

## Commissioner's Monthly Column

### Federal Legislation Overview

#### December 2013

At the end of each year my column takes a closer look at federal legislation passed during the previous year that has an impact on insurance in our state. As you may have heard me say in the past, insurance is not something that folks in Washington do very well, and this year it has been the areas of health and flood insurance that are the subject of much debate both in the nation's capital and in homes and businesses across the country.

The Affordable Care Act has dominated national headlines particularly in the last three months following the troubled launch of the online Health Insurance Marketplace, a major provision of the Affordable Care Act. Policies purchased in the marketplace before December 15 were to begin coverage as early as January 1, 2014. However, due to the technical problems that plagued the online marketplace, the Obama administration announced it would allow consumers additional time to sign up for health insurance coverage that would take effect at the beginning of the year.

Technical issues with the marketplace were not the only problems the Affordable Care Act (ACA) rollout faced. After being told they could keep their current health plans if they liked them, millions of policyholders nationwide, including more than 90,000 in Louisiana, were subject to cancellations of their policies because their plans did not meet ACA requirements. This prompted members of Congress to sponsor such bills as [S. 1617 – If You Like Your Health Plan, You Can Keep It Act](#) and [H.R. 3350 – Keep Your Health Plan Act of 2013](#). Both of which would essentially permit those with existing health insurance coverage to keep their existing policies.

In November the Obama Administration announced it would allow plans renewing between January 1 and October 1, 2014 to be extended without including certain 2014 market reforms required under ACA, provided that coverage was in effect on October 1, 2013. The decision to implement the president's proposal was left to the discretion of each state's insurance commissioner.

In hopes of alleviating some of the pressure and concerns of consumers and to allow more time for them to familiarize themselves with the complexities of the ACA, as the commissioners in Mississippi, Georgia, South Carolina and many other states did, I opted to allow insurers to offer "transitional relief," or extension of the non-ACA compliant policies. This decision was reached after closely reviewing the potential ramifications of the proposal, including the legal, health and solvency issues. Insurers are not required to offer policy extensions; however, the Louisiana Department of Insurance (LDI) has pledged to work with companies who decide to do so.

Due to the numerous kick-off problems, the Obama administration has moved to a rolling implementation of ACA, pushing back deadlines on other components of the law including postponing the employer mandate for one year and delaying online enrollment for small businesses looking to purchase coverage through the health insurance marketplace for one year.

Another major topic of interest in the insurance industry this year was the Biggert-Waters Flood Insurance Reform Act of 2012. Passed by Congress in July 2012, the Act aimed to make the National Flood Insurance Program (NFIP) actuarially sound by raising flood insurance rates to more closely resemble the true flood risk and losses in flood-prone areas. In doing so, the Biggert-Waters Act unintentionally imposes unaffordable flood insurance premium increases across the nation, potentially rendering properties unaffordable or worthless.

Flood insurance premium increases were to achieve actuarially sound rates on primary residences which had benefited from the grandfathering of previous flood risk determinations. Biggert-Waters ordered an end to many premium subsidies for property owners and a remapping of communities to establish current and more accurate flood zones. This resulted in additional property owners being required to purchase flood coverage.

Premium increases as a result of Biggert-Waters have been of particular interest to property owners here in Louisiana, where more than 480,000 flood insurance policies are insured through the NFIP. Approximately 18,000 of those policies are immediately impacted by the Biggert-Waters rate increases and another 50,000 will be impacted once they are sold.

In September, Mississippi Insurance Commissioner Mike Chaney filed an affordability-based lawsuit in the United States District Court for the Southern District of Mississippi to try to halt the NFIP premium increases imposed by Biggert-Waters. The lawsuit stated that the Federal Emergency Management Agency (FEMA) had failed to provide an affordability study to Congress by April 2013, as required by Biggert-Waters and asks that rate increases as a result of Biggert-Waters be blocked until FEMA has fulfilled every requirement of the law including submitting an affordability study.

In Louisiana we have also been proactive in attempting to block the oppressive rate increases of Biggert-Waters. In addition to filing an amicus curiae, or "friend of the court" brief, in support of the lawsuit filed by Commissioner Chaney, I've met with numerous state and federal officials over the past few months to discuss the issues resulting from the Biggert-Waters Act. Additionally, I was invited to Washington by the U.S. Government Accountability Office (GAO) in August to take part in a roundtable discussion as required by Biggert-Waters to study the possibility of privatizing the NFIP and I also was part of a group of state, local and congressional officials who met with NFIP Administrator Dave Miller in New Orleans to make our case for relief from the Biggert-Waters rate increases.

Most recently, during my meeting with President Obama at the White House, I personally handed him a letter on behalf of public and private interests in many states asking him to intercede to protect residents from the unintended consequences of Biggert-Waters. Essentially, the letter asked the president to impose a forbearance on rate hikes established under the 2012 law at least until an affordability study is completed.

Although in October the House and Senate members were able to reach a bipartisan agreement to delay NFIP rate increases that became effective on October 1, 2013, we have yet to see any success in the effort, legislatively. Two bills were introduced in Congress in late October as a result of the bipartisan agreement led, in part, by Rep. Maxine Waters who was a key drafter of Biggert-Waters. The goals of

the two pieces of legislation are to ensure that changes to the NFIP rates would be more affordable without the unintended effect of pricing large numbers of property owners out of their homes.

The two bills introduced were [H.R. 3370 – Homeowner Flood Insurance Affordability Act of 2013](#) and [S. 1610 – Homeowner Flood Insurance Affordability Act of 2013](#). Both bills call for a four-year delay on most flood insurance rate hike implemented under Biggert-Waters and required FEMA to complete an affordability study. The study is estimated to take up to two years to complete. Within 18 months of completing study, the bills state that FEMA must propose an affordability framework that addresses the affordability issues of Biggert-Waters and allows Congress six months to review the proposed regulations. Properties included in the four-year delay proposed by the bills include primary, non-repetitive loss residences that are currently grandfathered; all properties sold after July 6, 2012; and all properties that purchased a new policy after July 6, 2012.

Efforts to delay NFIP rate hikes currently face an uphill battle in Congress. Even though it is now widely known that drastic rate increases would be imposed on millions of property owners as a result of Biggert-Waters, many members of both the Senate and House of Representatives still stand behind the implementation of the flood insurance program overhaul. This opposition has forced supporters of the delay of NFIP rate increases, such as Sen. Mary Landrieu and Rep. Bill Cassidy, to examine alternative solutions. One promising solution comes in the form of recent legislation by Cassidy. [H.R. 3693 – The Flood Insurance Relief and Transparency Act](#) would delay NFIP rate hikes for certain properties in high-risk flood zones until March 2015, six months beyond when the increases are scheduled to start being phased in. But his bill has opposition since it doesn't address all the critical consequences of the NFIP increases contained in Biggert-Waters. That legislation is currently awaiting a House vote.

A four-year respite from Biggert-Waters rate hikes would undoubtedly be great news for Louisiana, where many residents in coastal communities will be severely impacted by the increases. I will continue to support legislative efforts to halt these premium hikes that would devastate our state's economy and to work with Congress for a more reasonable approach; one that will protect our working coastal families.

For a list of other 2013 congressional bills the department has been tracking throughout the year, please see the attached 2013 Federal Legislation bill list.