




FEMA

W-09038
July 16, 2009

MEMORANDUM FOR: Write Your Own (WYO) Company Principal Coordinators, the National Flood Insurance Program (NFIP) Servicing Agent, and Select Adjusting Firms

FROM: 
Edward L. Connor
Acting Federal Insurance Administrator
National Flood Insurance Program

SUBJECT: Notice of FEMA's Intent to Adopt, by Regulation, a Clarification of the Current Express Preemption Clause of the Standard Flood Insurance Policy

FEMA is aware of a recent decision of the United States Fifth Circuit Court of Appeals in *Campo v. Allstate Ins. Co.*, 562 F.3d 751 (5th Cir. 2009). In that decision, the Court significantly revised the scope of Federal preemption of Louisiana state law tort remedies by the National Flood Insurance Act and its implementing regulations. In particular, *Campo* found that certain issues related to the renewal of a policy were questions of policy formation, not claims handling, and held that a claim based on a breach of a state-law duty governing policy formation is not preempted by the National Flood Insurance Act and its implementing regulations.

FEMA previously understood and intended its regulations to preempt state law claims related to policy formation, renewal, and administration arising from allegations of WYO Company error as distinct from agent error (agent error is not subject to Federal regulation under 42 U.S.C. § 4081(c)). FEMA understood and intended preemption to apply, particularly where there is a conflict with a Federal regulation on the manner in which policies were administered, and also had expressly preempted state law related to claims handling. To the extent there are conflicts between Federal and state law, FEMA recognizes that application of state laws would interfere with the implementation of the National Flood Insurance Program and would frustrate the national purpose and scope of the program.

Rather than its application in *Campo*, federal preemption should apply not just to claims handling activities, but also to policy administration. Specifically, preemption should apply to the nationally uniform and FEMA-mandated processes governing policy issuance and the administration of existing flood policies, including but not limited to rating, renewal, transfer, non-renewal, cancellation, or reformation. Insurance agent procurement disputes or any allegation of negligence on the part of the insurance agent related to procurement are not subject to preemption.

In light of *Campo*, FEMA will review its regulations to determine whether clarification is required to fully implement its intended scope of preemption. FEMA understands *Campo*, however, not to preclude application of preemption related to issuance, renewal, or administration of policies where there is an express conflict with a Federal statute or regulation.

We ask for your full support. Any questions or comments regarding this extension should be directed to James A. Sadler, CPCU, AIC, Director of Claims, National Flood Insurance Program. Mr. Sadler may be reached by email at James.Sadler@dhs.gov.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting

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