



FEMA



CALENDAR YEAR 2017

The Annual Report of the Flood Insurance Advocate
OFFICE OF THE FLOOD INSURANCE ADVOCATE

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As last year's Annual Report was heading to the press, riverine flooding in Houston and Baton Rouge, combined with the effects of Hurricanes Hermione and Matthew, resulted in 2016 being the fourth largest claim payment year in National Flood Insurance Program (NFIP) history.

Message from the Advocate David Stearrett

This is the third annual report of the Office of the Flood Insurance Advocate (OFIA) presented to the Administrator of the Federal Emergency Management Agency (FEMA). Calendar year 2017 has been a year of challenge and opportunity for the National Flood Insurance Program (NFIP). As this year's Annual Report heads to press in March 2018, the devastating effects of Hurricanes Harvey, Irma, and Maria have resulted in \$9.9 billion in claims payments for the year. Now, calendar year 2017 saw the second highest claims in NFIP history, eclipsed only by 2005.

FEMA through its component, the Federal Insurance and Mitigation Administration (FIMA), continues to implement program-wide, transformational changes that aim to improve the customer experience. FIMA has multiple change initiatives underway, including overall flood insurance product simplification, exploration of alternative actuarial rate models, and several initiatives designed to improve the flood claims experience.

As advocates for NFIP policyholders and property owners, my office has sought to improve the NFIP customer experience by growing and maturing the OFIA to more effectively address customer concerns and communicate information and services that will best meet their needs.

In our Annual Report last year, the OFIA identified six issues and made recommendations to FIMA to help mitigate the issues for customers. We have seen substantial progress made to improve the NFIP based on our recommendations, and we look forward to seeing the positive impact these improvements will have for customers.

UPDATE ON THE OFIA

Over the past year, the OFIA has grown to include new staff and continued to build on technology systems changes introduced last year. We have strengthened our capability to directly serve policyholders seeking assistance with mapping questions, insurance rating, floodplain management, and Hazard Mitigation Assistance (HMA) grants. Additionally, the OFIA has become a resource for customers seeking guidance post-disaster related to the flood insurance claims process.

In our third year of operations, the OFIA has handled over 500 inquiries, which is about 25 percent more than last year's inquiry total. The majority of these cases are highly complex and require extensive research and, in some instances, collaboration across FIMA. From this complex casework, we identified eight trends and issues warranting a more systemic solution to reach more fair outcomes for policyholders. We also identified two external trends impacting NFIP policyholders that may require action by parties outside of FEMA.

I'd like to thank FEMA and FIMA leadership for their continued support as the OFIA works to address customer concerns. In addition, thank you to my staff and employees across FIMA who continue to work diligently to advocate on behalf of policyholders and property owners. I submit to the FEMA Administrator the calendar year 2017 *Annual Report of the Flood Insurance Advocate*.






The OFIA advocates for the fair treatment of policyholders and property owners by providing education and guidance on all aspects of the NFIP.

Executive Summary

The Office of the Flood Insurance Advocate (OFIA) advocates for the fair treatment of policyholders and property owners by providing education and guidance on all aspects of the National Flood Insurance Program (NFIP), identifying trends affecting the public, and making recommendations for program improvements to the Federal Emergency Management Agency (FEMA) through its component, the Federal Insurance and Mitigation Administration (FIMA).

This report details eight areas of customer frustration related to the NFIP. These areas specifically relate to flood insurance, flood hazard mapping, Hazard Mitigation Assistance (HMA) grants, and floodplain management.

The OFIA identified these issues while assisting customers with their questions and concerns, a primary activity for the OFIA stemming from its mandate outlined in Section 24 of the Homeowner Flood Insurance Affordability Act (HFIAA) of 2014. In this report, the OFIA aims to highlight issues impacting the NFIP and make recommendations to FEMA that will have the greatest positive impact to reduce frustration for NFIP customers.

It is also important to note that the trends reflected in the issues below do not represent all the cases the OFIA has received. In many instances, the OFIA finds the answers being given to customers prior to reaching us are accurate and appropriate based on the current rules and procedures of the NFIP.

The eight issues presented in this report are as follows:

- **Challenges to Customer Communication During the Claims Process:** The OFIA finds that available online and print resources describing how to navigate the claims process can be hard for customers to understand. Some general information publications are also out of date. The OFIA recommends refreshing these materials to improve the policyholder experience during the recovery journey and posting claims process resources to an easy-to-find central location on the Internet.
- **Effectiveness of Map Change Communications:** The OFIA finds that while the program offices communicate map changes to some policyholders and property owners seeking information about the mapping process, many property owners are not reached at the most opportune time so they can make time-sensitive financial decisions. The types of financial decisions typically made during a map change include purchasing flood insurance, investing in mitigation, or purchasing property in areas impacted by the map change. The OFIA recommends FEMA improve communications about map changes by using external resources, like insurance agents, realtors, and lenders, as well as improve use of online communication tools to expedite release and dissemination of this important information.
- **Misunderstandings Regarding Zone A:** The OFIA finds that property owners and policyholders are frustrated and confused by the flood zone designation of Zone A where detailed studies are not completed and a Federal regulatory Base Flood Elevation (BFE) has not been established. The OFIA recommends that program offices communicate how community officials can use the Flood Insurance Study and its backup data to develop a one-percent water surface elevation that meaningfully reflects the flood hazard for local floodplain management. This water surface elevation may be used as a community-established BFE provided by surveyors completing Elevation Certificates for Flood Insurance for homeowners seeking a more precise (lower for many) flood insurance rating, or pursuing the Letter of Map Change processes. The OFIA also recommends updating publications pertaining to Zone A.
- **Lack of Premium Reduction Following a Lower-Level Abandonment of a Building:** The OFIA finds that property owners are confused when a community official encourages them to accept HMA assistance to complete a project called a lower-level abandonment

of a multi-story home, and the policyholder continues to be charged for full coverage in the abandoned story. The OFIA recommends that guidance be provided to community officials regarding the best techniques to reduce flood risk and lower flood insurance costs.

- **Basement Determination Made at the Time of Loss:** The OFIA finds that policyholders are frustrated when basement limitations to coverage are applied at the time of loss to a home that was insured as a non-basement (slab-on-grade) building. The OFIA recommends that FEMA clarify for agents and adjusters how basement determinations are made so that policyholders are not surprised at the time of loss.
- **Lack of Refunds for Duplicate Coverage with Private Insurance:** The OFIA finds that policyholders are frustrated when they find a private flood insurance alternative, but are not allowed to cancel their NFIP policy for refund. The OFIA recommends that the program office allow a refund for the cancellation of an NFIP policy when a policyholder secures a flood insurance policy underwritten by a private insurer.
- **Severe Repetitive Loss (SRL) Mitigation:** The OFIA finds that the cost-benefit analysis of eligibility for HMA funding disqualify too many structures built before the community's initial Flood Insurance Rate Map and classified as SRL properties. The OFIA recommends a review of the eligibility requirements for HMA funding.
- **Lenders Requiring Coverage Where a Claim Would Not Be Paid:** The OFIA finds that when lenders require coverage for structures located in the Special Flood Hazard Area (SFHA), the value of the building may be below the minimum deductible allowed by law. This is creating a situation where coverage may be issued, but no claim would be paid. The OFIA recommends that the program office cease offering coverage in these instances.

Congress created the OFIA to advocate for the fair treatment of policyholders under the NFIP and property owners in the mapping of flood hazards, identification of risks from flood, and implementation of measures to minimize the risk of flood. First and foremost, the OFIA interprets advocating for the fair treatment of policyholders to mean reducing confusion and frustration for property owners affected by the NFIP. The OFIA seeks to accomplish this objective by accurately educating policyholders regarding individual flood risks and flood mitigation, with the goal of reducing risks to life and property resulting from floods, while advocating for the lowest insurance costs available under the statute. The OFIA will continue to work on the NFIP issues and the OFIA recommendations by engaging with FIMA program offices to identify, discuss, and understand opportunities that exist to address these issues for policyholders and property owners.

PROGRAM PROGRESS SINCE THE LAST ANNUAL REPORT

In our Annual Report last year, the OFIA identified six issues and made recommendations to the FIMA program offices to help alleviate frustration and confusion for customers. We have seen FIMA make substantial progress by:

- Allowing a refund of the HFIAA surcharge when a policy is canceled,
- Continuing to reevaluate the Increased Cost of Compliance (ICC) process,
- Exploring ways to educate customers on how to navigate flood zone disagreements when there are discrepancies regarding mapping determinations,
- Developing a readily accessible common suite of outreach materials to improve consistency in communications throughout FEMA Regions regarding map changes,
- Exploring new concepts to improve agent education, and
- Initiating technology upgrades that will improve the SRL identification process.

Trends, Issues, and Recommendations

The OFIA has identified eight areas of confusion and frustration for policyholders and property owners that can be largely addressed by FEMA as it administers the NFIP under existing authorities. All these issues are complex and require collaboration across several NFIP areas to address the challenges they present to current and future NFIP customers. The issues are presented in three parts: the key issue affecting customers, the background of the issue, and the OFIA's recommendations for consideration. FEMA's Federal Insurance and Mitigation Administration (FIMA) program office responses are included as received.

CHALLENGES WITH CUSTOMER COMMUNICATION DURING THE CLAIMS PROCESS

The OFIA finds that policyholders are confused and overwhelmed navigating the claims process. Flooding is often a traumatic event for a property owner, and experiencing flood damage is naturally frustrating. Following FEMA's response to Hurricanes Harvey, Irma, and Maria, a number of policyholders turned to the OFIA for help navigating their recovery journey.

The OFIA recognizes that the overall FEMA response to these events included a comprehensive communication approach for disaster survivors. This approach included making information more easily accessible on the Internet, updating outdated materials, and creating new materials where needed. For instance, in the immediate aftermath of these storms, FEMA offered useful resources like the *How to Save Damaged and Personal Treasures* fact sheet and the *Who's Knocking at Your Door* infographic.

There continue to be more opportunities to assist policyholders in navigating the flood insurance claims process. While existing NFIP materials are available to help policyholders understand the various steps throughout the process, some gaps exist. Further, the level of detail provided in some materials may be overwhelming for a policyholder who has little understanding of the entire claims journey.

BACKGROUND

There are many FEMA documents available online that address various steps in the claims process. Relevant information regarding frequently asked claims questions is organized according to specific events. However, it is sometimes difficult for policyholders to discern exactly which products are relevant at any given step of the recovery process.

There currently is no high-level roadmap, such as an infographic of the end-to-end claims journey, that would help policyholders determine where they are in the claims process. New or modified fact sheets that align with such a roadmap could provide appropriate details about each step in the journey. Additionally, The *NFIP Flood Insurance Claims Handbook* is provided to policyholders for all new and renewed policies. Adjusters provide it to policyholders when they file a flood insurance claim. Including a roadmap in the Claims Handbook would not only ensure every policyholder receives the roadmap, but would also enhance the Claims Handbook.

The step at which many policyholders have sought the most assistance from the OFIA is when attempting to request additional claim payments after an initial settlement.

There are a number of reasons policyholders may need to request additional payment. Examples include: adding an item that was omitted from the initial estimate, documenting the actual price of repair when different from their original contractor or adjuster's estimate, or appealing a denial of coverage.

The *NFIP Flood Claims Process* fact sheet, developed January 2016, provides a step-by-step guide for a policyholder filing an initial proof of loss. This fact sheet could form the basis for the roadmap described above, and inform a supplemental fact sheet on detailing how to request additional payments.

Answers to Questions about the NFIP is one of the most frequently accessed insurance documents from the FEMA Library. It is relied upon for disaster survivors at FEMA's Disaster Recovery Centers. This document contains very limited information about the claims process, and has not been updated since 2011. Significant program changes have occurred in the interim. Given FEMA's and the policyholder's reliance on this valuable resource, a refresh of this document is warranted.

RECOMMENDATION(S)

The OFIA recommends that the Federal Insurance Directorate consider the following actions to alleviate the issue described on the previous page:

1. Develop a document, such as an infographic of a roadmap of the entire claims journey. Revise the *NFIP Flood Insurance Claims Handbook* to include this roadmap.
2. Update the *NFIP Flood Claims Process* fact sheet to include more specific guidance to policyholders on how to request additional payment after an initial settlement.
3. Determine whether the *Answers to Questions about the NFIP* booklet should be updated.

PROGRAM RESPONSE

1. The Federal Insurance Directorate agrees that there is an opportunity to create additional communication products that further clarify later steps in the claims journey, including supplemental claims. While the adjuster and agent should always be the first line of information, additional products may be helpful to some. A more comprehensive roadmap of the entire process may also be useful for inclusion in future editions of the Claims Handbook, but care must be taken to not overwhelm the claimant with too much information or too much technical information, which could lead to additional stress or confusion.
2. In 2017, the NFIP created at least 26 new or replacement communications products in multiple languages to assist flood insurance claimants. New products were designed to help claimants file their claims correctly, clean their homes safely, and so on. The NFIP agrees that additional products focusing on later steps in the process may be useful to some policyholders, but the first resources to obtain additional information should always be the policyholder/claimant's agent and adjuster.
3. The *Answers to Questions about the NFIP* booklet is due for an update. However, because of the pending legislative reforms in the NFIP Reauthorization, the Federal Insurance Directorate has decided to wait before issuing a new document. Once Congress passes the Reauthorization of the program and the Federal Insurance Directorate identifies potential legislative changes, the program will conduct a comprehensive update of all communications products.

EFFECTIVENESS OF MAP CHANGE COMMUNICATIONS

The OFIA finds that policyholders and property owners are frustrated to learn about specific changes to the flood risk for their property after a revised flood map becomes effective.

Communicating map changes after the map already became effective impacts a property owners' ability to make sound financial decisions regarding their property. Decisions affected include whether to buy property, take out a loan, invest in mitigation to reduce flood risks, or buy flood insurance. Discounted premiums under the NFIP are only available for a limited time after the map has changed.

The OFIA finds that community resources like insurance agents, realtors, and lenders who often directly engage property owners, are not being utilized effectively to communicate the impacts of map changes.

BACKGROUND

Congress requires that FEMA publish notice in the Federal Register that maps are changing, provide actual notice to community executive officers, and publish each notice twice in a prominent community newspaper. Such notice must be provided whenever projected Base Flood Elevations (BFEs) or Special Flood Hazard Area (SFHA) designations have been established. Participating NFIP communities must adopt these changes into their floodplain management ordinance within six months of the notice in the Federal Register.

In addition to the statutory requirements for consultation with communities prior to this notice, FEMA engages community officials throughout the flood mapping process. FEMA's expectation is that communities will further engage with local property owners. The general public in each affected community is afforded a meeting during which FEMA presents a preliminary map that is subject to future changes prior to publication of the final notice. Sometimes, FEMA schedules a follow-up public meeting when the maps become final. The FEMA Regional offices utilize web resources to provide important information about map changes, including information on the timing and location of any publicly held meetings. The internal approval process to update these websites is often slow, and the result is that property owners are often unaware of a change of time or place and miss the opportunity to attend these meetings.

As required by statute, FEMA also sends mailings to NFIP policyholders communicating the effects of map changes on NFIP premiums. These mailings are generated after the final map has taken effect and any necessary premium adjustments have been made. Property owners who do not have flood insurance do not receive these direct mailings. As a result, an uninsured property owner may miss the opportunity to purchase flood insurance at discounted rates if too much time elapses after the map became effective. Many times, these property owners learn of the map change from their lender.

Property owners have a direct relationship with many resources other than FEMA. Insurance agents, realtors, and lenders are ideal resources to educate property owners about how the map revision specifically impacts an individual property owner's insurance requirements and pricing.

RECOMMENDATION(S)

The OFIA recommends consideration of the following actions to alleviate the issues described on the previous page:

1. The Federal Insurance Directorate should expand eligibility for discounted premiums, using the Newly Mapped rating procedure option, to include new policies purchased within 45 days of a lender's initial notification to the property owner of the requirement to purchase flood insurance, even if the requirement is more than one year after the map revision.
2. The Federal Insurance Directorate should develop guidance for insurers to notify policyholders of the eligibility for discounted premiums, such as a lower-cost Preferred Risk Policy (PRP), when a property is removed from the SFHA.
3. The Risk Management Directorate should coordinate with the FEMA Regional offices to ensure timely information is available to property owners via the Internet and in order to make information available to other external stakeholders, such as insurance agents, realtors, and lenders, who can directly engage policyholders and property owners.

PROGRAM RESPONSE

1. The Federal Insurance Directorate recognizes the potential challenges that lenders may encounter in identifying properties impacted by map changes. We will review the current eligibility guidelines for the Newly Mapped procedure and consider adjusting the timeframe for eligibility.
2. The Federal Insurance Directorate agrees with this recommendation. It should be noted that several insurers already have established guidance regarding the eligibility for a PRP when they receive a request to cancel a policy when a property is removed from an SFHA. However, there is no specific guidance from the Federal Insurance Directorate to insurers on this issue. The Federal Insurance Directorate will explore opportunities to provide official guidance in 2018.
3. The Risk Management Directorate has met with all the regions and has begun the process of migrating existing (.com) regional websites to fema.gov. We have also initiated the planning and coordination to build out websites for other regions on fema.gov.



MISUNDERSTANDINGS REGARDING ZONE A

The OFIA finds that policyholders and property owners become frustrated when discovering that their structures are located in Zone A on a Flood Insurance Rate Map (FIRM), where detailed studies are not available. Policyholders do not understand why their rates are generally higher than flood insurance in zones where detailed studies are available.

Policyholders are frustrated when they hire a surveyor to provide ground elevation information on an *Elevation Certificate for Flood Insurance* at their own expense, but a water surface elevation is not provided on the FIRM. This water surface elevation is important to potentially obtain lower flood insurance premiums or to be released from a lender's flood insurance requirement.

Policyholders and property owners are confused about how the flood risk was determined if a detailed study is not complete. Agents or community officials also may not understand how a flood hazard boundary was determined.

BACKGROUND

Zone A tends to be designated in areas with low population density and little development pressure. Policies rated in Zone A comprise less than 4 percent of the NFIP policy count. Though few policies are insured with the Zone A rating, Zone A comprises about 80 percent of all the SFHA mapped by FEMA.

The BFE is the water surface elevation during a 1-percent annual chance flood and is not depicted on a FIRM with a Zone A. In most SFHAs, a BFE is determined using detailed methods and is established through the regulatory process. Zone A depicts an area where the level of detail is not sufficient to determine a Federal regulatory BFE.

For many studies, sufficient data exist to determine a 1-percent water surface elevation, and is available in the backup data provided to communities to support the Flood Insurance Study (FIS). Water surface elevations derived from this data may be used by the community for local floodplain management purposes. This water surface elevation can also be used for insurance rating purposes, as well as to inform Letter of Map Amendment (LOMA) requests from property owners seeking removal from the SFHA.

The community is able to use Zone A water surface elevation data from a FIS and its backup data to determine a water surface elevation for local floodplain management purposes for structures in Zone A floodplains. Using this data benefits property owners and policyholders in three ways:

- The information could be used to develop appropriate floodplain management requirements to reduce the risk of flood damage.
- The information could be used to assist property owners seeking a LOMA.
- The information could be used to provide more accurate, often lower, flood insurance pricing.

FEMA Publication 265, Managing Floodplain Development in Approximate Zone A Areas (1995) (FEMA 265) originated in the 1980s to provide guidance on how to determine the water surface elevations in Zone A floodplains. This publication is out of date.

RECOMMENDATION(S)

The OFIA recommends that FIMA program offices consider the following actions to alleviate the issues described above:

1. The Federal Insurance Directorate and Mitigation Directorate (Floodplain Management Division) should revise the instructions for Elevation Certificates to ensure surveyors know how to document the 1-percent annual water surface elevation for local floodplain management purposes from FIS data and for insurance rating purposes.
2. The Federal Insurance Directorate should develop policyholder or homeowner material advising how to use an Elevation Certificate in Zone A.
3. The Risk Management Directorate should revise and update *Publication 265, Managing Floodplain Development in Approximate Zone A Areas (1995)* to describe and promote improved ways to establish a flood elevation in Zone A floodplains, clearly communicating the advantages for property owners.

PROGRAM RESPONSE

1. The Elevation Certificate form expires in November 2018. FEMA intends to undertake identifying needed updates to the revised form and instructions. Any updates will be informed by engagement with subject matter experts, including experts from the industry. This recommendation will be considered during that process.
2. The Federal Insurance Directorate will evaluate current and future products for policyholders and insurance agents that help those in the Zone A understand their options and when to hire an engineer to assist with completing the Elevation Certificate. Updating Publication 265 has been identified for revision; however, agency needs must be prioritized. Until a revision is undertaken, the Risk Management Directorate will be coordinating messaging for posting on the Flood Hazard Mapping website to promote the determination of a community-established BFE for local floodplain management purposes and clearly communicate the advantages for property owners.
3. Updating Publication 265 has been identified for revision; however, agency needs must be prioritized. Until a revision is undertaken, the Risk Management Directorate will be coordinating messaging for posting on the Flood Hazard Mapping website to promote the determination of a community-established BFE for local floodplain management purposes and clearly communicate the advantages for property owners.



LACK OF PREMIUM REDUCTION FOLLOWING THE LOWER-LEVEL ABANDONMENT OF A BUILDING

The OFIA finds policyholders express frustration because they do not receive a reduction in premium when they abandon the lower level of a multi-story building in an effort to both reduce their risk of flood damage and their flood insurance premium.

Some policyholders abandon the lower level of their properties based on the advice of a community official, floodplain manager, or state mitigation officer. Community officials often offer this option to help property owners conform with updated building codes to meet current NFIP requirements without truly understanding the impact on insurance pricing.

Policyholders are frustrated when they continue to be charged for full coverage in the abandoned story, as if the lower level was not abandoned. By mitigating the risk of flood damage to the building, policyholders expect a corresponding reduction in their premium. Compounding the confusion, lower-level abandonments are sometimes completed utilizing FEMA's HMA grants, which is perceived as an endorsement of the mitigation technique by FEMA and the policyholders expect the mitigation technique to be reflected in their flood insurance pricing.

BACKGROUND

The NFIP *Standard Flood Insurance Policy (SFIP)* restricts coverage in the area below the elevated floor of an elevated building within most SFHAs. Because coverage is restricted in the area below the elevated floor of an elevated building, these premiums tend to be lower than premiums for a non-elevated building.

Abandoning the lower level of a building is the first step of converting a non-elevated building into an elevated building. Premiums are not always reduced for a lower-level abandonment because non-elevated buildings are not rendered elevated by simply abandoning the lowest floor without modifications to the foundation system.

The SFIP defines an elevated building as a building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. *The NFIP Flood Insurance Manual* states that if foundation walls are supported on a slab, the building is considered non-elevated for insurance purposes. Many policyholders coming to the OFIA with the described frustration have a home with foundation walls supported on a slab. Thus, their buildings are rated as non-elevated, as they were before the lower-level abandonment. A reduction in the flood insurance premiums is not reflected because the risk of insurance-covered flood damage is not significantly reduced based on the terms of the insurance contract and the structural integrity of the building.

The OFIA has reviewed several FEMA-produced bulletins that address mitigation methods, including lower-level abandonments. While these documents generally mention that not all mitigation methods result in a premium reduction, they do not clarify which mitigation methods do reduce premiums effectively. However, the Risk Management Directorate has developed the *Hurricane Sandy Recovery Advisory (RA7)*, which describes the means of converting a non-elevated building into an elevated building over an enclosure, resulting in lower flood insurance premiums.

An elevated building is a building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

RECOMMENDATION(S)

The OFIA recommends that FIMA program offices consider the following actions:

1. The Risk Management Directorate should revise its Hurricane Sandy Recovery Advisory (RA7). This advisory has been retooled for subsequent flood events by replacing the words “Hurricane Sandy” with the name of subsequent storm events. The OFIA recommends that RA7 be used as a basis to develop a single, nationally applicable advisory for use by community officials in areas that may not have a current open disaster.
2. The Mitigation Directorate should adopt the requirements of RA7 as a component of Hazard Mitigation Assistance guidance. The OFIA also recommends that the Floodplain Management Division promulgate a memorandum for distribution to Regional offices, NFIP State Coordinators, and the Association of State Floodplain Managers (ASFPM). The memorandum should describe the issue and promote awareness about retrofits that may be necessary for a building to be considered elevated according to both floodplain management criteria and the definition in the SFIP. Additionally, the Floodplain Management Division should incorporate this topic into training materials and conduct regular outreach aimed at regional staff, NFIP State Coordinators and local floodplain managers.
3. The OFIA has created a presentation with the Mitigation Directorate that highlights the insurance implications of various mitigation projects, including lower-level abandonments. The OFIA recommends that the Federal Insurance Directorate continue to provide training with the Mitigation Directorate to external stakeholders, including State and local communities, and insurance professionals, regarding the insurance aspects of various mitigation techniques.

PROGRAM RESPONSE

1. The Risk Management Directorate will coordinate revisions to RA7, as applicable.
2. The Mitigation Directorate will complete an analysis of the requirements contained in RA7, and develop options to incorporate relevant requirements. The Floodplain Management Division will develop a memorandum to share with FEMA regional floodplain management staff, NFIP State Coordinators, and ASFPM on this topic. Additionally, the Floodplain Management Division will incorporate information on this topic into training materials and conduct regular outreach to educate and inform floodplain management professionals about this issue.
3. The Federal Insurance Directorate agrees with this recommendation and will continue to provide support to the Mitigation Directorate. The Mitigation Directorate will work collaboratively with the Flood Insurance Directorate and coordinate on the issues surrounding lower-level abandonment to develop a comprehensive FEMA approach for the external stakeholder, and to deliver a more resilient community, resilient structures, and potential cost-savings for policyholders.



BASEMENT DETERMINATION MADE AT THE TIME OF LOSS

The OFIA finds that policyholders are confused when their slab-on-grade structure is determined to have a basement at the time of loss. Basements have very limited coverage under the SFIP. Adjusters are required to apply the limitations of the SFIP upon discovery that a building has a basement, regardless of how a policy was originally underwritten. Policyholders who had previous claims settled without applying basement restrictions express the most confusion and frustration.

BACKGROUND

The OFIA finds that a concept of “positive/negative” drainage is being applied inconsistently by some adjusters to determine whether a building has a basement. The basement coverage limitations of the SFIP exist for both building coverage and personal property coverage. These limitations on coverage, when applied to an NFIP claim, will significantly reduce the amount paid at the time of the claim. The definition of a basement under the SFIP is “any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.”

Many claims are determined based on the relation of the lowest interior floor to the exterior ground level in contact with the home’s foundation. Positive drainage is described as the ability of water to flow away from a building toward the boundary of the property without backing up into the building. When the ground slopes toward the building, or there is a flood mitigation barrier intended to block water on the other side, a negative drainage situation may arise forcing floodwater towards the home. Using this concept, negative drainage is the primary factor in determining if the lowest floor of the structure is below grade.

If the negative drainage situation resulted from the construction of a flood mitigation barrier designed as protection from a flood source on the other side of the barrier, coverage will be restricted. This practice may discourage policyholders from taking such actions to reduce their flood risk.

The NFIP’s Standard Flood Insurance Application and associated training and underwriting materials do not provide guidance to an agent or adjuster that can be used to identify when positive/negative drainage occurs. In addition, the Mitigation Directorate’s publications describing flood risk reduction methods fail to indicate that taking certain measures, could impact the NFIP insurance rating and/or coverage available for the mitigated structure. If the concept of positive/negative drainage is to be applied as it has been in the field, the concept should be applied consistently throughout the country at the time of issuing building permits, underwriting NFIP policies, and adjusting claims under the NFIP.

The definition of a basement under the SFIP is “any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.”

RECOMMENDATION(S)

The OFIA recommends FIMA program offices consider the following actions to alleviate the issue described above:

1. The Federal Insurance Directorate should incorporate more specific training for NFIP adjusters that clearly defines the appropriate application of basement coverage limitations as they relate to the definition of a basement under the NFIP, including not using the application of positive/negative drainage.

PROGRAM RESPONSE

1. FEMA has not published any guidance describing the concept of “positive/negative drainage.” Invoking the positive/negative drainage approach could create confusion in the claim adjustment process because it departs from the clearly established definition of a basement found in the codified SFIP and other implementing NFIP regulations in 44 CFR. The matters brought to OFIA were unique and were resolved based on the Elevation Certificate. To ensure consistency in handling basement-related claims, FIMA conducts NFIP Claims Presentations for adjusters each year that explain how to determine a basement and described the basement limitations as defined in the SFIP and in the NFIP regulations in 44 CFR.



LACK OF REFUND FOR DUPLICATE COVERAGE WITH PRIVATE INSURANCE

The OFIA finds that some policyholders perceive it as unfair when they cannot cancel their NFIP policy for a refund and replace it with private flood insurance already purchased. Duplicate coverage frequently arises after lenders paid NFIP coverage using escrow funds, while the borrower later purchased a private flood policy. The NFIP allows the policyholder to non-renew, but not cancel a policy for a refund prior to the expiration date. Because policyholders are not allowed to cancel their NFIP policy, policyholders are required to maintain NFIP insurance they do not want, even if they have obtained adequate flood coverage on the private market.

BACKGROUND

Biggert-Waters and HFIAA encouraged greater participation of private insurers by directing lenders to accept private flood insurance with a similar scope of coverage as the NFIP. Not allowing cancellation for duplicate coverage with a non-NFIP source seems contrary to the intent of Biggert-Waters. The Government Accountability Office (GAO) has inquired why the NFIP does not allow for cancellation based on duplicate coverage with a non-NFIP source. Other NFIP stakeholders, including lenders and the National Association of Realtors, have also expressed their concerns regarding this issue.

RECOMMENDATION

The OFIA recommends that the Federal Insurance Directorate take the following action:

1. Clarify to NFIP insurers that a cancellation request, for any reason, received for a paid renewal prior to the effective date of the renewal can be processed for full premium refund.
2. Allow an NFIP policy to be canceled for duplicate coverage when secured with a non-NFIP source and develop fair premium refund procedures based on the date the duplicate coverage began.

PROGRAM RESPONSE

1. The Federal Insurance Directorate will review current cancellation guidance and will provide clarification to insurers.
2. The Federal Insurance Directorate recognizes the importance of non-NFIP flood insurance in disaster recovery. We will analyze and consider recognizing non-NFIP as duplicate coverage for NFIP policy cancellations.



SEVERE REPETITIVE LOSS MITIGATION

The OFIA finds that owners of properties designated as Severe Repetitive Loss (SRL) properties are frustrated that they are unable to obtain funding for flood mitigation projects. Policyholders are highly motivated to mitigate SRL properties because Biggert-Waters imposed a 25 percent annual rate increase for SRL properties currently paying subsidized rates, until the rate charged reflects the true flood risk to the property. The passage of the HFIAA, which limited certain rate increases, confirmed Congress' desire for SRL properties to continue realizing 25-percent annual rate increases until full actuarial rates are reached for the structure.

BACKGROUND

FEMA designates properties as SRL when a property has four or more separate claim payments exceeding \$5,000 or has two or more separate claim payments where the total payments exceed the current market value of the property at the time of the most recent loss. In either case, two of the claims must occur within 10 years of each other.

Policyholders seek financial assistance to help mitigate the risk of flood damage and to reduce their flood insurance premium. Because States receive funding through FEMA's Hazard Mitigation Assistance (HMA) program, SRL property owners request mitigation assistance through the State. Each State sets the priorities for distributing these funds.

In recent years, SRL property owners requesting mitigation assistance through a State have been denied the opportunity of financial assistance for a variety of reasons, including meeting FEMA's HMA requirements. In most instances, a cost-benefit analysis is required, per Office of Management and Budget Circular A-4. The cost-benefit analysis compares the total cost of a project relative to the value of the structure and costs of acquisition, including land value acquisitions. For approval of an HMA grant, the cost-benefit analysis must demonstrate that the project is cost-effective. Many SRL properties do not meet the cost-effective requirement, leaving policyholders with rising premiums and FEMA with continued SRL flood insurance claims.

RECOMMENDATION(S)

The OFIA recommends the Mitigation Directorate take the following action to align existing HMA policy to expedite funding authorized under statute:

1. Evaluate the effectiveness of the current cost benefit analysis tools for identifying ways to maximize the mitigation of SRL properties.

PROGRAM RESPONSE

1. The HMA Division is working to modernize the cost benefit analysis tools to maximize the benefits of mitigation. In addition, the HMA Division will evaluate best practices utilizing existing program efficiencies to mitigation SRL properties, such as project aggregation.



LENDERS REQUIRING COVERAGE WHERE A CLAIM WOULD NOT BE PAID

The OFIA finds that policyholders are frustrated when a lender requires flood insurance for buildings on a property that have a full replacement cost value below the minimum NFIP deductibles allowed by law. The deductible is an out-of-pocket liability paid by the policyholder before a claim is paid. If the full replacement cost of the building falls within the deductible, a policyholder is paying premiums on a policy where a claim will not be paid. As such, the sale of a flood insurance policy for this type of building defies standard insurance practices.

BACKGROUND

The Flood Disaster Protection Act of 1973, as amended, requires that lenders ensure flood coverage for property located in an SFHA used as collateral to a Federally backed or regulated loan. The requirements of the law are not enforced by FEMA, but by other agencies. By law, the minimum coverage requirement for flood insurance coverage is the lesser of the principal balance of the loan, the full replacement cost of the building, or the maximum coverage available through the NFIP.

While the Homeowner Flood Insurance Affordability Act of 2014 exempted detached structures on a residential property other than the main house, many owners of non-residential low-valued property are still subject to the flood insurance purchase requirement, but may never make a claim. The flood insurance exemption does not apply to non-residential, low-valued property still subject to the flood insurance requirement.

RECOMMENDATIONS

The OFIA recommends that the Federal Insurance Directorate take the following actions:

1. Discontinue allowing the sale of flood insurance in instances where the full replacement cost of the building is less than the applicable minimum NFIP deductibles.
2. Consult with the Federal agencies that oversee lenders to communicate that the NFIP no longer offers coverage in these instances, thereby waiving the flood insurance requirement.

PROGRAM RESPONSE

1. The Federal Insurance Directorate will consider this recommendation to discontinue allowing the purchase of flood insurance in instances where the amount of coverage for the building is less than the applicable minimum NFIP deductibles subject to applicable legal authorities.
2. The Federal Insurance Directorate will consult with the lending community regarding the eligibility for NFIP flood insurance for low-valued properties.





The OFIA will continue to monitor FIMA's Affordability Framework proposals for ensuring flood insurance affordability among low-income populations as well as any legislative changes introduced in reauthorization that address flood insurance affordability, funding for obtaining elevation data, and additional funding for mitigation.

External Trends Impacting Policyholders

Two issues emerged from OFIA casework that fall outside the administrative authority of the NFIP to resolve. These issues are impacting a broad population of policyholders and property owners, and may require a more holistic solution involving legislative or funding action to resolve.

AFFORDABILITY

The OFIA finds that many policyholders and property owners are seeking relief from higher premium rates and flood insurance purchase requirements under Federal law. Many policyholders seek relief from the requirement under the law to purchase flood insurance for properties in SFHA zones. Customers are frustrated by the cost of flood insurance in general, even outside of the SFHA. Many also seek relief from higher premiums arising as discounted premium rates are gradually phased out, as required by law.

Many of these policyholders' frustrations are compounded when they find they need to purchase elevation data to determine the full flood risk premium for their building. For policyholders who may not be able to afford the significant premium increases already required, this added expense is financially burdensome.

Customers seeking to take mitigation action to elevate their homes discover that FEMA's grant programs are unavailable or inadequate to help them take the necessary mitigation actions to make flood insurance affordable.

The OFIA will continue to monitor FIMA's Affordability Framework proposals for ensuring flood insurance affordability among low-income populations as well as any legislative changes introduced in reauthorization that address flood insurance affordability, funding for obtaining elevation data, and additional funding for mitigation.

THE COMPLEXITY OF THE NFIP

Congress created the NFIP in 1968 to provide a means for property owners to protect themselves financially from flood events and reduce the burden on the Federal Treasury of disaster costs. Over the years, additional legislation has been enacted to strengthen the program, ensure its fiscal soundness, and inform its mapping and insurance rate-setting. However, the result and interplay of all the various legislation has added to the growing complexity of the program.

The OFIA will continue to advocate for new approaches that result in a more easily understandable program for the American taxpayer.

Many of the issues in this report reflect the downside of the complexity of the evolving program and demonstrate the confusion policyholders feel when confronted with certain complex issues that result from it. While FIMA has made a concerted effort to reset priorities with survivor-centric and customer-focused reforms, the OFIA will be watching the reauthorization closely for additional solutions to simplify the NFIP.



Moving Forward

As the Office of the Flood Insurance Advocate (OFIA) moves into 2018, potential trends and issues are beginning to emerge. To deliver on its statutory mandate to advocate for the fair treatment of policyholder and property owners under the National Flood Insurance Program (NFIP), the OFIA has already identified four possible issues that require further analysis.

The issues identified so far include:

CONFUSION SURROUNDING ANNUAL PREMIUM INCREASES, WHICH APPEAR TO EXCEED STATUTORY CAPS ON PREMIUM INCREASES

The OFIA is finding that policyholders are frustrated and confused when their policy is discovered to be incorrectly rated and the correction results in a significant increase in premium that, in some cases, seems to exceed the statutory threshold allowed by Congress. Specifically, policyholders with primary residences who have been correctly receiving subsidized rates capped at 18 percent for annual increases are confused if a recent loss results in Severe Repetitive Loss (SRL) class designation. In this instance, the policyholder's premium rates are adjusted to the SRL class and becomes subject to annual increases of 25 percent. The greatest confusion occurs during the renewal that transitions the policyholder into the SRL class. This transition involves a rate correction of greater than 25 percent.

REQUIREMENT TO PURCHASE AN ELEVATION CERTIFICATE FOR FLOOD INSURANCE

The OFIA is finding policyholders expressing frustration with the program requirement to purchase an Elevation Certificate (EC), in order to obtain a flood insurance policy. As FEMA makes more and better use of Light Detection and Ranging (LiDAR) for flood mapping and replacement cost valuations for insurance pricing, the OFIA is watching to see if there will be a continued need to require an EC for rating.

INSUFFICIENT MITIGATION FUNDING

The OFIA is finding that there is inadequate funding under FEMA's grants programs to assist policyholders in elevating existing buildings to reduce flood insurance premiums. Additionally, owners of substantially damaged or SRL properties find that even when Increased Cost of Compliance Coverage is combined with HMA grants, mitigation opportunities may still remain financially out of reach. FEMA has set an objective to quadruple mitigation funding by seeking public and private partnerships and coordination with Federal partners and the non-profit sector. The OFIA supports this objective. The OFIA will be watching these efforts and the NFIP reauthorization to see how mitigation funding is made more widely available for the recovery efforts for Hurricanes Harvey, Irma, and Maria, and future flood events.

IMPROVED COMMUNICATIONS REGARDING INSURING AND RATING CONDOMINIUM BUILDINGS

The OFIA is finding that policyholders who are unit owners in condominium buildings are being sold individual flood insurance policies with building coverage that duplicates the association's coverage. The NFIP allows unit owners to purchase coverage apart from the condominium association; however, the NFIP does not verify if a condominium building already has a policy that provides adequate building coverage. Policyholders are frustrated when they discover at the time of loss that the policy they have purchased is duplicative and has limited value.



Customers who remain frustrated and confused, even after using existing NFIP resources, may request assistance with an unresolved issue from the OFIA via its website at:
www.fema.gov/national-flood-insurance-program-flood-insurance-advocate



FEMA



OFFICE OF THE FLOOD INSURANCE ADVOCATE