

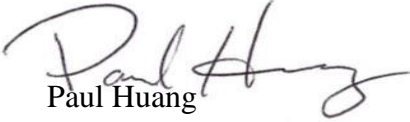


FEMA

W-18012

June 1, 2018

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

FROM: 
Paul Huang
Assistant Administrator for Federal Insurance
Federal Insurance and Mitigation Administration

SUBJECT: Guidance for the Release of Claim File Information to Policyholders

I. Integrity of Claim Files

NFIP insurers (Write Your Own Companies and NFIP Direct) must ensure that claim files contain all documentation in the NFIP insurers possession directly related to the adjustment, investigation, and payment of an individual claim. *See* 44 CFR 62.23(i)(10). Such documentation includes, but is not limited to:

- Declaration page and/or verifications of coverage applicable on the date of loss
- Copies of claim payment checks
- Correspondence to or from the insurer and policyholder regarding the claim at issue or underwriting issues relevant to the claim at issue
- Communications between insurer, claims examiner, adjuster, and other insurer employees and contractors
- Adjuster reports and supporting materials, including preliminary reports, final reports, estimates, log notes, and photographs
- Materials submitted by the policyholder, including estimates or supporting documents provided by the policyholder or policyholder representative
- Proofs of loss and other requests for additional payment
- Claim decision letters
- Denial letter(s)
- Expert reports (e.g., engineering assessments)

Electronic mail or other electronic communications should be included in the file (either as print copies or in pdf or similar format).

NFIP insurers may only rely upon documentation contained within a claim file when making a claim determination. NFIP insurers are not required to obtain drafts of the documents described above, but must maintain and disclose them if acquired in the course of adjusting, investigating, or

paying a claim.

NFIP insurers must ensure that individual claim files do not contain materials unrelated to individual claim. For instance, if an insurer receives communications pertaining to multiple policyholders, the insurer must remove the personally identifiable information of other policyholders who are not part of the claim file in question prior to including the communication in the claim file.

NFIP insurers may redact any privileged communications from a claim file prior to disclosure. Privileged communications are limited to privileges that the insurer anticipates will be asserted to preclude disclosure in court, such as the attorney-client privilege.

II. Disclosure of Claim Files

Policyholders may obtain a copy of their claim file by submitting a signed request to their NFIP insurer. At minimum, such request must include the policyholder's full name, current address, date, and place of birth. The policyholder's signature must either be notarized or submitted with the following statement prescribed by 28 U.S.C. 1746:

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)

In addition, if a representative of a policyholder, such as an attorney or public adjuster, requests a copy of a claim file on behalf of their client, the representative also must provide a letter of representation that meets the requirements below.

III. Letters of Representation

NFIP insurers may not disclose a policyholder's information to a policyholder's representative or allow a representative to act on behalf of a policyholder without obtaining a letter of representation signed by all policyholders named on the policy. At minimum, a letter of representation must include the following:

- Policyholder's full name.
- Policyholder's current address.
- Policyholder's date and place of birth.
- Name of third-party representative.
- Statement from policyholder authorizing authorized representative to act on their behalf and for the insurer to release records to the representative.

The policyholder's signature must either be notarized or submitted with the following statement prescribed by 28 U.S.C. 1746:

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)

Guidance for the Release of Claim File Information to Policyholders

June 1, 2018

Page 3

Please direct all questions or comments about this bulletin to FIMA Claims at FEMAFIDClaimsMailbox@fema.dhs.gov.

Please note that this bulletin will be superseded upon the release of the next NFIP Claims Manual. The manual will be located on FEMA.gov at <https://www.fema.gov/claims-manual>.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims, Underwriting