CALENDAR YEAR **2018**

The Annual Report of the Flood Insurance Advocate

OFFICE OF THE FLOOD INSURANCE ADVOCATE

The *Annual Report* of the Flood Insurance *Advocate*

Table of Contents

The OFIA reduces complexity through compassion and fairness.

Message from the Advocate David Stearrett

This is the fourth Annual Report the Office of the Flood Insurance Advocate (OFIA) has presented to the Administrator of the Federal Emergency Management Agency (FEMA).

As the National Flood Insurance Program (NFIP) reached its 50-year anniversary, FEMA continued its mission to help people before, during, and after disasters. Strategic goals were set to build a culture of preparedness, ready the nation for catastrophic disaster, and reduce the complexity of the NFIP. FEMA through its component, the Federal Insurance and Mitigation Administration (FIMA), set “moonshots” to help achieve these strategic goals by doubling the number of structures covered by flood insurance and increasing investment in mitigation by 2022. The growth of the private flood insurance market also furthers the strategic goal of doubling flood insurance coverage.

As these efforts are underway, the OFIA continues to advocate for the fair treatment of property owners and policyholders under the NFIP. Policyholders have contacted the OFIA to express frustration with the affordability of flood insurance premiums and the complexity of the program. Through casework, the OFIA identifies trends and makes recommendations to program leadership to continue to improve the NFIP customer experience by reducing program complexity and lessening disaster survivor suffering. My office is in the process of transitioning our Customer Relations Management (CRM) tool into the FIMA-wide CRM tool to improve integration and collaboration with FIMA program offices. Lastly, we are building partnerships with advocacy groups and volunteer organizations to conduct outreach and offer casework support resources that extend to underserved populations. All of these activities support the larger effort to transform the NFIP into a world-class operation.

UPDATE ON THE OFIA

Although the number of cases the OFIA has received remains steady over last year’s total, it is noteworthy that my office has received a variety of cases related to policyholders needing assistance navigating the claims process. This finding was expected following the heavy storm activity in 2017. We have also found that the program office has made progress on certain issues and trends identified in earlier annual reports with the implementation of OFIA annual report recommendations. I am pleased to report that 45 percent of the recommendations made in the 2015 and 2016 annual reports have been fully implemented by the FIMA program offices. Further, these program offices have taken action to address and make progress on all issues identified in the reports. You can find details of their progress in the new *OFIA Recommendation Progress Report,* which is available online on our webpage at www.fema.gov/flood-insurance-advocate. I am personally looking forward to seeing the positive impact these improvements will continue to have for customers.

From the casework this year, my office identified four issues warranting a more systemic solution to further ensure fair outcomes for policyholders. These issues are identified in the Trends, Issues, and Recommendations section and discussed in more detail in the following subsections.

I’d like to thank FEMA and FIMA leadership for their continued support as the OFIA works to address customer concerns. In addition, thank you to my staff and employees across FIMA who continue to work diligently to advocate on behalf of policyholders and property owners. I submit to the FEMA Administrator this calendar year *2018 Annual Report of the Flood Insurance Advocate.*

The OFIA advocates for the fair treatment of policyholders and property owners by providing education and guidance on all aspects of the NFIP.

Executive Summary

The Office of the Flood Insurance Advocate (OFIA) advocates for the fair treatment of policyholders and property owners by providing education and guidance on all aspects of the National Flood Insurance Program (NFIP), identifying trends affecting the public, and making recommendations for program improvements to the Federal Emergency Management Agency (FEMA) through its component, the Federal Insurance and Mitigation Administration (FIMA).

This report details four areas of customer frustration related to the NFIP.

The OFIA identified these issues while assisting customers with their questions and concerns, a primary activity for the OFIA stemming from its mandate outlined in Section 24 of the *Homeowner Flood Insurance Affordability Act of 2014*. In this report, the OFIA aims to highlight issues impacting the NFIP and to make recommendations to FEMA that will have the greatest positive impact for NFIP customers. It is important to note that the trends reflected in the issues below do not represent all cases the OFIA has received in 2018. In many instances, the OFIA finds the answers given to customers, prior to reaching us, to be accurate and appropriate, based on the current NFIP rules and procedures.

The four issues presented in this report are as follows:

- **Confusion Regarding Premium Increases:** Some policyholders are confused about why their premiums change from one policy year to the next, particularly when the change results in significant premium increases. It appears to the policyholder that they are being charged premiums that exceed the maximum amount chargeable under the law.
- **Confusion Regarding Condominium Coverage:** Policyholders express frustration when they discover that the coverage they purchased for their condominium unit does not provide the coverage they expected.
- **Claim Impacts When Assuming a Non-Primary Residence:** Policyholders are also frustrated when they discover, at the time of a flood loss, that their coverage limits were reduced due to a failure to submit a form. Failure to submit a form verifying their dwelling as their primary residence can result in a lower amount of coverage purchased and a lower amount of claim payment.
- **Lack of Refunds for Prior Policy Terms After a Letter of Map Amendment (LOMA) Is Issued:** Policyholders grow frustrated after obtaining a LOMA revealing that they paid higher flood insurance premiums than they believe they should have for the actual flood risk. These policyholders perceive it as unfair when they cannot get refunds for prior policy year payments because an earlier flood map inadvertently included their building in the Special Flood Hazard Area (SFHA).

Congress created the OFIA to advocate for the fair treatment of policyholders and property owners under the NFIP in the mapping of flood hazards, identification of risks from flood, and implementation of measures to minimize the risk of flood. First and foremost, the OFIA interprets advocating for the fair treatment of policyholders to mean reducing confusion and frustration by policyholders and property owners under the NFIP. The OFIA seeks to accomplish this objective by accurately educating policyholders regarding individual flood risks and flood mitigation. The ultimate goal is to reduce risks to life and property resulting from floods, and advocate for the lowest insurance price available under the statute.

The OFIA will continue to work on the NFIP issues identified above, and the OFIA recommendations, by engaging with FIMA program offices to identify, discuss, and understand opportunities that exist to address these issues for policyholders and property owners.

PROGRAM PROGRESS

In our previous annual reports for 2015 and 2016, the OFIA identified issues and made recommendations to the FIMA program offices to help alleviate frustration and confusion for NFIP customers. We have seen FIMA make substantial progress by completing implementation of OFIA recommendations and resolving systemic issues impacting policyholders and property owners. These actions have resulted in the following:

- Increases in the amount of premium refunds
- Increase in the availability of lower premiums
- Increase in the number of educated customers
- Increase of awareness to NFIP resources to maximize premium savings

FIMA has made significant progress resolving issues identified in the *OFIA 2017 Annual Report.* The following NFIP changes are intended to reduce customer frustration and NFIP complexity:

- Policyholders will receive notification detailing eligibility for low-cost premium options after a map change, such as the Preferred Risk Policy (PRP) and the Newly Mapped (NM) rating procedure.
- Property owners will remain eligible for premium discounts using the NM rating procedure for an additional year after a map change when notified by their lender they must purchase flood insurance.

For more details of the progress made on all issues identified in the annual reports, please see the *OFIA Progress Report* posted online at www.fema.gov/flood-insurance-advocate.

change from one policy year to the next.

Trends, Issues, and Recommendations

CONFUSION REGARDING PREMIUM INCREASES

Some policyholders are confused about why their premiums change from one policy year to the next, particularly when the change results in a significant premium increase that appears to exceed the maximum premium increase chargeable under the law.

BACKGROUND

The two most common cases of premium increases that generate confusion are when a policy receiving discounted rates covers a building that is newly designated as a Severe Repetitive Loss property or the property is no longer eligible for the lower-cost Preferred Risk Policy (PRP) due to the loss history.

The *Homeowner Flood Insurance Affordability Act of 2014,* with limited exceptions, prohibits most premium increases from year-to-year that exceed 18 percent per policy, or 25 percent for certain discounted properties, including the SRL properties.

However, the law contains an exception to this cap for correcting a misrating.

The NFIP considers each property's loss history at every policy renewal to determine SRL status and PRP eligibility. When a building incurs a loss during a policy term, which, combined with previous losses, results in the building becoming an SRL property or losing PRP eligibility at the next policy renewal. The program considers the policy misrated for a subsequent renewal. The result can be an increase in premiums greater than 25 percent at renewal. For example, premium increases may be greater than 100 percent in the first year following the most recent loss.

RECOMMENDATION(S)

The OFIA recommends the Federal Insurance Directorate (FID) consider the following actions to alleviate the issue described above:

1. Modify the description of a misrating contained in the *NFIP Flood Insurance Manual* to exclude losses incurred after the initial flood insurance application.
2. Develop a mechanism to transition a property from one rate class to another while remaining within the maximum amount of premium chargeable under the law.

PROGRAM RESPONSE

1. FID understands the challenge that loss history may have on the premium for policyholders. FID will review existing administrative guidance to determine if there is a solution that will reduce the impact that loss activity may have on subsequent substantial premium increases.
2. When a property changes from rate class to another, FID considers that a misrating, so no statutory caps apply. FID will not pursue this recommendation at this time. However, as FID transforms the NFIP, transition from on rate class to another will be taken into consideration.

Policyholders are frustrated when they discover the coverage they purchased for their condominium unit does not provide the coverage that they expected.

CONFUSION REGARDING CONDOMINIUM COVERAGE

Policyholders are frustrated when they discover the coverage they purchased for their condominium unit does not provide the coverage that they expected.

BACKGROUND

The NFIP provides coverage for a residential condominium building that may be insured under the *Residential Condominium Building Association Policy (RCBAP).* The RCBAP provides coverage to the entire condominium building and all the units within the building and the improvements within those units. The condominium association may purchase flood insurance for the entire building in an amount up to 100 percent of the full Replacement Cost Value (RCV) or the maximum amount of insurance available under the NFIP, whichever is less.

Unit owners may also insure their personal contents under the *Dwelling Form* policy and may purchase building coverage if the building is not adequately insured under the RCBAP.

When an association insures the condominium building at a value less than the RCV or the maximum available, condominium unit owners may be required, by their lender, to purchase a supplemental *Dwelling Form* policy for their portion of the underinsurance. When there is an RCBAP, some unit owners are unaware their unit already has coverage, and purchase coverage that is duplicative or will not pay until the RCBAP coverage limits have been reached. The fact sheet on *NFIP Condominium Coverage* does not directly address these aspects of how the RCBAP and *Dwelling Form* policies for unit owners interact at the time of loss.

RECOMMENDATION(S)

The OFIA recommends that FID consider the following actions to alleviate the issue described above:

1. Update or create new educational material that includes information about how the RCBAP and *Dwelling Form* policy interact at the time of loss.
2. Develop a procedure to identify condominium unit owners with *Dwelling Form* policies within a building covered by an RCBAP and ensure they receive the new or updated materials.
3. Develop a disclosure form to be signed by the owners of condominium units at the time of application for flood coverage and make it available to insurance agents.
4. Price *Dwelling Form* policies that are covering a unit that is already covered by an RCBAP differently than a unit that is in a building not covered by an RCBAP.

PROGRAM RESPONSE:

1. FID agrees that policyholders for condo units should have an understanding of how their unit interacts with any coverage the condo association may have. FID will review existing guidance and publications to identify opportunities to clearly communicate how NFIP condo unit owner policies interact with NFIP RCBAP policies.
2. It would be a major challenge to develop a procedure to cross reference unit policies with RCBAPs. NFIP policies can be written by multiple Write Your Own insurer companies or producers. In addition, there are inconsistencies in property address reporting that make tracking potential duplicate policies in the same building difficult.
3. FID offers a wide variety of NFIP condominium coverage training to insurance agents. FID will explore the development of a disclosure form that will be available to agents and incorporated into existing training.
4. FID will explore the possibility of different pricing and will determine the need based on the number of policies in this particular risk group. The difficulty in cross referencing unit policies with RCBAP policies would make this recommendation, most likely, unattainable.

FEMA considers a dwelling a "primary residence" when it will be lived in by the policyholder or his or her spouse for more than 50 percent of the current policy year.

CLAIM IMPACTS WHEN ASSUMING A NON-PRIMARY RESIDENCE

Policyholders are frustrated when they discover, at the time of a flood loss, that their coverage or loss payments were reduced due to a failure to submit a form that verified their dwelling as their primary residence. This is especially true for policyholders with a Preferred Risk Policy (PRP), as nearly half of their premium remitted is needed to satisfy the cost of the non-primary residence surcharge before any remaining funds may be used to purchase coverage.

BACKGROUND

The *Homeowner Flood Insurance Affordability Act of 2014* imposed a surcharge on all flood insurance policies. A policyholder purchasing flood insurance coverage for a primary residence pays an annual surcharge of $25, whereas all other policyholders pay a $250 surcharge per year.

FEMA considers a dwelling a "primary residence" when it will be lived in by the policyholder or his or her spouse for more than 50 percent of the current policy year. Such dwellings are considered a primary residence if the affected policyholder does not lease his or her residence to another, or use it as a rental or income property at any time during the policy term. All applications for new flood insurance policies must include current documentation verifying the dwelling to be covered is a primary residence.

At the time the HFIAA surcharge was first implemented, the insurer requested primary residence verification from all policyholders with policies covering residential buildings. When a policyholder did not respond, the insurer defaulted the designation to a non-primary residence. This resulted in $225 of the submitted premium being applied to the surcharge. Therefore, less premium was applied for the purchase of coverage and the policies were issued with lower amounts of coverage than originally requested. At the time of loss, the insurer has been discovering that the default was in error and many of these policies cover primary residences.

RECOMMENDATION(S)

The OFIA recommends that FID consider the following actions to alleviate the issue described above:

1. Instruct NFIP insurers that, at the time of application, residency status must be correct and not assumed either primary or non-primary.
2. Instruct NFIP insurers to identify and review policies initially quoted and paid for by policyholders as if they were for a primary residence, but issued as if they were for a non-primary residence on or after April 1, 2015, particularly PRPs.
3. Instruct NFIP insurers to validate the residency status of each dwelling at the time of loss. If the status is incorrect, the claim should be adjusted based on the amount of coverage originally requested before the coverage limits were reduced by the policyholder's underpayment of premium. The claim should not be delayed while the policy is being corrected.

PROGRAM RESPONSE:

1. FID requires on all new business that the residency status be verified and provides guidance to NFIP insurers in the NFIP Flood Insurance Manual.
2. The verification and collection of Primary Residence information can vary from insurer to insurer to align with their business processes. FID will engage industry partners to determine if any updates or action is needed regarding Primary Residence verification for existing flood business.
3. FID will communicate to NFIP insurers that they should review the adjuster's report to confirm the non-primary residency status, including identifying if a discrepancy exists. FID will be updating their agent training requesting agents engage policyholders annually to verify if there have been any changes to their residency status or to their building.

Following the revision of a flood map, property owners may request an official LOMA "removal" determination from FEMA.

LACK OF REFUNDS FOR PRIOR POLICY TERMS AFTER A LOMA IS ISSUED

Policyholders grow frustrated after learning they paid higher flood insurance premiums than FEMA would have charged for the actual flood risk shown on a Letter of Map Amendment (LOMA) issued specifically for their property. They perceive it as unfair when they cannot get refunds for the prior policy years when an earlier flood map placed their building in the Special Flood Hazard Area (SFHA).

BACKGROUND

Following the revision of a flood map, property owners may request an official LOMA "removal" determination from FEMA. A LOMA is issued after a technical review confirms that a building has been inadvertently mapped into an SFHA on the current, effective flood map.

When the insurer receives the LOMA and revises the flood zone designation, the change to the policy is effective the date the LOMA was issued, even when the LOMA revises a flood map that became effective in prior policy years. The premium refund is for the current policy year only. The difference between the current versus multi-year refund for misrating can be thousands of dollars.

RECOMMENDATION(S)

The OFIA recommends FIMA consider the following actions to alleviate the issue described above:

1. The Federal Insurance Directorate (FID) allow rating endorsements for LOMA removals back to the date of the effective flood map or up to five years, whichever is later.
2. The FID revise the *NFIP Flood Insurance Manual* to reflect the updated procedure.
3. The Risk Management Directorate update all LOMA outreach materials to educate policyholders on the allowance of premium refunds for prior policy terms.

PROGRAM RESPONSE:

1. The premium refund may be the difference in premium for the rating adjustment for the current policy term in which the LOMA became effective. For LOMAs issued in earlier policy terms, the rating adjustment will be the difference in premium for the rating adjustment for up to five policy terms. The premium refund for the cancellation of a policy, upon the issuance of a LOMA, is the current and potentially one additional prior term. FID will not be expanding the premium refunds for LOMAs. The Flood Insurance Rate Map (FIRM) that was revised showing the property was in the SFHA was done so using the best available data. As such, new information presented to FEMA qualifying a property to be mapped outside of the SFHA by issuance of a LOMA does not qualify a policyholder for additional premium refunds dating back to when the FIRM was changed.
2. The guidance contained in the NFIP Flood Insurance Manual is accurate and reflective of the rules for premium refunds following the issuance of a LOMA.
3. The Risk Management Directorate will work to make any necessary changes to outreach materials and messaging related to the LOMA process following the completion of any FID change(s) to post-LOMA refund policies that may occur as a result of the OFIA recommendation.

As the Office of the Flood Insurance Advocate (OFIA) moves into 2019, potential trends and issues are beginning to emerge.

Moving Forward

As the Office of the Flood Insurance Advocate (OFIA) moves into 2019, potential trends and issues are beginning to emerge. To deliver on its statutory mandate to advocate for the fair treatment of policyholder and property owners under the [National Flood Insurance Program (NFIP)](), the OFIA has already identified three possible issues that require further analysis.

The issues identified so far are described below.

GROUP FLOOD INSURANCE POLICIES (GFIPs)

Following a Presidentially-declared disaster, some recipients of FEMA federal disaster assistance with property located in a high-risk flood area may qualify for a GFIP. The GFIP is paid for out of the Individual Assistance grant for a term of up to three years and provides a limited amount of insurance coverage for both building and contents ($34,000). The GFIP begins 60 days after the disaster declaration and ends three years later. Individual coverage on the GFIP begins 30 days after the time of application, which is often more than 60 days after the disaster declaration. Disaster recipients don't receive coverage until sometime after they applied for assistance. Policyholders are confused when less than three years later their GFIP expires and they were not provided a full three years of coverage.

POLICY LAPSE AND LOSS OF DISCOUNTED PREMIUM

The NFIP provides discounted premiums to certain policyholders. Examples include policyholders with buildings that were constructed prior to the development of the initial effective flood map in a community and policyholders who have remained loyal customers of the NFIP and maintained continuous coverage. Many policyholders are subject to the mandatory purchase of flood insurance and their lender is responsible for paying their premiums. When the lender fails to pay, the policy lapses and these policyholders lose their discounted premium. Policyholders are frustrated that, through no fault of their own, they are now charged much higher premiums and must maintain flood insurance on their property.

THE FEMA APPEALS PROCESS

Policyholders who have their claims denied in whole or in part by their NFIP insurer may file an appeal to FEMA. Federal regulations require a policyholder to file a timely appeal—within 60 days of the date of their receipt of the denial letter—or their appeal will not be reviewed. Federal regulations also require FEMA to: acknowledge receipt of these policyholders' appeal, designate a FEMA point of contact to provide status updates, and render a decision 90 days from the date all the documentation is received.

Policyholders have contacted the OFIA frustrated by the length of time that FEMA may require to render an appeal decision on their claim. These policyholders also have expressed being unable to get a status or estimate from FEMA of the timeframe to resolve the appeal. This delay has caused uncertainty to some policyholders who are approaching their one-year deadline to file a lawsuit against their NFIP insurer. The appeals process does not extend this deadline and policyholders have to decide whether to file or wait for an appeal decision.


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Customers who remain frustrated and confused, even after using existing NFIP resources, may request assistance with an unresolved issue from the OFIA via its website at: www.fema.gov/flood-insurance-advocate

FEMA

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