

Federal Emergency Management Agency, DHS

§ 62.20

to the Federal Insurance Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice; or the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be pro rata but with retention of the expense constant.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 49 FR 33658, Aug. 24, 1984; 53 FR 16279, May 6, 1988]

§ 62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of

its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than \$10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First \$2,000 of Premium	15
Excess of \$2,000	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amount	Commissions (percent)
First \$2,000 of Premium	15
Excess of \$2,000	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981, as amended at 53 FR 15221, Apr. 28, 1988; 57 FR 19541, May 7, 1992]

Subpart B—Claims Adjustment, Claims Appeals, and Judicial Review

§ 62.20 Claims appeals.

(a) *Definitions.*

Appeal decision means the disposition of the appeal by the Federal Insurance Administrator.

Decision means the insurer's final claim determination, which is the insurer's written denial, in whole or in part, of the insured's claim.

(b) *Appeal*. A National Flood Insurance Program (NFIP) policyholder, whether insured by a participating Write-Your-Own (WYO) Company or directly by the Federal Emergency Management Agency (FEMA), may appeal a *decision*, including a determination of any insurance agent, adjuster, insurance company, or any FEMA employee or contractor with respect to a claim, proof of loss, and loss estimate. In order to file an appeal, the insured must comply with all requirements set out in the Standard Flood Insurance Policy (SFIP). This appeals process is available after the issuance of the insurer's final claim determination, which is the insurer's written denial, in whole or in part, of the insured's claim. Once the final claim determination is issued, an insured may appeal any action taken by the insurer, FEMA employee, FEMA contractor, insurance adjuster, or insurance agent.

(c) *Limitations on Appeals*. The appeals process is intended to resolve claim issues and is not intended to grant coverage or limits that are not provided by the SFIP. Filing an appeal does not waive any of the requirements for perfecting a claim under the SFIP or extend any of the time limitations set forth in the SFIP.

(1) Disputes that are or have been subject to appraisal as provided for in the SFIP cannot be appealed under this section.

(2) When a policyholder files an appeal on any issue, that issue is no longer subject to resolution by appraisal or other pre-litigation remedies.

(d) *Litigation preclusion*. An insured who files suit against an insurer on the flood insurance claim issue is prohibited from filing an appeal under this section. All appeals submitted for decision but not yet resolved shall be terminated upon notice of the commencement of litigation regarding the claim.

(e) *Procedures*. To pursue an appeal under this section a policyholder must:

(1) Submit a written appeal to FEMA within 60 days from the date of the decision. The appeal should be sent to:

DHS/FEMA, Mitigation Directorate, Federal Insurance Administrator, 1800 South Bell Street, Arlington, VA 20598-MS3010;

(2) Provide a copy of the insurer's written denial, in whole or in part, of the claim;

(3) Identify relevant policy and claim information and state the basis for the appeal; and

(4) Submit relevant documentation to support the appeal. The policyholder should submit only the documentation that pertains to his or her claim. The following are examples of the kinds of documentation which FEMA will require to adjudicate the appeal: A copy of the proof of loss submitted to the insurer as required in the policy; room by room itemized estimates from the adjuster (includes contractors' estimates), detailing unit cost and quantities for the items needing repair or replacement; replacement cost proofs of loss; Preliminary Report; Final Report; detailed damaged personal property inventories that include the approximate age of the items; completed Mobile Home Worksheet; Mobile Home Title, including Salvage Titles; real estate appraisals that exclude land values; advance payment information; clear photographs (exterior and interior) confirming damage resulted from direct physical loss by or from flood; proof of prior repair; evidence of insurance and policy information, *i.e.* declarations page; Elevation Certificate, if the risk is an elevated building; the community's determination made concerning substantial damage; information regarding substantial improvement; zone determinations; pre-loss and post-loss inventories; financial statements; tax records, lease agreements, sales contracts, settlement papers, deed, *etc.*; emergency (911) address change information; salvage information (proceeds and sales); condominium association by-laws; proof of other insurance, including homeowners or wind policies and any claim information submitted to the other companies; Waiver, Letter of Map Revision (LOMR) or Letter of Map Amendment (LOMA) information; paid receipts and invoices including cancelled checks that support an insured's out-of-pocket

expenses pertaining to the claim; underwriting decisions; architectural plans and drawings; death certificates; a copy of the will; divorce decree, power of attorney; current lienholder information; current loss payee information; paid receipts and invoices documenting damaged stock; detailed engineering reports specifically addressing flood-related damage and pre-existing damage; engineering surveys; market values; documentation of Flood Insurance Rate Maps (FIRM) dates; documentation reflecting date(s) of construction and substantial improvement; loan documents including closings; evidence of insurability as a Residential Condominium Association; Franchise Agreements; letters of representation, *i.e.* attorneys and public adjusters; any assignment of interest in a claim; and, any other pertinent information which FEMA may request in processing a claim.

(f) *Appeal resolution.* (1) FEMA will acknowledge, in writing, receipt of a policyholder's appeal and include in the acknowledgement contact information for a FEMA point of contact who can advise the policyholder as to the status of his or her claim.

(2) The *Federal Insurance Administrator* will review the appeal documents and may notify the policyholder in writing of the need for additional information. A request for the additional information will include the date by which the information must be provided, and shall in no case be less than 14 calendar days. Failure to provide the requested information in full, or to request an extension by the due date, may result in a dismissal of the appeal. A re-inspection of the policyholder's property may be conducted at the discretion of the *Federal Insurance Administrator* to gather more information. The *Federal Insurance Administrator* will ensure that all information necessary to rule on the appeal has been provided prior to making an *appeal decision*.

(3) The *Federal Insurance Administrator* will review the appeal documents, including any reinspection report, if appropriate. The Federal Insurance Administrator will provide specific information on what grounds the claim was denied initially. The Federal Insurance Administrator will provide

an *appeal decision* in writing to the policyholder and insurer within 90 days from the date that all information has been submitted by the policyholder and include specific information for the resolution of the appeal. No further administrative review will be provided to the insured.

(4) A policyholder who does not agree with FEMA's appeal decision should refer to the SFIP, for options for further action (*see* Part 61, App. A(1) VII.R., Part 61, App. A(2) VII.R., and Part 61, App. A(3) VIII.R.). The one-year period to file suit commences with the written denial from the insurer and is not extended by the appeals process.

[71 FR 30298, May 26, 2006, as amended at 71 FR 60438, Oct. 13, 2006; 74 FR 56123, Oct. 30, 2009]

§ 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and parts 61 and 62 of this subchapter.

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration, a participating Write-Your-Own Company, or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the