



FEMA

W-13029

May 15, 2013

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

A handwritten signature in black ink, appearing to read "James A. Sadler".

FROM: James A. Sadler, CPCU, AIC
Director of Claims
National Flood Insurance Program

SUBJECT: **Proper Invocation and Usage of the Appraisal Clause Provisions in
the Standard Flood Insurance Policy**

The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP) and promulgates all forms of the Standard Flood Insurance Policy (SFIP). There are three forms of the SFIP—the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP)—which are promulgated and found at 44 C.F.R. § 61, Appendixes A(1), A(2), and A(3), respectively.

Each form of the SFIP contains an Appraisal clause in its General Conditions (Section VII (P) (in the Dwelling and General Property Forms), and Section VIII (P) in the RCBAP). FEMA is issuing this bulletin to provide guidance regarding when the Appraisal clause may be used, and what the necessary conditions are for invoking it.

The text of the Appraisal provision states the following:

P. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an Appraisal of loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the State where the covered property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will

be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the Appraisal and umpire equally.

The SFIP Appraisal process is a mechanism for resolving only disputes regarding the dollar amounts to be paid for flood damages covered by the SFIP. The Appraisal process **cannot** be used as a method to determine scope of damage, coverage under the SFIP, or causation of damages. FEMA has had this rule in place in the Adjuster Claims Manual for many years. (See pp. V-33 (Dwelling Form commentary), V-71 (General Property Form commentary), and V-107 (RCBAP commentary) in the Adjuster Claims Manual.)

Further, FEMA believes that the Appraisal clause is one of the last resorts available for attempting to resolve a claim (initiating a lawsuit being the last resort) and it should not be used instead of the claims adjusting process. FEMA encourages the insured and the insurer to exhaust all other avenues available to determine the fair price for an agreed-to scope of loss. This includes the insured obtaining and providing all estimates (or if repairs or replacement has already occurred, actual receipts or invoices), photos, and any other relevant documentation or written narrative explanation that may support what the insured is claiming as a fair price of the agreed-to scope of loss.

For the Appraisal clause to be properly invoked, the following conditions must be met prior to the parties using the Appraisal process:

1. The named insured and the issuer of the SFIP must agree to the scope of loss and damages. This means that there must be a list of damaged items (the scope) that both parties agree were damaged by the flood event and covered by the SFIP. If the insured and insurer cannot agree on the scope of loss, then the Appraisal provision cannot be invoked. This means that a claim cannot be partially resolved by the Appraisal process and partially resolved by other means (such as an appeal to FEMA or through litigation). Appraisal can only be used when it will result in complete resolution of the entire claim.
2. The insured must have submitted a timely and complete Proof of Loss with supporting documentation for the items which the insured is seeking Appraisal. If an insured submitted a Proof of Loss for a dollar amount of damages and the insurer paid that amount in full, the Appraisal clause cannot be invoked because there is no dispute between the insured and insurer as to the scope of loss or pricing.

3. Appraisal is available only when the dispute between the parties involves the price to be paid for an SFIP-covered flood-damaged item. No other dispute of any type (*e.g.*, coverage, scope, or causation) can be submitted to Appraisal. If any issue other than pricing is attempted to be resolved through use of the Appraisal process, then the Appraisal provision has not properly been invoked and the Appraisal process is not valid.
4. The Appraisers and umpire selected for the Appraisal process must be competent and impartial. This means that the individuals nominated to serve as Appraisers by the parties, and the umpire to be selected by the Appraisers, cannot be in a position to profit from a higher claim(s) payment made to the insured. For example, if the insured has hired a public adjuster or attorney whose fee is based upon the insured securing a higher claims payment, no one employed, affiliated with, or related to the public adjuster or attorney could serve as the Appraiser or the umpire. The same rule applies to the insurer; no one employed, affiliated with or related to the adjuster or owner of the adjusting company who could receive a higher fee based upon the insured receiving a greater payment could serve as the Appraiser or umpire. The Appraisal process would not be valid if the Appraiser and/or umpire were not competent and impartial.

If possible, the Appraisal provision should be invoked prior to the insured filing a lawsuit. Appraisal is a means to avoid a lawsuit, and FEMA encourages the use of Appraisal as a viable alternative to litigation. However, nothing prohibits the Appraisal provision from being invoked after a lawsuit has been filed as a means of fully resolving the litigation. Appraisal cannot be used as a means to resolve some issues and not others because of the necessity of having an agreed-to scope of loss before invoking the clause. This means that Appraisal would only be available after a lawsuit is filed if it would result in a resolution of all claims of the insured and a dismissal of the lawsuit. If the insurer does not have the policyholder's complete Proof of Loss to support the amount of the Appraisal award, the insurer, upon the policyholder's request must seek a waiver from the Federal Insurance Administrator of the time period to submit a Proof of Loss in order for the Appraisal award to be valid.

Amounts payable as a result of a successful Appraisal should be paid within the 60 days allowed by Section VII (M) of the SFIP; however, nothing prevents the parties from agreeing to a longer period of payment. If a matter is in litigation and the parties consent to the Appraisal process or Appraisal award, the insurer would arrange for payment in accordance with the normal process of paying such disputed amounts (which is typically upon conclusion of all litigation or appeals).

Insurers should pay close attention to the time deadlines in the Appraisal provision with regard to appointing either an Appraiser and/or umpire. If the insured makes an inappropriate demand for an Appraisal (as described above), then a denial letter should be sent as soon as practicable

explaining why the Appraisal provision cannot be invoked, citing any applicable terms of the SFIP which may be at issue. Not responding to the Appraisal demand at all is not a good practice, as the SFIP provides a process for having an umpire appointed by a court of record in the state where the insured property is located. (Because a lawsuit may be brought only in the United States District Court where the insured property is located, a “court of record” would only be the United States District Court, as a state court could not preside over a matter involving an SFIP).

Please note that if an insured invokes the Appraisal process, the insured cannot subsequently file an appeal to FEMA. Similarly, if an insured submits an appeal to FEMA, the insured cannot subsequently invoke the Appraisal clause. (*See* 44 C.F.R. § 62.20 (c).) It should also be noted that FEMA is not a proper party to the Appraisal process when the policy is issued by a Write Your Own (WYO) Program participating insurance company because FEMA is not a party to that SFIP. (*See* 44 C.F.R. § 62.23 (g).)

This bulletin does not supersede or invalidate any term or condition of the SFIP. It contains FEMA’s interpretation of the Appraisal clause, under what condition it may be invoked, and is provided only as guidance.

Conclusion:

We ask for your full support. Any questions or comments regarding the Appraisal process should be directed to Russell Tinsley, Claims Examiner for the National Flood Insurance Program. Mr. Tinsley may be reached by email at: Russell.Tinsley@fema.dhs.gov.

If a WYO Carrier issues a payment in accordance with the terms and conditions set forth in this bulletin, and has the required documentation for these payments, then FEMA will use these standards in all reviews or audits of files, including any reviews under the Arrangement or the Improper Payments Information Act of 2002 (Public Law 107-300, 33 U.S.C. §3321 note), as amended by the Improper Payment Elimination and Recovery Act of 2010 (Public Law 111-204). However, if a payment is incorrectly made to an insured who has not had flood damages or the claim is not properly documented, or if the WYO Company inappropriately used the Appraisal provision, the WYO Company will be responsible to FEMA for the erroneous payment.

Authority: 44 C.F.R. § 61.13(d); 44 C.F.R. §§ 61, Appendices A(1), A(2) and A(3), General Conditions (P) and (M); 42 U.S.C. § 4019.

cc: Vendors, IBHS, and Government Technical Representative

Required Routing: Claims, Underwriting