



Roadmap to Recovery®
Advocacy and Action
Roadmap to Preparedness

May 31, 2024

Federal Emergency Management Agency
500 C Street South West
Washington, DC 20024

Via electronic submission to: www.regulations.gov

RE: Docket ID FEMA–2024–0004 – Proposed Rulemaking: National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form

United Policyholders¹ respectfully submits the following comments regarding the above-referenced proposed rulemaking.

Topic 1: Increased Cost of Compliance (ICC) Limit

Current limits for "ICC coverage provides up to \$30,000 of the cost to elevate, demolish, floodproof, or relocate an insured building or any combination thereof" (89 FR at 8286, Section III). Costs to elevate a home typically exceed \$30,000. This puts compliance out of financial reach for many homeowners. Yet we know that every \$1 spent on mitigation saves \$6 later. A higher ICC limit combined with post loss education will result in more participants elevating their homes and reduce future claim costs.

We propose the following changes: raise the limit to \$60k and reduce rates for those who elevate to above BFE or community program for new construction.

¹ United Policyholders ("UP") is a non-profit organization that has been informing, helping, and speaking for insurance consumers in the United States since 1991. UP is funded by donations and grants and its work is largely done by volunteers. Through its Roadmap to Preparedness and Roadmap to Recovery programs, UP helps Americans be personally responsible by reducing risk, buying insurance, and navigating the claim process successfully after a loss.

Topic 2: Restricted Drywall

In basements and all places relevant, the program currently allows drywall to be hung, but not taped; covering drywall "for walls and ceilings and the cost to nail it, unfinished and unfloated and not taped, to the framing" (89 FR at 8295, Section III.A.2.d). The coverage also allows for "nonflammable insulation" (89 FR at 8295, Section III.A.2.d).

The open cracks in untaped drywall provide pathways for rapid spreading of flames, smoke & heat during a fire. Fire Taped joints assist in the containment & slowing of the spread of a fire, allowing occupants more time to evacuate. By replacing finished drywall with untaped "hung only" drywall you make a home less safe.

The difference in cost between hung only & fire taped drywall is minimal and not worth the higher life safety risk. One example in Xactimate shows a \$0.45 cost difference (1.36 v 1.81/sf). We propose modifying the restriction from: "unfinished and unfloated and not taped" to "unfinished and fire taped only" (89 FR at 8295, Section III.A.2.d).

Topic 3: Advance

We strongly support advances of policy benefits to flood victims that help with immediate repairs to prevent further damage. The proposal is for "up to 5% of Coverage A" without the mortgagee on the check (89 FR at 8301, Section V.E.3). 5% of Coverage A is too low for many scenarios. If an insured post-flood requires a boiler, electric service and remediation just to stabilize the home to prevent further damages, an advance of \$12,500 (5% of \$250,000) will not cover those common needs. An insured with a small home with \$150,000 for Coverage A would only have up to \$7,500 available as an advance. We propose revising the advance proposal to either: A) 10% of Coverage A, or B) up to \$20,000.

Topic 4: POS Choice Architecture

The proposal includes an agent flow chart for helping homeowners select from available coverage and deductible options. The language for one of the section questions is worded in a manner likely to cause confusion and that does not line up with homeowners' expectations post-flood: "Agent: do you want to reduce your premium by agreeing to use the depreciated values for any flood-damaged property in the event of a loss?" (89 FR at 8289, Section IV). This language will lead homeowners to choose the "discount" without fully understanding the repercussions. Your average homeowner does not understand that agreeing to Actual Cash Value (ACV) coverage results in there being significantly less insurance dollars available to finance repairs and risk being shifted back on them. We understand this proposal is intended to give consumers a less expensive option, but we propose revising the language to the following: "Do you want the coverage to replace your damaged property, or a percentage less than the actual cost to replace?"

Topic 5: RCV Settlement

The program is offering a settlement option on a Replacement Cost Value (RCV) basis. According to FloodSmart for Agents², ACV is RCV at the time of the loss, accounting for any degradation in quality due to age or damage. According to The National Association of Insurance Commissioners (NAIC)³, RCV is the amount it would take to replace or rebuild your home or repair damages with materials of similar kind, quality, without deducting for depreciation. Proposed language suggests RCV payments to be: "lesser of (1) the coverage limit applicable to the loss as shown on the declarations page; (2) the replacement cost of the damaged part of the dwelling using materials of like kind and quality and for like use; **or (3) the amount necessary to repair or replace the damaged part of the dwelling for like use** (89 FR at 8305, Section VI.E.2).

² https://agents.floodsmart.gov/sites/default/files/fema_nfip-summary-coverage-brochure-12-2023.pdf

³ https://content.naic.org/sites/default/files/inline-files/committees_c_trans_read_wg_related_shopping_tool_spreads.pdf

The option (3), bolded, is a departure from the historic and internationally recognized definition of RCV, creating an option to abandon replacement cost for a lesser value as long as the part of the dwelling can be used for the same use. For example, a hardwood floor in a living room can be replaced with carpet as long as the room can still be used as a living room, under this proposed language. Is the intent of the homeowner policy to actually pay RCV, as understood and practiced by the property and casualty insurance industry?

We suggest removing option (3) from the definition of "Replacement Cost Value Settlement" (89 FR at 8305, Section VI.E.2).

Topic 6: Appraisal

We strongly support rules around Appraisals that make the process a cost-efficient, extra-judicial forum for resolving claim disputes. We concur that "appraisals can only be used when it would result in complete resolution of the entire claim and cannot be used to resolve only part of the claim or to determine the value of some items and not others" (89 FR at 8305, Section VI.F.3). Many disputes that are ripe for appraisal involve the extent of damage and/or the method of repairs.

Our concern over the proposed language is that it will disqualify too many scenarios from appraisal. For example, if an adjuster estimates damage and excludes a room, the damage to the room cannot be resolved in appraisal under this language. Another example being if an adjuster estimates the cost to sand and finish a wood floor, and the flooring company says the floor cannot be sanded and has to be replaced, only the cost to sand and finish can be appraised. The fast paced "running & gunning" of some NFIP CAT adjusters coupled with what sometimes appears as a quantity over quality environment, sometimes causes errors that create disagreements on damage that does not include coverage issues. Assuming that the adjuster's scope is 100% accurate is not feasible.

We suggest amending the restrictions to the appraisal process to the following: "Appraisal is available when the dispute involves the costs to be paid for covered damages to covered property. The full extent (scope) and cost of restoring damaged

property to its pre-loss condition is subject to appraisal, notwithstanding coverage disputes which are not subject to appraisal.”

Topic 7: Proof of Loss (POL) Dates

FEMA proposes to "extend the proof of loss deadline from" the current deadline of "60 days to 90 days (89 FR at 8285, Section II). Furthermore, proposed section VI.A.3f would require "that the homeowner policyholder provide a description of all damages to the dwelling and other covered buildings with detailed repair estimates" and "would help remind homeowner policyholders of the requirements to prepare their claim for Coverages A and B" (89 FR at 8303, Section IV.A.3.f). While the insurance policy would provide payment based on an adjuster's estimate, it is just that - an estimate. An occasion may arise where an estimate is insufficient to cover the cost of repairs that are within the policy's coverage that a contractor's quote would capture.

We propose extending the POL deadline to 90 days for localized, minimally-impacted flooding and at least 120 days for larger catastrophes. Extensions should be confirmed and publicized at least 20 days prior to the deadline.

Topic 8: POL Requirements

FEMA proposes to reinforce "requiring proof of repairs for prior losses to ensure coverage of damages occurring from the current loss[.]" in particular requiring "[e]vidence that prior flood damage has been repaired" (89 FR at 8299-8323, Section IV.C - VI.A.3.g(5)).

Depending on extent of damage, it is common for displaced homeowner to have difficulty accessing records and recreating destroyed records. If an item is in question, it is understandable to ask for specific info at a later date, but adding as a requirement to submit a compliant POL is an undue burden on the insured. If the insured had a prior flood loss, the records are stored at NFIP or the WYO. Insurance agents should have access to prior files to assist in verifying. For

example, you can many times tell from pre-loss photos if carpet was replaced, cabinetry, etc. to assist in the verification process if something is in question.

We propose removing g(5) from Section VI.A.3.g from the POL requirements (89 FR at 8322-23, Section VI.A.3.g(5)). It is understood in the industry that the carrier has the right to request this documentation if something is in question.

Topic 9: Basement definition

FEMA proposes a "further clarif[ied]" definition of basement as: "an area of a building" that "is below ground level when the land touching the exterior of the building is above its floor level. An area of a building is presumed to be below ground level when it is necessary to walk up steps or a slope to reach the land surrounding the building" (89 FR at 8291-92, Section II.C).

Neither the policy or a bulletin addresses the percentage and elevation is above or below grade. If 10% of all four sides are below grade then flood adjusters have called the entire area a basement. Appeals have not resolved these issues as they have been denied for consideration. The issue has met many challenges, including properties that have already been subject to litigation in federal court being reclassified by a new, inexperienced adjuster.

The definition in policy and manual is ambiguous. The ambiguity is misused in practice. Decisions are not addressed in appeals. The term basement to a lay person many times means something different than the FEMA definition.

Consider using different or expanded terminology and also identifying on declarations or at time of policy issuance if their basement or first level is restricted coverage. Also understanding the challenges facing property owners, generate a bulletin similar to W13025-A to clarify what FEMA intends a basement to be so insurance agents have a clear, unambiguous definition to follow.

Topic 10: Pool of experts

We recognize and appreciate that FEMA "consulted with property and casualty experts over time[.]" and "conducted interviews with flood insurance professionals in its loaned executive officer program in spring of 2017. We recognize and appreciate that FEMA procured insurance product expertise from Milliman, Stanley Parsons, and Hinshaw between 2017-2019, and engaged with and sought feedback from ten WYOs in the summer of 2019" (89 FR at 8287, Section IV, Footnote 26).

However, that identified pool of expertise excludes two key stakeholders: Property owners and claim professionals that don't work exclusively or even primarily for insurance companies. We propose the creation of a Roundtable that includes property owners and experienced claim professionals that serve policyholders.

Topic 11: Actual Claim practice

FEMA's proposed sub-definition for 'erosion' is substantively as currently provided, except that it specifies that the erosion must be *sudden*, making it clear that damage from gradual erosion may be excluded under the policy. (89 FR at 8291, Section II.B). Given that "NFIP flood insurance indemnifies property owners from flood losses" (89 FR at 8285, Section III), this definition change is certain to lead to unfairly denied claims and disputes.

While we commend FEMA for striving to set forth clear standards, we urge the agency to recognize that WYOs and Independent Adjusters may mis-apply this definition and create a bar for policyholders to recover for their losses (and be "indemnifie[d]") We urge FEMA to take a more active role in overseeing the claims handling by WYOs. They need to understand from the policyholder what burdens they are being told they need to meet, many times post submission. If FEMA is directing and in agreement with the necessary contractor breakdowns then they need to provide a form contract and estimate, along with enough qualified, licensed and insured builders to perform the work and present in the manner they are requiring.

We propose having routine follow-ups and audits of actual claim files, and interviewing policyholders who have been through the process in a major flooding event, including those whose covered losses did NOT exceed policy limits under an XM8 estimating platform.

Topic 12: Costs

The current trend of home insurance rates increasing across the country, combined with the impact of Risk Rating 2.0, is reducing the number of US homes that are insured against the peril of flood. We need to reverse that trend.

We recognize that "In general, the NFIP charges premium rates sufficient to cover the expected claims payouts and operating expenses. Such premium rates are commonly referred to as risk-based" (89 FR at 8286, Section III). It is imperative that additional care go into educating property owners and requiring accurate communication by agents that clearly explains in simple terms the correlation between reducing benefits and reducing premiums. Not explaining the correlation makes it appear to be a benefit and not necessarily a reduction. Ensure options that result in reduction of coverage are very clearly explained with real life examples. Checkboxes on an application are not sufficient. An example being if you have a covered flood loss and your 10-year-old carpet is ruined and it costs \$10,000 to replace, you will receive only \$5,000. Consumers need plain language explanations of the trade-offs they make when they agree to ACV or other categories of reduced coverage.

Topic 13: Engineering

FEMA proposes to "provide further specificity that the earth movement coverage exclusion does not include hydrostatic pressures or hydrodynamic forces, buoyancy, and frictional force from floodwater moving along the surface of the ground. These terms are subsumed in the statutory definition of a 'flood'. These terms appear in the engineering reports included in claims files. The ability to line up an engineering report with the policy language should help provide policyholders with additional clarity regarding what is and is not excluded" (89 FR at 8299, Section IV.A.3.b).

Issues regarding engineers and engineering reports have plagued the program. Engineers have stated that reports are written to specific language or coverage excluded in the NFIP. Generating language thresholds for bad actors to meet as a criteria for the denial of coverage is bad public policy. This matter or coverage can be addressed by allowing engineers, a freehand to report conditions, with a NFIP request to identify what damages are resulting from hydrodynamic or hydrostatic pressures from flood. The ability to remove bad acting engineers and engineering firms, that abuse, and their sovereign immunity protection from the NFIP would also help this matter.

Ridding bad engineers and engineering firms from the program would aid in public trust and reliance on the federal government program. Excluding key word phrases from policy language will allow reputable engineers to report their observations and measurements accurately and honestly.

We propose to empower the NFIP to dictate to and remove bad acting vendors from the WYO's vendor list.

Topic 14: Appeals

Proposed Section VII.L.2, "Appeal", would provide that "if the insurer denies a claim, in whole or in part, the insurer would send the homeowner policyholder a denial letter" (89 FR at 8307, Section VII.L.2). "If the homeowner policyholder wishes to appeal the denial, he or she must send an appeal letter explaining his or her position and a copy of the denial letter to FEMA within 60 calendar days of the date of the insurer's letter" (89 FR at 8307, Section VII.L.2).

The appeal process is currently misused by WYOs. The actual process is not consistent with how FEMA and leadership define the process.

We propose empowering an independent appeal panel to give consideration where an insured has reasons why they did not make a timely appeal.

Topic 15: Manual for Clarification

The June 2023 NFIP Claims Manual for flood claims is considered a supplement to the respective flood forms noted on the policies. WYOs and NFIP direct participants do not always follow the intent of the manual. They often interpret any ambiguities against coverage, which defeats the purpose of the program.

When addressing new changes and items, there needs to be specific direction in the manual on handling to avoid continued WYO "misunderstanding" inconsistencies. We propose providing clear definition and instruction in the manual for any new items, as well as review of current ambiguous items with FEMA and not the WYOs.

Topic 16: Insured

The proposed definition of "'Insured(s)'" would include the homeowner policyholder and (1) any additional persons identified on the declarations page; (2) any mortgagee or loss payee named in the application for insurance, as well as any other mortgagee or loss payee determined to exist at the time of loss; and (3) the homeowner policyholder's spouse, if a resident of the same household. This definition is substantively the same as the definition of 'you' from the Dwelling Form in II.A, but includes the homeowner policyholder's spouse here, to simplify and consolidate in one place the concept of who has an interest under the policy" (89 FR at 8292, Section II.D).

FEMA proposes to offer homeowner policyholders the option of purchasing additional coverage to receive compensation in the event they are displaced from their insured property due to flood while their home is undergoing repair.

That family (non-spouse) permanently residing in the residence would be excluded from their legal insurable interests and personal property being covered. In many cases named insured, family members have financial interest in the property either by loan or partial ownership. They are insureds as defined by other policies.

As in claims, a non-named insured would have to identify their insurable interest, which should not be different with the NFIP. By the definition above resident grandparents or extended family members would not be insureds. We propose revising subsection (3) to: "and (3) the homeowner policyholder's spouse and resident family, if residents of the same household," or if legal residents of the same household (89 FR at 8292, Section II.D).

Topic 17: Testing

FEMA proposed "[l]imitations on mold and mildew" with revisions aimed "to restate coverage in positive rather than negative terms, simplifying the explanation that the policy covers damage to the dwelling due to mold and mildew caused by a flood only when it is outside of the policyholder's control... to inspect and maintain the property after a flood recedes, as well as pollutant testing and monitoring after a flood when required by law or ordinance" (89 FR at 9295, Section III.A.3.b)

Proper mold remediation requires exit testing after a home was remediated to confirm that it is mold free. The concern is that a flood adjuster will not allow for testing for mold clearance misinterpretation of the pollutant testing restriction. The restriction states that they will only test if required by law or ordinance.

We propose adding clarification that both the testing for the presence of, and the absence of mold pre-and-post-mitigation, respectively, are covered. This can be done through the NFIP Claims Manual also. Further, adding language in the policy, stating the mold coverage includes testing related to mold, or address in the manual would address this concern, as well.

Topic 18: Debris not covered

"Proposed section III.D.1.b, 'Debris not covered' would provide that the policy does not cover debris from other locations on the land surrounding the dwelling or other insured buildings or any non-covered items of property from the dwelling or buildings, even if the removal facilitates covered cleanup or repairs. FEMA proposes this clarifying language to ensure that homeowner policyholders appropriately insure their property and to avoid duplication of benefits to both

owners of debris and the homeowner policyholder upon whose land the debris resides" (89 FR at 8298, Section III.D.1.b).

The effort to avoid the duplication of benefits is resulting in stalemates where neither an Insured nor the property owner whose property became debris on their property being covered for clean up.

1. An insured is not going to claim, and a WYO adjuster is not going to pay for debris removal away from the insured's property. 2. Paying to remove debris that was originally someone else's covered property from a property should be covered as part of its clean up. 3. There would not be a duplication of benefits, and in most cases, the clean-up is required to perform repairs in a safe manner.

We propose modifying the policy language to afford coverage to clean up flood damage on the Insured Property, especially when it is necessary to facilitate repairs.

Thank you for the opportunity to provide the above comments.

Sincerely,



Amy Bach
Executive Director