



FEMA

W-11124

December 7, 2011

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators

FROM:   
Edward L. Connor  
Deputy Associate Administrator for Federal Insurance

SUBJECT: WYO Company Communication with State Insurance  
Commissioners and Regulators

This Bulletin addresses participating Write Your Own (WYO) company communication with various State insurance commissioners and regulators who may be interested in company activity as a result of significant flooding events occurring in a State or other political jurisdiction.

State insurance commissioners and regulators are elected and appointed public officials who are generally authorized to regulate private commercial insurance practices within their jurisdiction. That authority typically includes the authority to review insurance company financial solvency, company ability to deliver insurance services within the State, and many regulate insurance agent and insurance adjuster licensing. FEMA recognizes the public services provided by the State regulators and, indeed, the NFIP benefits from their oversight and audit activities and uses State audits and financial information about companies when conducting our own review. Accordingly, FEMA has waived its sovereign immunity and general immunity from State taxation of premiums to compensate States for their efforts. FEMA also acknowledges that State regulation does not and cannot extend to the NFIP, which is particularly a creation of the Federal government and is exclusively administered by FEMA.

It appears that there is some confusion regarding the appropriate information sharing that can occur between WYO companies selling and administering NFIP insurance and State insurance commissioners and regulators seeking information about flood insurance claims and claims handling activities. To clarify, FEMA encourages WYO companies to cooperate with interested State insurance commissioners and regulators with general flood insurance inquiries. Consistent with State and Federal requirements and practices, it is appropriate for WYO companies to respond to inquiries relating to the status of claims in the aggregate and the status of a specific claim, and to provide routine aggregate flood claims information. It also is appropriate for a company to identify that it is the insurer for a particular building or its contents and to acknowledge a specific claim. It is not necessarily required for a WYO company to respond to requests for information designed to assess compliance with state law-based unfair claims practice standards, which are inapplicable to the NFIP.

By this Bulletin, FEMA is encouraging cooperation and comity with State insurance commissioners and regulators. FEMA is not relinquishing any of its statutory oversight responsibilities or authority as set forth in the National Flood Insurance Act, 42 U.S.C. Section 4001 *et seq.*, (the “Act”) and implementing regulations. The Act, the Write Your Own regulations at 44 C.F.R. Section 62.23, and the Financial Assistance/Subsidy Arrangement at 44 C.F.R. Part 62, Appendix A, establish that FEMA is responsible for expenditures from the National Flood Insurance Fund, and for establishing the fiduciary relationship whereby participating WYO companies act as fiscal agents for the Federal government. FEMA also is responsible for promulgating and interpreting the various Standard Flood Insurance Policies and for promulgating underwriting and claims handling standards. FEMA continues to be responsible for company oversight, including oversight of claims and claims handling, and is required by statute to administer the NFIP claims appeal process. Accordingly, FEMA does not expect that WYO companies will share specific claims information with State regulators, and is not authorizing the release of specific claims information or documents. FEMA will continue to cooperate with State insurance commissioners and regulators and, if necessary, will assist with inquiries into specific claims. Any such oversight will be under the authority of FEMA.

We also recognize that State regulators may seek information that a WYO company believes should not appropriately be provided to a State. If such a situation occurs, FEMA encourages the WYO company and State regulators to direct inquiries to FEMA for resolution.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting