



FEMA



ANNUAL REPORT OF THE FLOOD INSURANCE ADVOCATE

Calendar Year 2019

Office of the Flood Insurance Advocate

CONTENTS

MESSAGE FROM THE ADVOCATE	2
.....	
UPDATE ON THE OFIA	3
.....	
EXECUTIVE SUMMARY	4
.....	
PROGRAM PROGRESS	5
.....	
TRENDS, ISSUES, AND RECOMMENDATIONS	6
.....	
IMPROPER APPLICATION OF ELEVATION RATING USING AN ELEVATION CERTIFICATE (EC)	6
.....	
LOSS OF RATING DISCOUNTS FOLLOWING A LAPSE IN COVERAGE	8
.....	
CONFUSION REGARDING GROUP FLOOD INSURANCE	10
.....	
LIMITED REFUNDS AFTER RECEIVING A LETTER OF MAP AMENDMENT, OUT AS SHOWN	12
.....	
DENIAL OF INCREASED COST OF COMPLIANCE (ICC) FUNDS WHEN PERMITS ARE ISSUED BEFORE SUBSTANTIAL DAMAGE LETTERS	14
.....	
MOVING FORWARD	16
.....	



A MESSAGE FROM THE ADVOCATE

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

This year began with challenges for the 51-year-old National Flood Insurance Program (NFIP) due to a government-wide funding hiatus in January, and several short-term legislative reauthorizations of the NFIP. As the year ends, the program is still undergoing a series of short-term reauthorizations.

FEMA's strategic goals established in 2018 remain in place to build a culture of preparedness, ready the nation for catastrophic disaster, and reduce the complexity of FEMA programs, particularly the NFIP. FEMA's component, the Federal Insurance and Mitigation Administration (FIMA), remains committed to "moonshot" targets set to achieve these goals by doubling the number of structures covered by flood insurance and increasing investment in mitigation four-fold by 2023. The growth in the private flood insurance market furthers the target of doubling flood insurance coverage.

FIMA has also begun the process of modernizing its rate modeling system, which has not significantly changed in 51 years. The OFIA is supportive of this effort to reduce complexity and eliminate rating inequities that have adversely impacted owners of low-value property, who pay disproportionately high rates compared to owners of higher-value property.

My office continues to enhance the capabilities of our Customer Relationship Management (CRM) tool and is assisting FIMA with implementing an enterprise-wide CRM solution. We also continue to build partnerships with advocacy groups and volunteer organizations in order to conduct outreach and offer casework support for socially vulnerable populations. These populations face challenges in flood insurance affordability, find the flood recovery process daunting and confusing, and often lack resources to invest in flood hazard mitigation.

UPDATE ON THE OFIA

The number of cases the OFIA received in 2019 increased slightly from 481 last year to 497 this year (as of November 1, 2019). The OFIA is adequately staffed to handle current caseloads. Roughly 59 percent of casework is related to underwriting questions associated with quoting and issuing new business applications, coverage or rate changes, renewals or cancellations. Roughly 24 percent of casework is related to flood insurance claims. About 17 percent of casework is related solely to flood hazard mapping. Less than one percent of this year's casework is related to flood mitigation through floodplain management ordinance and grants implementation.

Last year, we identified four issues requiring a systemic solution. This year, we have identified five issues, including a renewed recommendation to modify existing Letters of Map Amendment refund rules. We also released our first Progress Report on action taken by FIMA Program Areas to address the issues identified in our 2015 and 2016 Annual Reports. Of note, the FIMA program offices have made progress on 100% of the OFIA's 2015 and 2016 recommendations and completed implementation of 45% of the recommendations.

I'd like to thank FEMA and FIMA leadership for their ongoing support as the OFIA continues to advocate with fairness and compassion to make the NFIP less complex. I also thank my staff, as well as employees across FIMA, who work diligently to treat policyholders with compassion and respect. I submit to the FEMA Administrator and the FIMA Deputy Associate Administrator the 2019 Annual Report of the Flood Insurance Advocate.

Sincerely,



David Starrett
Flood Insurance Advocate



Executive Summary

The Office of the Flood Insurance Advocate (OFIA) seeks to reduce the complexity of the National Flood Insurance Program (NFIP) with compassion and fairness.

This report details five areas of customer frustration related to the NFIP that warrant a systemic solution. These trends do not reflect all cases received in 2019, and in many cases, the OFIA affirms that responses provided to customers by FIMA's program areas are fair and correct based on the rules of the NFIP.

The OFIA identified the issues below while assisting customers with their questions and concerns, a primary activity mandated in Section 24 of the Homeowner Flood Insurance Affordability Act of 2014.

The five issues presented in this report are as follows:

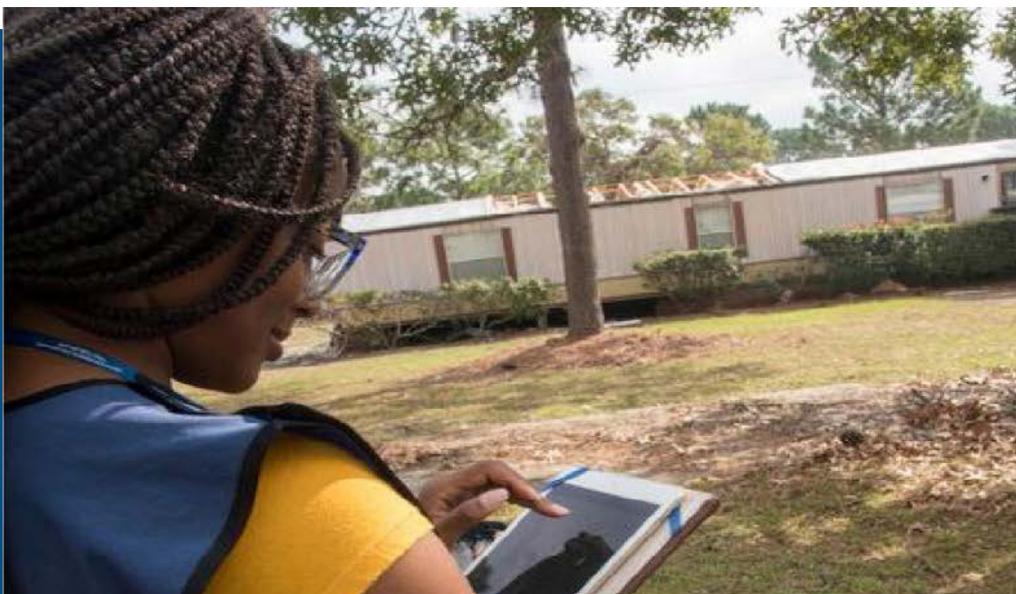
- **Improper Application of Elevation Rating Using an Elevation Certificate (EC):** Policyholders feel they have been treated unfairly when an EC was submitted to an insurer, and that EC was applied much later to rate the policy, resulting in the overpayment of premiums for several years.
- **Loss of Rating Discounts Following a Lapse in Coverage:** Policyholders are frustrated when a third party, such as a lender, causes a lapse in coverage by not paying the flood insurance premium on time, resulting in the loss of rating discounts.
- **Confusion Regarding Group Flood Insurance Coverage:** Property owners who are issued coverage under the Group Flood Insurance Policy (GFIP) are frustrated when they experience a subsequent flood within the three-year policy term that is not covered.
- **Limited Refunds After Receiving a Letter of Map Amendment, Out as Shown:** Policyholders find it unfair when there are no refunds for terms prior to the effective date of a Letter of Map Amendment (LOMA) that shows their property is "Out as Shown" (OAS).
- **Denial of Increased Cost of Compliance (ICC) Funds When Permits are Issued before Substantial Damage Letters:** Policyholders are frustrated when they are denied ICC claims because the community made a substantial damage declaration after a permit requiring flood mitigation was already issued.

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. The OFIA interprets advocating for the fair treatment of policyholders to mean reducing confusion and frustration for NFIP customers. The OFIA seeks to accomplish this objective by accurately educating policyholders regarding all aspects of the NFIP, including individual flood risks and flood mitigation options. The OFIA aims to advise property owners on the risks to life and property resulting from floods, advocate for the lowest insurance price available under the statute, and provide information on mitigation opportunities and the option to purchase flood insurance on the private market.

Program Progress

In 2018, the OFIA issued a Progress Report on the status of recommendations made in our 2015 and 2016 Annual Reports. In 2020, we will produce a subsequent report on the status of recommendations made in our 2017 and 2018 Annual Reports. Although we continue to see delays in processing flood insurance claims appeals and Severe Repetitive Loss appeals, we are pleased to recognize that progress is already being made on the following items:

- Significant changes have been made to improve communication with policyholders during the claims journey, resulting in measured increases in customer satisfaction.
- Issues with improper basement determinations and discovery of primary residency status at the time of loss have decreased significantly.
- The format of community mapping outreach has been revamped to provide more meaningful interaction with affected property owners.
- Greater communication between the Federal Insurance Directorate and the Mitigation Directorate is resulting in flood insurance premiums that reflect a lower rate when lower levels are abandoned to reduce the risk of flood damage.
- A new condominium brochure and a postcard for condominium unit owners is under development to reduce coverage confusion.
- The program expanded refund eligibility for rating corrections to five years based partially on the OFIA's recommendations in 2015, and included pro rata portions of the surcharges imposed by the Homeowner Flood Insurance Affordability Act of 2014. In this report, the program expands refund eligibility to include scenarios involving a Letter of Map Amendment, Out as Shown.



Trends, Issues, and Recommendations

The OFIA has identified five issues of confusion and frustration for policyholders and property owners that can be largely addressed by the Federal Insurance and Mitigation Administration (FIMA) program offices. The issues are complex, and many require collaboration across several National Flood Insurance Program (NFIP) areas to address the challenges they present to current and future NFIP customers. The issues are presented in three parts: the key issue affecting customers, the background of the issue, and the OFIA's recommendations for consideration. FIMA program office responses are included as received.

Improper Application of Elevation Rating Using an Elevation Certificate (EC)

Policyholders feel they have been treated unfairly when an EC was submitted to an insurer, and that EC was applied much later to rate the policy, resulting in the overpayment of premiums for several years.

BACKGROUND

Structures built prior to the community's first effective Flood Insurance Rate Map (FIRM) are eligible for pre-FIRM discounted rates. These rates do not require an EC to determine a price for a flood insurance policy. An EC is required for post-FIRM construction within the Special Flood Hazard Area, both to monitor compliance with local floodplain management regulations, and to price the flood insurance policy accurately. Since 2013, the policies issued with pre-FIRM discounted rates have been subject to annual premium increases aimed at phasing out the discounts to achieve a rate reflecting the full risk of flood damage. The only way to end the mandatory annual premium rate increases is to charge the rate reflecting a structure's specific full-risk of flood damage determined with an EC, purchased at the policyholder's expense.

FEMA's guidance to insurers indicates that customers are to receive the lowest premium for which they are eligible based on the information provided to the insurer. In some instances, an EC was submitted to an insurer, but was not favorable for the rating at the time of application. However, the EC was also not applied for insurance rating later, when, due to annual increases, the EC would have been favorable for insurance rating. This results in the policy renewing with higher rates. Regardless of the length of time that has passed since the insurer received the EC, a refund for overpayment is only applied for up to five years.

RECOMMENDATIONS

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

1. Allow a refund back to the date when the insurer received the EC and applying it would have resulted in a lower premium, even if the years eligible for refund are greater than five years.
2. Develop a process that identifies policies where the EC has been provided to the insurer in prior years, and ensures that the policy is rated properly.



“I was very pleased with the pleasant and prompt response from the Advocate. The representative knew who to contact and what to ask for. This was a very good experience.”

OFIA Customer

PROGRAM RESPONSE

1. The program agrees that there are instances where a refund should be based on the receipt date of the EC by the insurer. FID will review guidance and develop a mechanism to handle these requests with the insurer on an individual basis.
2. The current NFIP Flood Insurance Manual instructs insurers to provide the most beneficial rating or coverage for insureds. The program will reinforce this message through insurer engagement.

Loss of Rating Discounts Following a Lapse in Coverage

Policyholders are frustrated when a third party, such as a lender, causes a lapse in coverage by not paying the flood insurance premium on time, resulting in the loss of eligibility for rating discounts.

BACKGROUND

For most policies, FEMA is required by law to charge premium rates that reflect the full risk of the anticipated losses and expenses. The law permits certain discounted rates for buildings constructed before the first Flood Insurance Rate Map (FIRM) for a community (referred to as pre-FIRM properties) and for buildings newly mapped into the Special Flood Hazard Area by a FIRM update. Some policyholders also receive favorable rates through the application of grandfathering procedures.

When a policy lapses, all rights to discounted and favorable rates are lost, even when a third party fails to make a timely renewal payment. The loss of discounts can result in a much higher premium. The warning on renewal offers, which states that a lapse may trigger a loss of discounts, is unclear. It only mentions pre-FIRM discounts and not newly mapped or grandfathered rate discounts. Additionally, the guidance defining what constitutes a lapse is complex.

RECOMMENDATIONS

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

1. Allow the reinstatement of rating discounts when a third party admits, in writing, to a late payment.
2. Clarify the written warning on the renewal offer that a lapse may result in a loss of discounts and include a list of all types of discounts that can be lost.
3. Reduce program complexity by simplifying the guidelines defining a lapse.





More than 30% of inquirers facing a policy lapse mention being unable to afford the high cost of flood insurance if they lose their previously discounted rates.

PROGRAM RESPONSE

1. The program will review the procedures of the loss of rating discounts due to a lapse. Insurers can submit requests to the program for review on an individual basis. Consideration will be provided in those instances where the premium was collected by escrow in the prior policy term.
2. The program will review the messaging on the renewal notices and make adjustments for clarity as needed.
3. The program will work with counsel to determine if the definition of a lapse can be simplified.

Confusion Regarding Group Flood Insurance

Property owners who are issued coverage under the Group Flood Insurance Policy (GFIP) are frustrated when they experience a subsequent flood within the three-year policy term that is not covered.

BACKGROUND

Following a presidentially-declared disaster, some recipients of FEMA federal disaster assistance may qualify for a GFIP. As of October 1, 2019, the GFIP provides \$71,000 of flood insurance coverage for qualifying disasters and is paid out of the individual assistance (IA) grant. Under regulation, there is a distinction between the GFIP effective date and an individual grantee's coverage effective date. The group coverage begins 60 days after the disaster declaration and ends three years later. The beginning of the individual grantee's coverage is 30 days after the National Flood Insurance Program (NFIP) receives the applicant information and premium from the IA program. The individual coverage may be coordinated through the States in certain instances. The 30-day waiting period aligns the regulation with the requirements of the National Flood Insurance Act of 1968, as amended.

Due to processing delays, an individual's coverage on the group policy may not start until after the GFIP begins. Whether coordinated with the State or not, policyholders may flood a second time within the three-year period of the GFIP, but before their individual coverage begins. If a subsequent flood occurs prior to the issuance of individual coverage, the policyholder may discover they do not have coverage for the subsequent flood under the GFIP.

RECOMMENDATIONS

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

1. Review and amend the regulations governing the GFIP to make sure that the administration of the GFIP aligns with FEMA's strategic priorities of reducing complexity and closing the insurance gap. This can be accomplished by basing individual coverage effective dates on the date of IA awards rather than the date the NFIP receives the appropriate IA funds and applicant data.
2. Develop and publicize a process for IA recipients to follow when they believe they are identified as eligible for the GFIP but have not received proof of coverage prior to a second flood.





Approximately 50% of the OFIA's GFIP cases were resolved in collaboration with FEMA's Individual Assistance (IA) staff or with the U.S. Small Business Administration (SBA).

PROGRAM RESPONSE

1. In alignment with FEMA's strategic goal of reducing complexity and closing the insurance gap, FID has been working closely with the Individual Assistance (IA) Division and States that administer ONA (Other Needs Assistance) to relieve GFIP program complexities for a seamless process for program recipients. Following Hurricane Harvey, FID recognized that there were issues surrounding the transition from the IA/ONA award to receiving a GFIP. To address this concern, FID connected with IA and the ONA States to foster an understanding of the GFIP, ensure they are knowledgeable of the process, and remediate processing gaps.

Since 2018, processing gaps have been addressed, disaster adjudications are occurring, and FID is now included on ONA State reports. FID has also trained the NFIP Direct Call Center representatives in understanding GFIP alignment with our messaging, which has resulted in better customer service and a smoother process. The recommendation to change the coverage effective date to the date of the IA award rather than the receipt date of the applicant data and funds will involve the process of rulemaking.

2. FID will continue to work with IA on clarifying messaging and guidelines at the disaster sites so recipients can be clear on the process to follow and the points of contact if they are eligible for a GFIP but have not yet received proof of coverage. In rare cases where FEMA or the State caused delays, errors, or omissions, FEMA will ensure that the eligible recipient is afforded coverage accordingly.

Limited Refunds After Receiving a Letter of Map Amendment, Out as Shown

Policyholders find it unfair when there are no refunds for terms prior to the effective date of a Letter of Map Amendment (LOMA) that shows their property is “Out as Shown” (OAS).

BACKGROUND

When a third party, such as a lender or insurer, identifies a structure within the Special Flood Hazard Area (SFHA) and a subsequent FEMA-issued LOMA indicates the property is OAS, the LOMA-OAS communicates that the structure was never in the SFHA on the current Flood Insurance Rate Map (FIRM). The flood insurance premium rating adjustment after FEMA issues a LOMA-OAS is applied prospectively, similar to a physical map revision. This means that policy terms prior to the LOMA effective date are not eligible for refunds. Currently, the program allows prior-term refunds when a third party corrects a flood zone determination, however, a policyholder is not eligible for prior term refunds after receiving a LOMA-OAS.

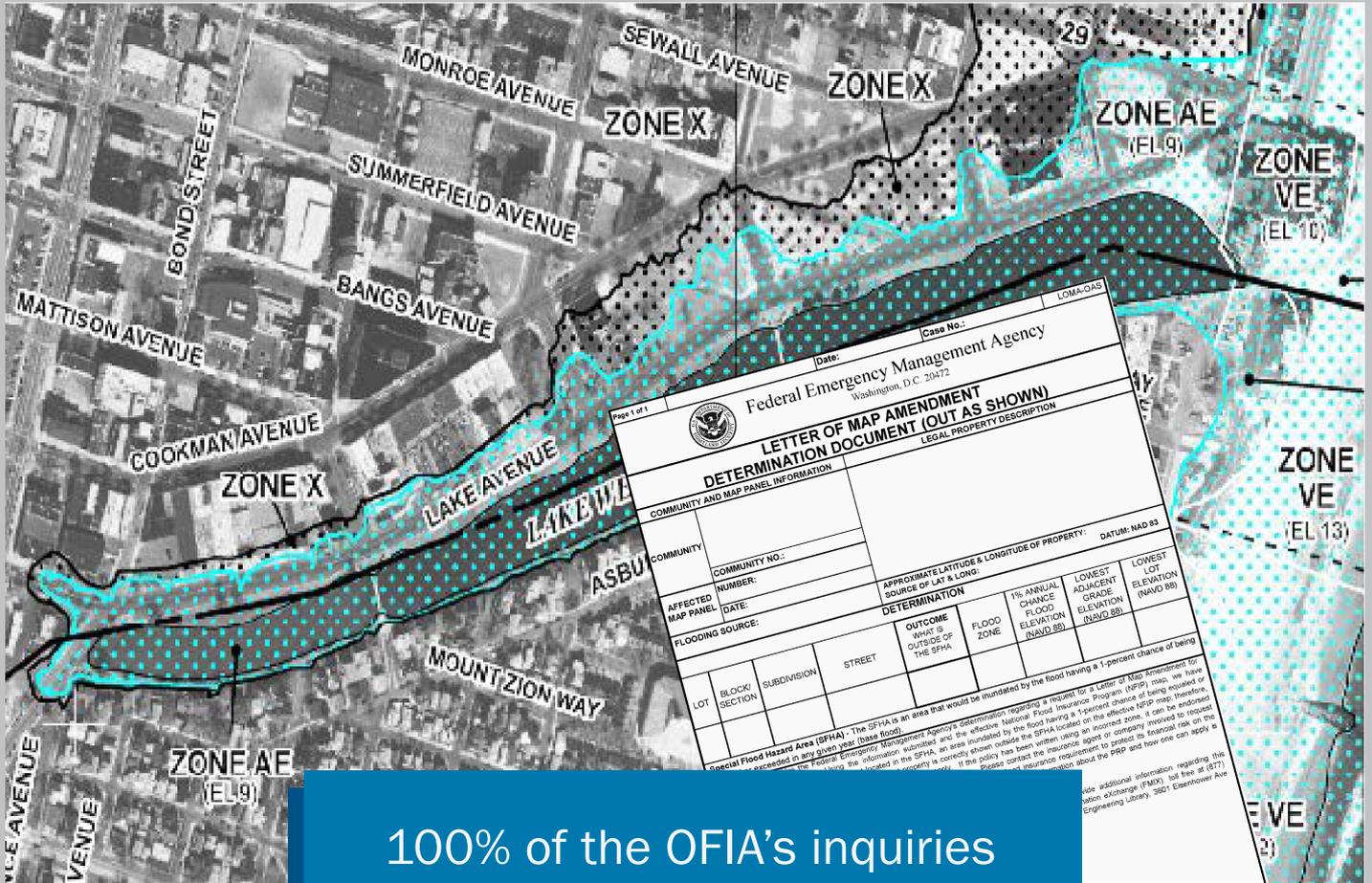
The 2018 Annual Report recognized that policyholders who obtained a LOMA were frustrated that they were not eligible for prior-term refunds. The program indicated that because many LOMAs are issued based on new information, such as elevation data, refunds earlier than the LOMA effective date were not warranted. In the case of a LOMA-OAS, no new information is presented. The LOMA-OAS simply corrects an erroneous determination by a third party. Therefore, the OFIA believes that the policyholder should receive prior-term refunds on overpaid premiums.

RECOMMENDATIONS

The OFIA recommends that the Federal Insurance Directorate (FID) consider the following action to alleviate this issue:

1. Allow policy re-rating and prior-term refunds for a LOMA-OAS back to the date of the effective flood map for up to five years maximum.





100% of the OFIA's inquiries seeking expanded refunds for Letters of Map Amendments (LOMAs) resulted in a monetary benefit for OFIA customers.

PROGRAM RESPONSE

1. Current procedures allow prior-term refunds for LOMA misratings up to five years based on the LOMA effective date. Since a LOMA, Out as Shown is considered another method to determine risk and not a change in the risk, the program agrees that prior-term refunds can be allowed up to five years based on the current map effective date (instead of the LOMA effective date). The program will update procedures.

Denial of Increased Cost of Compliance (ICC) Funds When Permits Are Issued Before Substantial Damage Letters

Policyholders are frustrated when they are denied ICC claims because the community made a substantial damage declaration after a permit requiring flood mitigation was already issued.

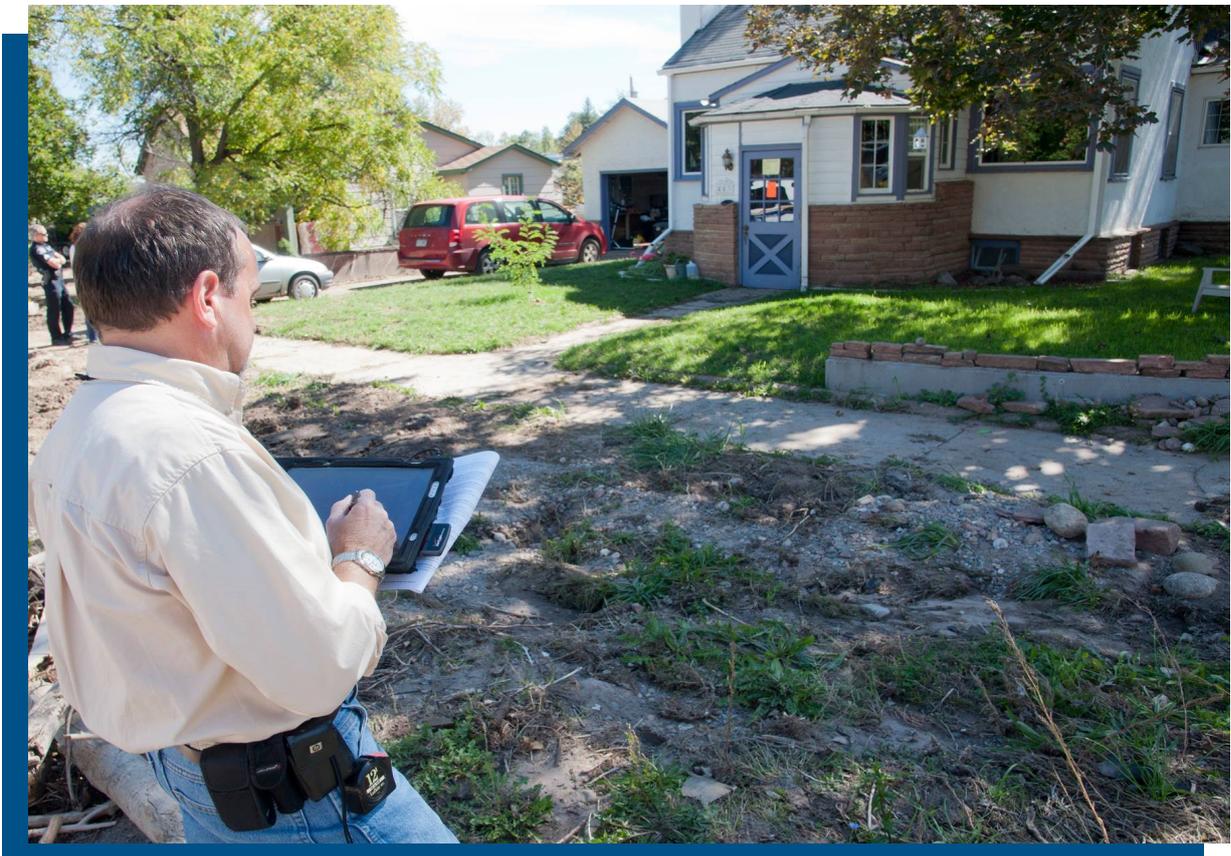
BACKGROUND

The Standard Flood Insurance Policy (SFIP) pays ICC coverage up to \$30,000. To qualify for ICC, the local community must declare the property substantially damaged or subject to a repetitive loss ordinance, and require mitigation by floodproofing, relocation, elevation or demolition. In larger scale flood disasters, community officials can become backlogged and permitted repairs can begin before the community issues a formal substantial damage declaration. Consequently, insurers deny ICC coverage because the mitigation activity occurs before the substantial damage letter, even though the requirement to mitigate is clearly spelled out in the community's permit in anticipation of the substantial damage declaration.

RECOMMENDATIONS

The OFIA recommends that the Federal Insurance Directorate (FID) take the following action to alleviate this issue:

1. Honor the ICC claim by accepting a substantial damage or repetitive loss letter dated after the permit, provided the requirement to comply with local floodplain management regulations is included in the permit.





“Being a former DHS/FEMA employee and current retiree, I very much appreciated the quick response, the expertise provided, and the guidance needed to better understand the processes and issues that were presented with the current FIS and FIRM. The representative’s assistance was very much appreciated and I cannot thank the representative and the Advocate’s Office enough. Job well done.”

OFIA Customer

PROGRAM RESPONSE

1. FEMA will review these claims on a case-by-case basis, requesting information relating to substantial damage (SD), and allowing the claims to proceed once confirmed. Eligibility requirements for Coverage D-ICC require substantial or repetitive flood damage to occur.

The SFIP policy forms are currently being rewritten, which includes a rewrite of Coverage D-ICC. Under that initiative, new guidance and procedures are being considered which will address this policyholder pain point.

Moving Forward

As the National Flood Insurance Program (NFIP) moves into 2020, the Office of the Flood Insurance Advocate (OFIA) has identified potential trends and emerging issues to consider for the calendar year. To deliver on its statutory mandate to advocate for the fair treatment of policyholders and property owners under the NFIP, the OFIA has observed five possible areas of focus that require further analysis.

RISK RATING 2.0

The OFIA has heard from property owners of low-value and inland homes subject to riverine flood risk who believe their premiums are inflated to pay for higher-value coastal risks. The OFIA supports efforts to ensure that rates are fair and equitable and reflect a property owner's unique risks. Risk Rating 2.0 is the first major overhaul of the NFIP rate model in over fifty years.

While implementation will begin in 2021, the OFIA anticipates information about rate changes will be rolling out in 2020. When implemented, the new model aims to be more transparent and reduce the complexity of the NFIP by making flood insurance easier for agents to quote, and easier for policyholders to understand. Because Risk Rating 2.0 will better communicate flood risks, communities and property owners will also be better equipped to understand their mitigation options.

When fully implemented, Risk Rating 2.0 will improve the fiscal soundness of the NFIP. While the OFIA anticipates initial confusion as existing policyholders transition to the new rating model, the OFIA also believes that the confusion will be alleviated with a proactive communication strategy and a more thorough understanding of the true flood hazard – which is often indicated by the price of flood insurance. The OFIA will work to ensure that FEMA's core values of fairness, integrity, respect and compassion infuse every aspect of FEMA's implementation of Risk Rating 2.0.

ELEVATION CERTIFICATE REQUIREMENT FOR FLOOD INSURANCE

Since the initial implementation of the National Flood Insurance Act of 1968, as amended, owners of new construction in an identified Special Flood Hazard Area (SFHA) were required to hire a licensed land surveyor, architect or engineer to complete an Elevation Certificate (EC). The EC is used to monitor floodplain management compliance and to accurately price flood insurance policies ineligible for discounted rates. As discounts continue to be phased out over time, more and more policyholders have been required to purchase ECs for accurate pricing of policies for properties constructed prior to the identification of the SFHA. While Risk Rating 2.0 will alleviate this burden for many property owners, the EC requirements continue to be a source of frustration for many property owners.

FLOOD RISK DISCLOSURE DURING PROPERTY TRANSFER

There are no uniform national flood risk disclosure laws requiring sellers of homes to inform buyers of known flood risks such as prior loss history or the FEMA zone determination on the Flood Insurance Rate Map. Lenders typically perform a flood zone determination, but where a property changes hands with no loan transaction, such as during an inheritance or a home purchased with cash, the new owner may be unaware of the flood risk.

Prospective property owners voice their concerns about their need to obtain loss history in order to secure accurate private flood insurance quotes and are unable to do so due to privacy laws. The OFIA also hears from frustrated property owners who were unaware of the flood loss history or requirements to maintain flood insurance (for instance, as a condition of receiving a grant) at the time of acquiring a property. This situation is particularly difficult for a homeowner who discovers their flood risk as a result of an uninsured flood loss. Improving flood loss disclosure at the State level may reduce some of this frustration.

UNDERSERVED AND SOCIALLY VULNERABLE POPULATIONS

The OFIA receives casework from a population of property owners who are unable to purchase flood insurance due to affordability concerns. This casework comes from both property owners who suffer flood damage where disaster assistance is unavailable, and from property owners who receive disaster assistance and need additional funds to recover. Following Hurricane Harvey and Maria, various media outlets reported that many socially vulnerable disaster survivors were still struggling to recover at least nineteen months after the storm. The FEMA Administrator indicated in March of 2018 that more than half of the American population did not have \$400 saved for a rainy day. This figure originates in the Report on the Economic Well-Being of U.S. Households in 2018, published by the Federal Reserve.

Welcomed increases in pre-disaster mitigation and recovery funding through the Disaster Recovery Reform Act provide some much-needed assistance to reduce the suffering caused by flood events. Yet, insured survivors continue to recover more quickly and more fully than uninsured survivors. To understand why, the OFIA analyzed FIMA's Flood Insurance Affordability Study and Framework and compared census tract data, OFIA casework, and NFIP policy statistics in six different types of NFIP communities. Community demographics differed by geography, population density, primary language, age, ability and race or ethnicity. The OFIA found that in each community examined, regardless of other demographics, property owners who were least likely to have flood insurance were renters and those who meet low-income thresholds, as defined by the Department of Health and Human Services.

The OFIA discovered shortcomings in data sets and recommends that communities make concerted efforts to gather more information about socially vulnerable residents and the obstacles they face in obtaining flood insurance. To reduce disaster suffering among vulnerable populations and save lives, the OFIA recommends that policymakers and NFIP staff work together to determine how to best encourage landlords to mitigate their properties from flood risk and provide coverage for their rental buildings.

AFFORDABILITY

The OFIA continues to hear from current NFIP policyholders about the rising cost of flood insurance outpacing their ability to pay. FIMA adjusts rates annually for a number of reasons, including congressional mandates to phase out discounts, inflation, and other actuarial considerations. The law places limits on the amount annual premium increases may rise, but those limits are set higher than many policyholders' income adjustments. Many policyholders who were not considered socially vulnerable at the time they initially purchased insurance are forced to choose between maintaining flood insurance and other vital necessities as prices continue to increase.



Office of the Flood Insurance Advocate



FEMA