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

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***

> ***(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 it 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.

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