

February 4, 2019

David I. Maurstad
Deputy Associate Administrator for Mitigation and Insurance
Federal Emergency Management Agency
Department of Homeland Security
400 C Street SW
Washington, DC 20472

Dear Deputy Associate Administrator Maurstad:

The undersigned organizations are writing to respectfully request clarification related to Cancellation Reason Code 26 ("Code 26"), and to further request FEMA consider appropriate action to ensure that consumers are not harmed by any unclear guidance related to Code 26. As you know, Code 26 was put in to place on October 1, 2018 and deals with duplicate flood insurance coverage from a source other than the National Flood Insurance Program (NFIP). However, since then there has been some confusion as to how to properly apply this code to cancel an NFIP policy.

The implementation of Code 26 was announced in March 2018 when FEMA issued a bulletin regarding the October 1, 2018 program changes which highlighted among other things Cancellation Reason Code 26 for duplicate coverage. In relevant part the March bulletin states: "Beginning October 1, 2018, FEMA will establish Cancellation Reason Code 26 to allow cancellation of an NFIP policy when a policyholder has obtained a duplicate policy from sources other than the NFIP. . . ." ¹ Between March and October, the purpose of the new cancellation code was generally explained to stakeholders—including Write-Your-Own (WYO) companies, insurance agents and brokers, NFIP policyholders, and members of Congress—as allowing for refunds on unearned premiums for the mid-term cancellation of NFIP policies if a consumer elected to purchase a policy from the private flood insurance market.

However, when the October flood insurance manual came out it stated in relevant part: "To cancel an NFIP policy when the insured obtained a duplicate policy from sources other than the NFIP and the insured did not intend to renew or purchase the NFIP policy." ² The addition of the intentional language in the October manual is resulting in a lack of clarity in the way that Code 26 is being interpreted by WYOs, agents, and FEMA staff, and is stifling the intent of Code 26 because it is unclear how it should be interpreted. Additionally, one possible interpretation is that if a policyholder has an NFIP policy in force, then buys a private flood policy intending to cancel the NFIP policy, that intentional act means it cannot be cancelled. Effectively meaning that cancellation can only occur if a private policy is obtained during an accidental renewal of an NFIP policy.

This inconsistency and subsequent differing interpretations are creating legal and reputational risks for the agents, brokers, and WYO companies that sell NFIP policies. It is also causing harm to consumers as policyholders are receiving inconsistent answers on their ability to receive refunds for unearned premiums on NFIP policies when they choose to purchase a private flood insurance policy. As such, clarification is

¹ See, Bulletin W-18008, "October 1, 2018, Program Changes," (March 27, 2018) available at: <https://bsa.nfipstat.fema.gov/wyobull/2018/w-18008.pdf>.

² See, October 1, 2018 NFIP Flood Insurance Manual, Chapter 6, Page 18, available at: <https://www.fema.gov/media-library/assets/documents/171681>.

needed to ensure that refunds for unearned premiums for a mid-term cancellation in favor of a private policy are permitted under Code 26 as was intended and communicated by FEMA in the Spring.

Allowing for refunds on unearned premiums is something that has broad support among NFIP stakeholders. Such refunds are generally permitted in other lines of insurance and are consumer-friendly, as they allow consumers to receive pro-rated refunds when cancelling an insurance policy. In fact, a recent report by the University of Pennsylvania identified NFIP regulations that only allowed policyholders to switch insurance providers at the time of their annual renewal and not mid-term as a significant point of frustration for consumers and a barrier to more affordable policies for some consumers. The report issued in November 2018 (after the October bulletin) also notes that FEMA now allows such cancellations.³ Refunds for mid-term cancellations is also something that has found support in Congress. Section 205 of H.R. 2874, “the 21st Century Flood Reform Act” that passed the U.S. House of Representatives in 2017 would have required FEMA to allow refunds of unearned premiums upon cancellation of an NFIP policy in favor of a private flood insurance policy.

Additionally, in the past FEMA allowed mid-term cancellation for unearned premiums if the consumer purchased a private flood insurance policy under Cancellation Reason Code 16. However, that reason code was later rescinded. Previously, FEMA allowed refunds for mid-term cancellations, then reversed course, and then sought to allow them again resulting in the current confusion. In addition to seeking clarity on how Code 26 is to be applied now we ask that FEMA also consider other options for ensuring that mid-term cancellation refunds are available consistently to consumers who purchase private flood insurance, such as issuing formal regulations. The undersigned organizations believe that this would be supported by stakeholders, would be beneficial to consumers, and would be consistent with ongoing efforts by FEMA to ensure that more Americans maintain insurance for the peril of flood.

Finally, the undersigned organizations appreciate all the work that FEMA staff has done and continues to do to improve the consumer experience for NFIP policyholders; and we specifically appreciate the time and effort that has gone into addressing issues related to mid-term cancellations. We thank you in advance for considering our request and are ready to work with FEMA to address these issues so that we can best serve NFIP policyholders.

Sincerely,

American Property Casualty Insurance Association
Council of Insurance Agents and Brokers
Independent Insurance Agents and Brokers of America
National Association of Mutual Insurance Companies
Reinsurance Association of America
Wholesale & Specialty Insurance Association

³ See, “Local solutions to Flood Insurance Affordability: Portland’s Flood Insurance Savings Program,” by Jacob Sherman and Carolyn Kousky Wharton Risk Management and Decision Processes Center, University of Pennsylvania, at page 7.