

# Senate Adds Private Insurer Oversight to Flood Insurance Bill

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<?xml version="1.0"?>Senate Adds Private Insurer Oversight to Flood Insurance Bill Raymond J Lehmann

The U.S. Senate has passed by a 92-6 margin legislation that would extend the National Flood Insurance Program through 2013, phase in actuarially sound rates for nonresidential and non-primary residences, and forgive the NFIP's debt, estimated at nearly \$18 billion.

The bill also creates an executive branch overseer to police Write Your Own insurers, as well as an expert commission that will report to Congress on ways to address the availability of catastrophe coverage in high-risk areas.

The vote sets up a potentially contentious conference with U.S. House leaders, whose version of the legislation, the Flood Insurance Reform and Modernization Act, would offer NFIP policyholders the option to purchase "multiperil" coverage with limits of \$500,000 for residential properties and \$1 million for commercial properties. The House bill, H.R. 3121, also includes language prohibiting insurers that market federal flood policies through the Write Your Own Program from excluding private coverage for damage caused concurrently by both wind and water.

The Senate previously struck down 73-19 an amendment from Sen. Roger Wicker, R-Miss., and supported by most Gulf Coast lawmakers that would have called for the windstorm coverage. However, the final bill did include a proposal from Sen. Mary Landrieu, D-La., expanding the newly created Office of the Flood Insurance Advocate to see that WYO insurers negotiate on behalf of the NFIP in good faith. The OFIA, which also would coordinate a mandatory arbitration process sought by state insurance regulators, would regularly audit WYO insurers, investigate potential instances of fraud and abuse, and refer criminal violations to the U.S. Department of Justice.

"The partnership between private insurers and the flood insurance program lacks any degree of meaningful oversight, which the General Accountability Office recently underscored," Landrieu said. "The GAO pointed out the inherent conflict of interest that exists when private insurers determine what damage is caused by wind, for which they must foot the bill, and what damage is caused by flooding, which the NFIP funds. This amendment will instill real accountability, and add a considerable amount supervision over the insurance companies."

Established in 1968 by the National Flood Insurance Act, the NFIP currently has more than 5.2 million commercial and residential flood insurance policies in force in more than 20,000 participating communities. More than 95% of the policies are sold and serviced through Write Your Own insurers, which are paid by the Federal Emergency Management Agency for marketing the policies and processing claims.

Although generally supportive of the overall bill, insurers expressed reservations about the Landrieu amendment, claiming the FEMA appeals process, state-based mediation and the courts all already provide sufficient options for policyholders concerned about the claims-payment process.

"With fewer than 100 WYO companies, it would not take long for everyone selling these policies to come under the federal microscope, regardless of whether added scrutiny is needed or not," David Sampson, president and chief executive officer of the Property Casualty Insurers Association of America, said in a statement.

The White House also has raised concerns about requirements that the National Flood Insurance Advocate file reports directly to Congress without review by superior executive branch officials, and about a requirement that FEMA claims adjusters participate in state-sponsored mediation at the request of state insurance commissioners. Although stopping short of claiming the provisions would trigger a presidential veto -- a warning the White House did hand down about the windstorm provisions -- the Office of Management and Budget suggested both provisions fail to pass constitutional muster.

Other differences between the House and Senate bills also threaten to hang up the bicameral negotiations process. The Senate bill, unlike the House bill, would forgive the more than \$17.5 billion the NFIP borrowed in the wake of 2005's record hurricane season. That could run afoul of "pay-as-you-go" budgeting rules that House

leaders have insisted upon, although a November 2007 report from the nonpartisan Congressional Budget Office suggested forgiving the program's debt would nearly pay for itself over the next decade, as it staves off mass abandonment by policyholders of a "nonfunctional" program (BestWire, Nov. 6, 2007).

The House also includes provisions, not included in the Senate bill, that would raise the NFIP's maximum coverage limits for the first time since 1994 from the current ceilings of \$250,000 for residential properties and \$500,000 for commercial properties, to \$335,000 and \$670,000, respectively, and the coverage limit on contents would rise to \$135,000 from \$100,000. Other industry-supported provisions of the House bill would introduce coverage of additional living expenses, business interruption, and finished basements.

"Both an increase in the maximum coverage limits and an inclusion of optional coverages would better allow both individuals and commercial businesses to insure against the damages that massive flooding can cause," said John Prible, assistant vice president for federal government affairs with the Independent Insurance Agents & Brokers of America. "We hope that the House and Senate will consider including these provisions as the legislation moves forward in a conference committee."

(By R.J. Lehmann, Washington bureau manager: raymond.lehmann@ambest.com)

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