

What Consumers Should Do to Get Fair Claims Payments in the Wake of Hurricane Ida

Consumer Federation of America

Washington, D.C. — The Consumer Federation of America (CFA) today warned consumers to prepare to file claims for damage resulting from Hurricane Ida and offered tips on “how to get all you are entitled to from your insurance company.”

CFA believes that Hurricane Ida will produce about \$19 billion in insured losses, split between private insurers for the wind damage and the federal government’s National Flood Insurance Program (NFIP) for flood damage. CFA estimates that private insurers will face over 180,000 claims for wind damage by homeowners with insurance payments for wind damage exceeding \$12 billion. The NFIP (and a few private insurers of flood insurance) will, in CFA’s estimate, handle as many as 100,000 flood claims for over \$7 billion, given the severity of the storm surge and the rainfall totals. The flood estimates could vary widely depending on how much rainfall ultimately occurs as the storm’s final bands pass through impacted areas, what the ultimate height of flood stages in the rivers will be, and the percentage of homes in those hard-hit areas that have flood insurance.

J. Robert Hunter, CFA’s Director of Insurance and former Texas Insurance Commissioner and Federal Insurance Administrator (who ran the National Flood Insurance Program) said, “Our thoughts and prayers go out to the wonderful people of Louisiana, where I was born, Mississippi, Tennessee and other states who face the aftermath of this huge storm.

“Fortunately, Louisiana has one of the highest percentages of residents who carry flood insurance in the nation so most people who had flood damage from this storm in Louisiana will be covered by flood insurance. Almost all wind-damaged homes have homeowners policies covering wind but insurers have been steadily increasing hurricane wind coverage deductibles and imposing other, sometimes draconian, homeowners insurance policy limitations. This shift of costs to consumers under homeowners insurance

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policies may take some by surprise, since disclosures of coverage changes are often buried in renewal paperwork that consumers may not understand or even read. Because so many consumers in Louisiana experienced severe claims problems in the wake of Hurricanes Katrina, we urge homeowners dealing with losses caused by Hurricane Ida to be vigilant with their insurance companies, including the insurers settling National Flood Insurance claims, to ensure that they receive a full and fair settlement.”

Tips for Consumers Filing Claims: How to Get All You Are Entitled to from your Insurance Company

As consumers prepare to contact their insurance companies in the wake of the storm, CFA offered the following five-part guide regarding the filing of a claim.

Part 1. Initiating Your Claim

1. You have paid your premium and are entitled to coverage. If you have a legitimate claim, do not hesitate to file it. Insurers should not raise your rate for filing this claim or fail to renew your policy for filing it. Report your claim as promptly as possible as insurance companies generally handle them first come, first serve.
2. Once your claim is reported, be sure to get your claim number and write it down. Insurance company claims departments can locate your file most promptly using your claim number.
3. Maintain receipts for any expenditures related to immediate repairs you had to make to secure your home or any living expenses (hotel, meals) if you could not return to your home in the wake of the storm. In wind claims you should get reimbursed for such additional living expenses. If your claim is limited to flood insurance, additional living expenses are not covered. If your home was impacted by both wind and flood, you may be entitled to living expenses from your homeowners insurer, depending upon your policy language (see discussion of “anti-concurrent causation clauses” below).
4. When the insurance company sends out an adjuster to survey your damage, ask if he/she is an employee of the insurance company or an independent adjuster (I.A.) hired by them. If an independent adjuster, ask if they are authorized to make claim decisions and payments on behalf of your insurance company and ask for the name of the in-house company adjuster to whom the I.A. is sending your information. As you begin the claim process, if you are able, obtain a repair estimate from a trusted local contractor to use as a guide in talking with the adjuster.

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5. Many insurance companies have repair programs in which they offer to send out one of their approved contractors to estimate your property damage. You may wish to obtain an estimate from their contractor, but you are not under any obligation to use them. The insurance company may encourage their use, as it is to their advantage. Contractors that participate in these programs have likely agreed to unit repair costs dictated by the insurance company or one of their vendors. The unit repair costs are provided to insurance companies by software vendors and are averages by geographic region and may or may not fully compensate you for your damages. It is very important to remember that your claim is unique and should always be treated as such by your insurance company.
6. Beware of fly-by-night contractors who might approach you to repair your home. Make sure the contractor has good references and is insured in case of errors in construction or a worker is injured on your property. Check with the Better Business Bureau near you or with your insurance company if you are not sure about the qualifications of a contractor.

“Not all insurance companies handle claims badly, so go into the claims process with an open mind,” said Hunter. “Be vigilant, though, and be ready to stand up for yourself and your family, or you run the real risk of being shortchanged.”

Part 2: Keeping Good Records During the Claims Process

When you file a claim, you should immediately start a notebook documenting contacts with your insurance company. List the date, time and a brief description of every exchange. If you need to complain later, this information will be vital (see below). If an adjuster says he or she will come and does not, write it down. If an adjuster is rude, write it down. If the adjuster is pleasant and efficient, write that down too.

Make as thorough a list of your possessions as you can. Use pictures of your possessions taken before the storm and keep them in a safe place. If you later realize you have no pictures when you file a claim, don't forget that family or friends may have pictures of rooms in your house (for example, from Christmas or other celebrations) that can be helpful in recreating a list of your belongings.

You may wish to take your own photos of the damage as part of your documentation, if you can do so safely. Do not climb on the roof. Leave that to the professionals. The adjuster should still take their own

damage photos.

As noted above, you may be entitled to money up-front for living expenses, such as hotel costs and meals, if your home becomes uninhabitable as a result of wind damage. Keep receipts from emergency repairs as well as any costs you incur in temporary housing. These costs may be reimbursable under the “Additional Living Expense” portion of your homeowners policy. Insurers are usually very good about these initial payments, particularly while the media is focused on the hurricane aftermath. Most claims problems, if they arise, come later, when bigger payments are sought.

Part 3. What if the Claim is Denied or the Offer is Too Low?

If the claim is denied or you feel the offer is too low, demand that the company identify the language in your homeowners policy that served as the basis for denying your claim or offering so little. This approach has several benefits:

- The company may be right and you may not know it. Once they pinpoint the appropriate language in the policy, you should be able to make this determination. For example, you may have \$900 in damage, but the company could well point out that you have agreed to a \$1,000 deductible or an even higher wind deductible—usually between 2 percent and 5 percent, but sometimes as high as 10 percent, of your home’s replacement value.
- The company may have slipped new limitations into the policy and not adequately informed you. If you feel that you have been misled in this regard, it might be a good idea to consult an attorney. The introduction of percentage deductibles (up to 10 percent of the value of a home) will shift much of the cost of Hurricane Ida from insurance companies to insurance consumers, as compared to many earlier storms. The practice of shifting the cost of previously insured events back to consumers may be acceptable, but only if consumers are clearly given the option to select the level of coverage they want with fully informed consent.
- Another restriction new to many policies is a limit on replacement cost payments, which might come into play in the event that a home is totally destroyed. A typical cap is 20 percent above the face value of the policy (some companies cap at no increase over the face value of the policy). If costs surge because of the spike in demand for materials or labor from a major storm like Hurricane Ida (or if your state does not monitor price gouging sufficiently) this limit might apply. For example, if a home would cost \$200,000 to replace and that amount was the limit on the

policy, the insurance company would pay no more than 20 percent more, or \$240,000. If the surge in construction costs due to extreme demand caused the price of replacing the home to jump to \$300,000, the homeowner would be short \$60,000.

- Another new limit on policy coverage that might surprise you is many insurers no longer cover the cost of additional costs to bring a damaged home up to new building codes (wiring, elevation for flood risk, etc.)
- Many insurers use an “anti-concurrent-causation” clause in their policies that, insurers allege, removes coverage for wind damage if a flood happens at about the same time, which could be a serious problem in claims from Hurricane Ida. CFA believes that these clauses are often ambiguous, so if an insurer uses such a clause to deny your wind claim or to offer a very inadequate payment, read the provision carefully to see if you think it is ambiguous and, if so, see an attorney right away.
- Before settling a claim, it is important to request a copy of the *initial* repair estimate written by either the company adjuster or I.A. Most of the adjusters are using the Xactimate estimating software. A problem we have discovered is that many insurers have a “review process” in place where they either have a vendor or an in-house review of the Xactimate estimate that was written on-site and cut that estimate (substantially in many instances). The insured is then only provided with the final estimate and is not aware that it has been cut. This is happening even in situations such as hurricanes as has been uncovered in several recent lawsuits.
- Once the insurance company tells you the reasons for its action, it cannot produce new reasons for denying payment or making a low offer at a later time. You have locked them in—an important protection for the consumer.
- If you review the policy and find that, under a reasonable reading, you think you are entitled to the full amount of your claim as you read the language they relied upon, you will likely win if you go to court. Courts consistently rule that if an insurance policy is ambiguous, the reasonable expectation of the insured party will prevail since the consumer played no part in writing the language of the insurance policy.

Part 4. How/Where do I Complain if I Have Trouble on a Wind Claim?

If you feel that the offer is too low or the claim denial is wrong, the best process for getting your complaint resolved is as follows:

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- Complain to more senior staff in the insurance company. It is often best to complain to an executive in consumer relations (who is paid to keep consumers happy) rather than an executive in the claims department (who is paid to keep claims costs low). Use the records you have kept since the claim process began. The more serious the insurance company sees that you are in documenting how you were treated, the more likely they will make a more reasonable offer.
- Complain to your state insurance department. All states will at least seek a response to your complaint from your insurance company, which will give you more information as you consider next steps if you are not satisfied with the response. A few states may actually intervene on your behalf with the insurance company in clear cases of bad claims handling. It is important to dispassionately present your side of the story when you complain, using the notes you have been taking.

The Louisiana Insurance Commissioner is:

James J. Donelon

Louisiana Department of Insurance

225-342-5900; 800-259-5300

702 N 3rd Street

Baton Rouge, Louisiana 70802

File a complaint: <https://www.lidi.la.gov/onlineservices/ConsumerComplaintForm>

The Mississippi Insurance Commissioner is:

Mike Chaney

mike.chaney@mid.ms.gov

Mississippi Insurance Department

601-359-3569; 800-562-2957

1001 Woolfolk State Office Building 501 N. West Street

Jackson, Mississippi 39201

File a complaint: <http://www.mid.ms.gov/consumers/online-complaint.aspx>

- See a lawyer. Now the notes you took are even more vital. In addition to an award covering your claim, if your treatment was particularly bad, the courts in many states will allow additional compensation when the insurance company acted in “bad faith.” Since insurance companies take your money in exchange for their promise to make you whole when disaster strikes, they must act in utmost good faith in performing that obligation.

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- Take note of what isn't covered in a homeowners policy. Homeowners policies do not cover flood, earthquake, tree removal (except when the tree damages the house) or food spoilage from power failures. Flood damage will be covered by your flood insurance policy.

Part 5. Dealing with Flood Claims

The federal government underwrites flood insurance coverage, although insurance companies (known as "Write Your Own" companies) are contracted with the government to service claims. Follow the same procedures as above, except direct complaints to the Federal Emergency Management Agency, the government agency responsible for running the federal flood insurance program (1-800-427-4661, TDD# 1-800-427-5593). The FEMA flood insurance program tips on handling claims are located at <https://www.youtube.com/watch?v=Oeal973gFjo>. This page contains a video that shows you the basics of how to prepare your claim your claim and how to appeal if you are unsatisfied.

The [FEMA claims manual](#) explains, in detail, the claims process. Key points are:

- Notice of loss to the flood insurer so an adjuster can be assigned to your claim.
- The adjuster estimates the claim and you and the adjuster file a proof of loss form with the insurer within 60 days of the loss.
- You have the right to amend this proof of loss.
- As explained above under wind claims, it is important to ask for the initial repair estimate to make sure it has not been shaved down by the insurer prior to presentation to you.
- A payment will be made. If you are satisfied the process ends. If you are not you can dispute the claim.
- The dispute process can be as simple as working with the adjuster to settle the claim. If you can't agree you can seek to have the adjuster's supervisor review the claim. If that does not succeed, the next step is to ask the insurer to review the claim by submitting a new proof of loss detailing the disputed amount.
- If you still disagree you may file an appeal with FEMA, within 60 days of the insurer's denial letter. FEMA requires this in writing. You may have a third party discuss this with FEMA. Be careful during this process because appeal does not extend the time to file suit, one year statute of limitations (from the insurer's first denial letter) to filing suit.
- Exercise your legal rights. Find an attorney who will represent you in a lawsuit in the United States

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District Court where the damaged property is located.

Since the National Flood Insurance Program (NFIP) is paid for by taxpayers, and often the same insurance company will handle the claim for both the wind and the flood damage, it is very important that consumers verify that insurers do not attribute an unjustifiably large portion of the losses they experience to flood damage. Consumers must be the first line of defense against insurers shifting costs for wind losses to the NFIP and thus to taxpayers, something of significant concern in Hurricane Ida given the large number of residents who will likely need to file both wind and flood claims. If you see such potential abuse by insurers, contact your U.S. Representative and Senators so that they can make sure that taxpayers are protected. CFA research has found that some of the private insurance companies that settle flood claims have corporate cultures that are biased toward settling claims low, even when the payments will be paid by NFIP/taxpayers and not the insurance company. In Superstorm Sandy, for example, this tendency led to woefully inadequate settlement offers and outrage among flood insurance policyholders.

“Flood insurance claims after both Katrina and Sandy were handled very badly,” said Hunter. “This sad history should not deter you from seeking fair compensation for losses caused by Hurricane Ida.” Indeed, Hunter indicated, insurers face greater scrutiny by state regulators and FEMA because of the serious claims problems that occurred after Hurricane Katrina and Superstorm Sandy. FEMA has been under extreme pressure from Congress to continue getting better at watching the performance of their insurance company contractors to do a better and fairer job in settling flood insurance claims. There seems to be significant improvement recently but you still must be vigilant when handling your flood claim.

Preventing Insurers from Using Hurricane Ida as an Excuse to Raise Homeowners Insurance Rates, Limit Coverage

After Hurricane Katrina and other large storms, insurers pulled back from offering homeowners coverage along the coasts, dumping people into higher priced, state-run insurance pools. They also cut coverage and raised rates substantially.

CFA is calling on state regulators not only to closely monitor insurers to prevent claims abuses but to stop insurers from moving to increase home insurance rates and cut back on the coverage they offer

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after Hurricane Ida claims are paid. There is no reason, actuarially, for insurers to raise rates or cut back coverage in homeowners insurance policies due to Hurricane Ida, which is a windstorm well within the computer-modeled projections underlying insurers' current rate schedules (the windstorm was probably no more than a one in 100-year event.)

Consumers must also act to protect themselves. To do this, consumers must stand together and agree not to buy auto insurance, home insurance, or other coverage from any insurance company that refuses to renew homeowners insurance policies with consumers who make claims related to Hurricane Ida. Consumers stood together after Hurricane Andrew, persuading Florida to pass a moratorium on the non-renewal of policies and to look carefully at companies' post-disaster rate increase applications. Consumers should fight any attempt to use hurricane claims as an excuse not to renew homeowners policies or sharply raise home insurance rates and should complain to state regulators if insurers do take such actions.

State Insurance Departments Should Create Web Sites Tracking Insurer Progress in Settling Hurricane Ida Claims

"The insurance departments in the states with serious damage should establish a web page with information on how each insurer is doing at closing claims from Hurricane Ida," said Hunter. It should show the number of claims filed, the number partially paid, the number fully paid, the number closed with no payment, and how long it takes each insurer to resolve the average claim settled since the storm. A model for such a system could be the monthly analysis of claims payment progress used by the New York Department of Financial Services in the aftermath of Superstorm Sandy.

"Americans always pull together to protect one another whenever there is a disaster like this, but when it comes to rebuilding homes long after the storm has passed, too many people find themselves in lonely battles with insurance companies. We all will have to keep a spotlight on the communities hit by Ida to make sure that survivors don't face a second disaster in the shape of unfair practices by their insurance companies," said Hunter.