

VIII. SPECIAL ADJUSTMENT ISSUES

A. AIR CONDITIONING CONDENSERS AND SOLAR HEATING ELEMENTS

Building coverage extends to the insured building and additions and extensions attached to and in contact with it by means of a common wall. Air conditioning condensers and solar heating panels are considered building property even if they are located apart from the structure and are not attached in accordance with the policy definition. Condensers are eligible for replacement cost coverage if the structures they service are eligible for it.

B. BAILEE GOODS

Customer property held by commercial bailees, such as shoe repair shops, dry cleaners, laundries, and consignment shops, are not covered by the bailee's Standard Flood Insurance Policy (SFIP) for personal property. Only personal property owned solely by the insured is covered by the General Property Form. The bailor can take out a separate flood policy for his property while located at the bailee's location, provided the property location is that of the bailee. There is no coverage for property such as the neighbor's lawn mower or the cable box under the Dwelling Form.

C. BOATHOUSES: COVERAGE FOR NON-BOATHOUSE PARTS OF BUILDING INTO WHICH BOATS ARE FLOATED

FEMA has determined that non-boathouse parts of a building into which boats are floated are not excluded from coverage. This means that, with respect to a building, a part of which is used for boathouse purposes and a part of which is used for other than boathouse purposes (e.g., residential, commercial, or municipal), non-covered items are limited to the following:

1. The ceiling and roof over the boathouse portion of the building into which boats are floated (unless there is an area above the boathouse used for purposes unrelated to the boathouse use, e.g., residential, in which case the upper area is covered, from the floor joists to and including the upper area walls and roof)
2. Floors, walkways, etc., within the boathouse area, or outside the area but pertaining to the boathouse use
3. Exterior walls and doors of the boathouse area not common to the rest of the building
4. Interior walls and coverings within the boathouse area (although a common wall between the boathouse area and the other part of the building is covered)
5. Contents located with the boathouse area, including furnishings and equipment, relating to the operation and storage of boats and other boathouse uses.

However, when the building is entirely in, on, or over water, there is no coverage at all if it was constructed or substantially improved after September 30, 1982.

D. CARPETING AND DRAPES

Carpeting is considered building property if it is installed over an unfinished floor surface. Carpeting over finished floors is considered personal property (contents), even if it is wall to wall or permanently affixed to the floor. All carpet losses, whether building property coverage or personal property coverage, are adjusted on an ACV basis. When a carpet loss is paid, overhead and profit is not allowed, unless a general contractor is responsible for installation.

Drapes are always treated as contents items, even if they are custom-made and fit only a specific window. However, window blinds of all kinds are considered building property. (See Dwelling Form III.A.7.)

E. CISTERNS

In certain communities, especially in the Virgin Islands, cisterns are fundamental parts of residential buildings. These are often the only source for storing water. Methods of construction of cisterns include beneath the structure, on the roof, above ground and physically attached to a side of a structure by a common wall, or as a separate unit detached from the structure. The SFIP provides coverage only if the cistern is an integral part of the insured building, such as above ground and connected by a common wall, on the roof, or within the perimeter walls. There is no coverage if the cistern is under ground unless it is contained in the basement. If the cistern is covered by the SFIP, the water in it also is covered.

F. CLOSED BASIN LAKES AND CONTINUOUS LAKE FLOODING

1. Closed Basin Lakes

A closed basin lake is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded 1 square mile at any time in the past. If an insured building is subject to closed basin lake flooding, a total loss claim can be paid if lake flood waters damage or imminently threaten to damage the building and an eventual total loss appears likely.

2. Continuous Lake Flooding

In a few areas of the United States, lake waters have risen to long-term record levels. Devil's Lake, North Dakota, is a primary example of this condition. The insured building must be inundated by rising lake waters continuously for 90 days or more, and it must appear reasonably certain that the loss and damage will reach or exceed the policy building limits including the deductible, or the maximum amount payable under the policy for any one building loss.

The current position of the National Flood Insurance Program (NFIP) is that occurrences of long-term, continuous lake flooding, loss, and damage to property will be settled on a one-time basis by paying the lesser of the two amounts mentioned above, if the insured signs a release agreeing to the following:

- a. To make no further claim under the SFIP
- b. Not to seek renewal of the policy

- c. Not to apply for any NFIP flood insurance for the property at the property location of the insured building

G. COASTAL BARRIER RESOURCES SYSTEM (CBRS)

1. Introduction

To determine whether a building (the insurable property) is eligible for flood insurance coverage when the building appears to be located in a Coastal Barrier Resources System (CBRS) area, the adjuster should consult the community's Flood Insurance Rate Map (FIRM) panel or a community code office (for example, the Tax Assessor's Office or the Building and Zoning Office) to determine which coastal barriers act applies to the property in question. In CBRS areas, eligibility for flood insurance coverage depends on this determination. (See IV. Property Not Covered, 15. in the SFIP.)

When handling any claim that may be in a CBRS area, the adjuster should:

- a. Identify the location of the risk on the FIRM;
- b. Determine when the risk was constructed;
- c. Comment on substantial improvement; and
- d. Provide photographs of all sides of the risk.

If any building you are adjusting appears to be subject to one of the laws discussed below, write a brief summary of your findings on the NFIP Narrative Report form and send it to the NFIP Servicing Agent or the WYO company for the claims examiners to evaluate.

2. Coastal Barrier Resources Act

Congress passed the Coastal Barrier Resources Act (CBRA) on October 1, 1982. The act became effective on October 1, 1983. Congress's intent was to reduce or restrict the federal government's direct involvement in encouraging development of certain undeveloped "coastal barriers." The act defined a coastal barrier as "a naturally occurring island, sandbar, or other strip of land, including coastal mainland, that protects the coast from severe wave wash."

CBRA does not prohibit development of designated undeveloped coastal barrier islands; nor does it affect private funding or investment for development of such areas. Instead, the act attempts to eliminate the use of "federal funds" (specifically, loans) for such development.

Under the terms of the act, FEMA is prohibited from providing NFIP flood insurance protection for structures built or substantially improved after October 1, 1983, in any area designated an undeveloped coastal barrier. However, structures in such areas that were built (walled and roofed) before October 1, 1983, remain eligible for coverage until such time as they are substantially damaged or substantially improved.

3. Coastal Barrier Improvement Act

The Coastal Barrier Improvement Act (CBIA) was enacted and made effective on November 16, 1990. The CBIA greatly expanded the identified land in the Coastal Barrier Resources System established pursuant to the CBRA of 1982.

4. Substantial Improvement: The 50 Percent Rule

Substantial improvement, as defined in public law (44 Code of Federal Regulations 59.1) means:

“any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which requires or exceeds 50 percent of the market value of the structure before the ‘start of construction’ of the improvement. This term includes structures which have incurred ‘substantial damage,’ regardless of the value of or actual cost of repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alterations of a ‘historical structure,’ provided that the alteration will not preclude the structure’s continued designation as a historical structure.”

In other words, if the damage or improvement equals 50 percent of the market value of the structure before damage, the insured building could be considered substantially damaged. If any building you are adjusting appears to be subject to the 50 percent rule, write a brief summary of your findings on the NFIP Narrative Report form and send it to the NFIP Servicing Agent or the WYO company for the underwriters to evaluate. In your report, use the replacement cost of the building less fair depreciation to obtain actual cash value (market value). Land values and outside improvements are not considered in the determination of market value.

The community that has jurisdiction over the area is the only authority that can make the final determination as to substantial improvement or substantial damage.

H. COMMERCIAL LOSSES

When you encounter an unusual commodity or type of business, with which you are not familiar, notify the examiner or claims management immediately for assistance and guidance.

On commercial stock losses, substantiation as to quantity and the insured’s cost must be obtained. Adjusters should not assume that all stock and business property on the premises is owned by the insured. The adjuster must verify ownership, especially for manufacturing, repairing, and high-end sales businesses. The SFIP insures only property owned solely by the insured. There is no bailee, consignment, or floor plan coverage. The SFIP does not provide coverage for property of others in the care, custody, and control of the insured under any policy form. On larger losses, the use of a CPA is encouraged.

I. CONDEMNATION OF PROPERTY

Communities may condemn flood-damaged properties as the result of ordinance enforcement or for loss mitigation. The SFIP covers only direct physical damage caused by flood and not loss of use or access. A flood claim for a structure with less than total damage but not repairable due to a condemnation order or ordinance receives coverage only for the direct physical loss by or from flood.

J. CONSTRUCTIVE TOTAL LOSS

Sometimes, when a flood-damaged building is less than a total loss, the insured will ask to be paid on the basis that a constructive total loss has occurred, so as to use the loss proceeds to move the insured building away from the peril of flood. FEMA has concluded that the SFIP does not and should not provide for such payments, unless Increased Cost of Compliance coverage applies.

K. DECKS

Since 1994, the SFIP has specifically excluded coverage for decks. However, stairways and staircases are still covered, if they are attached directly to the insured building. We also cover stairways or staircases attached to decks or walkways for the purpose of ingress and egress. If there are two staircases attached to the same deck or walkway, then there is coverage for only one of the staircases. The SFIP allows for payment of steps and a landing. The maximum allowable area is 16 square feet.

L. ELEVATED BUILDINGS

1. Coverage Restrictions

An “elevated building” is defined as a non-basement building in which the lowest elevated floor is raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Post-FIRM elevated buildings in certain SFHAs are subject to coverage restrictions specified in the Standard Flood Insurance Policy. A manufactured (mobile) home may be an elevated building.

Some confusion has been reported about the applicability of the elevated building coverage restrictions to a non-elevated Post-FIRM building located in an SFHA and constructed with its lowest floor below the Base Flood Elevation. Such a building is not subject to the elevated building coverage restrictions. The rating of any structure must be based on the correct elevation difference between the lowest floor and the Base Flood Elevation. Any policy found to be misrated must be corrected before a claim can be paid.

The restrictions apply only to Post-FIRM, Regular Program, elevated buildings in Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE. “Post-FIRM” means that a building was constructed or substantially improved on or after the community’s initial FIRM date or after December 31, 1974, whichever is later. The coverage restrictions apply to any area of an elevated building that is lower than the lowest elevated floor.

Coverage will respond for the building and personal property items listed in the policy, provided that these items are connected to a power source and installed in their functioning locations and that the insured has purchased appropriate coverage.

2. Coverage for Garages and Contents

a. Attached Garage

If a building is elevated and has an attached garage with a floor lower than the lowest elevated floor, the coverage restrictions apply to that area. Any contents located above the level of the lowest elevated floor (as hanging from the ceiling or on the garage walls) are covered.

b. Detached Garage

If a building is elevated and has a detached garage with a floor lower than the lowest elevated floor, the garage is fully covered. Also, contents inside the garage are covered, subject to all other policy provisions (such as the requirement that they be secured against flotation if the structure is not fully enclosed).

The General Property Form and RCBAP do not provide coverage for appurtenant private structures. Coverage for a detached garage responds only on one- to four-family residential buildings insured under the Dwelling Form. The insured may elect to apply 10 percent of the building coverage for an appurtenant private structure. This is not an additional amount of insurance.

As indicated in the "Exclusions" section of the ICC coverage (Coverage D), ICC coverage does not apply to a detached garage or any other appurtenant buildings. To obtain ICC coverage on an appurtenant structure, a separate flood insurance policy must be written. For example, a detached garage that has been converted and contains a separate room such as a play room, home workshop, laundry room, workout room, or bathroom receives no ICC coverage unless it is insured under a separate policy.

3. Coverage for Building Property in a Building Enclosure below the Lowest Elevated Floor or in a Basement

Paragraph III.A.8. of the SFIP provides coverage for certain items of building property (and related clean-up) in an enclosure below the lowest elevated floor of an elevated Post-FIRM building in any of Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a basement regardless of zone. Coverage is limited to:

a. Clean-up expenses

b. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- Central air conditioners
- Cisterns and the water in them

- Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing
- Electrical junction and circuit breaker boxes
- Electrical outlets and switches
- Elevators, dumbwaiters, and related equipment, except for related equipment installed below the Base Flood Elevation after September 30, 1987
- Fuel tanks and the fuel in them
- Furnaces and hot water heaters
- Heat pumps
- Nonflammable insulation in a basement
- Pumps and tanks used in solar energy systems
- Stairways and staircases attached to the building, not separated from it by elevated walkways
- Sump pumps
- Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system
- Well water tanks and pumps
- Required utility connections for any item in this list
- Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building

If an area below grade on all sides is within a room, such as a living room, then coverage is not provided for the “finished walls” of the area below grade. When the area extends above grade, or if there are contents located in the sunken area, coverage limitations will apply. When the entire room is below grade, even if the walls extend above grade, as in a daylight basement, there is no coverage for contents on the floor or coverage for the walls except those listed in the policy. The coverage limitations apply to the whole area, including the “finished walls.”

If an elevated building has an attached garage with a floor lower than the lowest elevated floor of the building, the coverage restrictions apply to that area. Any contents located above the level of the lowest elevated floor (as hanging from the ceiling or on garage walls) are covered.

M. ELEVATORS

The SFIP provides coverage for elevators, dumbwaiters, and related equipment. When these items are located in a basement or the enclosed area below an elevated building, there is no coverage for the related equipment below the Base Flood Elevation unless it was installed on or before September 30, 1987.

N. EROSION AND WAVE WASH

The SFIP states that loss and damage from wave action along a lake or other body of water is considered direct physical loss by flood. Loss and damage from spray consequent to wash-over, whether wind driven or not, is not covered. Loss and damage to structures arising from ongoing erosion is not covered under the SFIP. However, collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding cyclical levels which result in flooding is included in the definition of "flood" (SFIP II.A.2.) and, thus, is covered.

Replacement of soil lost through erosion is covered only when the erosion results from an overflow of inland or tidal waters and not from the unusual and rapid accumulation or runoff of surface waters from any source. Soil replacement must be confined to within the perimeter of, and related to the support of, the building. Soil replacement beyond this perimeter is not payable under the SFIP. Rip-rap, armoring, and retaining walls are not covered.

O. FOOD IN FREEZERS

Coverage is only provided for food in food freezers. Damage to food in refrigerator/freezers is excluded from coverage. The SFIP specifically states that coverage is not provided for refrigerator/freezers located in basements and enclosures under Post-FIRM elevated buildings.

P. FOUNDATIONS

Floods can cause significant foundation damage, but so can settlement, improper construction, earth movement, tree roots, and sinkholes. Many times an insured will claim normal settlement cracks in slabs and foundations as flood related. The insured will indicate that he or she never noticed the foundation and slab damage until after the flood. This neither proves nor disproves that the damage resulted from flood.

Most slab and foundation damage occurs because of a lack of moisture in the ground. The soil shrinks away from the foundation, allowing the grade beams to settle downward under the supported weight. This results in a bowing effect and cracks. Excess water in the ground exerts upward pressure on the slab floor and inward pressure on the subgrade foundation walls. This also results in cracks and displacement. Damage of this kind is considered the result of hydrostatic pressure and is not covered under the SFIP, unless there is a general condition of flooding in the area.

Flooding with sufficient water movement to carry the subsoil away (scouring) from the slab or foundation walls generally leaves visible signs. Claims for foundation damage without any visible indication of scouring or land subsidence bear close scrutiny. Most foundation and slab damage that occurs without any visible signs of soil displacement may have resulted from causes other than flooding and is not covered by the SFIP. The adjuster must carefully check

the perimeter and underneath the building for soil washout from velocity water flow. When finding no indication, the adjuster must resist a claim for foundation damage. The insured then has the responsibility to prove that the damage was caused by flood. Use of structural engineers must be limited to losses with visible indications of flood damage or of floodwaters' having exacerbated preexisting damage.

Q. FREEZERS

Walk-in freezers attached to the building are considered part of the building.

R. HYDROSTATIC PRESSURE

The SFIP excludes damages resulting from hydrostatic pressure unless there is surface flooding in the area and the flood is the proximate cause of the damage from the pressure of water against the insured structure.

S. ICE AND DEBRIS IMPACT DAMAGE

Damage sustained from freezing or thawing of water, along with damage sustained from and by the weight and pressure of ice, is not covered unless the property itself is under direct contact by flood as defined in the SFIP. Damage to property elements by freeze or thaw after the surface water has receded from the property is not covered.

T. MANUFACTURED (MOBILE) HOMES

The replacement cost for a manufactured (mobile) home will not exceed 1.5 times its actual cash value.

U. MUDFLOW

Mudflow is the only form of earth movement covered by the SFIP. (The word "mudslide" no longer is used in the SFIP.) A mudflow is a "river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water."

Mudflow is unforeseeable, is less common than earth movement from landslide or erosion, and has characteristics markedly similar to those of a flood. Landslide and slope failure are not covered under the policy. However, coverage is provided for subsidence of land along the shore of a lake or similar body of water which results from the erosion or undermining of the shoreline caused by waves or currents of water which results in a flood.

V. PROPERTY REMOVED TO SAFETY

If coverage has been purchased both for personal property (contents) and for the building, the SFIP covers direct physical loss by flood to each while the property is located at the property address shown on the application or endorsement. Coverage is available for 45 days at another place above ground or outside of a Special Flood Hazard Area to which any insured property (including a moveable building) is removed in order to protect and preserve it from a flood or from the imminent danger of flood. Personal property that has been removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured

against loss. The reasonable expense incurred by the insured, including the value of the insured's own labor at prevailing federal minimum wage in moving the insured property away from the peril of flood and storing the property at the temporary location, will be reimbursed to the insured, up to \$1,000.

W. REPETITIVE LOSS STRUCTURES AND PREVIOUS CLAIMS

1. Repetitive Loss Structures

A repetitive loss structure is one that has sustained flood damage on two occasions during a 10-year period ending on the date of the event for which a second claim is made, and for which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event. Repetitive losses are a major challenge to the NFIP. Since 1980, \$1.2 billion has been paid on risks with a repetitive loss history.

2. Previous Claims

It is imperative for the adjuster to be alert to the possibility that any loss property may have been involved in previous claim activity. Where there is evidence of repetitive flood loss, the adjuster must request the prior loss file from the WYO company or the NFIP Servicing Agent. To identify the previous carrier, the adjuster should call the NFIP Bureau and Statistical Agent.

In such cases, analyze prior loss file photographs and compare previous data to current conditions. Photographs from different dates of loss that show the same paneling, appliances, fixtures, machinery, and equipment indicating non-replacement for the prior flood event should be brought to the attention of the claims examiner. When investigating possible repetitive loss, always:

- a. Look for similarities in furniture color and style.
- b. Look for the same design, pattern, and texture in paneling.
- c. Check appliances and mechanical apparatuses for manufacturer names, model classifications, and serial numbers. (The same serial numbers between two events show non-replacement of these items after a previous flood.)

X. SCRIP AND STORED VALUE CARDS

Coverage is specifically excluded for these items.

Y. SEEPAGE AND HIGH WATER TABLE

The SFIP does not provide coverage for losses related to high water tables or seepage unless there was a general condition of flooding in the area.

Z. SWIMMING POOLS, HOT TUBS, AND SPAS

Coverage for swimming pools, hot tubs, spas, and their equipment is excluded, except that spas and hot tubs are covered if they are bathroom fixtures. Spas and hot tubs are covered under the General Property Form if they are bathroom fixtures or stock and inventory held for sale.

A'. TRAVEL TRAILERS

Travel trailers without wheels, built on a chassis, affixed to a permanent foundation, and regulated under the community's floodplain management and building ordinances or laws are covered.

B'. VENETIAN BLINDS

The SFIP now covers all types of window blinds.

C'. WATER, MOISTURE, MILDEW, OR MOLD DAMAGE

The SFIP covers reasonable costs for remediation of mold damage except when the damage results from a condition "confined to the insured building" or "within [the insured's] control," such as "failure to inspect and maintain the property after a flood recedes." Four examples of SFIP coverage are provided below.

1. If a building was inundated but not evacuated, the SFIP will pay reasonable expenses for water extraction, dehumidifier and fan rental, and mildicide and anti-microbial application.
2. If, after the insured has taken the mitigation measures in example 1 above, mold reappears and causes damage to the upper portions of walls, ceilings, etc., the NFIP will honor such claims if the insured can show that mitigation attempts were made.
3. If a local official requires testing for mold, and has legal authority to do so, the SFIP will pay reasonable costs for the test. No other testing is necessary because the SFIP pays for reasonable remediation of mold damage (except as noted above). Therefore, the cost of other testing, except as described here and in example 4 below, will not be covered.
4. If, during inspection of a claim for mold damage, the adjuster believes that such damage is not the result of the recent flood but is a long-term, recurring problem, it may be necessary to obtain a testing report from a Certified or Licensed Hygienist or Microbiologist. The report must be specific as to whether the mold is a recent problem or a long-term, recurring problem.

Obviously, there can be other scenarios: situations where waist-deep water has inundated the building and remained for several days, or situations where the insured was not allowed to return to the building for an extended period of time. In such cases, apply common sense and good adjusting principles. Use these examples as a guide in the handling of the more complex cases.

D'. WATER SOFTENERS

If the water softener is installed at the described location and connected to a power source, coverage is provided for the water softener and the chemicals in it.

E'. WELL WATER PUMPS

The Dwelling Form provides coverage for well pumps located below the lowest elevated floor of an elevated building and in basements. Well pumps are described as building items and therefore cannot be construed as content items. If the well pump is located in an unattached shed or building, then there is no coverage.