



Reauthorizing and reforming the National Flood Insurance Program

The National Flood Insurance Programⁱ serves the essential function of making it feasible for property owners to buy economic protection so that in the event of a flood, the owner can repair/restore the asset. While there are alternative flood insurance options in the private market that are available to *some* property owners in *some* regions, the NFIP will remain the only option for a substantial number of U.S. households in flood risk zones for the foreseeable future.

Just as state governments have created programs that fill availability gaps in the home, commercial and auto insurance markets, the federal government needs to maintain and improve the NFIP so it continues serving its essential function. As a non-profit that has been guiding consumers on insurance and disaster recovery for 25 years, United Policyholders has firsthand experience with the aspects of NFIP coverage and claim processing that need fixing. We share the goal of increasing resiliency and controlling premium costs through greater participation, but we and our long-term recovery partners need restored confidence in order to continue advocating that consumers buy NFIP products.

To maintain and improve the program while allowing healthy growth in the private competitive flood insurance marketⁱⁱ, United Policyholders strongly supports forgiveness of the NFIP's debt, specific reforms and a ten (10) year reauthorization subject to the following guiding principles:

- **Integrity:**
 - Increase the size of the professional staff employed by the NFIP to allow better oversight and standardization of the claim adjusting practices of Write-Your-Own companies. Implement audit penalties for claim underpayments and overpayments.
 - Disqualify from NFIP vendor contract eligibility all engineering, construction, claim adjusting and consulting professionals and firms whose work product related to flood losses has been found to be biased, unethical, incomplete or otherwise inconsistent with relevant professional standards.ⁱⁱⁱ
- **Transparency:**
 - Reform the appeals process set forth 44 CFR. § 62.20. The process needs clear procedural and substantive rules to merit restored public confidence. The appeals process, appellants' rights and the review standards must be transparent and allow efficient and neutral reviews of claim and coverage decisions. Congress should appropriate adequate funding for NFIP staff to be able to annually track appeals and report outcomes.
 - Vendor, WYO, Independent Adjusting, administrative support and other consulting contracts with the NFIP shall be public documents.
- **Solvency:**
 - The NFIP should be reauthorized for a minimum of 10 years and the debt should be forgiven.

- **Simplified coverage:**
 - Remove the ICC eligibility requirement of 50% or more so code compliance is covered, regardless of loss severity. Time and money is routinely wasted on disagreements over whether that threshold has been met.^{iv}
 - Require an advance of at least 10% of available coverage within 30 days of the date of loss.

- **Reasonable and consistent claim processing rules:**
 - The current Standard Flood Insurance Policy only gives claimants 60 days to submit a complete, signed, sworn proof of loss document. This is too short a window and should be 90 days. The Federal Insurance Administrator has authority under 44 CFR § 61.13(d) to waive or grant extensions of this deadline. When he/she exercises discretion to extend the deadline beyond 90 days, notice of the extension shall be disseminated at least one week in advance of the original deadline. The proof of loss requirement shall be a notice requirement only. Policyholders shall have a minimum of 180 days from the date the proof of loss is due to submit the documentation substantiating their claim.
 - Clarify that foundation damage is covered if it was proximately caused or exacerbated by the flood.^v
 - Congress should import at least two portions of California Insurance Code section 2071:
 - “Adjusters”
If within a 6-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report.
 - “Requirements in case loss occurs” that allows a claimant to access:
...all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs.

- **Accountability:**
 - Amend the National Flood Insurance Act (“NFIA”) to remove the Federal Emergency Management Agency (“FEMA”) and Write-Your-Own Insurers’ (“WYO”) immunity from liability for fully compensating victims of unfair flood claim practices. Numerous whistleblowers have identified that immunity as the most significant cause of poor flood claim handling.^{vi} The statute of limitations must be subject to equitable tolling during the adjustment of the claim and should be for a minimum of two years from the date of the denial or partial denial, not the date of the loss. Currently, in disaster areas, if the proof of loss is extended, the statute of limitations is not tolled.^{vii}

- **Uniformity:**
 - Amend 42 U.S.C. § 4019 or otherwise grant authority to FEMA to adopt the National Association of Insurance Commissioners’ Unfair Claims Settlement Practices Act (timelines for investigating, communicating information, and settling claims). Bulletin

W-15025 (June 1, 2015) was a positive first step in recognizing that claims handling varied widely among WYOs, resulting in inconsistent claimant experiences.^{viii}

- **Resiliency:**
 - Reallocate Homeowner Flood Insurance Affordability Act surcharges towards community pre- disaster mitigation and flood mitigation efforts.
 - Require meaningful premium reductions for homeowners that invest in mitigation to help ensure that homeowners are able to afford and maintain coverage.
 - Provide vouchers to low-income households who would not otherwise be able to afford flood insurance if the premium would exceed 40% of household income.
 - Maintain funding for flood mapping but ensure that grandfathering continues for households who already have flood insurance but are re-zoned.

- **Dispute Resolution Efficiency**
 - There is already wording in the SFIP that allows disputes over dollar amounts to be paid for flood damage to be resolved through the Appraisal Process.^{ix} With appropriate safeguards, appraisal can be a cost-effective and efficient way of resolving disputes over material quantities, qualities and repair methods. In order for an insurance appraisal to be cost effective and efficient, it should include the full scope of the loss - regardless of coverage considerations.^x

Endnotes:

ⁱ National Flood Insurance Act of 1968, P.L. 90-448, 42 U.S.C. § 4001 *et seq* (NFIP), set to expire on September 30, 2017.

ⁱⁱ As private carriers enter the flood insurance market (as a result of H.R. 2901 or otherwise) the largest problem will be spreading risk amongst the NFIP and the private market. The hazard to avoid will be the NFIP as the insurer-of-last-resort with all the worst risks and the private market taking the rest. We don't want a situation where the NFIP is left holding the bag on the most expensive losses with a further eroded premium base. This will result in higher rates and more program debt.

Recognizing that coverage under the SFIP is limited and not likely to be expanded greatly with respect to additional living expenses/loss of use, contents, and replacement cost for properties with damage exceeding \$250,000, there are benefits to developing a robust private flood market, but it must be done right.

Our preferred proposal is a national mandate to include coverage for flood risk in every home policy or a mandatory purchase requirement. Like the Affordable Care Act ("ACA"), if everyone is in the pool, the risk is spread amongst a larger premium base. There are also other models that contain elements which may be viable for the NFIP.

Another model to look for inspiration at would be the California Earthquake Authority (CEA). The CEA was created in 1996 as privately financed, publicly managed entity that offers residential earthquake insurance. In 1995, the passage of AB 13 (McDonald) prohibited residential insurers from selling policies

that did not include an offer of earthquake coverage. The CEA, a consortium of insurers, was created in response to most insurers asking for 10-15% rate increases and limiting the number of new policies written in order to limit their exposure following the 1994 Northridge quake.ⁱⁱ

The relevance in this discussion would be the idea that private insurers should be paying into the NFIP if they are not offering their own flood product. If they do offer their own product, they should be required to take a broad cross-section of risk.

In the United Kingdom, a recent public-private partnership, Flood Re, may offer guidance.ⁱⁱ When insurers failed to renew a 2000 principles – a “gentleman’s agreement” that insurers would offer flood coverage at competitive rates – discussions began around the creation of a new entity that insurers pay into to cover the highest risks. Premiums for the highest risk properties will be higher than low-risk properties but they are capped based on property taxes (council band taxes). While this solution doesn’t apply perfectly to the NFIP, it is worth exploring the possibility of whether private insurers could agree (or be required) to fund the NFIP in order to preserve fair premiums and prevent cherry picking from already insolvent program.

Other models that have been suggested include Reinsurance and Capital Market diversification of risk (already underway as FEMA recently purchased \$1 billion in reinsurance under authority from Biggert-Waters) and a Lend a hand model” whereby the federal or individual state governments would provide vouchers or subsidies for high-risk communities with high premiums. Further investment in the Community Rating System would also be helpful for reducing risk and lowering premiums.

See also:

Government Accountability Office (GAO), “Flood Insurance – Strategies for Increasing Private Sector Involvement,” January 22, 2014.

<https://www.earthquakeauthority.com/who-we-are/cea-financial-strength>

Timothy Edmonds, *Household Flood Insurance*, House of Commons Briefing No. 06613, March 1, 2017

The potential for flood insurance privatization in the U.S. - Could carriers keep their heads above water? Deloitte Center for Financial Services, Lead author Aditya Udai Singh (2014).

ⁱⁱⁱ See U.S. Magistrate Judge’s November 17, 2014 order in *Ramey v. Wright National Flood Insurance* (Case No. 14 MC 41, U.S. District Court for the Eastern District of New York) finding evidence of widespread manipulation of engineering reports causing underpayments to Sandy victims. (<http://uphelp.org/sites/default/files/blog/Raimey-v-Wright-National-Flood-Insurance-Memorandum-and-Order.pdf>).

^{iv} A larger allowance for ICC would be helpful for elevation where the costs far exceed the \$30,000 currently offered. We also agree that the substantial damage requirement is too nebulous and policyholder experiences varied widely across jurisdictions. That is why ICC should be treated the same way code upgrade coverage is treated in a standard homeowners insurance policy.

The Standard Flood Insurance Policy (SFIP) currently states:

A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a “repetitive loss structure.” A repetitive loss structure is one that meets the following conditions:

- (a) The structure is covered by a contract of flood insurance issued under the NFIP.
- (b) The structure has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.
- (c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.
- (d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

Conversely, a standard homeowners (HO-3) policy^{iv} states

Ordinance or Law

a. You may use up to 10% of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- 1) The construction, demolition, re-modeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
- 2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or

b. You may use all or part of this ordinance or law coverage to pay for the Increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a. above.

Using the language above in the context of an NFIP policy, an insured would get \$25,000 if there were building code upgrades that are required to conduct the necessary repairs to the damaged property. There is no requirement that the home be a repetitive loss structure and nor a substantial damage requirement. Thus, at a minimum, the 50% damaged requirement should be removed from the SFIP.

^v We believe this issue can be solved in two ways. The first of which is to rewrite the exclusion. The SFIP currently contains the following exclusion:

V.(C) We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.A.1.c. and II.A.2.).

Flood, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:
 - a. Overflow of inland or tidal waters,
 - b. Unusual and rapid accumulation or runoff of surface waters from any source,
 - c. Mudflow.
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 in A.1.a. above.

This exclusion is problematic for a few reasons. First, it is vague. The language “Some examples of earth movement that we do not cover are:” suggest there may be other types of damage that may be considered earth movement. We suggest deleting that language, as to eliminate any ambiguity as to what is excluded and removing: “3. Land subsidence; 5. Destabilization or movement of land that results from accumulation of water in subsurface land area; and 6. Gradual erosion” from the exclusion. This is the language undoubtedly responsible for foundation damage claim denials. It is absurd to suggest that if water inundates the ground around a foundation and thus changes the foundation to crack or move, which causes damage to the house, it is not considered a flood, and thus excluded. But that is what is happening, as you know.

The second way to address this issue is to require the NFIP to follow a proximate cause test in determining the cause of the damage. For example, California has adopted a regulation that has helped many homeowners in situations where more than one cause contributes to a loss, some of which may

be covered, and some which may be excluded (e.g., pre-existing damage from gradual settling exacerbated by floodwater).

Cal. Ins. Code sec. 530 reads as follows:

An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

(*In Garvey v. State Farm* (1989) 48 Cal .3d 395, 401404 (fn. 1), the California Supreme Court held that "...whether a claim is covered or excluded under the terms of the policy turns not on whether the alleged cause of the loss was a concurrent cause of the damage, but whether it was the "efficient proximate cause" of the loss." See also: California Civil Jury Instruction 2306.)

This standard, in addition to modification of the earth movement exclusion would remove ambiguity and help clarify that foundation damage resulting from or exacerbated by floodwater is covered under the SFIP.

^{vi} See, e.g., *Van Holt v. Liberty Mutual Fire Insurance Co.*, 163 F.3d 161 (3d Cir.1998) (holding that FEMA enjoys immunity from state law and WYOs are the "functional equivalent of FEMA" in flood insurance cases); *3608 Sounds Ave. Condo. Association v. South Carolina Insurance Co.*, 58 F.Supp.2d 499, 502 (D.N.J. 1999) ([it is]...well established that plaintiffs who assert flood insurance claims cannot recover penalties and attorney's fees because federal law preempts state law [tort and breach of contract] claims).

Violation of the unfair claims regulations by adjusters are imputed to the insurer, but independent adjusters should also face personal liability. This is reasonable given that adjusting outfits and engineering firms carry professional liability insurance. In California, an insurance adjuster can be sued for negligent misrepresentation if they misrepresent that a loss is not covered by the policy. See *Bock v. Hansen*, No. A136567, 2014 WL (Cal. App. Apr. 2, 2014).

Assuming that immunity is removed from all actors, policyholders must be able collect fees and expenses incurred in appeals and litigation. In extraordinary cases of fraud and tortious breach of the covenant of good faith and fair dealing, punitive damages should be available. We realize the later is likely a political nonstarter.

We believe that the proposals contained in H.R. 1423 (Velazquez) strikes the right balance between deterring wrongful conduct and fiscal soundness.

H.R. 1423 (5)(b)(2) et seq, reads as follows:

If the claimant prevails in an action under this section, the court may award costs of litigation, including attorneys fee, litigation expenses, and engineering and other expert expenses, to the claimant. Any such award shall be paid by the Administrator and, upon such payment, the Administrator shall be subrogated to the rights of the claimant to recover such costs for which the Administrator has

compensated the claimant from any insurance company or other insurer or [a]djustment organization that may be responsible for the [claim disallowance].

AWARDS FOR COSTS IN ADMINISTRATIVE PROCEEDINGS - If the claimant prevails in any appeal to the Administrator of the disallowance of a claim for losses covered by flood insurance made available under this title, the Administrator shall award costs of the appeal, including attorneys fee, any proceeding expenses, and engineering and other expert expenses, to the claimant.

This language clearly states costs incurred by a policyholder to appeal or litigate their claim are to be compensated by FEMA if they prevail. This should serve the deterrent effect. On the other hand, FEMA then is assigned the rights to recoup litigation costs from the WYO, engineer, or adjuster responsible. This approach would help to ensure that policyholders are treated fairly, but also will not add to FEMA's deficit.

It is also important to note that independent adjusting outfits and engineering firms carry errors and omissions or professional liability insurance (see above). So in the case that an adjuster or engineer was sued by FEMA for underpayment/bad faith, there would be insurance available to defend and indemnify. In other words, it's akin to a double safeguard against further financial stress on the NFIP, should it bear litigation costs, which is sure to be an objection to removing immunity.

^{vii} See *Interplay Between the Extension of the Proof of Loss Deadline for NFIP-Insureds Damaged By Meteorological Event Sandy and the 1-Year Statute of Limitations in 42 U.S.C. § 4072 (VII,R, Suit Against Us)* FEMA Bulletin W-13069, November 21, 2013, James A. Sadler, CPCU, AIC, NFIP Director Claims <https://bsa.nfipstat.fema.gov/wyobull/2013/w-13069.pdf>.

^{viii} Training and continuing education requirements may help, but the most effective change will be implementing a set of clearly defined claims standards that all adjusters and WYOs must follow. Failure to do so results in a penalty and removal from the NFIP.

One substantive change to the flood insurance regulations would be to amend 42 U.S.C. § 4019 or otherwise grant authority to FEMA to adopt the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act (timelines for investigating, communicating information, and settling claims).^{viii} Bulletin W-15025 (June 1, 2015)^{viii} was a positive first step in recognizing that claims handling varied widely among WYOs, resulting in inconsistent claimant experiences.

The Unfair Claims Settlement Practices Act ("UCSPA"), in Section 4, defines, *inter alia*, the following as unfair claim practices:

- Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions with respect to claims arising under its policies;
- Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies
- Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies

-
- Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear
 - Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them
 - Refusing to pay claims without conducting a reasonable investigation
 - Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims...

As far as we are aware, there is no such analog in the regulations applicable to flood insurance claims. To further the point, some states, such as California, have healthy, robust insurance markets and have these consumer protections. California has gone a step further and adopted specific timeframes and further clarified the obligations of the insurer during the claim to give the regulations more teeth.^{viii} However, we believe that a simple set of claim standards will go a long way:

- WYOs and NFIP-direct must conduct a thorough, timely, and reasonable investigation of all claims
- WYOs and the NFIP/FEMA must equal consideration to the financial interests of the insured and their own financial interests
- WYOs and the NFIP/FEMA must timely respond to an insured's communications and keep the insured apprised of the claim status
- WYOs and NFIP Direct/FEMA must not attempt to effectuate a settlement that is unreasonably low given the scope of the damage

Penalty for overpayment but not underpayment breeds a culture of underpayment. We believe there should be penalties for both underpayment and overpayment

See also:

<http://www.naic.org/store/free/MDL-900.pdf> (adopted by a majority of states).

NFIP Claim Handling Reminder, Brad J. Keiserman: <http://bsa.nfipstat.fema.gov/wyobull/2015/w-15025.pdf> (The WYO Company must oversee claims handling to ensure that loss estimates meet NFIP industry standards and document the most accurate scope of damage. NFIP claims need to be adjusted properly. We expect adjusting software to be properly calibrated for the geographic area where the loss occurred, taking into account post-disaster pricing factors and property-specific issues—estimates should be priced with reasonable and customary costs for the loss and location. The claim file should document the most accurate scope of loss, provide notations for exceptional scope, quantity and quality, and the adjuster must take or obtain meaningful photographs of the loss. A default unit pricing provided by adjusting software is only an average price and not a price ceiling. NFIP certified adjusters have the professional duty to fully understand what may constitute price changes and must explain any

exceptional adjustments in the estimate and claim file. The adjustment should reflect the adjuster's professional judgment, and the adjuster's judgment should be expressed in writing and documented in the file).

Cal. Code Regs. Sec. 2695.7 reads in relevant part:

(b) Upon receiving proof of claim, every insurer, except as specified in subsection 2695.7(b)(4) below, **shall immediately, but in no event more than forty (40) calendar days later**, accept or deny the claim, in whole or in part. The amounts accepted or denied shall be clearly documented in the claim file unless the claim has been denied in its entirety. (emphasis added)

(1) Where an insurer denies or rejects a first party claim, in whole or in part, it shall do so in writing and shall provide to the claimant a statement listing all bases for such rejection or denial and the factual and legal bases for each reason given for such rejection or denial which is then within the insurer's knowledge. Where an insurer's denial of a first party claim, in whole or in part, is based on a specific statute, applicable law or policy provision, condition or exclusion, the written denial shall include reference thereto and provide an explanation of the application of the statute, applicable law or provision, condition or exclusion to the claim. Every insurer that denies or rejects a third party claim, in whole or in part, or disputes liability or damages shall do so in writing.

(2) Subject to the provisions of subsection 2695.7(k), nothing contained in subsection 2695.7(b)(1) shall require an insurer to disclose any information that could reasonably be expected to alert a claimant to the fact that the subject claim is being investigated as a suspected fraudulent claim.

(3) Written notification pursuant to this subsection shall include a statement that, if the claimant believes all or part of the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance, and shall include the address and telephone number of the unit of the Department which reviews claims practices.

(c)(1) If more time is required than is allotted in subsection 2695.7(b) to determine whether a claim should be accepted and/or denied in whole or in part, every insurer shall provide the claimant, within the time frame specified in subsection 2695.7(b), with written notice of the need for additional time. This written notice shall specify any additional information the insurer requires in order to make a determination and state any continuing reasons for the insurer's inability to make a determination. Thereafter, the written notice shall be provided **every thirty (30) calendar days** until a determination is made or notice of legal action is served. If the determination cannot be made until some future event occurs, then the insurer shall comply with this continuing notice requirement by advising the claimant of the situation and providing an estimate as to when the determination can be made. (emphasis added)

(d) Every insurer shall conduct and diligently pursue a thorough, fair and objective investigation and shall not persist in seeking information not reasonably required for or material to the resolution of a claim dispute.

(e) No insurer shall delay or deny settlement of a first party claim on the basis that responsibility for payment should be assumed by others, except as may otherwise be provided by policy provisions, statutes or regulations, including those pertaining to coordination of benefits.

(f) Except where a claim has been settled by payment, every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim. Such notice shall be given to the claimant not less **than sixty (60) days** prior to the expiration date; except, if notice of claim is first received by the insurer within that sixty days, then notice of the expiration date must be given to the claimant immediately... (emphasis added)

(g) No insurer shall attempt to settle a claim by making a settlement offer that is unreasonably low. The Commissioner shall consider any admissible evidence offered regarding the following factors in determining whether or not a settlement offer is unreasonably low:

(1) the extent to which the insurer considered evidence submitted by the claimant to support the value of the claim;

(2) the extent to which the insurer considered legal authority or evidence made known to it or reasonably available;

(3) the extent to which the insurer considered the advice of its claims adjuster as to the amount of damages; and

(5) the procedures used by the insurer in determining the dollar amount of property damage...

California has also mandated that insurers respond to communications from their insureds within specific timeframes. Section 2695.5. Duties upon Receipt of Communications reads in relevant part:

(b) Upon receiving any communication from a claimant, regarding a claim, that reasonably suggests that a response is expected, every licensee shall immediately, but in no event **more than fifteen (15) calendar days** after receipt of that communication, furnish the claimant with a complete response based on the facts as then known by the licensee. This subsection shall not apply to require communication with a claimant subsequent to receipt by the licensee of a notice of legal action by that claimant. (emphasis added)

(d) Upon receiving notice of claim, every licensee or claims agent shall immediately transmit notice of claim to the insurer.

(e) Upon receiving notice of claim, every insurer shall immediately, but in **no event more than fifteen (15) calendar days** later, do the following unless the notice of claim received is a notice of legal action: (emphasis added)

(1) acknowledge receipt of such notice to the claimant unless payment is made within that period of time. If the acknowledgment is not in writing, a notation of acknowledgment shall be made in the insurer's claim file and dated. Failure of an insurance agent or claims agent to promptly transmit notice of claim to the insurer shall be imputed to the insurer...

(2) provide to the claimant necessary forms, instructions, and reasonable assistance, including but not limited to, specifying the information the claimant must provide for proof of claim;

(3) begin any necessary investigation of the claim.

Washington State Supreme Court - Pattern Jury Instructions 320.02 - Insurer's Duty of Good Faith—
General Duty: An insurer has a duty to act in good faith. This duty requires an insurer to deal fairly with its insured. [The insurer must give equal consideration to its insured's interests and its own interests, and must not engage in any action that demonstrates a greater concern for its own financial interests than its insured's financial risk.] An insurer who does not deal fairly with its insured [, or who does not give equal consideration to its insured's interests,] fails to act in good faith. *See also Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809 (“...[t]he insurer, when determining whether to settle a claim, must give at least as much consideration to the welfare of its insured as it gives to its own interests.”) (citing *Comunale v. Traders & General Ins. Co.*, 1958) 50 Cal.2d 654.

^{ix} See Proper Invocation and Usage of the Appraisal Clause Provisions in the Standard Flood Insurance Policy, James A. Sadler, CPCU, AIC, Director of Claims, National Flood Insurance Program, May 15, 2013 (<https://bsa.nfipstat.fema.gov/wyobull/2013/w-13029.pdf>).

^x *See, e.g., Runaway Bay Condominium Association v. Philadelphia Indemnity Insurance Companies*, No. 16-9551, 2017 WL 1478114 (N.D. Ill. April 25, 2017) (holding causation, matching, physical damage, and overhead and profit are subject to appraisal); *See also Rooftop Roofing, Inc. v. Fire Insurance Exchange*, Case No. 11 -CV-668, Colorado District Court for Adams Count, November 16, 2011 (citing *Cigna Ins. Co. v. Didimoi Prop. Holdings, N.V.*, 110 F. Supp. 2d 259 (D. Del. 2000) (holding that in an insurance context an appraiser’s assessment of the “amount of loss” necessarily includes a determination of the cause of loss, as well as the amount it would cost to repair that which is lost)