U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEMA

W-12108

November 30, 2012

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

FROM: David L. Miller (DLM)
Associate Administrator
Federal Emergency Management Agency
Federal Insurance and Mitigation Administration
National Flood Insurance Program

SUBJECT: Meteorological Event Sandy – Accelerated Partial Payment Process for up to $25,000 for Certain Mechanical Elements of Buildings and an Additional $5,000 for Necessary Doors and Windows to Preserve Health and Safety, and Conditional Waiver of Standard Flood Insurance Policy General Conditions (J) and (M)

Recently, a number of States experienced catastrophic losses as a result of Meteorological Event Sandy (Sandy). The Federal Emergency Management Agency (FEMA) issues this Bulletin to set forth an accelerated claim process applicable where prompt action is necessary to preserve health and safety. The process set forth herein will enable NFIP insurers to rapidly pay claims for Standard Flood Insurance Policy (SFIP) policyholders for covered damages to mechanical components of buildings that provide heat, hot water, and electrical connections necessary to preserve health and safety needed for those suffering Sandy-related flood damages.

This bulletin sets forth procedures for allowing claim payments before an inspection and written estimate can be prepared for certain mechanical elements of buildings. The requirement for an adjuster to evaluate the loss before payment is conditionally waived only for heating systems, hot water systems and necessary electrical connections required to preserve health and safety, and no other mechanical elements or damages. Coverage under the SFIP is available only for permanent repairs, and nothing in this bulletin shall be construed to authorize temporary repairs. Policyholders may be referred to FEMA Individual Assistance under the Stafford Act, specifically the STEP program, for temporary repairs to preserve health and safety.

The adjuster will still be required to inspect the loss and prepare a written estimate after the fact, and

the policyholder must still document the claim as required by the SFIP, using the methods set forth below in this bulletin. **For most flood events the time for an adjuster to meet with the policyholder is 48-72 hours after the assignment. In that Sandy is an extraordinary event, the target for the adjuster's visit should be 6 work days.**

FEMA has already published a conditional and limited waiver and extension of the SFIP time requirement for policyholders to send the proof of loss to their insurer (see Bulletin w-12092a). In line with Bulletin w-12092a, no signed and sworn Proof of Loss required by the SFIP or an Advance Payment receipt will be required for this authorized rapid partial payment, if the conditions for this waiver set forth below are agreed to and met. Instead, payment will be authorized based upon submission to the insurer of the documentation set forth herein.

Under the applicable conditional waivers, the following process will be available for use in handling claims for these mechanical elements when timely repair or replacement is required to preserve the safety and health of the policyholder and other residents in the insured property. For the policyholder to be eligible for this limited waiver, the following must take place and be documented:

1. The policyholder must document damage to insured mechanical elements subject to this bulletin with pictures showing the damage resulted from flood. Pictures shall show the area surrounding the mechanical elements in addition to the mechanical itself in a manner sufficient to demonstrate causation. Legible photographs of the serial number plates should also be included.

2. The policyholder must sign a sworn statement using the language in 28 U.S.C. § 1746 certifying under penalty of perjury that they are entitled to payment for damages to the mechanical elements of their house subject to the waiver, and that the payment they receive from this process will be used to permanently repair or replace those damaged mechanical elements caused by Sandy. The certification must contain a statement that the policyholder understands that he/she is making a claim for Federal funds and that a false statement will subject the policyholder to having their SFIP voided, and possibly civil and criminal penalties. FEMA recommends that the attestation be similar to this example:

> Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Signed on December 1, 2012. Signature: John Q. Public

3. If the insured had a prior flood loss within the last two years that damaged these same mechanicals, the policyholder must certify under 28 U.S.C. § 1746 as set forth in paragraph 2 above, that the prior damages to the mechanical elements had been repaired or replaced prior to Sandy causing the current damages (see Bulletin w-12086 addressing Prior Losses). The policyholder must also document the serial numbers and other identifiers for the current loss, and if possible the prior loss, to enable the insurer to verify that the mechanical was replaced after the prior claim.

4. The policyholder must provide a statement from the individual repairing or replacing the mechanical that the system requires repair or replacement as a result of flood damage.

5. The policyholder must provide all receipts showing all actual costs incurred in repairing or replacing the damaged mechanical elements.

6. The policyholder must take a photograph of the repaired or replaced mechanical elements, and provide the make, model and serial numbers of the damaged mechanical and the new mechanical (if applicable).

7. To make heating a home possible, there may be a need for permanent repairs to exterior windows, exterior doors, and minor permanent repairs to exterior walls. When properly documented with interior and exterior photographs, invoices, or signed estimates as described above, an additional building payment up to $5,000 (five thousand dollars) may be paid to permanently repair exterior windows, doors, or even minor wall repairs, without which heating the home would be impossible.

8. The insured must be given notice in writing and agree in writing that if the insured sells the damaged mechanicals for salvage, then a refund equal to the amount of the salvage payment must be given by the insured, or an offset against the value of the salvage payment will be deducted from any additional payments.

Please note that nothing in this Bulletin constitutes a waiver of any limitation or exclusion of coverage found in the SFIP. This means that no amounts can or will be paid for items excluded by the SFIP in Section IV of the SFIP or in any other provisions. These excluded items would include, but not be limited to, underground structures and equipment (such as underground plumbing, electrical lines, wells, septic tanks, septic systems), containers and related equipment (including, but not limited to, tanks holding gases or liquids), and items outside the perimeter exterior walls of the insured building.

If the policyholder complies with the above conditions, the insurer may issue a conditional partial payment to the policyholder and all known mortgagees not to exceed $25,000 (twenty-five thousand dollars) under the Coverage A limits of the policy (Building Coverage). In addition, the insurer may issue a conditional partial payment or advance payment to the policyholder and all known mortgagees not to exceed $5,000 (five thousand dollars) under the Coverage A limits of the policy (Building Coverage).

Along with the check, an explanation of the basis for the payment must be sent to the policyholder informing that:

1. The payment is being applied against the building claim and that it is not a payment for Additional Living Expenses (ALE).

2. Any mortgagee shown on the declarations sheet of the policy or any known mortgagee at the time of payment must be named on the payment check.

3. If the insured represents that they have another policy of flood insurance providing a primary level of coverage, then payment will be issued on a pro-rata basis in accordance with SFIP Section General Condition (C) and the accompanying letter must explain why only part of the loss is being paid for under their SFIP.

4. If all or any part of the loss is determined to not be a payable loss, or if there was not a flood loss at all, the payment (or relevant part) is not owed to them and must be repaid. The endorsement on the check for this advanced amount will act as a signed acceptance of this condition so as to allow the rapid processing of the claim.

5. Accepting the payment will not affect their right to seek additional payments under the terms and conditions of their SFIP for greater amounts if additional damages are discovered.

6. If the insured later determines that there was additional damage to the mechanical elements of the building, they will provide the SFIP-required proof of loss with documentation to support additional payment for mechanicals to the adjuster or their insurer. The documents to support the claim for the additional amount should include receipts showing actual costs incurred if the work was already completed (not just estimates of the costs).

7. Nothing in this waiver alters or affects the requirements for presenting a claim for Increased Costs of Compliance benefits under Coverage D of the SFIP.

8. The named insured must consent to the terms and conditions of receiving this waiver in order to receive this payment, and endorsing and negotiating the partial payment check will constitute consent.

9. By negotiating the payment, the policyholder acknowledges that he is entitled to payment for the claim, and that he understands that a false statement or claim is subject to civil and criminal remedies.

In the handling of claims arising out of Meteorological Event Sandy, it is the intent of FEMA to reduce the paper requirements typically associated with NFIP payments for the purpose of reducing claim adjusting and processing time. Therefore, for this waiver, and all other waivers and authorized advance payments and partial payments made by the insurer related to Hurricane Sandy, the usual advance payment receipt may be waived by the insurer. The receipt requirement will be satisfied when the notice of explanation is sent to the insured and the policyholder agrees to the required conditions for this waiver, as evidenced by their signature on the issued check. If the insured expresses dissatisfaction with the claim payment amount, seeks amounts over and above what is allowed by this process, or does not agree to the terms and conditions of this waiver, then the normal Proof of Loss requirements of SFIP Section VII (J) must be followed by that insured.

As always, the deductible amount, the estimated amount of damage, the amount of previous advances and/or partial payments, and the policy limits must be considered when making final decisions regarding such payments.

Additionally, this rapid partial payment process will not apply and payment under Coverage A is not authorized if there is a Residential Condominium Building Association Policy ("RCBAP") form SFIP in force and effect for the complex where the insured property is located. The RCBAP SFIP will provide primary coverage, and the individual Dwelling form will act as excess coverage pursuant to SFIP General Condition (C), up to a combined total between the RCBAP and individual Dwelling policy of $250,000.00, which is the maximum amount allowed pursuant to 44 C.F.R. § 61.6.

The insurer must obtain accurate information from the insured or their representative regarding their temporary address when the claim is reported. It will not benefit the insured to send their advance payment to a property address that is not accessible due to flooding.

This extraordinary measure is being taken to provide rapid response and assistance to the insureds. No other terms or conditions of the SFIP other than those listed herein are waived.

If a WYO Carrier issues a payment in accordance with the terms and conditions set forth in this bulletin, then FEMA will use these standards in all reviews or audits of files, including any reviews under the Arrangement or the Improper Payments 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). However, if a payment is incorrectly made (not consistent with the listed requirements) to an insured that has not had flood damages, or if the WYO Company omits a listed or known additional named insured or mortgagee from being listed as an additional payee, the WYO Company will be responsible for the erroneous payment.

Again, we ask for your full support. Any questions or comments should be directed to Russell Tinsley, Claims Examiner for the National Flood Insurance Program, Mr. Tinsley may be reached by email at: Russell.Tinsley@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.

cc: Vendors, IBHS, and Government Technical Representative

Required Routing: Reporting and Independent Adjusting Firms