is mold damage covered?

If you're thinking of buying a home, you can ask an agent to estimate the cost of insurance.

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Your Responsibilities

A homeowners insurance policy is a legal contract. It's written so that your rights and responsibilities, and those of the insurance company, are clearly stated. You should read your policy and be sure you understand it. If you have questions about your insurance policy, contact your insurance agent or company.

When you buy homeowners insurance, you will receive a policy — not a photocopy. If you don't receive a policy within 30 days, contact the insurance company, not the agent. If you need a company's toll-free number, contact your state insurance department.

Keep your policy in a safe place and know the name of your insurer. If you still have questions, contact your state insurance department.

Other helpful tips:

- Pay the premium on time. Most insurers don't offer a grace period for paying the premium; the due date is the due date.
- Keep a file of all paperwork you completed online or received in the mail and signed — as well as any other documents related to your insurance, including the policy, correspondence, copies of advertisements, premium payment receipts, notes of conversations and any claims submitted.
- Make a household inventory.
  - Go through each room; write down and take pictures or videos of everything in the room.
  - Inventory everything, including valuable items such as antiques, electronics, jewelry, collectibles and guns.
  - Store your home inventory in a secure place at another location, such as your workplace, a safe deposit box, a relative's house or online.
  - Annually review and update your home inventory, including your pictures/videos. Also update your inventory when you buy new items.
  - Keep receipts with your home inventory for all repairs and new items you buy, for proof if you file a claim.
- Maintain your home.
  - A homeowners policy isn't a maintenance contract; it insures against damage from perils such as fire, wind and hail. It doesn't pay to repair items that simply wear out, like rotted porch railings. You're responsible for the upkeep of your home, such as repairing your roof when it begins to leak or cleaning your chimney flue so it doesn't catch fire.

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Filing a Claim

Read your policy — it's your guide to the types of losses that may or may not be covered. How often you file a claim and the types of claims you file often affect your premium and whether your insurer will renew your policy. If the cost to repair the damage is not much more than your deductible, you might want to pay for the repairs without filing a claim.

> Most insurance companies report your homeowners claims to private nationwide claim databases (such as the Comprehensive Loss Underwriting Exchange, better known as CLUE). Insurance companies use these databases to see the claims you've submitted in the past.

To file a claim, contact your insurance agent or company as soon as possible. Ask about forms or documents you'll need to support your claim. You're also required to protect your home from further damage. For example, you might need to board it up or clean up water from a backed-up drain.

The insurance company will assign a claims adjuster to assess the damages and determine the payment. These adjusters may be employees of the company or independent contractors. You should cooperate with the adjuster's investigation of your claim. The adjuster will probably want to meet with you at your house to inspect the damage. Jot down notes and keep track of the dates of any conversations you have with your insurance agent or adjuster.

If there are disagreements between you, the insurer and the claims adjuster, first try to resolve them with your insurer. Don't feel rushed or pushed to agree with something you aren't comfortable with. It might help to have your contractor meet with you and the insurance adjuster.

If you and the insurer still disagree about the value of the claim, check your policy for an appraisal clause. Another option is to hire an attorney or a public adjuster.

> Public adjusters aren't attorneys or government employees — they're freelance adjusters that charge you a fee. Not all states allow public adjusters, but those that do require them to be licensed and to follow certain guidelines. If you have questions about the use of public adjusters, contact your state insurance department.

If you have trouble with or questions about your claim, you also may contact your state insurance department for help. Your state insurance department has consumer services personnel who can help you work with your insurer to resolve disagreements.

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Losing Your Insurance

There's a big difference between an insurance company cancelling your policy and not renewing it.

Cancellation means either you or your insurance company stop the coverage before the policy's normal expiration date (which is usually 12 months after the policy starts). You can always cancel your policy for any reason. When you're a new policyholder, there's a limited period of time (typically 60 days) in which your insurance company can cancel your policy for any reason. After that, it can only cancel you if you don't pay your premium, if you've lied on your application or if your risk has changed substantially.

If your insurance company cancels your policy, it must give you notice. The number of days varies by state. If you or the insurer cancels your policy, the company may refund a portion of your premium.

Non-renewal means the company refuses to renew your policy after it expires. Insurance companies generally have the right to not renew your policy. If your company chooses not to renew your policy, it must give you notice; the number of days (typically 30 days before the renewal date) varies by state. You may ask the insurer for the reason. You also may choose not to renew your policy.

What to Do if You Can't Find Insurance

- <Insert state-specific FAIR Plan information>
- <Insert state-specific wind pool or other residual market mechanism information or market assistance program>

For More Information

- Visit your state insurance department's Web site:
  - <Insert state department of insurance Web site information for the long version of the consumer's guide>
  - <If applicable, insert consumer rights information>
  - <If applicable, insert premium comparisons>
  - < If applicable, insert complaint handling information>
- Visit the National Association of Insurance Commissioners (NAIC) Web sites for consumers: www.InsureUonline.org or www.naic.org/consumer_home.htm.
- Visit the National Flood Insurance Program Web site: www.floodsmart.gov.
- Access your free annual credit report: Visit www.annualcreditreport.com or call 877.322.8228.

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