August 26, 2022

VIA ELECTRONIC MAIL to bryan.falcone@fema.dhs.gov

Bryan Falcone
Federal Insurance and Mitigation Administration
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472

Re: Request for Information – FEMA Direct to Consumer (D2C) Initiative

Dear Mr. Falcone:

On behalf of the National Association of Professional Insurance Agents (PIA)[1], thank you for the opportunity to respond to the Federal Emergency Management Agency's Request for Information (RFI) concerning its Direct to Consumer (D2C) initiative. Our independent agent members, many of whom sell flood insurance in the private market and through the National Flood Insurance Program (NFIP), are eager to provide feedback to the Federal Insurance and Mitigation Administration (FIMA), which manages the NFIP within the Federal Emergency Management Agency (FEMA), on this disconcerting proposal.

Without independent insurance agents, the NFIP Write-Your-Own (WYO) program, which makes up approximately 88 percent of all NFIP policies,[2] would cease to exist. WYO carriers write NFIP policies and contract with independent insurance agents to sell and service those policies. Independent agents are the salesforce and, to consumers, the "face" of the NFIP.

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[1] PIA is a national trade association founded in 1931. We represent member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals supporting the insurance industry all across America.

PIA is one of the three independent agent trade associations whose member representatives comprise the Flood Insurance Producers National Committee (FIPNC), a group assembled in 1982 by the Federal Insurance Administrator to facilitate improved communications between independent agents and the NFIP. Representatives of FIPNC's member associations meet with representatives of FEMA regularly several times each year. We take this duty very seriously and seek to represent the full spectrum of our flood agent members' experiences in both our PIA and FIPNC interactions with FEMA.

[2] Congressional Research Service, *Introduction to the National Flood Insurance Program (NFIP)*, https://sgp.fas.org/crs/homesec/R44593.pdf (87.9 percent of NFIP policies are written by WYOs as of June 30, 2022).

PIA's relationship with FEMA's NFIP employees has historically reflected the significance of the independent agent's role in the sale and servicing of NFIP policies. We value that relationship and always appreciate FEMA's solicitation of our members' input on existing or proposed changes to the program. Likewise, PIA reaches out to FEMA regularly to offer feedback on FEMA materials, make suggestions, and request clarifications.

The quality of that relationship was called into question when we received the RFI, which we did not obtain from FEMA. Rather, we acquired it from industry colleagues; we later learned that FEMA neglected to distribute the RFI to any agent representatives. FEMA's omission of independent agents from the dissemination of the RFI was perplexing and suggests a disregard for independent agents, a misunderstanding of agents' value in the NFIP sales process, or both.

PIA has had concerns about the D2C initiative from the time we first learned of it a couple of months ago. For a document that purports not to commit the Government to any purpose,[3] the RFI was promulgated quickly and unconventionally[4] and, at least initially, with an extraordinarily unrealistic timeline for responses.

I. Clarifications

Contrary to the RFI's claim that the "the 'arrangement' [is] codified at 44 C.F.R. Part 62, Appendix A," the Financial Assistance/Subsidy Arrangement has not been included in the Code of Federal Regulations (CFR) since late 2016.[5] The Arrangement continues to be published in the Federal Register, but it has not been included in the CFR for more than five years.[6] Additionally, contrary to the RFI's statement that "[f]lood insurance has been sold in the same manner since the program's inception," in fact, the WYO structure on which the program now relies was established in 1983, more than 15 years after its 1968 creation.[7]

II. Questions:

1. How would you implement and use digital sales and services to increase the number of properties covered by flood insurance and improve the nation's climate resilience?

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[3] The RFI's opening paragraph, "General Information," states, "This RFI shall not be construed as a commitment by the Government for any purpose …"

[4] Unlike most requests for information, which purport to solicit feedback from, among others, members of the public, this RFI was not published in the Federal Register, nor was it posted publicly on regulations.gov, to the best of our knowledge. As a result, members of the public were less likely to review and comment on it.

[5] *National Flood Insurance Program (NFIP): Financial Assistance/Subsidy Arrangement. Final Rule*. https://www.govinfo.gov/content/pkg/FR-2016-11-23/pdf/2016-28224.pdf (final rule removing the Financial Assistance/Subsidy Arrangement from the Code of Federal Regulations [CFR]).

[6] *National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY 2022 Arrangement*. https://www.federalregister.gov/documents/2021/04/01/2021-06714/national-flood-insurance-program-nfip-assistance-to-private-sector-property-insurers-notice-of-fy (announcement of Fiscal Year 2022 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program; Arrangement is reprinted here but is not codified).

[7] FEMA and the Write Your Own Program: https://nfipservices.floodsmart.gov/write-your-own-program (providing a detailed history of the WYO program from its 1983 inception to the present).

Theoretically, digital services could be used to inform property owners and potential customers of their level of flood risk and available products that may meet their needs. In an ideal world, information available digitally would be at least as comprehensive as information that an independent agent could provide in conversation with a potential policyholder. In that ideal world, such a system could potentially allow an agent to offer a wide array of products and permit a consumer to purchase the most appropriate products for their needs and budget. However, a D2C process would likely convey far less information than an agent would and could prompt consumers to make choices that an independent agent would have discouraged.

2. **What pain points or obstacles exist that would prevent or limit the implementation of digital services? What is the biggest risk to selling online?**

The NFIP currently faces several pressing challenges, all of which could present pain points or obstacles that would prevent or limit the implementation of digital services: the existing "digital divide," an unprecedented economic atmosphere, and crushing Treasury debt. The risks to selling online are numerous and are set forth below the list of pain points that follow.

a. Pain points or obstacles

i. Existing "digital divide"

One primary obstacle to the implementation of digital services is the existing "digital divide," which is driven, in part, by affordability.[8] The NFIP already has an affordability problem; many property owners at risk of flood remain uninsured because they cannot afford flood insurance premiums.[9] Those uninsured property owners could be the ones least able to pay for the broadband or smartphone that would give them access to a D2C system.

ii. Unprecedented economic atmosphere

The implementation of a D2C initiative will cost everyone involved in the program: FEMA, WYOs, vendors, and agents. Undertaking a project of this magnitude would be risky anytime, but, at present, the nation is lingering in a post-pandemic economic downturn,[10] making it an especially precarious time to embark on a bold, expensive new initiative. The pandemic itself prompted unprecedented global economic turmoil, and even experts are loathe to predict America's financial future. Consumers are balancing steep inflation and rising interest rates. Households across socioeconomic sectors have reduced their spending because of the pandemic-driven economic downturn.

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[8] "The Internet and the Pandemic," Pew Research Center. https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/ (September 1, 2021).

[9] *May 11, 2022 Letter from Alice Lugo, Assistant Secretary for Legislative Affairs of the U.S. Department of Homeland Security* to Vice President Kamala Harris in her capacity as president of the U.S. Senate and Senate and House majority and minority leaders, https://www.fema.gov/sites/default/files/documents/fema_flood-insurance-reform-proposal_5242022.pdf (recommending to Congress, among other policy proposals, the implementation of an affordability program).

[10] Broughton, Kristin. "How CFOs Are Preparing for A Potential Economic Downturn," *The Wall Street Journal*. July 29, 2022. https://www.wsj.com/articles/how-cfos-are-preparing-for-a-potential-economic-downturn-11659094200 (describing record inflation and rising interest rates).

Furthermore, over the past two years, industry stakeholders invested in costly and burdensome modifications to their business practices to facilitate the implementation of Risk Rating (RR) 2.0. Some independent insurance agencies struggled to integrate RR 2.0 into their businesses. Now, immediately on the heels of industry-wide RR 2.0-related expenditures, and despite its relatively nimble adaptation to RR 2.0's rocky rollout, the D2C initiative would impose additional changes on every sector of the economy that interacts with flood insurance. Now is not the time to burden FEMA's NFIP partners with another expensive experiment.

iii. Crushing Treasury debt

Despite the 2017 forgiveness of approximately $16B in NFIP debt,[11] the program still owes $20.5B to the Treasury Department,[12] a sum that the program, in its current form, simply cannot repay. The NFIP makes annual payments—not on the principal, just on the interest—of approximately $300 million.[13] Congress has multiple legislative tools from which to choose to cancel the remainder of the debt, and several introduced bills during the 117th Congress have included one method or another of debt forgiveness. However, none of the bills seem primed for passage before the conclusion of this Congress's second session.

b. Risks of selling online

The biggest risk to selling online is the chance that consumers using D2C will make bad choices because they lack the knowledge to understand their risks and how best to protect themselves.

Without expert advice, consumers are liable to misunderstand their level of risk and make uninformed choices that leave their properties unprotected. The NFIP is complex; even before the implementation of RR 2.0, independent agents were essential to consumers' understanding of the program. In a RR 2.0 environment, the guidance of independent agents is indispensable.

The concept of risk is itself complicated, and agents often have long, time-consuming conversations with potential customers about understanding their own risk tolerance and applying that understanding to their flood insurance decision making. D2C will not be able to replicate that dialogue. Today, potential NFIP policyholders with questions seek out independent agents for answers. In a D2C world, ostensibly, no human will be poised to respond to potential policyholder questions, and a prospective customer may purchase a policy without understanding how much (or little) it covers, or, worse, abort the buying process altogether because they find it too frustrating or hard to understand.

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[11] Congressional Research Service, *Options for Making the National Flood Insurance Program More Affordable*, https://crsreports.congress.gov/product/pdf/R/R47000/2 (released December 23, 2021).
[12] Congressional Research Service, *Introduction to the National Flood Insurance Program (NFIP)*, https://sgp.fas.org/crs/homesec/R44593.pdf (placing the current NFIP debt at $20.525B as of June 30, 2022).
[13] *May 11, 2022 Letter from Alice Lugo, Assistant Secretary for Legislative Affairs of the U.S. Department of Homeland Security* to Vice President Kamala Harris in her capacity as president of the U.S. Senate and Senate and House majority and minority leaders, https://www.fema.gov/sites/default/files/documents/fema_flood-insurance-reform-proposal_5242022.pdf.

Moreover, the NFIP does not boast a vast universe of experts. Even now, without D2C, insurance agents with comprehensive NFIP expertise are rare and valuable, and their counsel is vital to consumers. The knowledge and expertise of independent agents cannot be supplanted or replaced by automated phone calls. Even the suggestion that they are replaceable may discourage agents from remaining in the NFIP or expanding their businesses to include NFIP products at a time when FEMA should be encouraging more, not fewer, agents to become and remain sellers of flood insurance.

Finally, flood insurance is often misunderstood by members of the general public and even, sometimes, by property owners, whether or not they are current NFIP policyholders. Before even considering a D2C initiative, FEMA should identify and address flood insurance misconceptions common among members of the public and those common specifically to NFIP policyholders. For example, many of our members report that policyholders remain confused about the RR 2.0 methodology: how it treats mitigation efforts, the relative weight of the rating factors, and the meaning of an “actuarial rate.”

The D2C initiative would be an ambitious project likely to ensnare those least familiar with the program’s nuances. Before undertaking it, FEMA owes its policyholders and stakeholders a program that is as accessible and straightforward as possible.

3. **What services do you think potential NFIP customers expect to be able to obtain digitally? What tools do you currently use in other insurance lines to sell and service policies directly? What tools should FEMA explore in establishing this capability.**

The best way for FEMA to accurately predict the expectations of potential D2C NFIP customers is to ask those potential customers directly. Before the D2C initiative proceeds any further, FEMA should assemble focus groups of the target D2C customer base. Any final D2C initiative will be better suited to capture the target customer base if it is specifically designed to meet the needs and expectations of that base.

FEMA could examine groups composed of different categories of people within the target D2C customer base (geographic areas, risk profiles, prior NFIP WYO experiences, prior NFIP Direct experiences, prior private flood market experiences; different demographic groups, etc.), to identify their expectations before developing and investing in a proposal that may not satisfy them.

In fact, conducting focus groups of current NFIP policyholders would be valuable as well, to allow FEMA to identify and respond to the needs of current policyholders. Those focus groups should be assembled now, before the D2C initiative is pursued further, because existing NFIP policyholders may identify other, more pressing needs that prompt FEMA to reconsider the position of D2C on its list of priorities.

4. **What is preventing you from doing this today? What do you need from FEMA to start achieving digital sales capabilities? Would you be willing to sell flood insurance online if FEMA provided the technology?**

NFIP stakeholders could not possibly adopt a D2C initiative today, because the program's shortcomings render such a pursuit cost prohibitive. For it to make financial sense, at a minimum, the NFIP's product offerings and coverage zones would have to be expanded, its coverage limits increased, and its claims services improved.

Additionally, if consummated, the online buying experience would leave the consumer alone to decipher often opaque legal terminology—and that would be the *preferred* outcome, at least compared to a consumer who visits a D2C site but does not make a purchase. By contrast, a conversation between a prospective consumer and an agent begins with the consumer's stated goal and, for a thorough agent, evolves to include, hypothetically, the entire universe of that consumer's potential insurance coverage needs. The cost of reducing that time-consuming but worthwhile conversation to a few clicks in a browser window could be catastrophic.

Furthermore, some state laws effectively equate insurance agents' obligations with those of a legal fiduciary. In those states, the law often requires agents to address a consumer's every need to a degree, even if some of those needs cannot legally be fulfilled by that agent. At a minimum, agents subject to such laws often provide numerous examples of coverage options they themselves are not licensed to sell and then refer the consumer to another agent, from whom the consumer may purchase the other products.

5. **How will you ensure equity for all potential customers, and ensure excellent customer service for all? Do you feel properly incentivized to invest in digital sales and service?**

A discussion of equity cannot be productive without a common understanding of what "equity" means. That said, flood insurance markets vary greatly from one state to another; some variations are attributable to an area's proximity to a water source, property values, etc. Other variations, like the existence and strength of private flood insurance markets around the country, are policy-driven. For instance, only some states' private markets are regulated by their insurance departments. Because of these and other variations, states must retain the freedom to adjust their flood markets to meet the needs of the communities they serve.

The RFI suggests enabling the digital sale of NFIP policies via D2C will "ensure equitable access," but that may be an oversimplification. The pandemic demonstrated that access to the internet is inequitably distributed. Across the country, what we now call the "digital divide" left people struggling to connect to workplaces and schools.[14] If anything, the currently available evidence suggests online sales could exacerbate existing inequities.

But FEMA could take other steps to promote equitable access to flood insurance. The development of consumer-friendly, plain-language materials designed for a public audience explaining rating variables, clarifying RR 2.0's use of mitigation credits, defining a Special Hazard Flood Area (SFHA) and describing what that designation means in RR 2.0, and explaining how the treatment of elevation certificates (ECs) has changed in RR 2.0 and why

[14] "The Internet and the Pandemic," Pew Research Center. https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/ (September 1, 2021).

an EC could still be valuable. Providing easy to read explanations of frequently asked questions would promote equity without endangering potential consumers.

Independent agents are committed to providing consistently excellent customer service. Indeed, in the NFIP, where rates are outside the control of even the carriers, extraordinary customer service is often the only vehicle by which agents are able to distinguish themselves. Because NFIP products are entirely fungible, FEMA has an opportunity to incentivize agents to begin or continue to sell NFIP policies by offering rewards that mirror those available in the private sector. Agents could be rewarded for high premium volume, large numbers of policies, and similar quantitative, demonstrable measures of success.

Finally, now that RR 2.0 is fully implemented, many agents' expertise in RR 2.0 offers another way for them to differentiate themselves, but it also underscores the degree to which agents upended their businesses to prepare for RR 2.0. Throughout its implementation, some agents reported feeling undervalued, and this RFI has only heightened that concern.

6. **How do you think the NFIP Public/Private partnership will evolve if direct to customer services are implemented? What "non-typical" partners should FEMA engage in this effort?**

It is impossible to speculate as to how the NFIP public/private partnership will evolve in a D2C environment because the RFI does not include information about the roles—if any—key NFIP participants will be expected to play in D2C.

Irrespective of whether D2C is implemented, Congress should prioritize easing consumers' transitions between the NFIP and the private market and back. Even when the private market offers better coverage at a lower price than the NFIP, some independent agents are wary of moving their customers to the private market, because those who leave the NFIP for the private market and then seek to return to the NFIP are not afforded "continuous coverage."[15]

For instance, if a private market carrier withdraws coverage from policyholders who were previously covered by the NFIP, those policyholders might be forced to return to the NFIP, where they would be treated as if they were brand-new customers—and brand-new customers are immediately subject to full-risk rates. Thus, NFIP policyholders who leave for the private market do so at their peril. By abandoning their "glide path" toward their full-risk rate, they take the chance that they will ultimately need to return to the NFIP, at which point they will be subject to their full-risk rate immediately.

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[15] A continuous coverage proposal was introduced as a standalone bill during the current Congress and was included in the FEMA legislative proposal package submitted to Congressional leaders in May. It was also included in several other flood bills introduced during the 117th Congress.

PIA strongly supports the implementation of a continuous coverage provision to smooth consumers' transitions between the NFIP and the private market. Facilitating smooth transitions will strengthen the private market and provide consumers with a wider range of product options and price points, which will increase the overall number of policies in force, regardless of the market in which said policies originated.

7. **What has worked well or needed to work better when servicing claims for policies sold digitally? Have there been significant reformation or error and omissions concerns for policies sold directly in other lines of business?**

At times, the claims servicing process can raise concerns for agents arising out of the behavior of their claims adjuster. For example, poor customer service from an adjuster reflects poorly on the agent handling the claim, even though the agent has no control over the adjusters' behavior. Unfortunately, when a policyholder has a bad experiences with an adjuster, they sometimes react by terminating their relationship with their agent. As a result, poor claims adjusting can lead some agents to struggle with policyholder retention.

8. **Should FEMA primarily focus on delivering digital sales capabilities, or look to implement a full end-to-end policy sales and servicing platform?**

Considering FEMA's many other outstanding issues, we strongly urge FEMA to table the D2C initiative until its other challenges have been adequately addressed. Specifically, FEMA should abandon the pursuit of a D2C offering until its existing products can be updated, at least with an increase in policy coverage limits and expansion of the scope of available coverage.

Short of that, FEMA should concentrate its efforts on delivering a simple, non-binding rate estimator that could provide policyholders and prospects a likely range of premium rates for an NFIP policy using parameters that mimic the RR 2.0 rating factors and could be entered and altered by a consumer, floodplain manager, etc. Such a tool would offer users some insight into the relative power of various rating factors.

9. **Given recent program changes FEMA has recently delivered, such as Risk Rating 2.0 – Equity in action, what lessons learned do you want to ensure are applied?**

    a. **Appreciate your stakeholders**

Over the past several years, WYOs, independent agents, realtors, lenders, and other stakeholders made wholesale changes to their businesses to facilitate the implementation of RR 2.0. Obstacles emerged at nearly every turn, and stakeholders struggled but adjusted. Many independent agencies sacrificed greatly to successfully integrate RR 2.0 into their businesses. Some hired additional staff to support the transition process after the bifurcation process was announced. Now, just as the industry is acclimating to RR 2.0, FEMA has produced another set of demands. FEMA should demonstrate its appreciation for its partners' flexibility during the RR 2.0 implementation process by not demanding its stakeholders immediately prepare to absorb another substantial disruption.

    b. **Identify problems that need solving**

Although we were frustrated by the process of RR 2.0 implementation, PIA supports its premise, which was to capture additional risk factors and create a mechanism through which the program will eventually only sell policies that are priced at full risk rates. Sadly, updating the rating methodology did not alleviate every problem the NFIP had; many of its remaining shortcomings have been addressed elsewhere herein.

c. **Avoid choosing "solutions"**

One of the NFIP's biggest current problems, the sudden decline in policies in force, was likely precipitated by the implementation of RR 2.0. Instead of declaring its intent to "solve" a speculative "potential" problem by offering the online sale of flood insurance policies, the NFIP should collaborate with its partners to identify practical solutions to the drastic decline in policies in force.

10. What concerns and/or opportunities does a direct to service model raise? What challenges do you foresee with state regulators and interacting directly with the federal government?

We have several concerns with the proposed D2C initiative:

a. Prioritizing NFIP Goals

The D2C initiative is referred to as "imperative." Offering consumers the option of purchasing an NFIP policy online may *someday* be an ideal way to capture a previously-untapped segment of the policyholder market. But in the context of the NFIP's many competing needs, imperative it is not. Indeed, if FEMA viewed it as imperative, ostensibly, FEMA could have included funding and other support for it among its 17 legislative recommendations to Congress this past May.[16] It did not. The RFI's description of online NFIP policy sales as "imperative" exposes the arbitrary nature of FEMA's stated priorities.

b. Identifying the Problem

The RFI characterizes flood insurance as antiquated and suggests that its obsolescence causes "potential customer frustration and the inability to protect one's home or business." In fact, some aspects of the program are genuinely outdated; independent agents can readily identify weaknesses in the NFIP that cause real customers to feel legitimate frustration and prevent real consumers from protecting their homes and businesses. Rather than solving amorphous problems FEMA has deemed a source of "potential" consumer frustration, its resources would be better spent alleviating *existing*, verifiable consumer frustration.

For example, the NFIP's available coverage is relatively archaic; its $250,000 in residential property policy limits, for example, is insufficient to fully protect most covered residential properties today. In fact, it has been inadequate for years. Even before the last two years of economic uncertainty, the program had not been keeping pace with inflation, rising construction costs, and the costs associated with fully compensating policyholders who suffer

[16] *May 11, 2022 Letter from Alice Lugo, Assistant Secretary for Legislative Affairs of the U.S. Department of Homeland Security* to Vice President Kamala Harris in her capacity as president of the U.S. Senate and Senate and House majority and minority leaders, https://www.fema.gov/sites/default/files/documents/fema_flood-insurance-reform-proposal_5242022.pdf.

losses. As a result, after a covered event, policyholders often find themselves left with excessive out of pocket expenses.

Independent agents would be pleased to assist FEMA in identifying and working toward remedying sources of pervasive consumer frustration.

c. NFIP as Federal, State, and Community Program

The NFIP is effectively regulated at nearly every level of government. Communities participate in the program; states typically oversee insurance licensing and renewals and sometimes regulate their private flood insurance markets, licensees' flood-specific continuing education, etc.; and the federal government authorizes the NFIP's continued existence, funds it, and passes bills and promulgates regulations that provide the program's structure and guide its operational details. Our state-based insurance regulatory system typically produces a patchwork of requirements across states, and the challenges created by that patchwork are multiplied by the many layers of government involvement in the NFIP.

Agents are concerned about the degree to which state governments will ensure that licensees participating in a D2C program are appropriately credentialed in the state(s) in which they operate. Agents work hard to obtain and maintain their credentials, and they deserve to know that D2C will be capable of preventing people from improperly holding themselves out as independent agents. Most importantly, consumers rightfully depend on their federal and state governments to protect them from unscrupulous actors.

Additionally, if a D2C program sells policies through the NFIP Direct program (i.e., in the absence of a WYO), the NFIP Direct program should establish a process to validate the licenses of agents operating in each state in which it has policies. Similarly, if WYOs are involved in D2C, those that operate in multiple states will ostensibly need guidance on how to determine the state in which they are required to be licensed for NFIP D2C purposes.

III. Conclusion

PIA appreciates FEMA's attention to this issue and, more generally, to the need to modernize the NFIP. We are grateful for the opportunity to provide the independent agent perspective on the D2C initiative and welcome further discussion on it at your convenience. Please contact me at Lpachman@pianational.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents