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Legislative Bulletin……………………………………….………July 15, 2010

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Key Conservative Concerns

Take-Away Points

--**$481 Million of Authorized Spending.** The legislation authorizes a total of $481 million of new spending (subject to appropriation) over five years. This includes a new $250 million (over five years) program for outreach grants intended to encourage the purchase of flood insurance, and to increase public awareness of flood-risk prevention.

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

--**The Program Itself Creates Perverse Incentives.** Some conservatives argue the National Flood Insurance Program dampens the financial and common-sense disincentives to build homes in flood-prone areas by making insurance artificially more available than it otherwise would be in a market not manipulated by the federal government.

--***On the Other Hand…* Here are Some Positive Reforms.** As noted by Financial Services Committee Republicans in the Committee Report: "…several Republican proposals have been incorporated into H.R. 5114 to strengthen the reforms in the bill, including provisions to eliminate subsidies over time for homes that are sold to a new owner (Garrett), impose minimum deductibles for all insured properties (Neugebauer), require a report on the feasibility of incorporating nationally recognized building codes into the NFIP's floodplain management criteria (Neugebauer), and direct the NFIP to report to Congress with a plan to repay its debt to the Treasury within ten years (Hensarling)."

For more details on these concerns, see below.

H.R. 5114—Flood Insurance Reform Priorities Act *(Rep. Waters, D-CA)*

<u>Order of Business</u>: The bill is scheduled to be considered on July 15, 2010 under a structured rule (H.Res. 1517) that provides one hour of debate equally divided between the Chairman and ranking member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill except for clauses 9 (earmark rule) and 10 (PAYGO) of rule XXI. The rule makes in order a total of 11 amendments to be analyzed in a subsequent RSC Legislative Bulletin.

Summary: Highlights of H.R. 5114:

Extension of Flood Insurance Program: The bill extends the National Flood Insurance Program (NFIP) through September 30, 2015.

Increase in Maximum Coverage Limits: The legislation increases coverage limits as follows:

- From $250,000 to $325,000 for residences;
- From $100,000 to $135,000 for residential contents; and
- From $500,000 to $670,000 for nonresidential properties.

Actuarial Rates for Some Properties: Three years after enactment, the legislation requires phased-in actuarial rates (i.e. non-subsidized rates) for commercial and non-residential pre-FIRM properties. A pre-firm property is a property built before the community's flood insurance rate map was completed (or before 1975, whichever is later). The annual increase for premium rates would be allowed to increase by up to 20% annually.

5-Year Delay of Purchase Requirement for New Flood Hazard Areas: The legislation delays for five years the mandatory flood insurance purchases requirements of areas designated as "Special Flood Hazard Areas" after September 1, 2008.

5-Year Phase-In of Flood Insurance Rates for Newly Mapped Areas: The legislation phases in actuarial rates, over a five year period (with a 20% step-up in each successive year) for newly designated "Special Flood Hazard Areas." CBO estimates that this provision will worsen the financial outlook of the program by $160 million.

Increase in Annual Limitation on Premium Increases: The legislation allows the National Flood Insurance Program to increase the limit on annual premium increases from 10% to 20%.

Notification of Homeowners Regarding Mandatory Purchase Requirement: The legislation requires the FEMA Director, in consultation with affected communities, to establish and carry out a plan to notify residents of areas having special flood hazards (on an annual basis) that they reside in a flood area, and to provide them with a general estimate of what similar homeowners in similar areas typically pay for flood insurance coverage.

Waiver of Waiting Period for Effective Date of Flood Insurance Policies: For flood insurance coverage purchased within 30 days of purchase/transfer of a property, the bill makes the coverage effective immediately.

Minimum Deductibles for Claims: Sets minimum deductibles for claims as follows for pre-FIRM properties:

- $1,500 for losses of less (or equal to) $100,000;
- $2,000 for losses of more than $100,000;

Sets minimum deductibles for claims as follows for post-FIRM properties:

- $750 for losses equal to or less than $100,000;
- $1,000 for losses greater than $100,000.

Payment Installment Plan for Low-Income Policyholders: The legislation allows premiums to be paid in monthly installments for any residential property that is owned by a family whose income level is at or below 200% of the poverty line.

Civil Penalties: The legislation increases from $350 to $2,000 the civil penalty on lenders that do not enforce the NFIP purchase and notification requirements. The maximum, cumulative penalty that could be levied on one institution would increase from $100,000 to $1 million (with no limit if an institution is fined at the highest level in at least three out of five years). This provision increases revenues by a total of $10 million over ten years.

New Outreach to Property Owners and Renters Program: The legislation creates a new program, authorized at $50 million a year over the 2011-2015 period (total of $250 million), intended to encourage the purchase of flood insurance, and to increase public awareness of flood-risk reduction.

Severe Repetitive Loss (SRL) Mitigation Pilot Program: The legislation authorizes $40 million a year over 2011 to 2015 (a total of $200 million) for the Severe Repetition Loss Mitigation Pilot Program, which is intended to provide grants for projects that reduce flooding in at-risk areas.

Flood Insurance Advocate: The bill establishes a National Flood Insurance Advocate in the Federal Emergency Management Agency (FEMA). The purpose of the office is to:

- Assist insureds under the NFIP in resolving problems with the Federal Emergency Management Agency (FEMA).
- Identify areas in which such insureds have problems in dealing with the Agency relating to such program;
- Identify potential legislative, administrative, or regulatory changes which may be appropriate to mitigate such problems; and
- Assist communities and homeowners with interpreting, implementing, and appealing floodplain maps and floodplain map determinations.

The legislation authorizes $5 million annually, from 2011 to 2016, for this office (a total of $30 million).

Study on Repaying Flood Insurance Debt: The legislation requires the FEMA Director to submit a report to Congress with a plan for repaying, within 10 years, the more than $18 billion that the NFIP owes the Treasury.

Additional Background: The National Flood Insurance Program (NFIP) was created by Congress in 1968 to provide insurance as an alternative to direct federal disaster assistance for individuals living in flood-prone areas. According to CBO: "As of January 2010, the NFIP had approximately 5.6 million policies in force, with a total insured exposure of $1.2 trillion." NFIP coverage only applies in cases of mass weather-induced flooding, not in individual instances of, for example, a pipe bursting in one home. For more information on the NFIP, visit this website: http://www.floodsmart.gov/floodsmart/pages/index.jsp.

RSC Bonus Fact: The program currently owes the Treasury more than $18 billion. According to CBO, the NFIP has a total insured exposure of $1.2 trillion.

Committee Action: H.R. 5114 was introduced on April 22, 2010 and referred to the House Committee on Financial Services, which held a mark-up and ordered the bill to be reported (as amended) by voice vote on April 27, 2010.

Possible Conservative Concerns: Some conservatives believe that the NFIP dampens the financial and common-sense disincentives to build homes in flood-prone areas by making flood insurance artificially more available than it otherwise would be. The program currently owes the Treasury more than $18 billion—and H.R. 5114 would extend the program for another 5 years without guaranteeing that the Treasury would be paid back this debt. Finally, some conservatives may be concerned that the legislation authorizes a total of $481 million of new spending (subject to appropriation) without any offset to authorized, existing programs.

Administration Position: No Statement of Administration Policy is available at press time.

Cost to Taxpayers: The legislation increases authorized discretionary spending by $481 million over five years and increases federal revenue by $10 million over ten years.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation increases authorized discretionary spending by $481 million over five years and creates new programs and offices.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, though it does not exceed the threshold under the Unfunded Mandates Reform Act of 1995. CBO describes the mandates in the bill as follows:

> "Under current law, mortgage lenders who make federally related mortgages, as defined in 12 U.S.C. 2602, are required to provide a goodfaith estimate of the amount or range of charges the borrower is likely to incur for specific settlement services. The bill would require such mortgage lenders to include specific information about the availability of flood insurance in each good-faith estimate. To the extent that state agencies issue loans or other credit instruments that would be subject to the requirements of the Real Estate Settlement Procedures Act, the bill would impose intergovernmental mandates. The mandate would require small changes in existing disclosure requirements."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The House Financial Services Committee, in House Report 111-495, asserts: "H.R. 5114 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

Constitutional Authority: The House Financial Services Committee, in House Report 111-495, cites constitutional authority as follows: "Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce)." Some conservatives may find these citations questionable.

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