



FEMA

W-11110

October 21, 2011

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

FROM: David L. Miller *[Signature]*
Associate Administrator
Federal Insurance and Mitigation Administration

SUBJECT: Guidance Regarding SFIP Section V(B) "Flood in Progress" Determinations, Future Losses and Claims Handling

This Bulletin provides guidance regarding National Flood Insurance Program ("NFIP") Bulletins W-11030, W-11034 and Standard Flood Insurance Policy ("SFIP") Section V(B) (Dwelling Form, General Property Form, and Residential Condominium Building Association Policy), and addresses treatment of future claims in areas where there has been a flood in progress.

We understand that there is confusion regarding the SFIP's flood-in-progress exclusion. First, FEMA will clarify why its definition of "flood" and the application of the "flood in progress" exclusion is not dependent upon or similar to presidential disaster declarations. Second, FEMA will explain the scope of the "flood in progress" exclusion and its application to ensure that claims are processed consistent with the rules. Finally, FEMA will explain why the claims handling process under the Standard Flood Insurance Policy makes it unnecessary to issue an "end of flood in progress" declaration as has been requested by several NFIP participating communities, and explain in general terms the normal claims handling process.

I. Insurance losses are adjusted on a case-by-case basis

The NFIP is not a discretionary grant program and is distinct from the disaster-assistance program administered by FEMA pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 *et seq.* (the "Stafford Act"). Under the Stafford Act, the President makes a disaster declaration which provides a start and end date for the period of a disaster. Damage that occurs during a disaster declaration may be eligible for Stafford Act disaster assistance. Unlike Stafford Act assistance, the NFIP is an insurance program, and an individual insured's right to payment under the NFIP is defined by the terms of the SFIP, not by an administrative declaration.

Flood insurance benefits are available if an insured property suffers a covered loss caused by a general condition of flooding, as defined by the SFIP. Depending upon the cause of a flood event (such as the release of water from a dam or the destruction of a levee which result in a flood), there may be a common start date for a flood causing damage to a number of properties – the date the "Flood in Progress" begins. Typically, the SFIP Section V(B) exclusion will impact only policyholders who wait until it is almost certain that their property will flood before purchasing a

SFIP and thereby transfer their loss, not their risk of a loss, to the NFIP. However, the applicability of the SFIP Section V(B), and all the other terms, conditions and limitations of coverage under a SFIP, can only be determined on an individual, claim-by-claim basis based upon the individual facts of each loss. The applicability of these limitations and exclusions, including the flood in progress exclusion, can only be made after a loss has occurred and the facts surrounding the loss are known.

II. "Flood in Progress" is determined based on the definitions in the SFIP

There is a perception that because a flood has not reached the flood stage established by other federal agencies, a flood or a "Flood in Progress" should not be declared for purposes of coverage under SFIPs. The definition of a "flood" or "flood stage" set by other agencies differs from the definition of "flood" within the SFIP.

All of the policies contain the following definition of a "flood" at Section II (definitions):

- (1) a general and temporary condition of partial or complete inundation of (a) two or more acres of normally dry land area, or (b) two or more properties (one of which is your (the policyholder's parcel of land that is the location of the insured building and/or contents) property) from:
 - i) overflow of inland or tidal waters;
 - ii) unusual and rapid accumulation or runoff of surface waters from any source, or
 - iii) mudflow (as defined in the SFIP), or
- (2) collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above [in subpart (1)].

As noted, coverage is set by the terms of the SFIP, not a broad, technical or scientific determination. Thus, insured properties often will suffer a SFIP-defined "flood" and coverage will be extended to the property and the claim paid when a river or other water body has not reached the otherwise established flood stage. If the SFIP's definition of "flood" were tied to such determinations, coverage would be denied to many flooded insured properties when otherwise established flood stage has not been met. FEMA and the NFIP are distinct Federal entities with different missions and programs. Flood stages for rivers or other bodies of water are not relevant to the definition of a "flood" as set forth in the SFIP, or the applicability of any of the exclusions or limitations of coverage found in the SFIP and FEMA's rules and regulations.

III. Reasons why FEMA does not issue end to "Flood in Progress" declarations

Communities and individual insureds are asking FEMA to declare an end to various floods in progress. The flooding along the Missouri River below the Garrison Dam, ND including ND, SD, NE, IA, KS, and MO, and along the Souris River below the dam at Lake Darling, ND including Renville County, Ward County (Minot) McHenry County, and Bottineau County, is generally over. However, as always, FEMA will continue to evaluate any losses on a case-by-case basis, and to the extent FEMA determines that a loss was directly or indirectly caused by a flood in progress at the time a policy came into effect, we will apply the flood-in-progress exclusion under Section V(B).

The SFIP does not provide for a "No Flood in Progress" declaration, however, and the individual evaluation required to adjust an insurance claim is inconsistent with a blanket "No Flood in Progress" declaration. First, whether there was or was not a "Flood in Progress" is only relevant to an individual insured's claim under a SFIP. In the absence of an insurance policy sold to an individual policy holder, such declarations have no meaning. Second, this "Flood in Progress" determination – whether SFIP Section V(B) applies or does not apply – is part of the routine determinations that the NFIP-certified flood insurance adjusters make on every individual claim. FEMA is asked to declare a no flood in progress date for all policyholders. FEMA suggests that making that determination for each policyholder is consistent with good claims handling practices.

While a "No Flood in Progress" determination cannot be issued on a community-wide basis, when an insured files a claim, the independent insurance adjuster evaluates whether there was a flood as defined by the SFIP. The independent adjuster must then investigate whether there was a policy in force before the flood that caused the loss was in progress, and then presents his/her recommendations to the insurer. If a claim is denied in writing, the insured may appeal that final determination on the claim or any part of the claim directly to FEMA in accordance with the provisions of 44 C.F.R. §62.20. The appeal process and other flood claims process matters are detailed in the *NFIP Flood Insurance Claims Handbook* provided to policyholder when the policy is first issued, on each renewal, and when a claim is submitted.

As with other forms of insurance, a loss caused by a covered event that began before the policy comes into effect is not covered. Generally, if there is a future flood loss, and that "flood" is not related directly or indirectly to a flood that was in progress at the time the SFIP came into effect (*i.e.* – it is a new flood event), then the SFIP Section V(B) exclusion should not apply. However, as is the case with any other insurance policies, no guarantee of payment or coverage can be made in advance of a loss. As stated previously, the applicability of all the SFIP's exclusions or limitations in coverage can only be made after a loss has occurred, and can only be made on an individual, claim-by-claim basis.

Finally, FEMA has been asked to provide guidance on how future claims should be handled in an area once a Flood-in-Progress declaration has been issued. The routine claims processing mechanisms remain in place when a Flood-in-Progress determination is made. The routine procedures should be followed, and a general description of that process is as follows:

When an insured suffers a loss, the insured should report the loss to the insurer, either directly or through an insurance agent. An independent insurance adjuster will be assigned to the loss in accordance with the provisions of SFIP Section VII(J) for the Dwelling and General Property forms, and SFIP Section VIII(J) for the Residential Condominium Building Association Policy form. The independent adjuster will use his or her judgment to inspect the damaged property, gather the facts surrounding the cause of the loss, and make a recommendation to the insurer on any limitations or exclusions that may apply. However, the burden to present the claim lies with the insured, not the independent adjuster. If the insured disagrees with the conclusions or recommendations of the independent adjuster, the SFIP makes it clear that the responsibility for submitting the claim, along with documentation and information to support the claim, is the responsibility of the insured. This would include documentation and information concerning the applicability, or inapplicability, of SFIP Section V(B).

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Should you have any questions, please contact Mr. James Sadler at FEMA via email at James.Sadler@dhs.gov.

cc: Vendors, IBHS, FIPNC, Government Technical Representative
Required Routing: Claims, Underwriting

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