



FEMA

W-16024

April 7, 2016

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

FROM: 
Roy E. Wright
Deputy Associate Administrator for Insurance and Mitigation
Federal Insurance and Mitigation Administration

SUBJECT: Implementation of Section 100214 of the Biggert-Waters Flood Insurance Reform Act of 2012 – Payment of Condominium Claims.

This Bulletin implements Section 100214 of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters), codified at 42 U.S.C. § 4019(c).¹ Until FEMA amends the Dwelling Form of the Standard Flood Insurance Policy (SFIP) through rulemaking, FEMA is implementing Section 100214 through a general waiver of Section III.C.3.b (4) and a limited waiver of Section VII.C.2 of the Dwelling Form of the SFIP. Since 2007, FEMA has been issuing individual waivers of these provisions for any affected policyholders, but in light of the passage of Biggert Waters, a general waiver is more appropriate and a better way of communicating the availability of the coverage previously provided by these waivers to the public.

42 U.S.C. Section 4019, as amended by Section 100214 of Biggert Waters, prohibits FEMA from denying payment to condominium unit owners who purchased unit-owner building coverage under the Dwelling Form policy for building claims that cannot be paid by the Residential Condominium Building Association Policy (RCBAP). The RCBAP's coinsurance penalty triggers when the building insurance coverage purchased by the condominium association is less than 80 percent of the full replacement cost of the RCBAP insured condominium building, or less than the maximum amount of insurance available.

¹“PAYMENT OF CLAIMS TO CONDOMINIUM OWNERS – The Administrator may not deny payment for any damage to or loss of property which is covered by flood insurance to condominium owners who purchased such flood insurance separate and apart from the flood insurance purchased by the condominium association in which such owner is a member, based solely, or in part, on the flood insurance coverage of the condominium association or others on the overall property owned by the condominium association”.

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Section III.C.3.b(4) of the Dwelling Form policy precludes payment for a loss assessment if the reason for the shortage is application of the RCBAP's coinsurance penalty provision. Section VII.C.2 provides that the RCBAP provides primary flood insurance coverage and the Dwelling policy provides excess coverage if the Dwelling policy covers a unit in a condominium building where the condominium association has purchased an RCBAP or other coverage for the condominium structure. Section 100214 of Biggert Waters prohibits FEMA from enforcing Section III.C.3.b(4) and that provision is hereby waived. Under certain circumstances, application of Section VII.C.2 also prevents implementation of Section 100214 and that provision is hereby waived in part where application of the provision would deny payment due to the coinsurance penalty in the RCBAP. This will allow the Dwelling Form policy to respond as if the RCBAP coverage were exhausted. In all other cases, the RCBAP will continue to be primary, and the Dwelling Form policy will act as an excess flood insurance policy.

Section 100214 of Biggert-Waters does not alter, amend, or supersede the limits of coverage established under 42 U.S.C. Section 4013 or allow more than one payment for the same damaged item. Accordingly, the combined building coverage of the RCBAP and the Dwelling Form(s) for units within the building covered by the RCBAP cannot exceed \$250,000 times the number of units, nor can the payment for any one unit exceed \$250,000.

Thank you for your attention and cooperation in this matter. If you have any questions, please contact Karen Christian at Karen.Christian@fema.dhs.gov.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Accounting, Claims, Data Processing, Marketing, Underwriting