

United States Senate

December 27, 2018

COMMITTEES:
FINANCE
HEALTH, EDUCATION, LABOR,
AND PENSIONS
ENERGY AND NATURAL
RESOURCES
VETERANS' AFFAIRS
JOINT ECONOMIC COMMITTEE

The Honorable Brock Long
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20742

Dear Administrator Long:

With Washington Democrats choosing to shut down a portion of the federal government instead of voting to fund stronger border security measures, one consequence of their obstruction is the interruption of funding to the Federal Emergency Management Agency (FEMA) and its program functions, which includes the National Flood Insurance Program (NFIP).

Yesterday, FEMA issued guidance regarding the operational status of its functions due to the partial shutdown. With regard to the NFIP, FEMA indicated that the sale of new policies is an activity funded from a one year appropriation. According to FEMA guidance, when a Write Your Own company or an agent sells a policy, they are entitled to a fee from FEMA which FEMA pays from this appropriation.

FEMA's legal opinion is apparently based on a 2002 Department of Justice Office of Legal Counsel Opinion concerning the government shutdown impact on Ginnie Mae operations. Based on this precedent, FEMA's legal counsel has determined that a short-term interruption in the sale of flood insurance policies does not rise to the level of an immediate and significant market disruption that would support application of a narrow exception to the Antideficiency Act involving the safety of property. This opinion does not make sense and runs counter to the 2002 Ginnie Mae operation precedent where Ginnie Mae employees continued essential business operations under an emergency exception. In 2002, Ginnie Mae had limited staff available to manage business operations; contractors were paid from Ginne Mae reserves so that there would not be a break in contractor services on essential functions. Similar to Ginnie Mae, the NFIP does not receive appropriations to fund the selling and servicing of policies - the only money that's appropriated to the NFIP is for the mapping program. Everything else is paid from fees or surcharges or premiums from the policyholders participating in the program.

It makes no sense to impede the selling of NFIP policies until the interruption cascades to a level where a clear market impact is demonstrable – only in Washington, D.C. would this seem like a good idea. The application of the exception under the Antideficiency Act and the resumption of the sale of flood insurance policies needs to happen immediately.

The NFIP is the primary source of flood insurance coverage for residential properties in the United States. As of May 2018, the NFIP had over 5 million flood insurance policies providing over \$1.28 trillion in coverage, with approximately 23,000 communities in 56 states and jurisdictions participating. The program collects about \$3.6 billion in annual premium revenue.

According to research by the National Association of Realtors, a NFIP lapse would impact 1,400 home closings per day, representing over 40,000 sales per month. Just last week, Congress specifically reauthorized this program until May 31, 2019 for the precise reason of avoiding market interruption. I urge you to respond quickly in providing an exception to the Antideficiency Act for the NFIP and all its functions.

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.
United States Senator