ADJUSTING
TODAY
Adjusters International Disaster Recovery Consulting

EDITOR'S NOTE

The topic of flood claims was originally addressed in an earlier edition of Adjusting Today. *Changes in the industry and the National Flood Insurance Program—which provides property owners with federally-backed coverage—along with vast demand for material on this topic from our readers, has caused us to revisit this subject. In this edition, original author and industry veteran Bill Koehler is joined by fellow Adjusters International public adjuster, Hal Arnold, in exploring the coverages and issues unique to the adjustment of flood claims. This article aims to clarify the complexities of flood insurance and describe the role of the National Flood Insurance Program. Readers should also note that as this edition of* Adjusting Today *was going to press, The Flood Insurance Reform & Modernization Act of 2007 was before the Senate. Should this act be passed into law, we will include an update on its effects in a future issue.*

Rounding out this edition is a brief discussion of the role of the FEMA Public Assistance Program by Jeff Shaw, a nationally recognized expert in FEMA disaster programs. Mr. Shaw outlines the key steps in the grant process as well as the potential pitfalls.

If you or any of your clients have even a remote chance of a flood loss, this edition of Adjusting Today *is must reading. As always, we welcome your comments and suggestions on our effort to better inform our readership.*

—Sheila E. Salvatore, Editor

FLOOD

Understanding and Recovering from One of Nature's Worst Disasters

By Bill Koehler
Contributing: Hal Arnold

It is the inevitable disaster. Each year floodwaters will rise and numerous properties will be destroyed. Heavy rains, hurricanes and winter runoff all cause flooding. Flooding can occur just about anywhere, and other than fire, it is the most common and widespread disaster. After the water recedes, the adjusting of flood insurance claims can be a very difficult and trying process.

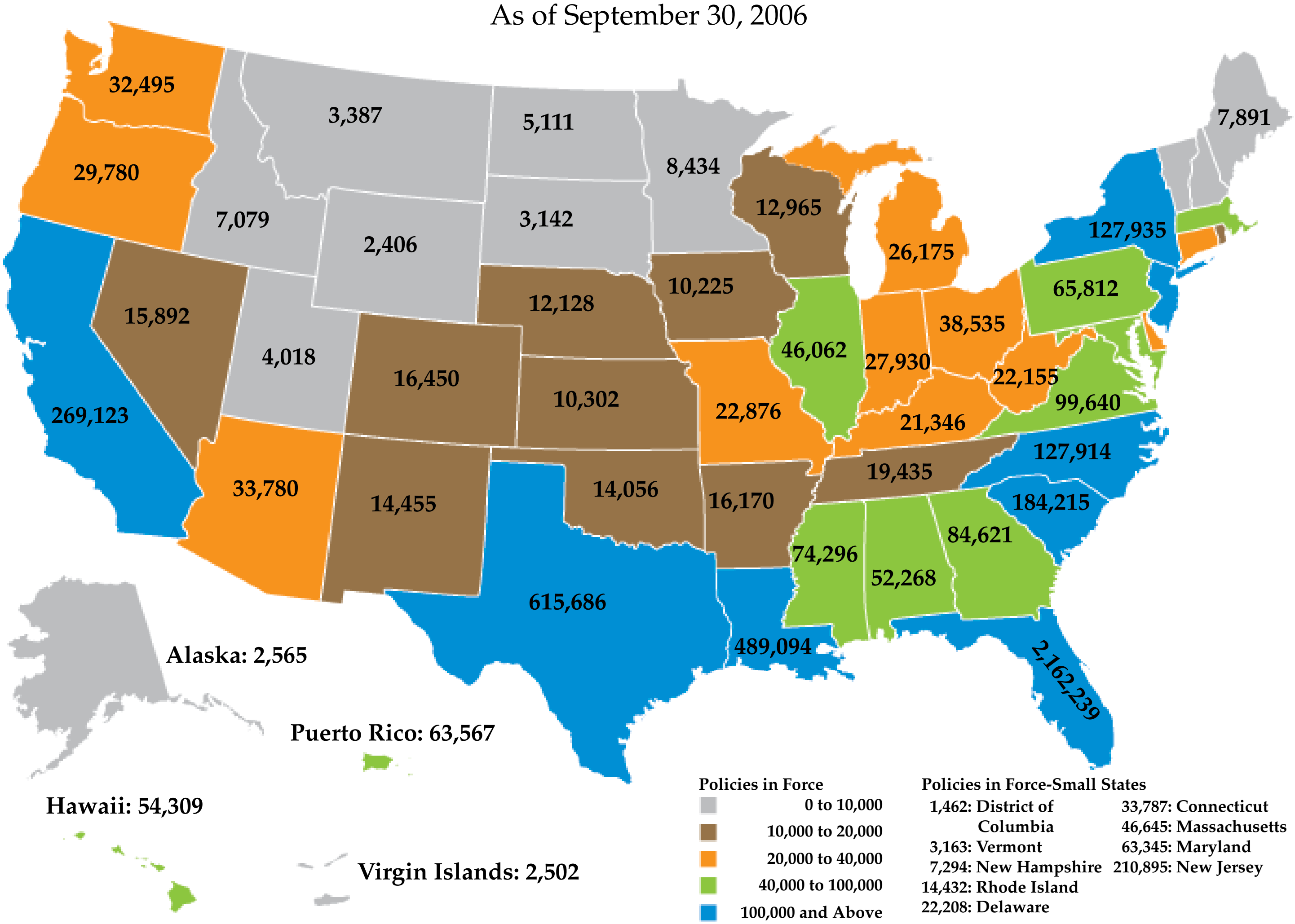
Although flood insurance claims may seem more complicated, they work much like other claims under property insurance policies. The real challenge lies in the unique nature of flood damage, as well as in how to deal with flood adjusters and interpret the policy.

The National Flood Insurance Program (NFIP), administered by the Federal Emergency Management

National Flood Insurance Program

Total Number of Policies in Force[1]

As of September 30, 2006



Agency (FEMA), makes federally-backed flood insurance available in communities that adopt and enforce floodplain management ordinances to reduce future flood losses. Currently, more than 4.2 million policies representing $524 billion worth of coverage are in force in more than 19,000 participating communities.

The NFIP defines flooding as "a general and temporary condition during which the surface of normally dry land is partially or completely inundated. Two adjacent properties or two or more acres must be affected." Flooding can be caused by any one of the following:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source, such as heavy rainfall;
- Incidence of mudslides or mud flows caused by flooding, which are comparable to a river of liquid and flowing mud;
- Collapse or destabilization of land along the shore of a lake or other body of water, resulting from erosion or the effect of waves or water currents exceeding normal, cyclical levels.

All property owners should be keenly aware of any risk of flood that may exist for them. According to FEMA, one-third of the NFIP's claims come from outside the designated high-risk flood areas. Of the approximately 10 million properties in so-called Special Flood Hazard Areas—the most vulnerable to flood—no more than a quarter are covered by flood insurance.

[1] http://www.fema.gov/pdf/nfip/totpif2006.pdf

Yet, in these special hazard areas, flooding is 26 times more likely to occur than a fire over the course of 30 years.

The NFIP contracts with many insurance companies to sell flood insurance. The insurance company receives only a small portion of the premium and generally contracts out the adjusting of flood claims to independent adjusters. These adjusters, sometimes called "storm troopers," follow storms and floods spending a great deal of time on the road traveling from disaster to disaster.

Purchasing Flood Insurance

All NFIP policies have the same language and will cost the same, regardless of the insurance company from which they are purchased. With this standard pricing, it is wise to buy from an insurance company that has a history of cooperation with their regular policy settlements. Companies will tend to be as liberal or as conservative with their NFIP policies as they are with their own policies. A company that generally provides the poorest payouts with its regular work will most likely adjust its flood losses the same way, even though the premium is the same no matter which company provides coverage.

There are three NFIP policies available: commercial property, condominium property and dwellings and their contents. In addition, the Insurance Services Office introduced an endorsement, CP 10 65, which can be used with general lines policies either on an excess basis over NFIP policies or, for businesses not subject to NFIP coverage, on a primary basis.

Four types of coverage are offered with the flood policy: building, personal property, debris removal and increased cost of compliance.

Building Coverages

Building coverage applies to the building structure itself, with some exceptions and extensions. This coverage extends to fixtures, machinery and equipment within the building, and includes a list of 23 specific property items, including for example: awnings and canopies, fire sprinkler systems, venetian blinds, ventilating equipment and permanently installed wall mirrors.

Since no definitions are offered for most of these items, controversy often can occur between insureds and the companies' adjusters over the existence and extent of coverage. Also included under building coverage are materials and supplies for use in constructing, altering or repairing the building while stored in a fully enclosed building, on the premises or on an adjacent property; and buildings in the course of construction before being walled and roofed. Certain conditions apply to each, which should be checked before relying on coverage for any item.

Personal Property Coverage

NFIP coverage for personal property applies to property in or on a fully enclosed insured building. Unlike most property insurance policies, there is no coverage for property in the open or in vehicles on or near the premises. The policy provides for either household contents or "other than household contents" but not both. This could produce a problem for people who have a business or office in their home unless they obtain separate coverages for household contents and business property at the same location.

A problem may occur with property that can be considered as either household or business property. This should be discussed with underwriters in advance to determine how such property should be treated.

When not insured under the building coverage, any of the following items are covered under personal property: kitchen appliances, air conditioners, carpet, and outdoor

Expense incurred to remove debris off, on, or from the insured property caused by flood is covered by NFIP policies. This includes debris from the insured's property on or away from the premises, and other debris brought onto the property by flood.

equipment and furniture stored inside a fully enclosed building on the insured premises. A limit of insurance is imposed collectively on artwork, rare books, jewelry, watches and furs. Where there is any substantial value to such items, separate coverage, possibly under an inland marine floater that includes flood coverage, should be arranged. Up to 10 percent of the personal property coverage (but not as additional insurance) can be applied to tenant's improvements and betterments to the building.

Debris Removal Coverage

Expense incurred to remove debris off, on, or from the insured property caused by flood is covered by NFIP policies. This includes debris from the insured's property on or away from the premises, and other debris brought onto the insured property by flood.

Payment for this and the property coverages cannot exceed the total coverage limits for the property insurance.

Increased Cost of Compliance Coverage

This coverage reimburses the insured for compliance with a state or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, flood proofing, relocation, or demolition (or any combination of these activities) of a structure. Specifically excluded from this coverage is loss due to any ordinance or law that the insured was required to comply with before the current loss.

Special Coverages

Flood policies provide temporary coverage for property that has been moved to another location due to the threat of flooding. This coverage applies for 45 days, and there is a modest limit for the incurred costs. To be covered, personal property must be in a fully enclosed building above ground level, or otherwise reasonably protected from the elements. Note that this extension of coverage applies only to property threatened by flood—not to flood damage to property that has been removed when threatened by any other peril.

There is also limited coverage for loss mitigation measures such as sandbags, fill for temporary levees, pumps and wood materials used to save a building endangered by flood.

Property not Covered

There are 11 types of property that are not insured under the flood policy. Many of these exclusions are standard to general property coverages—accounts, bills, currency, valuable papers or records, animals, livestock, birds and fish, aircraft, most motor vehicles and boats, among others. Exclusions unique to flood policies include property located in basements. These exclusions are detailed later in this article.

Amount of Insurance Available[2]

Building Coverage	Emergency Program	Regular Program		
		Basic Insurance Limits	Additional Insurance Limits	Total Insurance Limits
Single Family Dwelling	$ 35,000	$ 50,000	$200,000	$250,000
2-4 Family Dwelling	$ 35,000	$ 50,000	$200,000	$250,000
Other Residential	$100,000	$135,000	$115,000	$250,000
Non-Residential	$100,000	$135,000	$365,000	$500,000

Contents Coverage	Emergency Program	Regular Program		
		Basic Insurance Limits	Additional Insurance Limits	Total Insurance Limits
Residential	$ 10,000	$ 15,000	$ 85,000	$100,000
Non-Residential	$100,000	$115,000	$385,000	$500,000

How Flood Damages are Valued

The value of flood damage in the Dwelling Form is based on either replacement cost value or actual cash value.

Replacement cost value (RCV) is the cost to replace that part of a building that is damaged (without depreciation). To be eligible, three conditions must be met:

- The building must be a single-family dwelling, and
- Be your principal residence, meaning you live there at least 80 percent of the year, and
- Building coverage must be at least 80 percent of the full replacement cost of the building, or is the maximum available for the property under the NFIP.

Actual cash value (ACV) is replacement cost value at the time of the loss, less the value of its physical depreciation.

Some building items such as carpeting are always adjusted on an ACV basis. For example, wall-to-wall carpeting could lose between 10-14 percent of its value each year, depending on the quality of the carpeting. This depreciation would be factored in the adjustment.

Personal property is always valued at ACV. [3]

NFIP Insurance: Is Coverage Provided at Replacement Cost?

Coverage is provided only for single-family dwellings and residential condominium buildings, if several criteria are met. Replacement cost coverage is available for a single-family dwelling, including a residential condominium unit that is the policyholder's principal residence and is insured for at least 80 percent of the unit's replacement cost at the time of the loss, up to the maximum amount of insurance available at the inception of the policy term. Replacement cost coverage does not apply to manufactured (i.e., mobile) homes smaller than certain dimensions specified in the policy. Losses are adjusted on a replacement cost basis for residential condominium buildings insured under the Residential Condominium Building Association Policy (RCBAP). The principal residency and the 80 percent insurance to value requirements for single-family dwellings do not apply to the RCBAP. However, coverage amounts less than 80 percent of the building's full replacement cost value at the time of the loss will be subject to a co-insurance penalty.

[2] Relationship Between Floodplain Management and Flood Insurance, March 2000.
[3] FEMA website, August 14, 2007.

Contents losses are always adjusted on an actual cash value basis. If the replacement cost conditions are not met, the building loss is also adjusted on an actual cash value basis. Actual cash value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.[4]

Additional Coverages

The NFIP does not provide coverage for business interruption, extra expense or additional living expenses. However, if a business is large enough and can afford the additional premium, extra coverage—including higher policy limits—for flood losses can be purchased from a private insurance company.

A good example of purchasing extra coverage involved a manufacturing facility in the midwest. The maximum coverage the NFIP provided to commercial properties at that time was $250,000. The manufacturer purchased $50 million in flood coverage outside the NFIP from a private insurance company that covered property and business interruption. Flood struck the facility in 1993 and 18 inches of water flowed through the property. The insurance company adjuster evaluated the loss and offered $3 million for the damages; however, more damage occurred to the property than met the eye.

Under certain circumstances, land subsidence is covered under flood policies. Land subsidence occurs when water moves through soil, washing away the finer particles and causing the soil to sink. Through the aid of a public adjuster and other experts, it was proven that the floodwaters did in fact wash away the fine soil underneath the facility. This changed the soil structure beneath the building, leaving it highly vulnerable to collapse. Five teams of engineers from the insurance company couldn't refute the evidence and eventually agreed with the claim. Because this loss resulted in property damage and a delay in business, the manufacturer was paid $25 million for property damage and $25 million for business interruption losses.

Basements

Basements are the most misunderstood areas when adjusting flood losses. A basement is defined as "any area of the building, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides." However, if a room is subgrade on three sides, and has at least one walkout door (a door opening onto dry land where the ground is lower than the finished floor of the subgrade room), the room is not considered a basement. Many exclusions apply to basements unless there is a walkout door.

Property covered in a basement:

- Unpainted drywall and ceilings
- Breaks in the foundation
- Sewer lines (if backed up)
- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy

[4] FEMA website, August 14, 2007.

- Furnaces
- Storage water heaters
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Stairways and staircases attached to the building that are not separated from the building by elevated walkways
- Elevators, dumbwaiters and relevant equipment, except for such relevant equipment located below the base flood elevation if such relevant equipment was installed on or after Oct. 1, 1987
- Clean-up costs

Property not covered in a basement:

- Contents or personal property
- Finished walls, floors and ceilings
- Doors
- Cabinets
- Stoves, dishwashers
- Any building equipment not specifically listed

NFIP will not cover anything below the Base Flood Elevation (BFE). The BFE is determined by FEMA and represented on contour maps that are very hard for most people, including adjusters, to understand.

Garden-Style Apartments

Garden-style apartments and their "basement" units present a unique problem in flood adjusting. There are thousands of these apartments in the country, and they are usually comprised of two levels; however, often the first floor is several feet below ground. Unfortunately, unless there is a walkout door, the bottom level is considered a basement and many items are not covered by flood insurance. In certain instances, when a flood strikes such apartments, determining what is covered and what is not can be tricky.

Many exclusions apply to basements unless there is a walkout door.

For example, in 1996 a widespread flood devastated Grand Forks, N.D., when the Red River overflowed its banks. Water levels reached up to six feet or higher on city streets, and roughly half the city's residents were evacuated. The flood spread for miles. A garden-style apartment complex several miles from the river was one of many to fall victim to the flood. The complex had the maximum NFIP flood coverage allowed at that time, which was $250,000. (Maximum coverage has since been increased for building and personal property.) The insurance company adjuster classified the first floor as a basement, denying coverage for the contents and finishings, and offered the insured $50,000.

After closely inspecting the premises, it was noticed that the ground surrounding the property did not appear to be the original ground. Rather, it looked as if fill had been placed around the foundation. The insured's flood policy uncovered some interesting language in Article 6, Paragraph G.

Property Not Covered: "property below ground, meaning a building or unit and its contents, including personal property and machinery and equipment, which are part of the building or unit, where more than 49 percent of the actual cash value of such building or unit is

...Unfortunately, unless there is a walkout door, the bottom level is considered a basement and many items are not covered by flood insurance.

below ground… .” Most adjusters stop reading there and deny coverage. However, a crucial point is stated directly after that: “…unless the lowest level is at or above the base flood elevation (in the regular program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.”

Based on that language in the policy, it appeared that the lower unit of the complex was above the BFE, so it could not be considered a basement, thus allowing full coverage. A surveyor was then hired who verified that this was true and double-checked it with the property’s plat map from city hall. The base of the apartment building was exactly three inches above the BFE, and the ground surrounding the structure was fill. According to the policy, this would classify the first floor as above ground, and all the property and contents would be covered.

The insurance company adjuster had already left the area and had no intention of revisiting the loss. Therefore, the first step after verifying the adjuster’s oversight was to contact the supervising general adjuster at FEMA. The general adjuster commented that this instance was the first time anyone had ever raised the issue of a garden-style apartment being above the BFE. He reviewed the evidence and agreed with the theory. However, FEMA cannot override the insurance company adjuster, so someone at the insurance company needed to agree with the findings. The original adjuster would not revisit the decision, and after three years, just weeks before the loss was scheduled for litigation, a new adjuster was assigned to the loss.

The new adjuster agreed with the findings and paid the insured near policy limits. This is a rare case. However, given the large number of garden-style apartments, many may fall into the same category. Most insurance company adjusters will not look for such subtle issues when adjusting flood losses and, when unique cases like this are discovered, the resulting settlements are not paid quickly.

Estimating Damages

All NFIP or insurance company flood insurance policies contain the same language and work the same way. The only differences insureds will encounter with various companies involve how different adjusters interpret the policies. The single most important thing an insured can do to achieve a fair settlement is to make sure that they or a trusted adviser are there to work with the insurance company adjuster when they visit the site to inspect the damage.

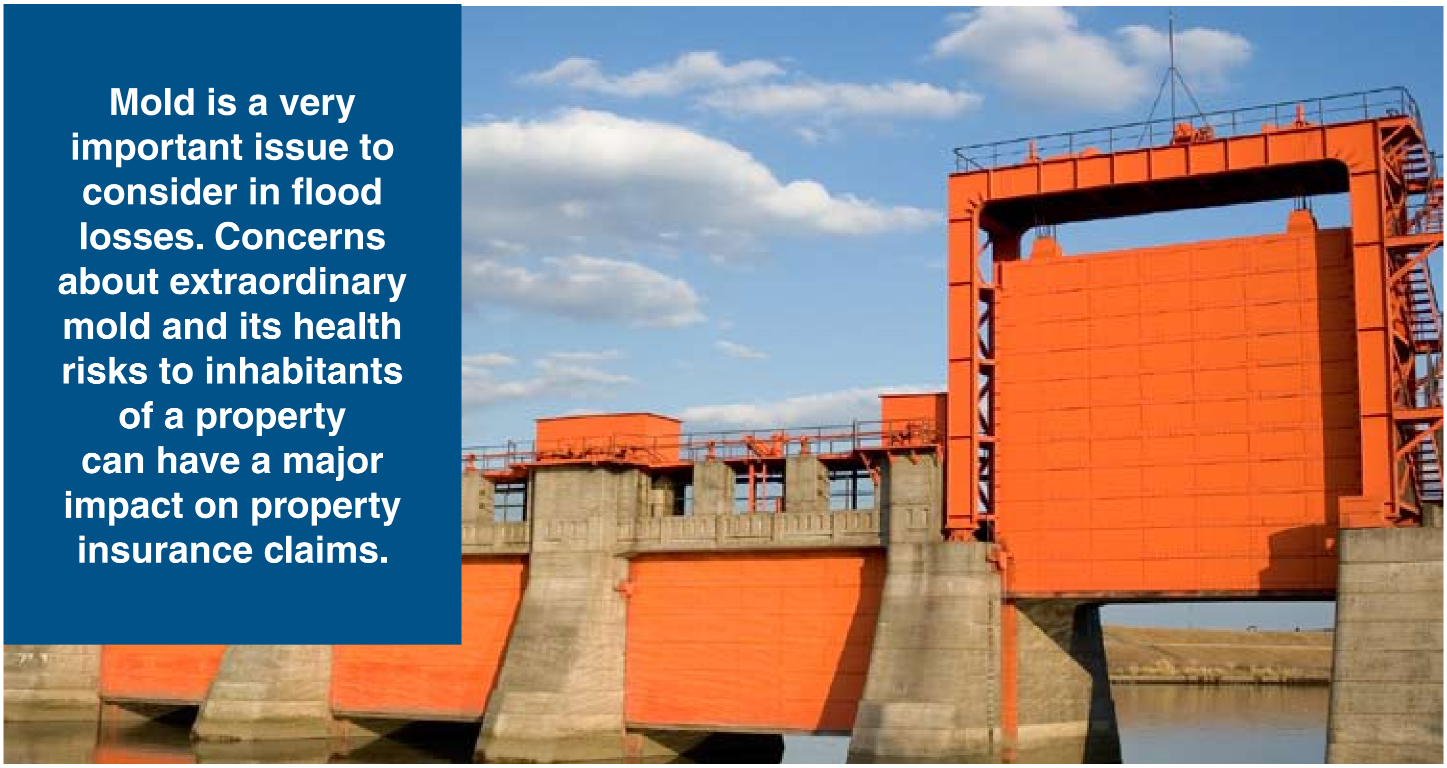
If alone at a flood loss, adjusters will quickly work their way through the property, writing down what they see and filling in their estimating template. They usually concentrate on room sizes, flooring, walls and a few other

variables. When you work with the adjuster, it is important that there is agreement about the “scope of damage,” meaning an agreement about what needs to be repaired or replaced, without a dollar amount.

Working under extremely adverse conditions, and with the large number of losses in a flood area, the adjuster’s goal is to adjust as many losses as they can each day. Because of their workload, once these adjusters set their position in writing, it may be very difficult to change.

For example, a commercial building was flooded with seven feet of water and mud. Inside the flooded building was a suspended ceiling, which soaked up large amounts of moisture, causing it to sag and grow mold. The adjuster inspected the damage alone without obtaining any information from the owner. The adjuster later denied coverage for the ceiling, stating, “No water touched the ceiling, therefore it is not a covered flood

Mold is a very important issue to consider in flood losses. Concerns about extraordinary mold and its health risks to inhabitants of a property can have a major impact on property insurance claims.



loss." He simply said, "Take it to appraisal," and left to adjust the next loss. (Appraisal is a policy's form of arbitration.)

Unfortunately, if everything under the flood line is covered in mud, adjusters can have a hard time determining if something is brand new or 20 years old. If possible, try to locate receipts or proofs of purchase before the adjuster arrives, especially for major appliances, to prove the age of the items.

Compounding this problem, flood areas are usually without power, they smell foul, and can contain mold, bacteria, spiders and snakes. Given these circumstances, the adjusters do not want to, nor do they have the time to, clean every item and determine its precise age and worth. They typically depreciate most items a standard percentage, unless someone is there to point out otherwise.

Another example is flooring. A property may have very expensive walnut wood flooring; however, caked with mud, it looks just like all other hardwood floors. The adjuster may very well mark the flooring down as oak, which is half the value of walnut. Once that estimate is on paper, it is extremely difficult to change. In some cases the insurance company will amend the mistake, but many times the claim will need to go to appraisal, which can take weeks, months or years. It is wise to avoid this situation by being present with the adjusters during inspections and encouraging them to represent the losses accurately.

All NFIP or insurance company flood insurance policies contain the same language and work the same way. The only differences insureds will encounter with various companies involve how different adjusters interpret the policies.

An apartment building in Grand Forks, N.D., provides a good example of how difficult it can be to change an adjuster's opinion. The building's electric baseboard heating units in the basement were flooded. Furnaces are covered in basements under all flood policies; however, the adjuster would not grant coverage, saying it was not a furnace because electric baseboard was not specified in the policy. FEMA's definition of a furnace is a device that produces heat. FEMA agreed that electric baseboard falls under this definition and should be covered. The adjuster felt his interpretation was still correct, disagreed with FEMA, and refused to

grant coverage. Only after a new adjuster was assigned to the loss, did the insurance company pay for the claim.

Continuous Flooding

Another issue to consider when discussing flood insurance is continuous lake flooding. When a building is inundated by rising lake waters for 90 days or more and continuation seems likely to damage the building to a degree equal to or greater than the policy limits plus the deductible, the insurer may pay the full policy amount without waiting for further damage. To do this, the insured needs to sign a release agreeing to make no further claim under the policy, not seek renewal of the policy, and not apply for any flood insurance under NFIP for property at that location.

Conclusion

Overall, the National Flood Insurance Program is a very fair and necessary program that helps many homeowners and business owners recover from what would otherwise be uninsured losses, since standard insurance policies do not cover flood losses. Important things to remember about flood insurance are:

- Be there with the insurance adjusters when damages are estimated;
- Consider hiring a public adjuster;
- Contents and finished items in basements are excluded from coverage;
- Walkout doors are required in garden-style structures where the door is lower than the finished floor of the subgrade room for full coverage on the lower level;
- Remember that the damages are paid on an actual cash value basis—not replacement cost. However, the homeowner's building damages can be settled on a replacement cost basis (provided replacement cost coverage is purchased) and are still subject to the replacement cost provisions;
- Purchase the flood policy from a company with whom there is a comfort level in settling claims;
- Additional coverage can be purchased from private insurance companies, usually at higher premiums than the NFIP rates.

For information on flood insurance and copies of current policies, contact FEMA or visit their web site at www.fema.gov.

Bill Koehler

FEMA Public Assistance Program

Overview of the Key Steps and the Potential Pitfalls in the Grant Process

By Jeff Shaw

A discussion of flood insurance would not be complete without commentary regarding the Federal Emergency Management Agency (FEMA) Public Assistance Program. Once a major disaster declaration is made by the president, this voluntary program provides supplemental reimbursement for the repair or replacement of infrastructure and facilities to pre-disaster condition. In addition, additional funding is obtainable for codes and standards, and mitigating future hazards. Typically, FEMA funds 75% of eligible costs while the remaining 25% is borne by the state and applicant (cost share). However, in special circumstances, the FEMA share can be as much as 100% (with the exception of the Hazard Mitigation Grant Program, which is statutorily capped at 75%). Since this is a federal grant program, applicants seeking federal reimbursement must adhere to stringent program guidelines and meet all eligibility requirements.

Eligible applicants include state agencies, municipalities, Native American tribal organizations and certain private nonprofit organizations that provide essential services of a governmental nature to the general public.

In order for a disaster-related expenditure to be considered as part of an eligible public assistance application, it must meet the following minimum criteria:

- The damage must be a direct result of an incident for which there is a major disaster declaration made by the president.

- The damage must be located within the designated disaster area (typically designated by county).

- The damaged infrastructure/facility must be owned by and/or be the legal responsibility of an eligible applicant.

- The damage and related work to be performed must not be eligible for reimbursement under the authority of another federal program (exceptions may be made for emergency work).

- Assistance is supplemental to any insurance proceeds.

Key Steps in the Process

The FEMA disaster recovery process follows a standard course of events. The key steps are as follows:

- A catastrophic event triggers the process.
- The governor declares a disaster area.
- There is a preliminary state/federal assessment of the damage, and reports are generated.
- The president declares the catastrophe a disaster area, making federal funds available.
- Within the damaged area, applicants are briefed by state/FEMA representatives.
- Applicants file a Request for Public Assistance (RPA), which is the first of many applicant responsibilities.
- The applicant has a kickoff meeting with the Public Assistance Coordinator (PAC).
- FEMA prepares Project Work sheets (PW) for large projects.
- The applicant prepares PWs for small projects (FEMA will assist with this process, or will write all PWs as requested by an applicant).
- FEMA reviews the PWs.
- Approved PWs are obligated and funds are made accessible by the state.
- Payment of the federal share is made.
- Payment of the state share (if applicable) is made.
- A final inspection is completed.
- Project is closed out.
- Disaster is closed out.

Potential Pitfalls

There are a number of potential pitfalls in the FEMA process. Requested payments can be disallowed for a number of reasons, including:

- Cost is unallowable—a cost charged to a PW is unallowable according to statute, regulation or policy.
- Cost is eligible but incorrectly allocated—an otherwise eligible cost is incorrectly charged to the wrong disaster project.
- Cost is ineligible—costs were charged that were not authorized in the PW's scope of work.
- Cost is eligible but unallowable—eligible costs cannot be adequately documented.
- Cost is administratively unallowable—cost may be eligible, but the project fails to meet an administrative requirement.

Once a payment is made, audits may discover problems that, if unresolved, could force applicants to return some or all of the FEMA funds received. Some common problems include:

- Failure to adequately describe the work performed.
- Claiming indirect costs which are not eligible.
- Lack of documentation for fringe benefits and/or nonproductive leave time.
- Lack of support for equipment rates.
- Excessive claims for equipment hours.
- Failure to distinguish between disaster-related work and normal ongoing activities.
- Failure to provide a clear audit trail from the supporting cost summaries to the supporting records.
- Failure to segregate ineligible work.

In the case of a flood-related disaster, eligible facilities within a Special Flood Hazard Area may be subject to a reduction in eligible costs. This reduction, which can be as much as $1 million, is a penalty for the failure to carry insurance with either NFIP or a commercial carrier.

It is important to keep in mind that, as with an insurance claim, the applicant is responsible for providing documentation and maintaining all information pertaining to the damage and the grant request. It is equally important for applicants to stay informed on the ever-changing rules and regulations governing these programs, including 44 CFR and the Robert T. Stafford Act.

. . .eligible facilities within a Special Flood Hazard Area (100-year flood plain) may be subject to a reduction in eligible costs of as much as $1 million as a penalty for the failure to carry insurance with either NFIP or a commercial carrier.

The Federal Emergency Management Agency is a former independent agency that became part of the new Department of Homeland Security in March 2003.

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