



Consumer Federation of America

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After Superstorm Sandy, State Insurance Regulators Must Protect Consumers From Unjustified Out-of-Pocket Costs.

Regulators Must Closely Monitor How Insurance Companies Determine Claims Deductibles

Washington D.C. -- Governors of nine states and the mayor of Washington D.C. moved quickly to protect consumers from high insurance deductibles associated with their wind damages claims caused by Superstorm Sandy. Today in a [letter to elected officials](#) the Consumer Federation of America warned that state insurance regulators must closely monitor how insurance companies determine claims deductibles to ensure that consumers are not subject to unjustified, higher out-of-pocket costs.

Wind claims from designated hurricane activity are subject to considerably higher deductibles than standard, flat rate deductible claims. After the storm, the governors of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island, as well as the mayor of Washington D.C. announced that claims filed as a result of Superstorm Sandy would be subject to standard, flat rate deductibles, rather than the much higher percentage of replacement costs normally applied to hurricane-related damage.

The decisions will result in millions of dollars in savings and will ensure that much-needed resources will remain with homeowners during the recovery in following weeks and months. However, there are already strong indications from the insurer trade organizations that some insurers may not comply with these orders.

“This determination alone is not enough to ensure that consumers are treated fairly during the claims process,” said J. Robert Hunter, director of insurance at the Consumer Federation of America. “State insurance departments need to ensure that this determination is implemented fairly and consistently, as some insurers explicitly define the percentage of replacement cost deductible as a ‘hurricane’ deductible. Rather, they use ‘wind speed’ or other nomenclature.”

Hunter also warned that some policies may contain clauses that could result in the denial of some legitimate claims. These provisions, called “anti-concurrent-causation clauses,” allow insurers to deny claims based on excluded causes, in many cases flooding, if they occur at the same time as other covered causes, such as wind damage.

A typical anti-concurrent causation (ACC) clause might read, “[w]e will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” The list almost always includes flooding as an exclusion. Different insurers have different formulations of the clause in place in their policies. The ACC clause was intended to limit the insurer’s liability when a covered risk damages a structure at about the same time as an excluded risk, regardless of the order of such events. After Hurricane Katrina, courts were asked to determine whether the insurance companies’ language supersedes the common law doctrine of proximate cause. While many of the courts ruled that insurance companies could, in fact, use

ACC clauses to avoid the common law rule of proximate cause, others found the clause too ambiguous and, ruled against the insurance companies.

“Storms such as Superstorm Sandy result in considerable wind and flood damage, and consumers who face property loss from both should be treated fairly in the claims process,” said Hunter.

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The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.