




FEMA

W-16053

August 17, 2016

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

FROM: 
David I. Maurstad
Assistant Administrator for Federal Insurance
Federal Insurance and Mitigation Administration

SUBJECT: Advance Payments Under Standard Flood Insurance Policies

The recent 2016 Mid-Summer severe storms affected the states of Louisiana, Mississippi, Arkansas and Texas causing widespread and extensive damage. The Federal Emergency Management Agency (FEMA) is making every effort to ensure the accurate and prompt settlement of claims to NFIP policyholders affected by the recent flooding event. Therefore, I am authorizing a conditional waiver of the Standard Flood Insurance Policy (SFIP), Section VII. General Conditions, Paragraphs (J) and (M) and Section VIII, General Conditions, Paragraphs (J) and (M) of the Residential Condominium Building Association Policy to allow advance payments. This bulletin authorizes two advance payment opportunities that WYO Companies and the NFIP Direct Servicing Agent may use independently or in combination.

Advance Payment Opportunity One: Pre-Inspection

When the insurer who issues the policy (a WYO Company or the NFIP Direct Servicing Agent for FEMA) receives a notice of loss, it will confirm coverage and validate that the insured building and/or personal property has flooded. After the insurer determines that a general and temporary condition of flooding as defined in the SFIP existed and damaged the insured property, the insurer should offer an advance payment to the policyholder for building and/or personal property damages up to a total of \$5,000. However, if the policyholder provides photographs depicting flood damage and documentation validating their out of pocket expenses, such as receipts or a contractor's itemized estimate for covered flood damage, the insurer may make advance payment up to a total of \$10,000.

Advance Payment Opportunity Two: Preliminary Payment for Significant Damage

The preliminary payment for significant damage advance payment process is applicable where prompt action is necessary to provide immediate loss assistance to a policyholder having a claim with significant damage. To provide adequate assistance to the policyholder, the insurer should offer an advance payment as a percentage of the general contractor's estimate. The insurer must have a copy of the contractor's estimate and an inspection by the flood insurance adjuster prior to offering advances on this size of loss. As a general business practice, a general contractor usually requires a 20 percent advance payment from the policyholder as a commitment for losses exceeding \$150,000. Contractors may require 25 percent of the estimated loss ranging from \$75,000 to \$150,000, and 33 percent for moderate losses ranging \$25,000 to \$75,000. The flood insurance adjuster should be able to conclude losses less than \$25,000 after the initial inspection.

Paying up to 50% of the estimated covered loss allows the policyholder the ability to proceed with recovery efforts while negotiating the proof of loss with the adjuster.

Advance Payment Guidance

For both opportunities, the insurer must notify the policyholder in writing of the following conditions:

1. The advance payment is not a payment for Additional Living Expenses (ALE). ALE is specifically excluded in the SFIP.
2. The advance payment is conditioned upon the insured signing an Advance Payment Request which contains a Non-Waiver Agreement (which means that no claims by the insured or insurer, or available defenses to the insured or insurer, are prejudiced or waived by the issuance and acceptance of the advance payment, and coverage under the policy is not admitted).
3. Acceptance of an advance payment will not affect the insured's right to seek additional payments under the terms and conditions of their SFIP.
4. After the claim is settled, the final payment will be reduced by the amount of any advance(s) made to the policyholder.
5. Any mortgagee shown on the declarations sheet of the policy or any known mortgagee at the time of payment must be named on the building property check.
6. The insured will eventually have to sign a proof of loss meeting the requirements of the Standard Flood Insurance Policy for all amounts received, including the amount of the advanced payment.

If a WYO Company issues an advance payment in accordance with the terms and conditions set forth in this bulletin to an insured suffering flood damages, FEMA will use these standards in all reviews or audits of files, including any reviews under the Arrangement or the Improper Payments

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Information Act of 2002 (Public Law 107-300, 33 U.S.C. §3321 note), as amended by the Improper Payment Elimination and Recovery Act of 2010 (Public Law 111-204).

If the WYO Company makes an advance payment in accordance with the terms and conditions of this Bulletin, FEMA will not hold the company responsible for ineligible payments. The company will need to make best efforts to recoup the funds, but if unable to do so, the recoupment shall be referred to FEMA for appropriate action. However, if a WYO Company makes an advance payment that results in an unauthorized payment without complying with the terms and conditions set forth in this Bulletin, the company will be responsible for the erroneous payment.

It should be noted that accurate information from the insured or their representative regarding their temporary address must be obtained when the claim is reported. It will not benefit the insured to send their advance payment to the property address, which is not accessible due to flooding.

Again, we ask for your full support. Any questions or comments should be directed to Greta Richardson, Claims Director for the National Flood Insurance Program. You may reach Ms. Richardson by email at Greta.Richardson@fema.dhs.gov.

Authority: 44 C.F.R. § 61.13(d); 44 C.F.R. §§61, Appendices A(1), A(2) and A(3), General Condition (D); 44 C.F.R. § 62.23(k); 44 C.F.R. § 62, Appendix A(1), Articles II(G) and IV(B); 42 U.S.C. § 4019.

Attachment

cc: Vendors, IBHS, and Government Technical Representative

Required Routing: Reporting and Independent Adjusting Firms

ADVANCE PAYMENT REQUEST

POLICYHOLDER NAME: _____ POLICY NUMBER: _____
PROPERTY ADDRESS: _____ DATE OF LOSS: _____

AMOUNT OF COVERAGE:
Building: _____
Contents: _____
Deductibles: _____/_____

This request is your agreement in which you acknowledge you have sustained a Flood Loss on the above date at the above address.

_____ agrees to advance you and any mortgagee and all other benefitting insureds the amount of \$_____ under Coverage A (Building) of your Standard Flood Insurance Policy and/or advance you and all other benefitting insureds \$_____ under Coverage B (Contents) of your Standard Flood Insurance Policy against the final payment of your loss. It is understood, by you, that the investigation of your loss is not complete at this time. It may be established, after the investigation of your loss, that there is no covered loss, or the amount of covered damages may be less than the amount advanced to you. If it is determined your claim is not a valid claim under your Standard Flood Insurance Policy, or that amounts greater than the amount of damages payable have been advanced to you, you agree to reimburse the amount not properly advanced to you under Coverage A and/or Coverage B of your policy. Issuance of an advance payment by us as the insurer is not an admission of liability or an admission of coverage under your policy. Acceptance of this advance payment by you by you does not represent a satisfaction or release of all claims.

This is not a PROOF OF LOSS as required by the policy. A PROOF OF LOSS must be submitted to your insurer within sixty (60) days of the date of loss (or within the time period authorized by the Associate Administrator of FEMA), as stated in your Standard Flood Insurance Policy, see Section VII. General Conditions, Paragraph J. "Requirements in Case of Loss" in the Dwelling and General Property forms of the SFIP, and Section VIII, Paragraph J of the Residential Condominium Building Association Policy or "RCBAP" form.

This agreement to pay this advance is not intended to change or modify any of the conditions, terms, provisions, or requirements contained in the Standard Flood Insurance Policy. Any obligations or legal rights which may now or hereafter be available to you or the company are reserved and not waived.

Additionally, in the event that it is determined that the amounts advanced to you were not owed, or the amounts advanced to you exceeded what you were owed, and you do not refund the improperly advanced amount, by signing this agreement you agree to indemnify your insurer for the costs of any and all steps and costs incurred by the insurer in recovering the improper amounts, including, but not limited to, all legal costs, attorney's fees, court costs and filing fees.

I hereby certify under 28 U.S.C Section 1746 to the best of my knowledge that the foregoing is true and correct.

POLICYHOLDER SIGNATURE: _____

POLICYHOLDER PRINT NAME: _____

OWNER, TITLE OR POSITION (if non-residential): _____

LIENHOLDER(S): _____

TEMPORARY MAILING ADDRESS: _____

WITNESS or ADJUSTER SIGNATURE: _____

WITNESS or ADJUSTER PRINT NAME: _____