

September 13, 2011

TO: BIC Members

FR: Susan Sallada & Andy Harris

RE: Technically Dealing with NFIP

There are two sides to the NFIP program. One is for PIA to address the ongoing advocacy issues of what the future will, and as well as should hold for the policy and program future of NFIP. This is the purview of the PIA National NAT-CAT WG and Government Affairs Committee. The second is technically dealing with and understanding the current, in-place, functioning NFIP insurance program. On this aspect, members from both BIC and the NCWG review and address technical guidance matters in NFIP.

This year has been particularly busy, because of all the flooding events. Due to the nature of these flooding events, the year has been most challenging because NFIP introduced a new meaning and practice under the policy heading of “flood-in-progress” for what the White House Federal Disaster Declarations call “continuous flooding or condition of continuous flooding.” Please see and share any comments on the following DRAFT communication update planned for PIA Leaders.

From across the country, these flooding events have made PIA members’ customers and our agency members more aware of the NFIP policy, as well as the excess flood insurance marketplace. With NCWG, BIC will produce a “Things to Know & DO” for PIA agencies in taking on NFIP production and/or seeking excess flood or other coverage options for flood losses.

Also, three additional issues have arisen in the context of these floods which are more related to generic BIC issues, i.e. (1.) the use in NFIP of broker-of-record letters; (2.) can or should a state DOI order property insurers not to apply deductibles to covered major losses; and (3.) is there an opportunity in CL &/or PL for private carriers to offer an additional coverage rider for purchase which fills in the any gaps that may arise at the direct insured level in the event of major losses?

DRAFT September 2011

TO: PIA National & Affiliate Leaders

FR: PIA National NAT-CAT WG

Bill McGraw, Chair & Richie Clements, Vice Chair

Supported by PIA National Business Issues Committee

RE: Update on NFIP Expansion of “flood-in-Progress”

NFIP w-11030

In late May we provided NFIP issued Bulletin w-11030 addressing the definition and expanded meaning of “flood-in-progress,” SFIP, Section V. (B)- (please see attached).

Generally, “a” flood event has a single fixed date of occurrence affecting at the same time THE defined location-scope of the flooded territory. However, the flooding events since late January 2011 and through today have been unique compared to typical flood events of past experiences in that they began at a specific point and time, but continue to flow/flood over many days entering and covering so much more territory, as it moves “downstream” affecting more communities and states, i.e. condition of continuous flooding.

Through the issuance of this new rule, FEMA/NFIP expands and adds to their meaning and claims affect under the NFIP policy’s definition of “flood-in-progress.” This new instruction enables FEMA/NFIP to determine and set a specific date at which the flood event began (despite downstream flows) and set a far broader geographical scope as the area covered by THAT date (as compared to how NFIP has determined claims flood date in the past. It is also a way for NFIP to more tightly manage when claims coverage and the 30-day waiting period are effective under newly issued NFIP policies sold in areas affected and/or potentially to be affected by the current “continuous flood” events.

This can mean that the Flood Date set for the upstream hit communities may change for further downstream communities *or it may not!* This is why you may see a series of NFIP date Flood Claim Date revisions (as holds true for the Presidential Declarations which trigger The Federal Stafford Act under which federal disaster response and relief is provided.) For example, FEMA/NFIP may issue a flood event claims date, file & FICA code for 09-01-11 for all of VA which would mean no matter where the flooding hit or will hit, only NFIP policies enforce and through the 30-day waiting period on or before that date will have coverage. OR FEMA/NFIP can come back 1 week later or more and revise that to set a separate sub-claim date for a certain portion of VA.

In sum w-11030 - Please also be aware that only those that have NFIP insurance in place and in effect (beyond the 30-day waiting period) on/or before the declared date of flood will be covered for that declared event (and its defined geography).

NFIP w-11045

In July 2011 NFIP issued w-11045 addressing how WYOs and insurance producers were to disclose the coverage issues of w-11030 to consumers and policyholders and that it also expects insurance producers to continue to sell NFIP policies in flood affected and soon to be affected areas. Then on August 2011, FEMA/NFIP issued a response to the concerns that WYOs and producer raised to w-11030 and w-11045. (both are attached)

In sum-11045 & FEMA/NFIP August Letter – NFIP expects that new policies will be sold in flooded/flood areas and that insurance producers are to explain how and why the NFIP policy may not cover their immediate/ensuing flood claims.

PIA Action – PIA continues to press FEMA/NFIP for further clarifications and changes. However, please remind members that these three NFIP bulletins convey FEMA/NFIP standing and applied policy/meaning/practice at this time.

Attached is suggested sample disclosure language that PIA members may wish to use in the sale of NFIP insurance highlighting this issue.

ALSO, outlined are the advocacy changes that PIA will continue to press with NFIP.

PIA National Suggested NFIP Policy Revisions for “Flood-in-Progress”

Suggested NFIP Proviso:

Please be advised - Insurance coverage for damaged to buildings and their contents caused by a condition of flooding is not a risk/loss-exposure that ever has been or is now generally insured or provided for under/by the private sector insurance industry in its policies.

Therefore, in 1968, Congress created the National Insurance Flood Program/Policy (NFIP). Under the oversight of the Federal Emergency Management Agency (FEMA), the federal government’s NFIP insurance is **the available insurance program in the US** that insures residential, multi-family, Condo, commercial, institutional and public buildings and contents against damage from a condition of flooding.

The National Flood Insurance Program (NFIP) and its issued policies comprise an insurance program exclusively created, offered, underwritten, policies issued and executed by the federal government. NFIP does so according to the authority established and provided it under federal law, regulations and the decisions made and instructions issued by the Federal Emergency Management Agency (FEMA) through their NFIP section (both of which are under Department of Homeland Security {DHS}).

However, it must be remembered that the nature, scale, scope and covered territory of each federally declared flooding event is unique. This means that FEMA/NFIP and its policies are subject to federal event-by-event assessment which in turn determines the exact manner in which the NFIP policies and claims process for each event will proceed with their claims response based upon the circumstances of each event.

NFIP makes every effort to conform their per event response to the manner, meaning, practice and intention expressed in their policies, instructed in their manuals and as executed by them in previous events. NFIP strives to have their claims actions align with the marketing information and instructions that FEMA/NFIP issues to the insurance carriers and insurance producers (engaged to administer and execute the NFIP insurance), and the consumer/marketing information that they publish.

However, in addition to each event being assessed individually, FEMA/NFIP’s decisions/actions are also subject to possible further changes instructed, authorized or directed by additional federal officials and/or action by Congress or its Members. Also, FEMA/NFIP must also consider/coordinate their decisions and claims actions with The White House and other federal authorities when such a federal event is declared.

As a result, there can be times, when despite best efforts and published information FEMA/NFIP’s event-by-event decisions may not aligned with its previous, usual or customary manner, or issued information and/or consumer understanding or as an insurance carrier and/or insurance producer working with NFIP had been instructed to explain such coverage by NFIP and/or experienced past NFIP claims events.

PIA Advocated Changes to FEMA/NFIP:

1. NFIP policy, web/issued materials should all have this (or substantially similar provision) so that all are aware that they call the shots & can change what “the shot” is even if new &/or entirely different than previous.

2. *This means that while insurance producers will make best effort to convey NFIP terms, conditions, meanings and practice to consumers as they sell NFIP that when the sold/issued NFIP policy is called upon to function in a possible flood event, NFIP entirely controls such decisions and at the moment of any claim may decide something entirely differently.*
3. *NFIP should amend the NFIP Section V (B) language to now more expressly include their new and additional definition and treatment of "Flood-in-Progress" as it may apply to continuous flooding events. Then NFIP must follow-through in all related information, manuals, and instructions etc areas and include both this new definition and develop specific instructions for it in all areas and circumstances. This must include revision of NFIP FAQ section.*
4. *Therefore, NFIP should take all that it has published on this subject from March 2011 – forward and develop a better, more cohesive, understandable and non-conflicting statement and instruction on NFIP policy, meaning and practice in this area.*
5. *For this new aspect of how NFIP may also define and respond to another and additional type of "flood in progress," policyholders, consumers and insurance producers require a better method of how to determine and time a date certain for the commencement of the event. We believe this might better be accomplished by FEMA/NFIP including:*
 - a. *Specific date that NFIP has decided that this event has commenced;*
 - b. *Also expressly state and define the terms and conditions that apply as well as the specific scope of and geographical limits to which this applies; and*
 - c. *Provide a period of date latitude by a maximum number of days following the specific date of the event's commencement (say 5 days) under which the published FEMA/NFIP flood date determination has been issued. That would help add clarity and certainty for everyone's calculations as to what FEMA/NFIP event/claims directive applies to what event. This also allows FEMA/NFIP to better distinguish between different declared events when these are the result of a continuous condition of ongoing flooding over wide territory.*