



FEMA

W-11045

June 30, 2011

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the
National Flood Insurance Program (NFIP) Servicing Agent

A handwritten signature in black ink, appearing to read "Dennis Kuhns".

FROM: Dennis Kuhns
Division Director, Risk Insurance
Federal Insurance and Mitigation Administration

SUBJECT: Guidance Related to Flood-in-Progress Exclusion
and New Policy Applications

This is to provide guidance for advising customers whether to purchase flood insurance now in light of possible flood-in-progress determinations, and additional information on what is considered a flood in progress.

Standard Flood Insurance Policies (SFIPs) should continue to be sold to any eligible customer. The Federal Emergency Management Agency (FEMA) has not imposed a moratorium on the sale of SFIPs. We recognize that the SFIPs contain exclusions and limitations that may preclude payment, in whole or in part, for a loss, including, but not limited to, denial of an entire claim pursuant to Section V(B) of the SFIP if there was a flood in progress when the policy became effective. The flood-in-progress exclusion applies both when the 30-day waiting period is in effect, or when an SFIP is purchased without the waiting period.

It is important to emphasize that the applicability of the Section V(B) exclusion in the SFIP cannot be determined until after a loss occurs. It is not possible prior to a loss occurring to identify whether a particular claim will be denied.

For your reference, the exclusion at Section V(B) specifically provides that:

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

- 1. The policy term begins; or***
- 2. Coverage is added at your request.***

FEMA recommends that when agents receive an application for the purchase of an SFIP, they discuss the flood-in-progress exclusion contained in Section V(B) of the SFIP and explain that a loss caused by a flood in progress may be excluded from coverage. Agents also should explain that the applicability of the exclusion can be determined only after a loss has occurred. Even with a flood in progress, an intervening event that had not started at the time the policy became effective could cause a separate and independent flood event for which coverage could be afforded. Accordingly, FEMA suggests that agents also advise that subsequent floods, not directly or indirectly related to the flood in progress, could occur, and that every loss will be evaluated on an individual basis. Indeed, one reason that FEMA did not impose a moratorium on sales, even when there is a flood in progress, is because of the possibility that a loss will be caused by a flood that was not in progress when the policy became effective.

FEMA addressed application of the flood-in-progress exclusion in Bulletins W-11030 (issued May 17, 2011) and W-11034 (issued June 6, 2011), which are attached for your review. Those bulletins provide illustrative examples of events that could result in a claim being denied pursuant to the SFIP Section V(B).

Sections A and B of W-11030 are shown below, for your reference:

- A. The community where the insured building is located first experiences a flood as defined in the SFIP, or
- B. The date and time of an event initiating a flood that causes damage, including but not limited to:
 - i) a spillway is opened,
 - ii) a levee is breached,
 - iii) water is released from a dam, or
 - iv) water escapes from the banks of a waterway (stream, river, creek, etc.).

When the flood is caused by an event described in Section A of Bulletin W-11030, the date that the flood starts, for purposes of the Section V(B) exclusion, is the date when the community first experiences a flood as defined by the SFIP.

When the flood is caused by an event described (or similar to those described) in Section B of Bulletin W-11030, the date that the flood in progress starts, for purposes of the Section V(B) exclusion, is the date that the flood event first started for all persons and properties impacted by that event.

For example, when the Morganza spillway opened in Louisiana and released water onto the ground so that two acres of normally dry land were generally and temporarily inundated, there was a flood and a flood in progress. As long as the spillway gates were opened and continued to feed that flood, it was part of a single, continuous flood event. Any property insured under an SFIP that was damaged by those floodwaters, wherever those floodwaters went and whenever those floodwaters reached the property, the start of the flood in progress would still be the date that a flood, as defined by the SFIP,

first occurred after the opening of the Morganza spillway. (This same type of analysis would apply to other similar events, such as the Garrison Dam release in North Dakota beginning on June 1, 2011, causing a flood in progress.)

If an SFIP became effective after the Morganza spillway started releasing and the resulting flood was already in progress, damage from that flood in progress should not be covered. However, flood damage from a subsequent flood could be covered, subject to the provisions of the SFIP. If the subsequent flood event causing a loss started after the SFIP became effective, the claim from the subsequent flood event should be covered, even if an inevitable and excluded flood in progress would have (or does) damage the property at a later date. The later-occurring damages from the flood in progress should be denied.

Your cooperation is appreciated. If you have questions, please contact James A. Sadler at James.Sadler@dhs.gov.

Attachments

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Marketing, Claims, Training, Underwriting

ARCHIVED APRIL 2018



FEMA

W-11030

May 17, 2011

MEMORANDUM TO: Write Your Own (WYO) Principal Coordinators and the
National Flood Insurance Program (NFIP) Servicing Agent

Edward L. Connor

FROM: Edward L. Connor
Acting Federal Insurance and Mitigation Administrator

SUBJECT: Flood-In-Progress, SFIP, Section V (B).

This Bulletin provides guidance regarding the exclusion contained in the Standard Flood Insurance Policy (SFIP) Section V (B) (Dwelling Form, General Property Form, and Residential Condominium Building Association Policy). Section V (B) excludes from coverage a loss caused by a flood that is already in progress at the time and date the policy term begins or when coverage is added pursuant to the policyholder's request. The exclusion at Section V (B) specifically provides that:

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

- 1. The policy term begins; or***
- 2. Coverage is added at your request.***

Questions have been raised regarding what triggers the exclusion, and how to interpret the exclusion together with exceptions to the 30-day waiting period found at 44 C.F.R. § 61.11. The Section V (B) exclusion is triggered on the date and time of the flooding event as defined in the SFIP that causes the loss. Specifically, FEMA considers that Section V (B) is triggered by the earlier of the following situations:

- A. The community where the insured building is located first experiences a flood as defined in the SFIP, or
- B. The date and time of an event initiating a flood that causes damage, including but not limited to:
 - i) a spillway is opened,
 - ii) a levee is breached,
 - iii) water is released from a dam, or
 - iv) water escapes from the banks of a waterway (stream, river, creek, etc.).

Flood-In-Progress, SFIP, Section V (B).

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These situations are provided for illustrative purposes only and do not encompass all instances in which the Section V (B) exclusion is triggered. Individual losses will be evaluated on an individual basis.

The Section V (B) exclusion is not limited to individual property, city, county, or parish boundaries. FEMA will apply the Section V (B) exclusion regardless of individual property, city, county, or parish boundaries if causation of the flood is clear.

FEMA **does not** interpret the Section V (B) exclusion as being triggered only when floodwaters physically touch the insured building.

The applicability of the Section V (B) exclusion is separate from the applicability of the 30-day waiting period provisions found at 44 C.F.R. § 61.11. An insurance policy may be purchased without the 30-day waiting period, but that does not mean that Section V (B) of the Standard Flood Insurance Policy is inapplicable.

If you have any questions please contact James A. Sadler at James.Sadler@dhs.gov

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: All Departments

ARCHIVED APRIL 2018



FEMA

W-11034

June 6, 2011

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the
National Flood Insurance Program (NFIP) Servicing Agent

FROM: NFIP Clearinghouse

SUBJECT: Garrison Dam Flood of 2011 – Flood In Progress

This Bulletin addresses the application of the Standard Flood Insurance Policy (SFIP), Section V (B), flood-in-progress exclusion to the release of water from Garrison Dam, ND, and the resulting Missouri River Basin flooding. FEMA has determined that the Garrison Dam water release occurring on June 1, 2011, triggered a flood in progress that extends to the Missouri River Basin below Garrison Dam, ND, and the system of coordinated dams through Gavins Point Dam, at Yankton, SD, and the basin beyond.

Based on the flood-in-progress exclusion at Section V (B), for coverage to be effective for losses caused by the flood resulting from the water release from Garrison Dam, ND, an SFIP must have been in effect prior to June 1, 2011.

FEMA recognizes that there may be subsequent flood losses caused by flooding not related to the water releases from Garrison Dam, ND, that triggered the June 1, 2011, flood in progress. Therefore, the applicability of the Section V (B) flood-in-progress exclusion should be evaluated individually for all claims.

The date of this flood-in-progress trigger event, June 1, 2011, is distinguished from the date of loss. The SFIP provides coverage for a direct physical loss by or from flood. The date of loss will continue to be the date that a flood causes such a covered loss to the insured property.

A copy of the May 17, 2011, Bulletin W-11030, Flood-In-Progress, SFIP, Section V (B) is attached for your reference.

Your cooperation is always greatly appreciated. If you have any questions, please contact James.Sadler@dhs.gov.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Claims, Training, Underwriting