



FEMA

W-12079

October 12, 2012

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

FROM: NFIP Clearinghouse

SUBJECT: What Insurance Agents Need to Know about the Wildfire 30-Day
Waiting Period Exception

Attached is a Flood Following Wildfire Q & A document. While the document targets flood insurance agents and company flood sales associates, it has application for other disciplines, including claims.

Also, attached is the July 10, 2012, Bulletin W-12045 that implemented Section 100241 Biggert-Waters FIRA 2012, an exception to the 30-day waiting period for coverage of flood damage due to flooding on Federal land caused, or exacerbated, by post-wildfire conditions on Federal land.

Attachments

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting

What Insurance Agents Need to Know about the Wildfire 30-Day Waiting Period Exception

Because the risk of flooding can be elevated after a wildfire, FEMA encourages property owners to purchase flood insurance in areas potentially affected by fire. On July 6, 2012, the President signed into law the Biggert-Waters Flood Insurance Reform Act of 2012, P.L. 112–141, which includes a section creating a new exception to the 30-day waiting period associated with the effective date of newly written flood insurance policies for areas affected by wildfire on Federal lands.

The three 30-day waiting period exceptions (codified at 42 U.S.C. § 4013(c)(2)) are:

- 1) The initial purchase of flood insurance coverage when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan (no waiting period, applied at policy application);
- 2) The initial purchase of flood insurance coverage pursuant to a revision or updating of floodplain areas or flood-risk zones (waiting period is one day after policy application and presentation of premium if written within the 13-month period after a Flood Insurance Rate Map revision); and
- 3) Property affected by flooding on Federal land caused or exacerbated by wildfire (the “wildfire exception”) (no waiting period, eligibility is determined after the loss).

The issued policy initially will include the 30-day waiting period. The waiting period exception is determined at the time of loss, not at the time of policy application, as part of the individualized claim adjustment performed by an adjuster. When explaining this new wildfire exception, the insurance agent should advise the applicant that every flood loss is adjusted on a case-by-case basis. The NFIP flood-certified claims adjuster will determine the source of floodwaters and make a recommendation to the Write Your Own insurance company or the NFIP Direct Servicing Agent (insurer); only the insurer is authorized to approve or deny coverage.

Answers to Questions:

1) Under what circumstances will the new exception to the 30-day waiting period apply?

- The flood damage must have resulted from a flood occurring on Federal land;
- That flooding must result from or be made worse by the post-wildfire conditions on Federal land; and
- Flood insurance must have been purchased no later than 60 days after the fire containment date, with no flood damage having been sustained both prior to the purchase of the flood insurance or prior to the enactment date of the law, July 6, 2012.

Examples:

Scenario One

- The containment date of the wildfire is June 30.
- Coverage is purchased on June 23.
- Flooding occurs on Federal land that results from, or is made worse by, the post-wildfire conditions on Federal land.
- A privately owned building is damaged by that flood on July 1.

The exception to the 30-day waiting period will not be applied. The flood loss occurred before the effective date of the law that allows the new exception (July 6, 2012). However, if the loss had occurred after July 6, 2012, but no later than 60 days after the containment date of the wildfire, the exception would apply and the insurer would reform the policy with no waiting period.

Scenario Two

- The containment date of the wildfire is June 30.
- Coverage is purchased on July 8.
- Flooding occurs on Federal land that results from, or is made worse by, the post-wildfire conditions on Federal land.
- A privately owned building is damaged by that flood on July 7.

Because the building sustained flood damage prior to the purchase of the policy, there is no coverage.

Scenario Three

- The containment date of the wildfire is June 30.
- Coverage is purchased on September 5.
- Flooding occurs on Federal land that results from, or is made worse by, the post-wildfire conditions on Federal land.
- A privately owned building is damaged by that flood on September 15.

Because coverage was purchased later than 60 days after the containment date, the 30-day waiting period applies.

Scenario Four

- The containment date of the wildfire is June 30.
- Coverage is purchased on August 20.
- Flooding occurs in a State Park that results from, or is made worse by, the post-wildfire conditions in the State Park. There is no flooding on Federal lands resulting from, or made worse by, post-wildfire conditions on Federal land.

- A privately owned building is damaged by that flood on August 25.

Because the wildfire and the flooding were on State land, and not Federal land, the 30-day waiting period applies. This would also be the result if the wildfire and the flooding were on private land.

Scenario Five

- The containment date of the wildfire is June 30.
- Coverage is purchased on August 20.
- Flooding occurs on Federal land that results from, or is made worse by, the post-wildfire conditions on State land.
- A privately owned building is damaged by that flood on August 25.

Because both the flooding and the wildfire were not on Federal land, the 30-day waiting period applies.

2) How will an insured know what wildfires will qualify for the exception to the 30-day waiting period?

Any flooding that occurs on Federal land that is caused, or made worse, by post-wildfire conditions on Federal land may qualify for the exception to the 30-day waiting period. Determinations regarding the applicability of the exception will be made on a case-by-case basis. The flood adjuster assigned to a claim by the insurer is responsible for gathering facts and making a recommendation to the insurer.

3) What happens after a claim is made?

The insurance agent implements normal claims handling procedures. The adjuster assigned to a claim makes the flooding source determination and will make a recommendation on the applicability of the exception to the 30-day waiting period to the insurance carrier. If the insurance carrier determines that the exception applies, it will direct the insurance agent to rewrite the policy to reflect the policy effective date without the 30-day waiting period.

4) What effect does the 30-day Waiting Period Exception have on coverage?

The exception to the 30-day waiting period has no effect on policy coverage or exclusions.

5) Does the wildfire have to start on Federal land?

No, the only requirement is that flooding on Federal land must be caused by or made worse by the wildfire on Federal land that damages NFIP-insured property.

6) Do the Federal lands on which the wildfire occurs and the Federal land that floods have to be contiguous?

No, but in most instances that will likely be the case.

7) What happens if the policyholder's claim is denied by the insurer?

The NFIP Claims Appeal Process is available to each policyholder. The appeal is made directly to FEMA.

The requirements are as follows:

- The insurance carrier must first issue a written denial (final determination) of the claim or any portion of the claim;
- The appeal must be made within 60 days of the date of the insurance carrier's denial letter.

The policyholder must include all documentation supporting the policyholder's appeal position. The policyholder should carefully review the *NFIP Flood Insurance Claims Handbook* for the steps to be taken in the appeal. A copy of the handbook can be viewed or downloaded at the following FEMA website: <http://www.fema.gov/library/viewRecord.do?id=2184>.

8) Where can I find more information about the wildfire exception to the 30-day waiting period and wildfire containment dates?

Please visit http://www.nfipiservice.com/nfip_docs.html to locate the bulletins that will be issued identifying communities that have been determined to be at an elevated risk of flooding and the wildfire containment date or contact your flood insurer for additional assistance.

FEMA is currently in the process of developing a webpage, which will become accessible at a later date, to be posted on www.FEMA.gov and www.FloodSmart.gov. Look for information to be sent out when these pages become available.

- Your flood insurance carrier's flood insurance underwriters can help.
- Review www.FloodSmart.gov, the premier website for both consumers and insurance agents.
- Wildfire containment dates will be posted on <http://www.floodsmart.gov> and the FEMA website, <http://www.fema.gov>.



FEMA

W-12045

July 10, 2012

MEMORANDUM TO: Write Your Own (WYO) Principal Coordinators, the National Flood Insurance Program (NFIP) Direct Servicing Agent, IBHS Flood Insurance Committee, FIPNC

FROM: David L. Miller 
Associate Administrator
Federal Insurance and Mitigation Administration

SUBJECT: Notice of Implementation of Section 100241 of H.R. 4348 –
Exception to 30-Day Waiting Period for Coverage of Flood Damage
Due to Flooding on Federal Land Caused, or Exacerbated, by Post-
Wildfire Conditions

In Bulletin W-12044, Edward Connor, Deputy Associate Administrator for Federal Insurance, informed you that on July 6, 2012, President Obama signed the ***Biggert-Waters Flood Insurance Reform Act of 2012*** reauthorizing the National Flood Insurance Program (NFIP) for five years and implementing a number of programmatic reforms. Section 100241 of that Act created a third exception to the NFIP's 30-day waiting period for flood insurance coverage to become effective. This Section reads in part:

SEC. 100241. INSURANCE COVERAGE FOR PRIVATE PROPERTIES AFFECTED BY FLOODING FROM FEDERAL LANDS.

Section 1306(c)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(2)) is amended by adding at the end the following:

(C) The initial purchase of flood insurance coverage for private property if—

(i) The Administrator determines that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

Notice of Implementation of Section 100241 of H.R. 4348 –Exception to 30-Day Waiting Period for Coverage of Flood Damage Due to Flooding on Federal Land Caused, or Exacerbated, by Post-Wildfire Conditions

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(ii) The flood insurance coverage was purchased not later than 60 days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (i).

To implement this new legislation in a timely manner and to address the imminent need for flood insurance coverage in certain areas, FEMA will make a preliminary determination that there is an elevated risk of flooding as a result of post-wildfire conditions. This preliminary determination will be made in consultation with the appropriate federal agency or agencies having jurisdiction over the federal land in question. When appropriate, we will issue bulletins identifying communities that have been determined to be at an elevated risk of flooding and the wildfire containment date.

Section 100241 requires a property-by-property determination for the exclusion to the 30-day waiting period to apply. If a specific property in the area of elevated risk suffers a loss due to flood and the NFIP policyholder submits a claim, the NFIP insurer (either Direct or WYO company) should evaluate whether the conditions warrant application of the exception to the 30-day waiting period, *i.e.*, that the property was affected by flooding on Federal lands that is caused, or is exacerbated by, post-wildfire conditions. To make the required determination, the following conditions must be met:

- The adjuster determines that the flood causing the loss was affected by flooding from Federal land that was caused by or exacerbated by post-wildfire conditions; and
- The policy was purchased not later than 60 days after the fire containment date.

If these conditions are met, the flood damage should be adjusted without the application of the 30-day waiting period. Application of the exception to the 30-day waiting period, however, does not change the NFIP requirements for issuing new policies. The 30-day waiting period exception is applied only if a policy has been issued and a loss occurs before the policy becomes effective. If the insured property meets the eligibility requirements, the appropriate insurer is authorized to reform the policy effective date to eliminate the 30-day waiting period.

Each NFIP flood insurance claim should be individually adjusted on its merits, and all provisions of the NFIP Standard Flood Insurance Policy still apply. For instance, the exception to the waiting period will not apply if:

- A flood is in progress or flood damage occurs before the application is submitted and the full premium is accepted by the insurer;
- The application for insurance and the full premium is accepted by the insurer later than 60 days after the wildfire's containment date;
- The flood damage is caused by floodwaters not affected by flooding on Federal lands; or
- The community in which the property is located was not a participating community on or before 60 days after the wildfire's containment date.

An uncontained wildfire is currently burning in Waldo Canyon in the Pike National Forest in Colorado, and a wildfire in High Park in the Arapaho-Roosevelt National Forest, also in Colorado, was contained on June 30, 2012.

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Based on our consultation with the U.S. Forest Service, we have determined there is an elevated risk of flooding in the communities in the vicinity of these wildfires. FEMA is making this preliminary determination to provide notice to the WYO insurance companies and other stakeholders that the recently-enacted exception to the 30-day waiting period may be in effect. As noted above, the actual determination on the applicability of the exception must be made on a property-by-property basis.

FEMA is aware that other wildfires on federal land in other States are also uncontained at this time, and we continue to monitor those events to determine eligibility for the exception to the 30-day waiting period.

Again, we ask for your full support in implementing this new legislation. Questions or comments regarding this bulletin 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.Sadler2@fema.dhs.gov.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting