



**Insurance Circular Letter No. 13  
November 28, 2011**

**TO All Authorized Property Insurers Writing Business in New York State**

**RE: Unfair Claims Settlement Practices and the National Flood Insurance Program**

**STATUTORY REFERENCES: N.Y. Ins. Law § 2601**

The purpose of this Circular Letter is to remind insurers that, as stated in Circular Letter No. 15 (1996), the requirements of Insurance Law § 2601 and 11 NYCRR Part 216 (Regulation 64) apply fully to insurers providing coverage through the National Flood Insurance Program (“NFIP”) Write Your Own Program (“WYO”).

Insurance Law § 2601, which applies to all claims an insurer processes in this State, prohibits insurers doing business in this State from engaging in unfair claims settlement practices. Insurance Law § 2601 further provides that, if any insurer performs any of the acts or practices proscribed by that statute without just cause and with such frequency as to indicate a general business practice, then those acts shall constitute unfair claims settlement practices subject to disciplinary action. Insurance Law § 2601 in pertinent part defines the following as unfair claims settlement practices:

- (1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverage at issue;
- (2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
- (3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
- (4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear . . .
- (5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them . . . .

Regulation 64 implements the provisions of Insurance Law § 2601 and further defines an insurer’s obligations to employ fair claims practices. For instance, among other things,

Regulation 64 requires insurers to respond to communications from insureds within 15 business days; to commence an investigation within 15 business days of receiving a notice of claim from an insured; to notify the insured in writing of the insurer's acceptance or rejection of a claim within 15 business days, or to notify the insured that more time is needed and the reason for the additional time with periodic updates to insureds; to notify the insured in writing of the specific policy provision for any denial of any part of a claim that is based upon a policy provision; and to respond to inquiries from the Department of Financial Services ("DFS") within 10 business days.

The fact that the NFIP is a federal program administered by a federal agency, the Federal Emergency Management Agency ("FEMA"), does not alter the applicability of Insurance Law § 2601 and Regulation 64. The legislation creating the NFIP, the National Flood Insurance Act of 1968 ("NFIA"), does not expressly purport to preempt state claims handling or other laws. Indeed, the regulations implementing the NFIA expressly provide that, among other things, WYO insurers are "subject to audit, examination, and regulatory controls of the various States." See 44 CFR Part 62, Appendix B(b) (emphasis added). FEMA regulations also require a WYO insurer to process WYO flood claims in the same manner as the insurer processes its claims for all its other policies, *i.e.*, policies exclusively governed by state law. See 44 CFR Part 62, Appendix A, Article II(A)(2); 44 CFR 62.23(e). Similarly, an insurer's claims processes for WYO claims are subject to a financial control plan that provides for state audit, examination and application of regulatory controls. See 44 CFR Part 62, Appendix A, Article II(A)(2); 44 CFR 62.23(e). These same provisions illustrate, too, that federal law does not in any way "occupy the field" in this area, and that instead, federal and state authority over administration of the NFIP are intended to coexist.

Finally, Insurance Law § 2601 and Regulation 64 are substantially consistent with FEMA standards. Thus, their applicability would not be subject to conflict preemption. To the extent that the FEMA regulations and guidance now or in the future provide a more stringent standard than that set forth in Insurance Law § 2601 and Regulation 64, an insurer complying with the more stringent federal standard would be in compliance with the state standard.

In short, insurers cannot use the federal aspects of NFIP WYO policies as a shield against discipline for violating New York Law. Any insurer that violates Insurance Law § 2601 or Regulation 64 in adjusting an NFIP claim can expect to face any form of disciplinary action authorized by the Insurance or Financial Services laws.

Very truly yours,



Benjamin M. Lawsky  
Superintendent