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Comments of the Center for Economic Justice

To the Market Analysis Procedures Working Group

September 1, 2017

CEJ writes to urge the Working Group to add private, voluntary flood insurance to the Market Conduct Annual Statement, to respond to industry objections and to offer a new proposal to streamline industry's opposition to any proposed data collection for market analysis and regulation.

Need for Adding Private, Voluntary Flood to MCAS

The 2016 statutory annual statement required separate reporting of federal and private flood insurance for the first time. The NAIC has compiled the data (attached) and in 2016, insurers wrote $376 million in private flood premium and earned $215 million premium. The large difference between written and earned indicates a rapidly growing market.

The market for private flood will continue to grow regardless of the reauthorization of the NFIP for at least four reasons. Federal agencies are finalizing rules regarding private flood insurance. Once these rules – or legislation supplanting the need for the rules – are in place, there will be fewer real or perceived roadblocks to banks accepting private flood insurance in lieu of an NFIP policy. Second, risk modeling, data analytics and reinsurance for flood have progressed to a level similar to that of other catastrophe perils, making it easier for the private market to write flood. Third, all of the proposals before Congress promote the sale of private flood to one degree or another. Fourth, a number of states are actively promoting private flood markets. Fifth, Hurricane Harvey will cause more homeowners to purchase flood insurance over the next few years.

Implementing the addition of voluntary flood may be as simple as adding a voluntary flood column to the homeowners MCAS or otherwise using the same data elements and definitions for voluntary flood as currently used for the homeowners MCAS.

Finally, there is urgency for action by the MAP WG. Were the MAP WG to act tomorrow to agree to recommend to the D Committee a voluntary flood MCAS, it would be a challenge to get the MCAS ready by next June 1 for initial reporting of 2019 experience in 2020. By 2019, private flood will have grown dramatically from the 2016 totals. Now is the time to start the development process for voluntary flood MCAS so it is in place when regulators need it. If a MCAS for voluntary flood were currently in place, then regulators would have had MCAS data on voluntary flood sales, claims, complaints and suits related to Hurricane Harvey.

Response to Industry Objections

"Wait to see what happens with the NFIP reauthorization." During an earlier call, industry's rationale for opposing a flood MCAS was that regulators should wait and see what happens with the NFIP reauthorization because the uncertainty about the NFIP reauthorization will somehow affect the need for or nature of MCAS flood data collection. This argument is without merit because there is no outcome regarding the NFIP reauthorization that will eliminate or even slow the growth of private flood insurance. There is nothing in any of the legislative proposals that would eliminate or otherwise affect the need for regulators to examine for private flood the sales, complaints and claims settlement data elements used for the homeowners MCAS. Industry has not articulated one specific issue associated with NFIP reauthorization that would affect the need for voluntary flood MCAS.

In their July 19, 2017 letter, the industry trades oppose adding voluntary flood to MCAS stating:

> For the reasons set forth in more detail below, we do not believe inclusion of private flood as a separate MCAS business line is necessary or appropriate at this time.
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> In the case of private flood, we firmly believe that there are no benefits in collecting this information on MCAS for a number of reasons. These reasons include the limited size of the market, the fact that any form of regulatory burden could stifle this emerging market, the fact that most private flood is written on a non-admitted (surplus) lines basis and thus is of limited utility to regulators and the limited number of complaints for this particular line of business.

CEJ offers the following responses.

"Private flood is a small market." Private flood is small compared to homeowners, but tens of thousands of consumers have purchased private flood. More important and more relevant is the fact that private flood is growing rapidly. If the MAP working group were to decide now to add private flood to MCAS, the first data will 2019 experience reported in 2020. By then the market will have grown significantly to $1 billion or more involving hundreds of thousands of consumers. If the MAP working group does not act quickly to add private flood to MCAS, regulators will, at best, lose another year during a period in which private flood is growing rapidly and policymakers at the state and federal level will be seeking information.

In addition, we point out that one of the indicators/red flags for possible market problems is rapid growth – and that is the case here.

"Private flood is a peril, not a line of business." Industry argues that flood coverage is included in commercial policies and in some homeowners policies and, consequently, asking insurers to report private flood policy information "would be akin to asking for specific data on "hail damage" or "dog bites. requiring [sic] reporting solely on one peril in a multi-peril policy would be a time- and resource- intensive effort to avoid missing data or double counting data.

While one of the more creative objections industry has offered in opposition to all proposed market regulation data collection, this "argument" is ~~lame~~ based on a misunderstanding of the proposed private flood MCAS. Private flood is, in fact, a separate line of insurance with a separate line in the statutory annual statement and separate policy forms and rates filed with insurance departments. This is the private flood to be included in a private flood MCAS.

"Since the market is small, the costs burdens are great." Industry argues, "any additional costs would have a significant impact as the market lacks the scale to leverage such costs. As a result, requiring that reporting companies regularly report any form of private flood data would place a significant burden on these companies

While we admire the creativity of this argument – "the market lacks the scale to leverage such costs"—the argument is ~~goofy~~ based on erroneous assumptions. MCAS is not a cost to a market or an industry, but to the individual insurers who are required to report the experience. Further, the concept of "leveraging costs" is misplaced. To the extent the reporting of MCAS requires more than the programming of a data system to produce the required data, the addition personnel costs will be proportional to the size of the insurer – much less for an insurer with a small book of business than for an insurer with a large book of business.

In addition, the size of the private flood book of business is not an indicator of the size of the insurer. Insurers writing private flood may write only flood or may write huge volumes of other lines of insurance.

Further, consideration of cost alone is not the relevant metric because the benefits of reporting are not included. While the benefit to cost ratio is great, it is unclear why reporting data that are routinely collected as part of normal business operations – sales, claims, complaints, lawsuits – represents a significant cost in absolute terms or relative to the benefits of improved efficiency and effectiveness of market analysis and reductions in special data calls and unfocused regulatory inquiries and examinations.

"A private flood MCAS will discourage private flood. Industry argues that adding a private flood MCAS will discourage the development of a private flood market. Industry seems to be arguing that regulators should not expect new entrants to keep track of policies sold and cancelled, claims received and denied and complaints received – even though this is the critical data needed run the business. The industry argument appears to be that the cost of reporting some 20 data elements generated as part of the routine operation of our business is significant relative to the insurer's capital requirements, other regulatory costs and costs of sales, marketing, pricing and claims. Industry's claim – that the presence of private flood MCAS will be the factor that prevents an insurer from entering the private flood market is ~~absurd~~ illogical and without empirical or logical support.

"A lot of private flood is written by surplus lines insurers." While the fact that some or most private flood is written by surplus lines insurers is interesting, it is not particularly relevant for evaluating the addition of a private flood MCAS for admitted carriers. As noted above, the admitted private flood market is substantial and growing rapidly. It may well be that regulators will seek to collect data from surplus lines insurers, but that question can be examined and addressed only after the MCAS WG is tasked with developing a private flood blank.

"There are few complaints for private flood." This is truly a zombie argument. It has been thoroughly refuted again and again, but it continues to shamble on in the industry library of objections. Complaints are not a substitute for MCAS. If they were, there would be no need for MCAS. Further, complaints are not remotely an exhaustive indicator of market problems. How many complaints did regulators get about Wells Fargo falsely force placing 800,000 LPI auto policies over a five or six year period? Apparently not enough to identify the problem. MCAS is important, among many reasons, because it involves complaints received by insurers directly as opposed to complaints that make their way to the DOI and which make it through the confirmation process.

CEJ Proposal to Streamline Industry Objections

In an effort to foster collaboration between all stakeholders and improve the efficiency of MAP and MCAS Working Group meetings, CEJ proposes the attached checklist to streamline industry's routine opposition to any and all proposed data collection for market regulation.