

**House Subcommittee on Housing and Community Opportunity
Proposed NFIP Claims Guidance Memorandum - Detail**

NFIP Policy Adjuster Training Bulletin

We understand a number of complaints have arisen whereby policyholders are stating that flood adjusters are wrongfully denying coverage. This bulletin is intended to clarify some of the most common points involved in the complaints.

The following parameters are assumed in each example: a) the damaged item in question is a covered item such as sheetrock as opposed to a non-covered item such as a boat; b) the policy deductible and policy limits apply to the entire loss, and; c) unless otherwise described, the SFIP is referring to the Dwelling Form.

Direct Physical Loss

Flood victims report adjusters state: *The SFIP only covers damaged caused by direct physical contact with flood waters.* This is incorrect.

The SFIP pays for losses resulting from the unbroken chain of events flowing from the flood, provided the originating event which proximately caused the losses was in fact a flood and the damaged items are not expressly excluded from coverage in the SFIP.

Several examples of mis-communicated coverage regarding Direct Physical Loss are as follows:

The SFIP pays for the outside HVAC equipment if destroyed, but not the related indoor equipment if such equipment is not contacted by flood waters. This is incorrect.

When the outdoor HVAC equipment is torn from the building leaving refrigerant lines open to contaminants, the indoor unit, even if not contacted by flood waters, is a covered item. Likewise, if the outdoor unit is inundated it is possible for electrical problems to arise as a result of improper signals on the wiring between the indoor and outdoor units. Such problems can destroy indoor equipment. In such a case the indoor equipment is covered.

The SFIP only pays for the portion of an electrical circuit that has been flooded. This is incorrect.

When electrical wiring becomes flooded at any point, in a crawl space junction box for example, the cost to remove and replace the circuit, from the point of water contact to the point inside the structure where it connects to another undamaged circuit is covered.

The SFIP does not pay for moisture damage. This is incorrect.

In many instances the flood waters and their contaminants condense on the underside of subfloors, walls, ceilings and other surfaces causing considerable damage. Where the proximate cause of the condensation was the flood, the damage caused by the moisture is covered.

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Depreciation Taken on RCV Losses

Flood victims report: *adjusters are taking depreciation on RCV losses and stating that the withheld depreciation will be released upon the completion of the repairs.* This is incorrect.

RCV losses are not subject to depreciation.

Refusal to Compensate for “Like for Like”

Flood victims report: *adjusters are refusing to compensate them for “Like for Like” on covered items.* This is incorrect.

Several examples of mis-communicated coverage regarding failure to compensate on a “like-for-like” basis are as follows:

The SFIP does not pay to replace Anderson Windows. It is unlike other insurance and will only pay for an economy grade window. This is incorrect.

In many cases the damaged property is not “economy” grade, but rather consists of name brand or high-end materials. The policyholder is entitled to the same materials as were originally in place prior to the flood.

The SFIP does not pay to replace a building component that is no longer manufactured, such as a brass door handle with a specific offset that is no longer available. It’s not our problem that the only lockset currently manufactured will not fit into the existing penetration leaving a gaping hole in your door next to your door knob. Your door would cost \$900 to replace, and it can be sanded and refinished. You are not entitled to a door. This is incorrect.

The policyholder is entitled to RCV, ACV or Special Loss assessment as specified in the policy. Regardless of the applicable method of loss settlement, policyholders are entitled to the restoration of their flood loss. In the event that an item is no longer available, such as brass lever handle and lockset with a non-standard offset, then a similar handle with a standard offset would be covered. In addition, the replacement doors that matched the new lockset would also be covered such that damage was fully remedied.

The SFIP does not pay to replace a building component that cannot easily be obtained, especially when an alternative component could be used. This is incorrect.

The policyholder is entitled to RCV, ACV or Special Loss assessment as specified in the policy. For example, in some cases the structure may have structural members, such as 2 X 4s that measure two inches by four inches, not 1 ½ x 3 ½ as is currently the norm. Regardless, the policyholder is entitled to be compensated for the same materials that were damaged, in this example custom milled materials of the same species as was damaged.

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Price Guidelines and New Construction Pricing

Flood victims report: *adjusters are stating that the prices they are permitted to submit for claims settlement are controlled by the federal government and they cannot be exceeded.* This is incorrect.

Several examples of mis-communicated coverage regarding Price Guidelines and New Construction Pricing are as follows:

The SFIP may set the prices they allow for damaged items wherever they wish. Flood insurance is unlike other insurance and is merely a form of assistance. This is incorrect.

The policyholder is entitled to RCV, ACV or Special Loss assessment as specified in the policy. In each case, the cost to repair the damages is based upon the estimated costs of labor and materials at the time of the repair and/or the amount of the contractors' detailed estimates, proposals or receipts.

The NFIP adjusters are free to use whatever pricelist or construction estimator they choose, regardless of the age or source of the list. They are not required to deviate from their database. This is incorrect.

The NFIP does not maintain a database of prices. Adjusters are free to begin with any adjusting database they choose, but they must adjust upward or downward in accordance with the actual cost of repairs such that the covered damage shall be fully restored.

Sales Tax

Flood victims report: *adjusters are stating the SFIP does not cover sales tax on covered items.* This is incorrect.

Example:

The Federal Government does not pay sales tax and the flood policy does not reimburse victims for sales taxes. This is incorrect.

Sales taxes associated with all covered items are covered by the SFIP.

Mold Cleanup

Flood victims report: *adjusters are refusing to compensate them for cleanup of mold that has appeared after a flood, regardless of mitigation attempts.* This is incorrect.

Several examples of mis-communicated coverage regarding mold clean-up are as follows:

The SFIP does not pay to clean-up or to remediate mold contamination and it never has. This is incorrect

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The SFIP does cover mold cleanup expenses, provided, the contamination is not as a result of the policyholder failing to mitigate. A common example of failure to mitigate is where the policyholder does not return to the property, although such return was not prevented by floodwaters or other flood related access issues such as a bridge being washed away, and in the interim mold has grown that otherwise would not have grown.

The SFIP only pays to clean-up mold with soap and water or chlorine bleach solution. This is incorrect.

The SFIP covers mold clean-up costs necessary to restore the contaminated property to its condition prior to the loss. Such costs may include, but are not limited to; protective devices and other equipment contractors are required to use in order to comply with OSHA regulations. In many cases porous building materials will be damaged by chlorine and other liquids. There are no exclusions for the types of remediation protocols that may be employed. Such protocols include, but are not limited to, dry ice blasting, abrading, sealing, borax based products such as Boracare and related negative air systems.

The SFIP only pays to remediate mold in areas that are readily accessible. This is incorrect. If the mold was not preexisting prior to the loss, and the insured did not fail to mitigate, the SFIP pays for the costs associated with remediation.

The SFIP limits the amount of coverage for mold clean-up. This is incorrect.

Some areas of contamination require extensive effort and substantial costs to properly clean-up. The contaminated sheathing behind brick veneer and/or siding will require the siding and/or brick veneer to be removed and replaced. In addition, intersections and joints of building materials, such as where bottom plates meet subfloors and joists intersect with other framing are examples where contamination may not be able to be properly remediate without removing and replacing the contaminated materials.

Settlement

Flood victims report: *adjusters are stating that the SFIP does not pay for settlement regardless of the cause. This is incorrect.*

In the event that erosion occurs as a result of the flood, thereby undermining the foundation and the foundation settles as a result of the erosion, the settlement damage is covered.

Pre-FIRM vs. Post FIRM Denials of Coverage

Flood victims report: *adjusters are stating that once a building has been improved it is deemed a post-FIRM structure, regardless of the age of the building and the value of the improvements. This is incorrect.*

A pre-FIRM structure remains as such unless and until substantial improvement occurs. Substantial improvement is defined as not less than fifty percent of the market value of the

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building before the "start of construction" of the improvement. Substantial improvement includes buildings that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either any project for improvement of a building to correct existing state or local code violations or any alteration to a "historic building," provided that the alteration will not preclude the building's continued designation as a "historic building."

Several examples of mis-communicated coverage regarding pre-FIRM vs. post FIRM issues are as follows:

The unfinished basement of a pre-FIRM structure was totally finished in 1990 at a cost of forty thousand dollars. The value of the structure at the time of the improvements was two-hundred thousand dollars. That is a substantial amount of money; therefore the building is now deemed a post-FIRM building and is subject to post-FIRM exclusions. This is incorrect.

In order for a pre-FIRM status to change to post-FIRM status, the improvements must have exceeded fifty percent of the value of the structure at the time the improvements were made.

The SFIP only pays for very limited coverage in basements or other areas below the lowest elevated floor, regardless of when the structure was built. This is incorrect.

Only Post-FIRM basements are subject to limited coverage, i.e. the exclusions found in Section III, paragraph 8.

Fuel Oil Contamination

Flood victims report: *adjusters are stating that fuel oil contamination is not a covered peril, and/or it can be remediate with chlorine bleach or absorbents with deodorizers. This is incorrect.*

The SFIP does not have a fuel oil contamination exclusion. Fuel oil is a known toxin, irritant and suspected carcinogen. At the present time there is no way to wholly remediate fuel oil contamination. The only proper course of action is to remove and replace the contaminated materials.

Several examples of mis-communicated coverage regarding fuel oil contamination issues are follows:

Although there was obvious fuel oil contamination in the home in the form of an oil slick on the floor and oil at the high water mark, now that the damaged sheetrock and flooring has been removed, there is no longer a strong odor of fuel oil in the premises. Without obvious signs of contamination, the SFIP will not pay for clean-up. This is incorrect.

The hydrostatic pressure of the floodwaters has the effect of pressure treating. Oil molecules are pushed deep into porous materials. Although the odor will subside, and prolonged exposure lessens people's ability to detect an odor, the dangerous chemicals are nevertheless

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left behind. Interior foundation walls, slabs, framing and other building materials cannot be wholly remediate at this time. The only safe course of action is to remove and replace all contaminated building materials.

The SFIP has a limit of ten thousand dollars for remediating damage caused by pollutants. This is incorrect.

The General Property Form has a ten thousand dollar limitation on pollutant clean-up. The Dwelling Form has no such exclusion.

Pairs and Sets

Flood victims report: *adjusters are stating that the “Pairs and Sets” clause applies to building materials such as kitchen cabinets. This is incorrect.*

The pairs and sets language specifically refers to damaged “articles” as opposed to damaged “items”. Building materials are referred to throughout the SFIP as items; personal property on the other hand is referred to as articles.

Garage Coverage

Flood victims report: *adjusters are stating that in order for a garage to be covered it must have doors of a particular size. This is incorrect.*

The SFIP includes coverage for a garage provided it is not used as a Dwelling or for a business or farming purpose. There is no requirement pertaining to the size, style or configuration of the building’s doors.

Limitation of Coverage

Flood victims report: *adjusters are attempting to limit coverage because the cost of repairs are just “too costly”. This is incorrect.*

Several examples of mis-communicated coverage regarding cost of repairs are as follows:

The SFIP does not pay to make you whole. The cost to remediate the mold in your crawlspace is very high based upon its extremely limited clearance. The SFIP will only allow a fixed price per square foot of floor space. It will not pay for all of the joist surfaces – that would just be too much. This is incorrect.

The SFIP compensates victims for their covered loss based upon the costs in affect at the time of the adjustment.

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Increased Cost of Compliance Payments

Flood victims report: *adjusters and/or carriers are stating that the second portion of the ICC payment will not be released until the policyholder obtains a final occupancy permit.* This is incorrect.

The policyholder is entitled to receive the second half of the ICC payment upon submission to the WYO of a county or local municipality elevation certificate.

An example of a mis-communicated regulation regarding ICC payments is as follows: *All ICC payments are on hold due to the large number of claims from the recent storms in Florida.* This is incorrect.

Minimizing Damages

Flood victims report: *adjusters are attempting to limit coverage by minimizing the significance of damage, such as “there was only one inch of water on the floor”.* This is incorrect.

Significant damage can occur to surfaces above the flood waters, for example when subfloors expand from moisture damage. The depth of the water above a flooded surface shall not be used as basis for denying coverage.

Substantially Damaged Structures

Flood victims report: *they are having significant difficulties when a local municipality deems their structure substantially damaged.*

Several examples of mis-communicated coverage regarding substantially damaged structures are as follows:

Flood victims report: *Adjusters refuse architect, engineer, and contractors’ proposals that indicate the cost of repairs will exceed the cost of new construction.* This is incorrect.

In the event that a municipality deems a structure substantially damaged, and a licensed architect attests under the penalty of perjury that he or she believes the cost of repairs will exceed the cost of new construction, then the architect’s statement shall be accepted as evidence of a policy limits claim. In the event the NFIP has conflicting advice from an architect of its choosing, then the victim shall choose a second architect to act as a referee and split the tie. In the event the victim’s claim is upheld by the referee, the NFIP shall bear all architects fees paid by both the NFIP and the victim and shall not be charged against the victim’s claim. In the event the victim’s claim is not upheld by the referee, the victim will be required to submit a detailed proof of its proposed reconstruction costs.

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Depreciation Schedules

Flood victims report: *adjusters are depreciating items and articles at widely varying rates for the identical materials. For example, neighboring homes, of the same age and condition may have differences in depreciation rates for their foundation of zero to 25 percent. This is incorrect.*

The SFIP includes the industry standard ACV term. This means that depreciation must be calculated fairly based upon age and condition.

Failure to Address Damage to Entire Portions of Structures

Flood victims report: *adjusters have failed to adjust the flood loss on entire portions of homes, e.g., didn't include the kitchen and laundry. This is incorrect.*

Unless expressly excluded under the SFIP, loss to every portion of the home must be adjusted.

Partial (Advance) Payments

Flood victims report: *adjusters and/or carriers are stating that advance payments are limited to small fractions of the damage or otherwise not available. This is incorrect.*

The NFIP publishes the following statement regarding partial (advance) payments:
Partial (Advance) Payments. The adjuster must advise the insured of the availability of a partial (advance) payment. If the insured requests a partial payment, the adjuster must prepare documentation necessary to support the amount of payment requested, including a Proof of Loss (shown on page A-29). The partial payment should not be for more than 50 percent of the anticipated total claim and preferably should be made against the contents claim.

Several examples of a mis-communicated mis-communicated information regarding partial (advance) payments are as follows:

The SFIP policy no longer has any provision for an advance payment. This is incorrect.

The SFIP limits the amount of an advance payment to \$5,000. This is incorrect.

The policyholder is entitled to receive an advance payment and should not be dissuaded from requesting one in any amount. Depending on the circumstances, the entire amount of the claim may be approved in advance of completed repairs.

Your insurance carrier really wants to settle your claim. I don't believe they have any interest in processing an advance payment request. You really must sign the proof of loss form in order to receive any insurance proceeds. This is incorrect.

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The policyholder is entitled to receive an advance payment prior to completion of a proof of loss form. In no event is a policyholder to be given an ultimatum of signing a proof of loss form as a prerequisite to receiving a partial (advance) payment.

Basement Coverage

Flood victims report: *adjusters have failed to compensate for the flood loss on Basements of buildings which meet pre-FIRM requirements.* Adjusters in many cases are applying exclusions to basements, regardless of their pre-FIRM status. This is incorrect.

Section III Section 8 of the SFIP makes a distinction between pre-FIRM and post-FIRM exclusions. Structures meeting pre-FIRM requirements are not subject to any exclusion under this section. Unless expressly excluded under the SFIP, loss to every portion of the home must be adjusted.

Profit and Overhead

Flood victims report: *adjusters are refusing to compensate for profit and overhead for contractors and sub-contractors.* This is incorrect.

Several examples of mis-communicated coverage regarding profit and overhead are as follows:

Flood victims report: *Adjusters refuse to cover an electrician's overhead and profit saying it is included in the general contractor's overhead and profit.* This is incorrect.

The costs associated with restoring the flood damaged covered property to its pre-loss condition are covered under the SFIP. This includes profit and overhead associated with the various trades, contractors and subcontractors involved with the repairs.