



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

**Insurance Circular Letter No. 8 (2013)**  
**October 28, 2013**

**TO: All Insurers Authorized to Write Property/Casualty  
Insurance in the State of New York (“insurers”)**

**RE: Post-Disaster and Natural Catastrophe Regulatory Guidance (Emergency Disaster  
Protocol)**

**STATUTORY REFERENCES: Insurance Law §§ 308, 2108, 2601, 3404(e), 3425**

**Summary**

The purpose of this Circular Letter is to apprise insurers of the various post-disaster regulatory measures they should anticipate in the event that the President of the United States or the Governor of New York State (“Governor”) declares a State Disaster Emergency in all or some New York State counties in the wake of a disaster or catastrophe. The Superintendent of Financial Services (“Superintendent”) might employ measures that include those described in this circular letter. This description is not intended to be exclusive; the Superintendent might decide to implement additional measures as warranted, either by regulation or as otherwise permitted by law.<sup>1</sup>

**1. Moratorium on Policy Cancellation or Non-renewal for Non-payment of Premium**

Pursuant to New York Insurance Law § 3425(p), the Superintendent might declare a moratorium precluding policy termination, or suspend or otherwise adjust that section’s provisions and limitations, for areas of the State that have been declared by the President or the Governor to be in a state of emergency due to a disaster or catastrophe.<sup>2</sup> The moratorium could be up to three months and thereafter could be extended for up to another three months. See Insurance Law § 3425(p).

---

<sup>1</sup> In addition the Governor, pursuant to Section 29-a of Article 2-B of the Executive Law, could temporarily suspend or modify specific provisions of any statute, local law, ordinance, order, rule, or regulation of the Department of Financial Services (“Department”) during a State disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

<sup>2</sup> If an insurer were to be prohibited from cancelling or non-renewing a policy in accordance with the above provision, premium finance companies would likely similarly be prohibited from exercising any power of attorney to cancel any such policy.

The Superintendent expects insurers to be mindful that all policyholders in disaster-affected areas might have difficulty making timely premium payments. The Superintendent further expects that insurers would work with any such policyholders by making reasonable accommodations to assist policyholders in making premium payments so as to allow continuing insurance coverage. Such accommodations could include allowing reasonable repayment plans and payment extensions. See, e.g., Insurance Circular Letter No. 1 (2013). Failure to treat policyholders fairly could subject insurers to disciplinary action.

## 2. **Processing of Claims**

Insurers should always promptly and in good faith adjust and pay all valid insurance claims, but never more so than after a declared disaster emergency with respect to claims directly resulting from the disaster, taking into account the magnitude of and circumstances surrounding the disaster and the severity and circumstances of individual claims. The Superintendent expects that insurers and licensees would take the following actions upon receiving notice of a claim:

- Promptly establish contact with the claimant;
- Promptly survey and assess the claimant's damage;
- Promptly comply with any Department directive relating to the activation of the Insurance Emergency Operations Center;
- Promptly respond to Department inquiries, including inquiries made relating to consumer complaints filed with the Department;
- Promptly inform claimants of any documents that must be submitted to complete a claim;
- Provide prompt and accurate responses to claimants;
- Provide prompt payment for additional living expenses and for temporary repairs after the assessment of the insured's damage; and
- Promptly set appointments with the claimant for examination and resolution of all claim matters.

The Superintendent might, by emergency regulation, establish further claims handling requirements or procedures, to protect the health or safety of claimants, or otherwise. For example, after Storm Sandy in 2012, these measures included: permitting immediate, necessary repairs; and broadening proof-of-loss-documentation to include photographs, video recordings, material samples, receipts and inventory listings. See, e.g., Insurance Circular Letter No. 8 (2012).

## 3. **Expedited Process for Adjuster Licensing**

The Superintendent might implement an expedited process for issuing temporary independent and public adjuster licenses for adjusters in good standing from other states, including an online process. This measure should help ensure an adequate supply of qualified adjusters to affected areas promptly when large number of losses would create a spike in demand for adjusters.

#### **4. Claims Data Reporting**

The Superintendent could require claims data reporting in accordance with the form and requirements adopted by the Northeast Zone of the National Association of Insurance Commissioners (NAIC). In addition, the Superintendent might require an additional, separate data report for supplemental data, which might include, among other things, claims investigation extension information. See, e.g., Emergency Regulation 64, Sixteenth Amendment. These reports might be required on a daily, weekly, or other basis depending on the circumstances. The Superintendent might require the reporting of data until a certain number of all claims have been closed, such as 95%, depending on the circumstances.

The Department would expect to use the data collected to compile “report cards” assessing the performance of insurance companies or for similar purposes. For example, the report cards issued following Storm Sandy in the fall of 2012 included the number of claims filed (though claims made under flood policies issued pursuant to the National Flood Insurance Program were not included), average time for inspection and payment of claims, number of adjusters conducting examinations, number of complaints filed with the Department, and number of such complaints as a percentage of the number of claims.

Complaints regarding issues relating to the peril of flood and associated coverage issues may be included among report card listed data, but such complaints shall be separately identified and shall not be included in the percentage calculation of complaints to total number of claims. In addition, inquiries or non-specific grievances shall not be counted as complaints for inclusion in the report card complaint listing.

#### **5. Mediation**

The Superintendent might, by regulation, establish a mediation program following a declared disaster emergency to facilitate the resolution of disputed open claims for damage to real or personal property resulting from the disaster. To the extent the situation warranted, the program might not be made available for: (i) disputes in property valuation that were submitted to an appraisal process; (ii) a claim that was the subject of a civil action unless the insurer and insured agree otherwise; (iii) a claim made under a flood insurance policy issued by the National Flood Insurance Program; (iv) claims for which existence of coverage was in dispute; or (v) claims with respect to which coverage had been exhausted. Claims likely would be eligible for the program: (a) when an insurer had denied a claim in whole or in part; (b) when the insurer received notification from the insured that the amount in controversy had exceeded a defined dollar threshold amount (such as where the amount in dispute equals or exceeds \$1,000); or (c) the insurer had not offered to settle within a specified period of time after it had received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the insurer.

For example, after Storm Sandy, the Superintendent designated an entity, the American Arbitration Association (“AAA”) to carry out mediations, which still are being conducted in accordance with procedures established by the AAA and approved by the Superintendent. Under the mediation program, insurers have been required to pay mediation expenses and to notify policyholders

with mediation-eligible claims of the availability of the mediation process, among other things. See Emergency Insurance Regulation 64, Fifteenth Amendment, first issued on February 25, 2013.

**Conclusion**

While no disaster or catastrophe befalling the State is identical to those that came before, and the Superintendent would tailor any post-disaster or catastrophe measures to the particular circumstances, the foregoing measures are among those that the Superintendent has taken before, and most likely would employ again, in whole or in part, following the declaration of a disaster emergency in the State.

Questions regarding this Circular Letter should be directed to John Capuano via e-mail at john.capuano@dfs.ny.gov or by phone at (518) 486-9107.

Sincerely,

Benjamin M. Lawsky  
Superintendent of Financial Services

By: \_\_\_\_\_  
Jean Marie Cho  
Deputy Superintendent  
Property and Casualty Insurance