



FEMA

W-12017

March 5, 2012

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the National Flood Insurance Program (NFIP) Servicing Agent

Edward L. Connor

FROM: Edward L. Connor
Deputy Associate Administrator for Federal Insurance

SUBJECT: Guidance Regarding SFIP Section IV (Property Not Covered), Subpart 2 (Buildings Over Water)

All coverage forms of the Standard Flood Insurance Policy (SFIP) contain a limitation excluding coverage for buildings located entirely over water if they were constructed or substantially improved after September 30, 1982. Section IV, subpart 2 of each form of the SFIP provides as follows:

IV. Property Not Covered

We do not cover any of the following:

* * *

2. A **building**, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

Questions have arisen regarding how FEMA interprets and applies this provision of the SFIP, and this Bulletin serves as FEMA's guidance to the WYO Companies and the NFIP Servicing Agent regarding its interpretation.

The SFIP does not provide coverage for a building that has its exterior perimeter walls located entirely over water, even if any of the following is not entirely in, on, or over water or seaward of mean high tide:

- a. A stairway, platform, walkway, or driveway that provides access to the building;
- b. A part of the support for the building, such as a post, pier, piling, dock, foundation, or slab; or
- c. A porch, patio, deck, or other outdoor building extension.

FEMA is aware of the decision rendered in Dean Blanchard Seafood, Inc., v. Acadian Insurance Services, Inc., et al., 616 F.Supp.2d 612 (E.D. La. 2008). In this case, a seafood processing plant was constructed on a concrete slab over water supported by pilings. All of the exterior perimeter walls of the seafood processing plant building were entirely over water and were seaward of mean high tide. The building was constructed in this manner to allow boats to dock next to the plant and unload their catch. Part of the concrete slab extended onto dry land to allow trucks to drive up to the plant to take the processed seafood to market. The court examined the SFIP and the definitions of “building” and determined there to be an ambiguity that allowed for coverage.

FEMA understands and construes SFIP Section IV.2 to mean that when part of the exterior perimeter walls and foundation of the building are on land, the building is not “entirely” over water and coverage can be afforded for that building. However, FEMA interprets the SFIP Section IV.2 exclusion to apply where exterior perimeter walls of the building are completely over water and the support system or foundation underneath the insured building extends onto the land, or the mechanism for access and egress into the insured building (including, but not limited to, stairs, decks, walkways, piers, posts, pilings, docks, or driveways) is on land. Similarly, if the exterior perimeter walls of a building are completely over water, but connected to another eligible building by means of an elevated walkway, stairway, roof, and/or rigid exterior wall, or there is an appurtenant structure on the same slab, foundation, or other continuous support system that is on land (such as a shed or garage), the presence of the connected building or appurtenant structure on land does not allow coverage to be afforded to the building that has its exterior perimeter walls entirely over water.

We recognize that policies may have been issued for ineligible buildings due to the misunderstanding that a building may be eligible because its access and egress (including, but not limited to, stairs, decks, walkways, piers, posts, pilings, docks, or driveways) is on land. For this reason, we are requiring insurers to work with the insurance agents/producers and brokers to make sure those ineligible buildings are identified and their policies are cancelled from the inception date with full premium refund, provided no claim has been paid. If a claim was paid, the refund is allowed only if the premium refund is greater than the amount of claim paid, and it is limited to the difference between the calculated premium refund and the amount of claim paid.

Please note that this guidance does not alter NFIP Clearinghouse Bulletin W-10010, dated February 16, 2010 (see attachment).

Any questions regarding this guidance should be directed to Jhun de la Cruz, Underwriting Branch Chief, National Flood Insurance Program, Federal Insurance and Mitigation Administration at jhun.de-la-cruz@dhs.gov.

Thank you for your cooperation.

Attachment

cc: Vendors, IBHS, FIPNC, and Government Technical Representative

Required Routing: Claims, Marketing, Underwriting



FEMA

W-10010

February 16, 2010

MEMORANDUM FOR: Write Your Own (WYO) Company Principal Coordinators and the National Flood Insurance Program (NFIP) Servicing Agent

FROM: NFIP Clearinghouse

SUBJECT: Policy Interpretation 2010-1 – Buildings Over Water That Were Originally Constructed Over Land

Please see the attached Policy Interpretation concerning flood insurance coverage for NFIP-insured buildings that were constructed over land or partially over water on or after October 1, 1982, but are now completely over water because of erosion.

Attachment

cc: Vendors, IBHS, FIPNC, and Government Technical Representative

Required Routing: Underwriting and Claims

Suggested Routing: Marketing and Training

Policy Interpretation 2010-1

Subject: Buildings Over Water That Were Originally Constructed Over Land

Background: This Policy Interpretation addresses the Property Not Covered Clause in the Standard Flood Insurance Policy (SFIP), Section IV, Paragraph 2. This paragraph specifically excludes flood insurance coverage if a building is located entirely in, on, or over water or seaward of mean high tide if it was constructed over water or substantially improved after September 30, 1982.

However, FEMA has become aware of situations where NFIP-insured buildings constructed over land or partially over water on or after October 1, 1982, are now completely over water because of erosion. A strict interpretation of the policy language would result in denial of coverage for these buildings, even though they may have had NFIP policies prior to being located entirely over water.

Policy Interpretation: If a building was originally constructed on land or partially over water, and later becomes entirely over water because of erosion, it is eligible for coverage only if the building has had continuous coverage:

- (1) from the period beginning at least 1 year prior to the building being located entirely over water, regardless of any changes in the ownership of the building, or
- (2) from the date of construction if less than 1 year.

Acceptable documentation of a building's continued eligibility for coverage includes the following:

- A letter from the community official stating that the building originally was constructed on land or only partially over water
- Photographs of the building over land, if available
- The approximate date when the building became located entirely over water
- Proof of continuous flood insurance coverage from the period beginning 1 year prior to the building being located entirely over water, or from the date of construction if less than 1 year.

In accordance with the SFIP provisions, the policy will pay only for direct physical loss by or from flood.

February 4, 2010

(Date)



Edward L. Connor
Acting Federal Insurance Administrator
National Flood Insurance Program
Mitigation Directorate