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

FEMA

W-13011

February 22, 2013

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

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

SUBJECT: **Extension of Time to Present a Proof of Loss Under the Implementation of Section 100227(b) of the Biggert-Waters Flood Insurance Reform Act of 2012**

In the attached NFIP Clearinghouse Bulletins, W-12111, dated December 17, 2012 and W-12080, dated October 19, 2012, I authorized a total of 120-day period for qualifying NFIP policyholders that may have been affected by flooding of the Missouri River in 2011, to comply with the Proof of Loss requirements of the standard flood Insurance Policy, General conditions (J). In recognition of the events of the past 120 days, I am granting a 30- day extension of the of the 120-day period granted in Bulletin W-12111 and W-12080 until March 18, 2013, for qualifying NFIP policyholders to comply with the Proof of Loss requirements of the Standard Flood Insurance Policy (SFIP), General conditions (J).

Actual notice should be provided to each SFIP policyholder who is determined to qualify for coverage under Section 227(b) of this new deadline to present their claim.

Authority: Biggert-Waters Flood Insurance Reform Act of 2012, Section 227 (b); 44 C.F.R. § 61.13(d) and General Conditions (D) of the Standard Flood Insurance Policies found at 44 C.F.R. § 61, Appendices A(1) (Dwelling form), A(2) (General Property form), and A(3) (Residential Condominium Building Association Policy form).

Again, we ask for your full support. 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.

Attachments

Cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting

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

FEMA

W-12111

December 17, 2012

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

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

SUBJECT: **Extension of Time to Present a Proof of Loss Under the Implementation of Section 100227(b) of the Biggert-Waters Flood Insurance Reform Act of 2012**

In the attached NFIP Clearinghouse Bulletin, W-12080, dated October 19, 2012, I authorized a 60-day period from that date for qualifying NFIP policyholders that may have been affected by flooding of the Missouri River in 2011, to comply with the Proof of Loss requirements of the Standard Flood Insurance Policy, General Conditions (J). In recognition of the events of the past 60 days, I am granting a 60-day extension of the 60-day period granted in Bulletin W-12080 until February 16, 2013, for qualifying NFIP policyholders to comply with the Proof of Loss requirements of the Standard Flood Insurance Policy, General Conditions (J).

Actual notice should be provided to each SFIP policyholder who is determined to qualify for coverage under Section 227(b) of this new deadline to present their claim.

Authority: Biggert-Waters Flood Insurance Reform Act of 2012, Section 227 (b); 44 C.F.R. § 61.13(d) and General Conditions (D) of the Standard Flood Insurance Policies found at 44 C.F.R. § 61, Appendices A(1) (Dwelling form), A(2) (General Property form), and A(3) (Residential Condominium Building Association Policy form).

Again, we ask for your full support. 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.

Attachment: Bulletin W-12080

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting

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

FEMA

W-12080

October 19, 2012

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

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

SUBJECT: **Notice of Implementation of Section 100227(b) of the Biggert-Waters Flood Insurance Reform Act of 2012 – Flood in Progress Determinations – Effective Dates of Policies Covering Properties Affected By Flooding of the Missouri River in 2011 and Limited Waiver of the Time Requirements for Presenting a Proof of Loss**

Purpose: On July 7, 2012, the Federal Insurance and Mitigation Administration ("FIMA") issued Bulletin W-12044 advising that President Obama signed into law the Biggert-Waters Flood Insurance Reform Act of 2012 (hereinafter "FIRA 2012"), P.L 112-141. Section 100227(b) of FIRA 2012 (hereinafter "Section 227 (b)") establishes an alternative effective date for Standard Flood Insurance Policies ("SFIPs") that were purchased during the period beginning on May 1, 2011 and ending on June 6, 2011 and that were impacted by the Flood in Progress exclusion found in Section V of the SFIP, part B ("SFIP Exclusions V. B.").

The alternative effective date provision set forth in Section 227 (b) applies: (1) if a property is in the qualifying area (the Missouri River Basin as described in Bulletin W-11034, issued on June 6, 2011); (2) if the property was either insured under an SFIP purchased between May 1, 2011 and June 6, 2011, or there was an increase in coverage during the period May 1, 2011 to June 6, 2011 on an existing SFIP; and (3) that SFIP-insured property was not damaged by flood for 30 days after the policy purchase date. When all conditions described further below are met, Section 227(b) establishes the alternative effective date for the policy or the increased coverage as the 30th day after the policy purchase date, without regard for the flood in progress. In addition, this alternative effective date applies only to claims that were denied based upon SFIP Exclusions V. B.

Authority: **Biggert-Waters Flood Insurance Reform Act of 2012, Section 227 (b); 44 C.F.R. § 61.13(d) and General Conditions (D) of the Standard Flood Insurance Policies found at 44 C.F.R. § 61, Appendices A(1) (Dwelling form), A(2) (General Property form), and A(3) (Residential Condominium Building Association Policy form).**

Guidance:

SFIP Exclusions V. B. provides, in relevant part, as follows:

> **V. EXCLUSIONS**
>
> **B. We do not insure a loss directly or indirectly caused by a** flood that is already in **progress at the time and date:**
>
> 1. **The policy term begins; or**
> 2. **Coverage is added at your request.**

Section 227(b), provides, in relevant part, as follows:

> **FLOOD IN PROGRESS DETERMINATIONS.**
>
> *** * ***
>
> **(b) EFFECTIVE DATE OF POLICIES COVERING PROPERTIES AFFECTED BY FLOODING OF THE MISSOURI RIVER IN 2011.—**
>
> **(1) ELIGIBLE COVERAGE.—For purposes of this subsection, the term "eligible coverage" means coverage under a new contract for flood insurance coverage under the National Flood Insurance Program, or a modification to coverage under an existing flood insurance contract, for property damaged by the flooding of the Missouri River that commenced on June 1, 2011, that was purchased or made during the period beginning May 1, 2011, and ending June 6, 2011.**
>
> **(2) EFFECTIVE DATES.—Notwithstanding section 1306(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)), or any other provision of law, any eligible coverage shall—**
>
> **(A) be deemed to take effect on the date** that **is 30 days after the date on which all obligations for the eligible coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed; and**
>
> **(B) cover damage to property occurring after the effective date described in subparagraph (A) that resulted from the flooding of the Missouri River that commenced on June 1, 2011, if the property did not suffer damage or loss as a result of such flooding before the effective date described in subparagraph (A).**

For the purpose of this Bulletin, the term "policy purchase date" shall refer to the date upon which the conditions set forth above in Section 227(b)(2)(A) quoted above were met.

The provisions of Section 227 (b) apply to an SFIP issued by FEMA or a participating WYO insurance company, if all of the following conditions are met:

1. **The NFIP policy was purchased, or coverage for an existing SFIP was increased, during the period beginning on May 1, 2011, and ending on June 6, 2011.** This includes and means:

    - The normal underwriting rules regarding new business purchase and increases of coverage apply for issuing an **SFIP** *(e.g.,* the rules regarding receipt of the application and premium payment). Existing policy coverage increases include: adding or increasing Building or Contents coverage, increasing policy limits of an existing policy, or reducing the policy deductible(s).

    - While an SFIP with a policy purchase date of May 1, 2011, with the 30-day waiting period, was in effect on May 31, 2011 (before the June 1, 2011, trigger for the Missouri River flood in progress occurred), all SFIPs purchased on May 1, 2011, and subsequently denied based in whole or in part upon SFIP Exclusions V. **B. should** be reviewed to verify the facts and the applicability (or inapplicability) of Section 227(b).

    - The provisions of Section 227 (b) will not apply to an SFIP purchased or coverage increased on an existing SFIP before May 1, 2011, or after June 6, 2011.

    - The significant determination date is not the SFIP effective date, but the SFIP policy purchase date (or date an increase in coverage was purchased under an existing SFIP). To establish an alternative effective date under Section 227(b), the SFIP (or increase in coverage) must have been purchased between May 1, 2011 and June 6, 2011, and the insured property could not incur any flood damage for 30 days after the policy purchase date *(e.g.,* if the policy is purchased May 15, 2011, the property must not flood until after June 14, 2011 for the Section 227(b) alternative effective date provision to be applicable).

    - If the insured property is damaged by flood, as defined by the SFIP, during the 30 days after the policy purchase date, the exception in Section 227(b) will not apply and there will be no effect on a claim denial.

2. **To be eligible for review under Section 227(b), the denial of the claim in whole or in part must have been based on SFIP Exclusions V. B, of the SFIP.** This means:

    - Denial of a claim made under an SFIP based on any reason other than application of the SFIP Exclusions V. B. does not qualify the claim for review under Section 227(b). (For example, if the property was deemed to be uninsurable because it was not in a participating community or was constructed in violation of the applicable floodplain management ordinance or law, Section 227(b) will not operate to provide coverage). Also, even though coverage will be available under this Section, the normal exclusions and limitations of coverage will still apply to a policy which qualifies for coverage. (For example, If Section 227(b) results in coverage being afforded, the limitations for basements in Coverage A.(8) and Coverage B.(3) would still apply).

3. **The NFIP policyholder's property that is insured under an SFIP suffered a "direct or indirect physical loss by or from flood" on or after June 1, 2011.** This means:

    - Section 227(b) does not afford coverage for an excluded peril (*e.g.*, earth movement damage is not covered, even if the direct flood damage is provided coverage under Section 227(b) because it was caused by a now-covered flood in progress on or after June 1, 2011).

    - Indirect physical losses by or from flood which commence or occur prior June 1, 2011, will not be covered.

4. **Section 227 (b) applies only to Missouri River flood damage in the States of North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri.** This means:

    - No other flood-related damages in any other areas or for any other rivers are impacted by Section 227(b).

Based on the above conditions, the NFIP Direct Servicing Agent and Write Your Own (WYO) program participating insurance companies should identify qualifying claims affected by Section 227(b). Please note that if there is a fully-executed Small Business Administration (SBA) lien in the file, the insurer should include SBA as a payee with respect to the express provisions of the lien, that is, for payment of damage to Building Property and/or damage to Personal Property.

Please note that if an SFIP was deemed to be in force and effect before June 1, 2011 because of one of the exceptions to the 30-day waiting period found in 42 U.S.C. § 4013(c) and a claim was paid under that SFIP for the Missouri River Basin flooding made subject of Section 227(b), this alternative effective date under Section 227(b) shall not be construed in a manner that would now invalidate the coverage afforded under that SFIP or any payments made to an insured under that SFIP. Only claims that were denied under Section V.B will be reviewed for possible coverage under Section 227(b).

Additionally, FIMA is requiring the WYO carriers to provide a complete list (name, address, policy number, and date of loss) for each insured that does qualify for coverage under Section 227(b) to the Director of Claims for the National Flood Insurance Program.

Finally, an insured under an SFIP normally has sixty days from the date of the loss to present the required Proof of Loss with supporting documentation as required by General Conditions (J) of the SFIP. This time limit can be waived expressly and in writing pursuant to the authority found in 44 C.F.R. § 61.13(d) and General Conditions (D) of the SFIP.

Since it is more than sixty days since the flood event occurred which is the subject of Section 227(b), by this notice, I am granting those qualifying policyholders a waiver of the sixty-day Proof of Loss time requirement, and allowing those qualifying policyholders a period of sixty days from the date of this Bulletin to comply with the Proof of Loss requirements of the SFIP, General Conditions (J).

After the expiration of that sixty-day period, and in the event that no additional extensions of time are granted for submission of the SFIP required Proof of Loss with supporting documentation, it will be necessary for individual policyholders to seek an individual waiver of the time period.

As a result of the foregoing process for complying with Section 227(b), written notice should be provided to each SFIP policyholder who is determined to qualify for coverage under Section 227(b) and their time limit to present their claim.

Again, we ask for your full support. 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