

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, and 62

[Docket ID FEMA-2018-0026]

RIN 1660-AA95

National Flood Insurance Program: Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy.

DATES: This rule is effective on October 1, 2021.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Kelly Bronowicz, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 557-9488.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Rule

On July 16, 2018, FEMA published a Notice of Proposed Rulemaking (NPRM) (83 FR 32956) proposing to make several non-substantive changes to the NFIP regulations to improve their readability, uniformity, and clarity. In addition, FEMA proposed to codify certain requirements of the Biggert-Waters Flood Insurance Reform Act of 2012 (Pub. L. 112-141, 126 Stat. 916) (BW-12) and the Homeowner Flood Insurance Affordability Act of 2014 (Pub. L. 113-89, 128 Stat. 1020) (HFIAA).

The NPRM proposed to codify the provisions of BW-12 that require FEMA

to (1) increase the maximum coverage amount for multi-family properties to the same amount as that allowed for commercial properties; (2) establish a minimum deductible amount for NFIP policies; (3) stop denying payment to policyholders for damage or loss to a condominium unit under the Dwelling Form based solely on the fact that the condominium association has inadequate flood insurance coverage on the entire condominium; and (4) review, among other things, the processes and procedures for making flood in progress determinations. The NPRM also proposed to codify HFIAA's requirement that FEMA offer a high deductible option of \$10,000.

The NPRM solicited public comment on these proposed changes. FEMA received three comments related to the rulemaking and five unrelated comments that were outside the scope of the rulemaking. FEMA does not consider the five comments unrelated to this rulemaking in this preamble. In this final rule, FEMA adopts the changes it proposed in the NPRM, with some minor revisions in consideration of the related comments and corrections of typographical errors. FEMA describes these changes below.

II. Summary and Discussion of Public Comments

Of the three comments germane to this rulemaking, one anonymous commenter [FEMA-2018-0026-0005] commented on the need for more dams, the second, from the Association of State Floodplain Managers (ASFPM) [FEMA-2018-0026-0004], commented on the inclusion of spouses on the General Property Form of the Standard Flood Insurance Form (SFIP) and identified a typographical error, and the third, a member of the public [FEMA-2018-0026-0003], suggested that FEMA should modify the Residential Condominium Building Association Policy (RCBAP) to better take into account certain State laws concerning the maintenance and repair of condominium buildings and the units therein.

A. Dams

The anonymous commenter [FEMA-2018-0026-0005] suggested that FEMA "build more dams to hold back the waters from flooding." FEMA is committed to building a culture of preparedness by, in part, incentivizing investments that reduce risk—including pre-disaster mitigation—and reduce disaster costs at all levels.¹ This

includes encouraging the investment in infrastructure that reduces future disaster costs, such as dams and levees. However, this comment suggests actions beyond the scope of this rulemaking, which focuses on making conforming and clarifying changes to the National Flood Insurance Program's regulations and policy forms. For this reason, FEMA declines to make changes to this rulemaking in response to this comment.

B. Spouse as Named Insured in General Property Form

The Association of State Floodplain Managers (ASFPM) [FEMA-2018-0026-0004] noted that it supports FEMA's effort to revise the NFIP's regulations to clarify rules relating to the NFIP's operation and align them with BW-12 and HFIAA. ASFPM disagreed, however, with FEMA's proposal to add the insured's spouse as a named insured for both the Dwelling Form and the General Property Form of the SFIP. While ASFPM understands that a homeowners policy may typically include the insured's spouse as a named insured, it is not included in a commercial policy. ASFPM spoke with insurance specialists who confirmed that there may be a good chance that the spouse is not part of the commercial venture and has no interest in the business and therefore, should not be automatically included in the General Property Form. ASFPM therefore recommended removing the spouse as a named insured in the General Property Form.

FEMA did not intend to modify this provision in the NPRM and agrees with ASFPM's comments that the spouse of a named insured should not automatically be included as an insured in the General Property Form of the SFIP. The current General Property Form of the SFIP does not automatically include the spouse of a named insured as an insured under the policy. See 44 CFR part 61, App. A(2), II.A. Accordingly, this final rule will not modify the provision from the status quo. FEMA thanks ASFPM for identifying this inadvertent proposed change.

C. Replacement of "Covered" With "Insured"

ASFPM [FEMA-2018-0026-0004] also noted that while it has no issues with FEMA's proposal to replace the word "covered" with the word "insured" in the SFIP, the NPRM did not propose doing so throughout the

¹ Federal Emergency Management Agency, 2018-2022 Strategic Plan, [https://www.fema.gov/media-](https://www.fema.gov/media-library-data/1533052524696-b5137201a4614ade5e0129ef01cbf661/strat_plan.pdf)

SFIP, including the title of Section IV, "Property Not Covered." ASFPM recommended that FEMA review the different SFIP forms and ensure they are consistent with the use of "insured."

FEMA proposed to replace the word "covered" with the word "insured" in the SFIP because "covered" is a generic and undefined term that does not conform to common industry or Agency usage. FEMA agrees with ASFPM's comment and has replaced the word "covered" with "insured" in all instances where appropriate throughout the three SFIP forms.

D. Residential Condominium Building Association Policy (RCBAP)

A member of the public [FEMA–2018–0026–0003] suggested several modifications to the Residential Condominium Building Association Policy (RCBAP). The RCBAP insures residential condominium association buildings and offers building coverage up to \$250,000 multiplied by the number of units and contents coverage up to \$100,000 per building. Under existing NFIP regulations, the RCBAP acts as primary coverage for an entire condominium building, including portions of a condominium building which an individual unit owner is responsible for maintaining, such as interior walls and cabinetry.² Individual unit owners may choose to purchase a Dwelling Form policy that provides excess building coverage beyond that offered by an RCBAP, subject to statutory coverage limits. The requirement that the RCBAP act as primary coverage for all losses to condominium buildings and the units therein simplifies the claims process by allowing the NFIP to pay claims without having to divide payments between unit owners and condominium associations based on a wide array of condominium building bylaws and relevant state laws.

The commenter suggested that FEMA modify the RCBAP to better take into account certain state laws concerning the maintenance and repair of condominium buildings and the units therein. The commenter explained that many state laws divide responsibility for maintaining and repairing condominium buildings between a condominium association and individual unit owners. According to the commenter, the RCBAP's present design causes FEMA to deem the excess building coverage of an individual unit owner's Dwelling Form policy duplicative, excessive, and unable to provide coverage that an individual policyholder could use upon suffering a

loss. The commenter stated that treating the Dwelling Form's building coverage as excess to the RCBAP causes delays in insurance payments reaching individual unit owners, which in turn delays repairs, ultimately leading to litigation between condominium owners and their associations. The commenter is concerned that as a result, informed individual owners will cease purchasing building coverage under a Dwelling Form policy if they are aware that they will only receive payment of loss if the loss exceeds coverage under the RCBAP.

In addition, the commenter also stated that FEMA's treatment of a unit owner's Dwelling Form policy as excess to a condominium association's RCBAP violates section 1312(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4019(c)) (added by section 100214 of BW–12), which generally prohibits FEMA from denying or limiting coverage under an individual condominium unit owner's policy based solely or in part on the flood insurance coverage of the condominium association on the overall property.

The commenter also suggested defining the term "common elements" or making clear to policyholders that the applicable state definition will be used in interpreting the policy, likely for the purposes of interpreting Dwelling Form SFIP, Art. III.C.3.a. Moreover, the commenter recommended expanding the condominium loss assessment coverage provisions in III.C.3 of the Dwelling Form to clearly state what flood damaged items, if any, are excluded from coverage under the condominium loss assessment provision.

In sum, the commenter proposed that FEMA redesign the RCBAP so that it conforms with the laws in most states regarding condominiums (e.g., individuals insure the inside of their units, and the associations insure what they are responsible for under state law to repair). The commenter believes that this would (1) encourage individual unit owners to purchase building coverage, and (2) protect financial institutions, as a unit owner's financial institution is usually only named on the individual's Dwelling Form policy but not the RCBAP.

FEMA appreciates the commenter's suggestions on substantive changes FEMA could make to the SFIP to increase its marketability. As part of its 2018–2022 Strategic Plan, FEMA is committed to building a culture of preparedness by, in part, taking steps to double the number of properties covered by flood insurance through the private sector or the government. FEMA believes that designing flood insurance

products that meet consumer needs will help achieve this goal. However, FEMA does not intend to make such substantive changes to the SFIP in this rulemaking. FEMA's intent in this rule is to clarify the SFIP to improve overall readability as well as conform it to BW–12 and HFIAA. FEMA thanks the commenter for this comment and will take it under advisement if FEMA considers substantive changes to the SFIP in the future.

FEMA disagrees with the commenter's view that making coverage under a unit owner's Dwelling Form policy excess to the condominium association's RCBAP violates 42 U.S.C. 4019(c). Condominium associations commonly charge individual unit owners loss assessments when the association's insurance coverage is insufficient to cover damage after a flood. When a Dwelling Form policy insures a condominium unit, the policy provides coverage for loss assessments charged to the policyholder by their condominium association for covered flood damage. *See* Dwelling Form SFIP, Art. III.C.3.a. Prior to the enactment of BW–12, the policy excluded coverage for loss assessments if the reason for the assessment is due to application of the RCBAP's coinsurance penalty provision. *See* Dwelling Form SFIP, Art. III.C.3.b.4. As a result, FEMA would deny coverage for a portion of flood damage under both the RCBAP and the Dwelling Form of the SFIP.

Section 100214 of BW–12 now prohibits FEMA from denying or limiting coverage under an individual condominium unit owner's policy based solely or in part on the flood insurance coverage of the condominium association on the overall property, including situations where the condominium association did not maintain a minimum amount of coverage through an RCBAP. *See* 42 U.S.C. 4019(c). As a result, FEMA no longer denies coverage for a loss assessment under the Dwelling Form SFIP that results from the application of the RCBAP's coinsurance penalty, and this rulemaking removes the contrary provision. *See* Dwelling Form SFIP, Art. III.C.3.b.4.

Contrary to the commenter's assertion, the current structure of the RCBAP acting as primary coverage for a condominium building and the Dwelling Form acting as excess coverage does not violate 42 U.S.C. 4019(c). The Dwelling Form's excess coverage provision (VII.C.2) does not result in the denial of otherwise covered damage. Rather, it merely apportions the coverage between the Dwelling Form and the RCBAP. Ultimately, the flood

² *See* SFIP Dwelling Form, Art. VII.C.2.

damage is still covered, though the payment may go to the condominium association rather than directly to the unit owner.

Additionally, interpreting 42 U.S.C. 4019(c) to prohibit treating the Dwelling Form as excess coverage to the RCBAP coverage would be contrary to FEMA's statutory authority, fundamental tenets of insurance law, and Congressional intent. If FEMA were not able to treat Dwelling Form coverage as excess to RCBAP coverage, Dwelling Form policyholders could be entitled to receive payments for damage that FEMA would also be required to pay for under an RCBAP. Congress has not given FEMA authority to "double pay" for the same damage.³ Further, such double payments would also be contrary to fundamental principles of insurance law.⁴ Finally, Congress' intent in enacting 42 U.S.C. 4019(c) was to ensure Dwelling Form policyholders can still receive payments where RCBAP coverage is inadequate; it was not intended to require FEMA pay for the same damage under two separate policies.⁵ Treating the Dwelling Form coverage as excess to the RCBAP coverage comports with this purpose.

FEMA appreciates the commenter's suggestions to clarify parts of the Dwelling Form's coverage for condominium loss assessments. However, FEMA does not agree with the commenter's suggestion of defining "common elements" based on applicable state laws. The NFIP is a national program that is best implemented through uniform guidance irrespective of various state laws. Defining "common elements" based on state law, rather than a uniform standard, would increase policyholder

confusion and complicate claims adjusting processes.

FEMA also does not agree that it is necessary to list in the SFIP items excluded from coverage of condominium loss assessments. FEMA has already provided guidance in this respect in the NFIP Claims Manual.⁶ On page 54, the Manual explains "[The Dwelling Form's coverage of condominium loss assessments] does not include an assessment from the Condominium Association for property not covered by the SFIP, such as the cleanup of debris, sand, landscape lighting, repairs to parking lots, decks, sidewalks, pools, etc." It is FEMA's position that this guidance states with sufficient clarity what flood damaged items are excluded from coverage under the condominium loss assessment provision.

FEMA also wishes to point out that Coverage B (Personal Property) in the Dwelling Form of the SFIP will continue to include coverage for "interior walls, floor, and ceiling" not otherwise covered by an RCBAP policy. This coverage is limited to no more than 10 percent of the contents coverage limit chosen by the insured. This allows an individual unit owner to purchase his or her own policy that provides coverage beyond that offered by the RCBAP.

III. Summary of Other Changes

The final rule also includes corrections of typographical errors and other non-substantive stylistic changes from the NPRM. For instance, FEMA corrects the capitalization of some section headings to ensure consistency. FEMA also removed an inadvertent inclusion of "initial installment payment" in the revised 44 CFR 61.11(c) and added an inadvertently-removed unnumbered paragraph in the revised RCBAP section III.C.2.a (stating "[t]his coverage does not increase the Coverage A or Coverage B limit of liability."). FEMA also hyphenated the usage of "single-family" and "two-to-four" through the rule to conform to current NFIP styles. FEMA also updated cross-references to the Dwelling Form in 44 CFR 61.17(g).

Last, in the Maximum Amounts of Coverage Table at 44 CFR 61.6(a), FEMA replaced the term "Condominium Building" with "Residential Condominium Building" to make clear that the particular coverage limit is limited to condominium buildings used for residential purposes, rather than

non-residential condominium buildings. This change reflects current practice and is for clarification purposes only.

IV. Regulatory Analysis

A. *Executive Orders 12866, "Regulatory Planning and Review", 13563, "Improving Regulation and Regulatory Review", and 13771, "Reducing Regulation and Controlling Regulatory Costs"*

Executive Orders 13563 ("Improving Regulation and Regulatory Review") and 12866 ("Regulatory Planning and Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017).

In this rule FEMA makes several nonsubstantive changes to the National Flood Insurance Program (NFIP) regulations at 44 CFR parts 59, 61, and 62, as well as the Appendices to Part 61. FEMA is codifying certain provisions of the Biggert Waters Flood Insurance Reform Act of 2012 (BW-12) and the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) that it has already implemented in its Flood Insurance Manual and other related guidance documents. FEMA is also revising certain provisions of the NFIP regulations relating to NFIP operations and the Standard Flood Insurance Policy to consolidate and update the

³ Congress has only authorized FEMA to sell "insurance against loss resulting from physical damage to or loss of real property or personal property." 42 U.S.C. 4011(a).

⁴ For instance, one such principle is that of indemnity, which requires that "the value of the benefit paid the insured will not exceed the amount of the loss." 1 New Appleman on Insurance Law Library Edition § 1.05 (2019). (This principle is essential for mitigating the moral hazard that would result from policyholders profiting from insured losses). And "Congress did not intend to abrogate standard insurance law principles" when it created the National Flood Insurance Program. *Leland v. Fed. Ins. Adm'r*, 934 F.2d 524, 530 (4th Cir. 1991) (quoting *Drewett v. Aetna Cas. & Sur. Co.*, 539 F.2d 496, 498 (5th Cir.1976)).

⁵ In December 2011, the Senate Banking Committee explained the intent behind section 116 of the *Flood Insurance Reform and Modernization Act of 2011* (2011 S. 1940), which eventually became law as Section 100214 of BW-12. The Committee explained that the provision "[c]larifies that condominium owners with flood insurance policies should receive claims payments regardless of the adequacy of flood insurance coverage of the condominium association and other condominium owners." See Senate Report 112-98, p. 8.

⁶ https://www.fema.gov/media-library-data/1559248107320-0943773d439f0ea73003ce1adcf48be7/NFIP_Claims_Manual.pdf.

regulatory text and standardize key terminology.

There are 34 regulatory changes in this rule (itemized in Table 1). The majority of these changes are nonsubstantive clarifications. The remaining changes codify an existing practice, policy, or process.

Pursuant to OMB Circular A-4, FEMA assesses the impacts of this rule against a no-action baseline and a pre-statutory baseline. With the no-action baseline, FEMA assesses what the world would be like absent the final rule. With the pre-statutory baseline, FEMA assesses what the world would be like absent the

relevant statute(s) (in this case, BW-12 and HFIAA). With this approach, FEMA considers the full impacts of the rule.

Under a no-action baseline, this rule has no quantifiable transfers, costs, or benefits. The rule makes non-substantive improvements to the language and organization of the NFIP regulations through clarifications and codifications, which do not result in any quantifiable transfers, costs, or benefits. The rule also codifies certain provisions of BW-12 and HFIAA that FEMA has already implemented via the Flood Insurance Manual and other related guidance documents, which results in

no quantifiable transfers or benefits. WYO (Write Your Own) companies will, however, incur opportunity costs as they spend time becoming familiar with the rule's changes. Pursuant to the final rule, FEMA will no longer require individual waivers for condominium loss assessment restrictions; this results in cost savings.

The analysis below utilizes a pre-statutory baseline of 2012. The summary of changes table (Table 1) lists all changes the rule makes to FEMA's current regulations, a description of each change, and their impact.

(a) TABLE 1—SUMMARY OF CHANGES
[Pre-statutory baseline]

| Current section No./ subject matter | Rule change | Mandatory or discretionary action | Impact |
|--|---|-----------------------------------|---------------------------------|
| Non-substantive Clarifications & Consolidations | | | |
| 1. § 59 Definitions | FEMA will add and revise definitions to support clarifications and codifications described below. This is a non-substantive change that clarifies existing definitions and does not alter the administration of the program. | Discretionary | No change in compliance burden. |
| 2. § 61.1 Purpose of part. | FEMA will remove irrelevant second sentence that does not relate to the substantive content of part 61. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 3. § 61.3 Coverage and benefits provided under the SFIP. | FEMA will clarify language to provide a more complete statement of coverage and benefits provided by the SFIP. The coverage and benefits provided under the SFIP are already stated in regulations; this is just a consolidated, unified statement of coverage and benefits under the SFIP. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 4. § 61.5 Deductibles | An application of BW-12 section 100210 and HFIAA section 12, that will clarify existing policy/practice by moving content of 61.5 to new unified cancellation/nullification section in 44 CFR 62.5 (discussed below). FEMA also will replace the current deductible tables with provisions describing the minimum deductibles required by BW-12 section 100210 and the \$10,000 deductible option required by HFIAA section 12. This is a non-substantive change because FEMA has always had this authority and has always made these deductible options available to policyholders despite not being explicitly provided for in the CFR. | Mandatory | No change in compliance burden. |
| 5. § 61.6 Maximum amounts of coverage available. | FEMA will clarify the maximum coverage limit tables in section 61.6 with non-substantive changes to improve readability and conformance with standard program terminology and terminology introduced by BW-12. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 6. § 61.10 Requirements for Issuance or Renewal of Flood Insurance Coverage. | FEMA will clarify/consolidate existing regulation language. This new provision will clarify that no flood insurance coverage will be issued unless there is (a) receipt of full amount due and (b) submission of a complete application with all the required rating information. Although this has always been the case, and these concepts are covered in sections 61.5 and 61.11, FEMA believes that increased clarity is needed by adding a consolidated statement in the regulations. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 7. § 61.13 Standard Flood Insurance Policy. | This provision will clarify that SFIP is authorized only under terms and conditions established by Act, regulations, SFIP, and Administrator interpretations. FEMA also will clarify that the agent acts only for policyholder and that the risk of loss is borne by the National Flood Insurance Fund, not the WYO company. This does not represent a substantive change in policy or terms and conditions of the SFIP, but instead will make terms clearer. | Discretionary | No change in compliance burden. |

(a) TABLE 1—SUMMARY OF CHANGES—Continued
[Pre-statutory baseline]

| Current section No./ subject matter | Rule change | Mandatory or discretionary action | Impact |
|--|---|-----------------------------------|---------------------------------|
| 8. § 62.5 Policy Nullification and Cancellation. | FEMA will make changes that will clarify and consolidate the existing reasons for which a policy may be cancelled or nullified. The current reasons for which a policy may be cancelled or nullified are spread throughout the regulations and FEMA's interpretations of those regulations in the Flood Insurance Manual. This will consolidate those reasons into one section for greater clarity and transparency to the public. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 9. § 62.6 Broker and Agents for Servicing Agent. | This provision will clarify FEMA's existing policy by adding it to regulation that a broker or agent selling NFIP policies must be licensed in the state in which the property is located. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 10. SFIP Article I | FEMA will change SFIP Article I to clarify the types of property insured by the SFIP. Clarifications are about coverage limits and multiple policies covering one building. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 11. SFIP Article II—Definitions. | FEMA will revise and add some definitions for clarity. In particular, the changes will clarify that the named insured must also include the building owner if building coverage is purchased. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 12. SFIP Article III | FEMA will clarify that references to insured property do not extend coverage to any type or item of property not otherwise insured in accordance with the terms and conditions of SFIP. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 13. SFIP Article III.A | FEMA is making minor non-substantive changes to Article III.A.5.b.2 to improve the grammar of the section; revise Article III.A.8 to remove the phrase "in a building enclosure." This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 14. SFIP Article III.B | FEMA will revise the numbering in this section to improve readability and organization; revise Article III.B.3 by removing the phrase "in a building enclosure." This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 15. SFIP Article III.D | FEMA will revise the language in this section so that the word "structure" is replaced by the word "building" throughout the section except at III.D.5.c. The reason for this change is the NFIP insures SFIP defined "buildings," not any structure that does not meet the definition of "building" as defined in the SFIP. FEMA also will improve the language in III.D.3.d and III.D.3.e by replacing the phrase "this coverage" with the phrase "Coverage D" to clarify that the coverage referred to in these provisions is Coverage D. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 16. SFIP Article V.B | FEMA is making a non-substantive, clarifying adjustment to the Flood in Progress Exclusion at SFIP Art. V.B to align with reports required by BW-12 section 100227. This change does not impact the application of the exclusion, but will help support more consistent reading of the provision. | Discretionary | No change in compliance burden. |
| 17. SFIP Article VII.B | FEMA will move the provision on concealment of fraud and policy voidance for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 18. SFIP Article VII.E | FEMA will remove Article VII.E, Cancellation of the Policy by You, and incorporate the language into a new consolidated section on policy nullifications, cancellations, and non-renewals. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |

(a) TABLE 1—SUMMARY OF CHANGES—Continued
[Pre-statutory baseline]

| Current section No./ subject matter | Rule change | Mandatory or discretionary action | Impact |
|--|--|-----------------------------------|---------------------------------|
| 19. SFIP Article VII.F ... | FEMA will remove Article VII.F, Non-Renewal of the Policy by Us, and incorporate the language into a new Article VIII discussing policy nullifications, cancellations, and non-renewals. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 20. SFIP Article VII.G ... | This provision will revise the reformation section for clarity/readability. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 21. SFIP Article VII.U ... | FEMA will move the provision on duplicate policies for consolidation into unified section on policy cancellations and nullifications (discussed below). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 22. SFIP Article VII.V ... | FEMA will revise Article VII.V.1.a.1 of the current policy to remove all the language after “It is your principal residence.” The reason for this change is that this language, which is essentially a definition of the term “principal residence,” has been incorporated into the new definition of “principal residence” being added to Definitions section in Article II. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 23. SFIP Article VIII | FEMA will clarify the existing reasons for which a policy may be cancelled, nullified, or not renewed. This will mirror similar section being established at 44 CFR 62.5 (discussed above). This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 24. SFIP Article IX | FEMA will clarify that the SFIP and all disputes arising from the insurer’s policy issuance, policy administration, or the handling of any claim under the SFIP are governed by the National Flood Insurance Act and the regulations. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 25. Entire SFIP—Global Language Replacements. | FEMA will replace the word “covered” with the word “insured” because the word “covered” does not conform to common industry or Agency usage. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 26. 62.22 Judicial Review (preamble sec. III.F.5). | FEMA will replace references to the “Federal Insurance Administration” with the current organizational title, “Federal Insurance and Mitigation Administration.” This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 27. SFIP Article VII.D ... | FEMA will redesignate Article VII.D as Article VII.C. Replaces the phrase “structure during the course of construction” in Article VII.D.2 of the current rule with “building under construction,” which is the proper term of art, as used in Article III.A.5.a and Article VI.A. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 28. § 61.4 Limitations on Coverage. | FEMA will delete this provision because some of the language is duplicative with language in other sections, and the rest of the language is more appropriately moved to other sections of the regulation. Move 61.5(a) and (b) to become a new 44 CFR 61.4. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 29. § 62.3 Servicing agent. | FEMA will remove the name of specific direct servicing agent. This is a non-substantive change that codifies current practices that began more than a decade before the baseline regarding the public announcement of the direct servicing agent. | Discretionary | No change in compliance burden. |
| 30. Part 59 Authority Citation. | FEMA will replace the citations to Reorganization Plan No. 3 and Executive Order 12127 with a citation to the codification of the Homeland Security Act of 2002, 6 U.S.C. 101 <i>et seq.</i> This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| 31. Part 61 Authority Citation. | FEMA will update authority citations to reflect changes to FEMA’s source of authority from Executive orders to statute. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |

(a) TABLE 1—SUMMARY OF CHANGES—Continued
[Pre-statutory baseline]

| Current section No./ subject matter | Rule change | Mandatory or discretionary action | Impact |
|---|---|-----------------------------------|---|
| 32. Part 62 Authority Citation. | FEMA will update authority citations to reflect changes to FEMA's source of authority from Executive orders to statute. This is a non-substantive change that does not alter the administration of the program but rather provides greater clarity for the reader. | Discretionary | No change in compliance burden. |
| Codification of Existing Policy and Practice | | | |
| 33. § 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements. | FEMA will codify BW–12's addition of the Post-Wildfire Exception to the 30-day waiting period required by 42 U.S.C. 4013(c). This change does not alter the current administration of the program because FEMA immediately complied with the law. FEMA also is making a clarification by removing the second clause of the first sentence of 61.11(e) and 61.11(f) because these clauses accommodate a business model that the WYO companies no longer use. This change does not alter the current administration of the program but rather provides greater clarity for the reader. | Mandatory | No change in compliance burden. |
| 34. SFIP Article III.C | FEMA will codify BW–12 section 100214, which prohibits the application of SFIP Article III.C.3.b.4 (disallowing the payment of a condominium loss assessment on a unit policy if the condominium building is underinsured). Prior to BW–12, FEMA issued individual waivers of this provision as the need arose. The changes will delete Article III.C.3.b.4, thus no longer requiring FEMA to issue individual waivers. | Mandatory | Cost savings of \$2,048 over 10 years (\$1,799 at 3 percent and \$1,539 at 7 percent discount rates.) |

1. Costs

This rule makes non-substantive improvements to the language and organization of the NFIP regulations. These changes do not result in any quantifiable costs, other than opportunity costs, that WYO companies will incur as they spend time becoming familiar with the changes.

This rule revises section 61.11 to codify an additional exception to the 30-day waiting period before coverage on a flood insurance policy takes effect. Prior to BW–12, there were only two exceptions to this 30-day waiting period. The first exception was for the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan. The second exception was for the initial purchase of flood insurance pursuant to a revision or updating of floodplain areas or flood risk zones, if such purchase took place within 1 year of the notice of such revision.

The final rule codifies Section 100241 of BW–12, which amended Section 1306(c) of the NFIA (42 U.S.C. 4013(c)), by placing a third exception to the 30-day new policy waiting period. This new exception applies to situations where the flooding to an insured privately owned property is the result of flooding on Federal land that was caused or exacerbated by post-wildfire conditions, also on Federal land. FEMA implemented this new exception via bulletin. See WYO Bulletin W–12045 (July 10, 2012) (announcing the

implementation of Section 100241), see also, WYO Bulletin W–18001 (Jan. 16, 2018) (replacing WYO Bulletin W–12045). To date, circumstances have not existed requiring FEMA to apply this exception. The change updates the regulations to reflect the revised statutory language and existing Agency practice.

According to FEMA's NFIP claim data, since implementation of this exception in July 2012, no parties have made claims that apply to this provision. Additionally, due to both the brief window of applicability (the 30-day waiting period after initial enrollment in the NFIP) and the narrow circumstances to which this exception applies (flood damage due to flood on Federal land caused, or exacerbated, by post-wildfire conditions), invocation of this exception will be rare. This provision serves as an added enticement to potential enrollees of the NFIP to join the NFIP if they believe that a wildfire on Federal land may cause, or exacerbate, flooding on their property. In accordance with the data, there has not been and FEMA estimates that there will continue to be no additional burden on any party.

2. Benefits

The majority of provisions represent clarifications of the regulation, or remove regulations that are no longer applicable. The few non-clarifying provisions reflect certain provisions that FEMA has already implemented through policy. These provisions

streamline operations or meet greater potential needs of policyholders (codifications). It is only with codifications where any quantifiable impacts appear. This analysis considers the following as possible benefits of this rule:

i. Clarification of NFIP Terms & Conditions

This analysis looks at the many efficiencies of the final rule; FEMA cannot quantify the bulk of these benefits. Although FEMA has not quantified them, they are essential to the justification of the final rule and provide significant benefits for stakeholders.

Under current conditions, the NFIP-related sections of the CFR contain inconsistencies or vague language that may cause confusion to stakeholders. The following are selected examples of changes presented in Table 1:

a. Making Explicit the Implicit

The current NFIP deductible charts at 44 CFR 61.5(d) show several possible deductible options, but not all the deductible options available under the program. A note to these tables indicates that policyholders may submit any other deductible amounts not currently listed in this chart (including the \$10,000 deductible option required under HFIAA). Notwithstanding this note, the current regulation's listing of deductible options may give readers the impression that the list is exhaustive. In this rulemaking, FEMA removes the

deductible charts and replaces them with a requirement that FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to certain minimum deductibles. This change does not expand or contract the deductible options the NFIP offers; rather, it clarifies that FEMA offers various options, including the \$10,000 deductible, subject to other restrictions.

This rulemaking also changes the language in Appendix A(1) of Part 61 to clarify that FEMA also insures personal property under this policy. FEMA has always insured personal property under this policy, but the change makes this more explicit in the initial coverage statement. This rulemaking also changes Appendix A(2) to Part 61 to state that the policy insures only one building and that the insured building is the one specifically described in the Flood Insurance Application. FEMA has always limited coverage under the SFIP to one building; with this change, FEMA clearly states this at the very beginning of the SFIP.

b. Modifying, Adding or Removing Definitions

In this rule, FEMA revises definitions such as “deductible,” “emergency program,” “act,” and “basement.” These non-substantive changes are clearer and more consistent with the language in the Articles of the SFIP, as are the addition of acronyms for ease of repetitive use (such as that for the Special Flood Hazard Area as “SFHA”) or to remove

a term or definition that FEMA no longer uses (e.g., “Expense Constant” which no longer applies, or “Probation Premium” which is better changed to “Probation Surcharge”).

This increased precision and consistent use of terms increases clarity of FEMA’s NFIP regulations for the insurance companies, flood insurance policyholders, academic researchers, and private citizens. This improved accuracy will minimize confusion.

ii. Codification of Dwelling Policy Underinsurance Exception

Article III.C.3.b.4 of the SFIP, found in Appendix A(1) to Part 61, prevents payment of condominium loss assessments on a unit policy if the condominium building is underinsured. The SFIP also requires policyholders to exhaust the coverage limits of the RCBAP policy (the primary policy) before the Dwelling Policy (the secondary policy) can take effect. This poses a challenge in the event FEMA disallows the primary policy in the above circumstance. Since 2007, FEMA required policyholders facing such a predicament to obtain a waiver from FEMA to process such claims.

Pursuant to Section 100214 of BW–12, this rule removes Article III.C.3.b.4 of the SFIP, which prohibits such claim payments and necessitates the submission and processing of waivers. As a result of this statutory change, FEMA no longer requires waivers for this prohibition.

To estimate the cost savings that result from FEMA’s removal of this requirement, FEMA considered the frequency of these specific circumstances. Between 2007, when FEMA began issuing the waivers, and 2013, when FEMA terminated the waiver process (following the passage and FEMA’s provisional implementation of BW–12), there were four occurrences: Twice in Illinois, once in Texas, and once in Tennessee. Four occurrences over 6 years equate to an estimated frequency of 0.667 instances each year, assuming that the rate remains consistent in the future.

FEMA requires 3 hours to process a waiver request. Two General Schedule (GS) Federal employees in the National Capital Region, at the GS–14 and GS–15 levels, process waiver requests in equal proportion. Utilizing 2018 GS scale⁷ published hourly wage rates from the Office of Personnel Management (OPM) for the midpoint (step 5) of these grade levels FEMA calculated fully loaded⁸ wage rates of \$90.85 and \$106.87 per hour, respectively. At approximately 90 minutes per officer for each expected waiver, the subtotal is \$136.28⁹ and \$160.30,¹⁰ respectively. An Assistant Administrator at the Senior Executive Service (SES) level must clear each waiver. This review and approval takes approximately 5 minutes.¹¹ FEMA estimates that a fully loaded SES hourly rate is \$126.66 per hour.¹² The subtotal of the SES time is \$10.56.¹³ The total opportunity cost to process each waiver is \$307.16.¹⁴

(b) TABLE 2—PROJECTED COST SAVINGS OF CODIFICATION OF DWELLING POLICY UNDERINSURANCE EXCEPTION

| | Avg frequency of waivers | Total cost per waiver | Annual cost savings | NPV at 3% (m) | NPV at 7% (m) |
|--------------|--------------------------|-----------------------|---------------------|---------------|---------------|
| Year 1 | 0.67 | \$307 | \$205 | 205 | 205 |
| Year 2 | 0.67 | 307 | 205 | 199 | 191 |
| Year 3 | 0.67 | 307 | 205 | 193 | 179 |
| Year 4 | 0.67 | 307 | 205 | 187 | 167 |
| Year 5 | 0.67 | 307 | 205 | 182 | 156 |
| Year 6 | 0.67 | 307 | 205 | 177 | 146 |
| Year 7 | 0.67 | 307 | 205 | 171 | 136 |

⁷ GS Scale based on 2018 OPM tables, hourly basic wage rates by grade and step for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA. Accessed March 1st, 2018. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/18Tables/html/DCB_h.aspx.

⁸ Bureau of Labor Statistics, Employer Cost for Employee Compensation News Release, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation; civilian workers, by major occupational and industry group, December 2017. https://www.bls.gov/news.release/archives/ecec_03202018.htm.

The per hour benefits multiplier is calculated by dividing total compensation for all workers (\$35.87) by wages and salaries for all workers (\$24.49),

which yields a per hour benefits multiplier of 1.46. (\$35.87 ÷ \$24.49 = 1.46468). Fully-loaded wage rates are calculated by multiplying the per hour benefits multiplier by the applicable wage rate. GS–14: \$62.23 × 1.46 = \$90.85 and GS–15: \$73.20 × 1.46 = \$106.87.

⁹ \$90.85 (hourly wage rate of \$62.23 × 1.46) * 1.5 hours = \$136.28.

¹⁰ \$106.87 (hourly wage rate of \$73.20 × 1.46) * 1.5 hours = \$160.30.

¹¹ FEMA bases SES salary estimates on OPM’s Senior Executive Service Report. The latest report available is for 2016. Across all agencies the median SES pay is \$173,882 (see table 13 at the following link) <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/ses-summary-2016.pdf>. Accessed June 4, 2018.

¹² \$173,882 annual wage/2087 annual hours = \$83.32 hourly wage rate × 1.46 benefits multiplier = \$121.65 fully loaded hourly wage × 1.04115 inflation adjustment = \$126.66 fully loaded \$2018 hourly wage. We calculated the inflation adjustment by subtracting the July 2016 CPI–U (240.6) from the April 2018 CPI–U (250.5). We divided the result (9.9) by the July 2016 CPI–U (240.0). Calculation: (250.5 – 240.6)/240.6 = 0.04115. BLS CPI–U data is available at <http://data.bls.gov/cgi-bin/surveymost?bls>. Select CPI for All Urban Consumers (CPI–U) 1982–84 = 100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button. Accessed June 8, 2018.

¹³ \$126.96 * 5 minutes = \$10.56.

¹⁴ \$136.28 + \$160.30 + \$10.56 = \$307.14.

(b) TABLE 2—PROJECTED COST SAVINGS OF CODIFICATION OF DWELLING POLICY UNDERINSURANCE EXCEPTION—Continued

| | Avg frequency of waivers | Total cost per waiver | Annual cost savings | NPV at 3% (m) | NPV at 7% (m) |
|---------------|--------------------------|-----------------------|---------------------|---------------|---------------|
| Year 8 | 0.67 | 307 | 205 | 166 | 128 |
| Year 9 | 0.67 | 307 | 205 | 162 | 119 |
| Year 10 | 0.67 | 307 | 205 | 157 | 111 |
| Total | 6.67 | 3,072 | 2,048 | \$1,799 | \$1,539 |

Applying this cost to the estimated frequency of occurrence of 0.67 waivers per year and extending the avoided costs over a 10-year period will project a total undiscounted cost savings of \$2,048. The 10-year total equates to \$1,799 and \$1,539, when discounted at 3 percent and 7 percent respectively.

3. Alternatives Considered

Given that this rule has no direct compliance costs, no less burdensome alternatives to the final rule are available. In the absence of this final rule, stakeholders will continue to experience the negative repercussions of inconsistencies between the statutes, regulations, and agency policy documents.

4. Summary

For the 10-year period analyzed, FEMA does not anticipate any costs resulting from the selected provisions of BW-12 and HFIAA that the rule is implementing. During that same period analyzed, the estimated quantified benefits total \$2,048. The present value, discounted at 7 percent, of the estimated quantified benefits is approximately \$1,539 and \$1,799 discounted at 3 percent. FEMA’s ability to administer the NFIP in a more streamlined manner and the public’s enhanced understanding of the terms and conditions of the program justify the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 29 of the 67 WYO companies participating in the NFIP (43 percent) are small entities.¹⁵ However, this rule will not

have a significant economic impact on any company because this rule does not impose burdens on any participating WYO company. The rule makes non-substantive improvements to the language and organization of the NFIP regulations through clarifications and codifications. The rule also codifies certain provisions of BW-12 and HFIAA that FEMA has already implemented via the Flood Insurance Manual and other related guidance documents.

Accordingly, FEMA certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the

expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. This rulemaking does not call for a new collection of information under the PRA. There is an existing collection of information, 1660–0006, the National Flood Insurance Program Policy Forms, Public Law 90–448 (1968) (expanded by Pub. L. 93–234 (1973)) included in this rulemaking. BW-12 and HFIAA require modifications to the NFIP. Program changes resulting from BW-12 and HFIAA necessitated revision of the NFIP Policy Forms to assure proper classification of properties for rating purposes and to rate and issue the policies in accordance with the provisions of BW-12 and HFIAA. However, this rule will not impact this collection because the forms have already been updated as needed.

E. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the

¹⁵ See Initial Regulatory Flexibility Analysis in the Notice of Proposed Rulemaking at 84 FR 32983.

identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See *id.* section 552a(5). An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this rule. DHS/FEMA has determined that this rulemaking does not affect the 1660–0006 OMB Control Number’s current compliance with the E-Government Act of 2002 or the Privacy Act of 1974, as amended. As a result, DHS/FEMA has concluded that the 1660–0006 OMB Control Number is covered by the DHS/FEMA/PIA–011—National Flood Insurance Program Information Technology Systems (NFIP ITS) Privacy Impact Assessment (PIA). Additionally, DHS/FEMA has decided that the 1660–0006 OMB Control Number is covered by the DHS/FEMA–003 National Flood Insurance Program Files, 79 FR 28747, May 19, 2014 System of Records Notice (SORN).

F. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249, (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no

agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal government, or the agency consults with Tribal officials.

Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. This rule involves no policies that have Tribal implications under Executive Order 13175. This rule makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations applicable to communities, including participating Indian Tribal governments and Tribes, which voluntarily choose to participate in the program. Because these program updates are limited, they will not have substantial direct effects on Indian Tribes, on the relationship between the national government and Indian Tribes, or the distribution of power between the Federal Government and Indian Tribes.

G. Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” For the purposes of this Executive Order, the term States also includes local governments or other subdivisions established by the States. Under this Executive Order, Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States. Further, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless the Federal Government provides funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation, or the agency consults with State and local officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has

federalism implications and preempts State law, unless the agency consults with State and local officials.

FEMA has reviewed this rule under Executive Order 13132 and has determined that it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rule makes limited changes to the comprehensive, longstanding National Flood Insurance Program regulations governing the communities’ participation in the program. Because these program updates are limited, they will not have substantial direct effects on the States or participating communities, on the relationship between the national government and the States or participating communities, or the distribution of power among the various levels of government.

H. Executive Order 11988, “Floodplain Management”

Pursuant to Executive Order 11988, each agency must provide leadership and take action to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare. In addition, each agency must restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a

regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA determined that these actions will not have a significant effect on land use, floodplain management, or wetlands.

I. Executive Order 11990, “Protection of Wetlands”

Executive Order 11990, “Protection of Wetlands,” 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. These responsibilities include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a

proposal's effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this rule is to implement insurance-related administrative changes to clarify coverage, rates, and terms and conditions. FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a significant effect on land use, floodplain management, or wetlands.

J. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts of their proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 *et seq.*, require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. FEMA included the Federal Insurance actions covered in the

purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a significant effect on the human environment.

K. Executive Order 12898 Environmental Justice

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381, (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA included the Federal Insurance actions covered in the purpose of this rule as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and in accordance with FEMA Directive 108–1 and Instruction 108–1–1. FEMA has determined that these actions will not have a disproportionately high or adverse effect on human health or the environment, nor will it exclude persons from participation in FEMA programs, deny persons the benefits of FEMA programs, or subject persons to discrimination because of race, color, or national origin.

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a

copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has sent this final rule to the Congress and to GAO pursuant to the CRA. The rule is not a "major rule" within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

44 CFR Parts 59 and 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 62

Claims, Flood insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FEMA amends 44 CFR Chapter I as follows:

PART 59—GENERAL PROVISIONS

- 1. Revise authority citation for part 59 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

- 2. In § 59.1, remove definition for "Emergency Flood Insurance Program or emergency program," and add definitions, in alphabetical order, for "Condominium Building," "Mixed Use Building," "Multifamily Building," "Non-Residential Building," "Non-Residential Property," "Other Residential Building," "Other Residential Property," "Residential Building," "Residential Property," "Single-Family Dwelling," and "Two-to-Four Family Building" and revise the definitions for "Act," "Deductible," and "Emergency Program" to read as follows:

§ 59.1 Definitions.

* * * * *

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001- *et seq.*

* * * * *

Condominium Building means a type of building in the form of ownership in which each unit owner has an undivided interest in common elements of the building.

* * * * *

Deductible means the amount of an insured loss that is the responsibility of the insured and that is incurred before any amounts are paid for the insured loss under the insurance policy.

* * * * *

Emergency Program means the initial phase of a community's participation in the National Flood Insurance Program, as prescribed by Section 1306 of the Act.

* * * * *

Mixed Use Building means a building that has both residential and non-residential uses.

* * * * *

Multifamily Building means an other residential building that is not a condominium building.

* * * * *

Non-Residential Building means a commercial or mixed-use building where the primary use is commercial or non-habitational.

Non-Residential Property means either a non-residential building, the contents within a non-residential building, or both.

* * * * *

Other Residential Building means a residential building that is designed for use as a residential space for 5 or more families or a mixed use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building.

Other Residential Property means either an other residential building, the contents within an other residential building, or both.

* * * * *

Residential Building means a non-commercial building designed for habitation by one or more families or a mixed use building that qualifies as a single-family, two-to-four family, or other residential building.

Residential Property means either a residential building or the contents within a residential building, or both.

* * * * *

Single-Family Dwelling means either (a) a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, or (b) a single-family residential unit within a two-to-four family building, other-residential building, business, or non-residential building, in which

commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

* * * * *

Two-to-Four Family Building means a residential building, including an apartment building, containing two-to-four residential spaces and in which commercial uses are limited to less than 25 percent of the building's total floor area.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

- 3. Revise the authority citation for part 61 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

- 4. Revise § 61.1 to read as follows:

§ 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds.

- 5. Revise § 61.3 to read as follows:

§ 61.3 Coverage and benefits provided under the Standard Flood Insurance Policy.

(a) Insurance coverage under the Program is available for buildings and their contents. Coverage for each may be purchased separately.

(b) In addition to building and contents coverage, the Dwelling Form of the Standard Flood Insurance Policy (SFIP) covers debris removal, loss avoidance measures, and condominium loss assessments. The General Property Form of the SFIP covers debris removal, loss avoidance measures, and pollution damage. The Residential Condominium Building Association Policy Form of the SFIP covers debris removal and loss avoidance measures.

(c) With the purchase of building coverage, the Standard Flood Insurance Policy covers the costs associated with bringing the building into compliance with local floodplain ordinances.

- 6. Revise § 61.4 to read as follows:

§ 61.4 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies will be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any floodplain, mudslide (*i.e.*, mudflow), or flood-related erosion area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, applicants must pay the

full policy premium at the time of application.

■ 7. Revise § 61.5 to read as follows:

§ 61.5 Deductibles.

FEMA must provide policyholders with deductible options in various amounts, up to and including \$10,000, subject to the following minimum deductible amounts:

(a) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with

building coverage amounts less than or equal to \$100,000 is \$1,500.

(b) The minimum deductible for policies covering pre-FIRM buildings charged less than full-risk rates with building coverage amounts greater than \$100,000 is \$2,000.

(c) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts equal to or less than \$100,000 is \$1,000.

(d) The minimum deductible for policies covering post-FIRM buildings and pre-FIRM buildings charged full risk rates, with building coverage amounts greater than \$100,000 is \$1,250.

■ 8. Revise § 61.6 to read as follows:

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

TABLE 1 TO PARAGRAPH (a)—MAXIMUM AMOUNTS OF COVERAGE AVAILABLE ¹

| Occupancy | Emergency Program | Regular Program |
|---|-------------------|--|
| | Amount | Amount |
| Building Coverage | | |
| Single-Family Dwelling | * \$35,000 | \$250,000. |
| Two-to-Four Family Building | * 35,000 | \$250,000. |
| Other Residential Building (including Multifamily Building) | ** 100,000 | \$500,000. |
| Residential Condominium Building | N/A | \$250,000 times the number of units in the building. |
| Non-Residential Building | ** 100,000 | \$500,000. |
| Contents Coverage² | | |
| Residential Property ³ | 10,000 | \$100,000. |
| Non-Residential Property | 100,000 | \$500,000. |

¹ This Table provides the maximum coverage amounts available under the Emergency Program and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.

² The policy limits for contents coverage are not per building. Although a single insured may not have more than one policy covering contents in a building, several insureds may have separate policies of up to the policy limits.

³ The Residential Property occupancy category includes the Single-Family Dwelling, Two-to-Four Family Building, Other Residential Building, and Condominium Building occupancies categories.

* In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$50,000.

** In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$150,000.

(b) Coverage and benefits payable under the SFIP pursuant to § 61.3(b) and (c) are included in, not in addition to, the coverage limits provided by the Act or stated in paragraph (a) of this section.

■ 9. Add § 61.10 to read as follows:

§ 61.10 Requirements for issuance or renewal of flood insurance coverage.

FEMA will not issue or renew flood insurance unless FEMA receives:

(a) The full amount due (including applicable premiums, surcharges, and fees); and

(b) A complete application, including the information necessary to establish a premium rate for the policy, or submission of corrected or additional information necessary to calculate the premium for the renewal of the policy.

■ 10. Amend § 61.11 by revising paragraphs (c) through (g) to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New business applications and endorsements.

* * * * *

(c) Where the following conditions are met, the effective date and time of any initial purchase of flood insurance coverage for any privately-owned property will be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium:

(1) The Administrator has determined that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

(2) The flood insurance coverage was purchased not later than 60 calendar days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that

caused the post-wildfire conditions described in clause (1).

(d) Except as provided by paragraphs (a), (b), and (c) of this section, the effective date and time of any new policy, added coverage, or increase in the amount of coverage will be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

(e) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy, subject to any applicable waiting periods. The additional premium for any new coverage or increase in the amount of coverage will be calculated pro rata in accordance with the rates currently in force.

(f) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium

payment by the agent does not constitute payment to the NFIP. Therefore, it is important that an application for flood insurance, as well as the full amount due, be mailed to the NFIP promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the full amount due are received at the office of the NFIP within ten (10) calendar days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of application even though the application and full amount due are received at the office of the NFIP after ten (10) calendar days following the date of application. Thus, if the application and premium payment are received after ten (10) calendar days from the date of the application or are not mailed by certified mail within four (4) calendar days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term *endorsement* for the term *application* in this paragraph (f).

(g) The rules set forth in paragraphs (a) through (f) of this section apply to Write Your Own (WYO) companies, except that agents must mail the premium payments and accompanying applications and endorsements to the WYO company and the WYO company must receive the applications and endorsements, rather than the NFIP.

■ 11. Amend § 61.13 by revising paragraphs (e) and (f) and adding paragraphs (g) and (h) to read as follows:

§ 61.13 Standard Flood Insurance Policy.

* * * * *

(e) *Authorized only under terms and conditions established by the Act and Regulation.* The Standard Flood Insurance Policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage that are not consistent with Federal statute, the program's regulations, the Federal Insurance Administrator's interpretations, and the express terms of the policy itself, are void.

(f) *Agent acts only for policyholder.* The duly licensed property or casualty agent acts for the policyholder and does not act as agent for the Federal Government, the Federal Emergency Management Agency, the Write Your Own (WYO) program participating insurance company authorized by part 62 of this chapter, or the NFIP servicing agent.

(g) *Oral and written binders.* No oral binder or contract will be effective. No written binder will be effective unless issued with express authorization of the Federal Insurance Administrator.

(h) The Standard Flood Insurance Policy and endorsements may be issued by private sector Write Your Own (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO company, wherever the names "Federal Emergency Management Agency" and "Federal Insurance and Mitigation Administration" appear, a WYO company must substitute its own name therefore. Standard Flood Insurance Policies issued by WYO companies may be executed by the issuing WYO company as Insurer, in the place and stead of the Federal Insurance Administrator, but the risk of loss is borne by the National Flood Insurance Fund, not the WYO company.

■ 12. Amend § 61.17 by revising paragraph (g) introductory text and (g)(2) and (3) to read as follows:

§ 61.17 Group Flood Insurance Policy.

* * * * *

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

* * * * *

(2) VIII. POLICY NULLIFICATION, CANCELLATION, AND NON-RENEWAL, C. Cancellation of the Policy by You, does not apply to the GFIP.

(3) VII. GENERAL CONDITIONS, E. Policy Renewal, does not apply to the GFIP.

* * * * *

■ 13. Revise Appendix A(1) to part 61 to read as follows:

Appendix A(1) to Part 61

**Federal Emergency Management Agency,
Federal Insurance and Mitigation
Administration**

Standard Flood Insurance Policy

Dwelling Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy insures the following types of property only:

1. A one to four family residential building, not under a condominium form of ownership;
2. A single-family dwelling unit in a condominium building; and
3. Personal property in a building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if separate policies were issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form policy and the RCBAP. We will only pay for damage once. Items of damage paid for under an RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, "you" and "your" refer to the named insured(s) shown on the Declarations Page of this policy and the spouse of the named insured, if a resident of the same household. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the

order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters;
- b. Unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure: Built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation*. The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium*. That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building*. A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page*. A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible*. The amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location*. The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood*. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Dwelling*. A building designed for use as a residence for no more than four families or a single-family unit in a condominium building.

16. *Elevated Building*. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

17. *Emergency Program*. The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

18. *Federal Policy Fee*. A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

19. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

20. *Mudflow*. A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

21. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

22. *Policy*. The entire written contract between you and us. It includes:

- a. This printed form;
- b. The application and Declarations Page;
- c. Any endorsement(s) that may be issued; and
- d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one dwelling, which you specifically described in the application, may be insured under this policy.

23. *Pollutants*. Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

24. *Post-FIRM Building*. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

25. *Principal Residence*. The dwelling in which you or your spouse have lived for at least 80 percent of:

a. The 365 days immediately preceding the time of loss; or

b. The period of ownership of you or your spouse, if either you or your spouse owned the dwelling for less than 365 days immediately preceding the time of loss.

26. *Probation Surcharge*. A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

27. *Regular Program*. The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

28. *Special Flood Hazard Area (SFHA)*. An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

29. *Unit*. A single-family residential space you own in a condominium building.

30. *Valued Policy*. A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured.

Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.

3. A detached garage at the described location. Coverage is limited to no more than 10 percent of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of

liability. We do not cover any detached garage used or held for use for residential (i.e., dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a) then coverage applies:

(1) Only while such work is in progress; or
(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

6. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Built-in dishwashers;
- d. Built-in microwave ovens;
- e. Carpet permanently installed over unfinished flooring;
- f. Central air conditioners;
- g. Elevator equipment;
- h. Fire sprinkler systems;
- i. Walk-in freezers;
- j. Furnaces and radiators;
- k. Garbage disposal units;
- l. Hot water heaters, including solar water heaters;
- m. Light fixtures;
- n. Outdoor antennas and aerials fastened to buildings;
- o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;
- p. Plumbing fixtures;
- q. Pumps and machinery for operating pumps;
- r. Ranges, cooking stoves, and ovens;
- s. Refrigerators; and
- t. Wall mirrors, permanently installed.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone. Coverage is limited to the following:

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

- (1) Central air conditioners;
- (2) Cisterns and the water in them;
- (3) 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;
- (4) Electrical junction and circuit breaker boxes;
- (5) Electrical outlets and switches;
- (6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
- (7) Fuel tanks and the fuel in them;
- (8) Furnaces and hot water heaters;
- (9) Heat pumps;
- (10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:

a. The property is owned by you or your household family members; and

b. At your option, the property is owned by guests or servants.

2. Personal property is also insured for a period of 45 days at another location as set forth in III.C.2.b, Property Removed to Safety.

3. Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case, there is no coverage for such property.

4. Coverage for personal property includes the following property, subject to B.1 above, which is insured under Coverage B only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. "Cook-out" grills;
- f. Food freezers, other than walk-in, and food in any freezer; and

g. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

6. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

7. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise insured under a flood insurance policy purchased by your condominium association) for not more than 10 percent of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

8. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
- b. Rare books or autographed items;
- c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;
- d. Furs or any article containing fur that represents its principal value; or
- e. Personal property used in any business.

9. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

- (a) Your reasonable expenses to buy:

- (i) Sandbags, including sand to fill them;
- (ii) Fill for temporary levees;
- (iii) Pumps; and
- (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Condominium Loss Assessments

a. Subject to III.C.3.b below, if this policy insures a condominium unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed. The assessment must be made because of direct physical loss by or from flood during the policy term, to the unit or to the common elements of the NFIP insured condominium building in which this unit is located.

b. We will not pay any loss assessment:

(1) Charged against you and the condominium association by any governmental body;

(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;

(3) That results from a loss to personal property, including contents of a condominium building;

(4) In which the total payment combined under all policies exceeds the maximum amount of coverage available under the Act for a single unit in a condominium building where the unit is insured under both a Dwelling Policy and a RCBAP; or

(5) On any item of damage that has already been paid under a RCBAP where a single unit in a condominium building is insured by both a Dwelling Policy and a RCBAP.

c. Condominium Loss Assessment coverage does not increase the Coverage A Limit of Liability and is subject to the maximum coverage limits available for a single-family dwelling under the Act, payable between all policies issued and covering the unit, under the Act.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limit of Liability

We will pay you up to \$30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain

management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "free-board" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are eligible for Coverage D.

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Coverage D Exclusion 5.g below.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition

activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80 percent insurance-to-value requirement for replacement cost coverage as set forth in Art. VII.R ("Loss Settlement") of this policy.

b. All other conditions and provisions of this policy apply.

IV. Property Not Insured

We do not insure any of the following:

1. Personal property not inside a building.

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.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.B.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment.

However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the

Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these acts.

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

V. Exclusions

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress*. If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the full amount due. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspire to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures;

2. III.C.3. Condominium Loss Assessments;

or

3. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set

that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance issued under the Act in the name of your condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance, except where a condominium loss assessment to the unit owner results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

a. 80 percent or more of its full replacement cost; or

b. The maximum amount of insurance permitted under the Act.

The combined coverage payment under the other NFIP insurance and this policy cannot exceed the maximum coverage available under the Act, of \$250,000 per single unit.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

a. When this policy insures only personal property; or

b. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1, if the premium we received from you was not sufficient to buy the kinds and

amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pays the additional premium amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term, and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is

provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the insured property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of loss and for what purpose; and
- i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
 - a. Show us or our representative the damaged property;
 - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
 - c. Permit us to examine and make extracts and copies of:
 - (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
 - (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and
 - (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
 - b. There is an entry of a final judgment; or
 - c. There is a filing of an appraisal award with us, as provided in VII.M.
2. If we reject your proof of loss in whole or in part you may:
 - a. Accept our denial of your claim;
 - b. Exercise your rights under this policy; or
 - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon to us damaged or undamaged property insured under this policy.

L. Salvage

We may permit you to keep damaged property insured under this policy after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is

located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.
2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.
3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
4. All of the terms of this policy apply to the mortgagee.
5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.
6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.
7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your

right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flooding

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

- a. Lake floodwaters must damage or imminently threaten to damage your building.
- b. Before approval of your claim, you must:
 - (1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and
 - (2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood

damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title,

any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any in-creased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in paragraphs a–c below.

a. Replacement Cost Loss Settlement, described in R.2 below, applies to a single-family dwelling provided:

(1) It is your principal residence; and
(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80 percent or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in R.3 below, applies to a single-family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value Loss Settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in R.4 below.

2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in R.1.a above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown on your Declarations Page;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than \$1,000, or more than 5 percent of the whole amount of insurance that applies to the dwelling, we

will not be liable for any loss under R.2.a above or R.4.a.2 below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to R.2.a, b, and c above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a single-family dwelling that:

(1) is a manufactured or mobile home or a travel trailer, as defined in I.I.C.6.b and c;

(2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled; and

(3) is your principal residence as specified in R.1.a.1 above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value; or

(2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in R.2 above.

4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of R.4.a.2., below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80 percent of its full replacement cost immediately before the loss and less than the maximum amount of insurance available under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value, as defined in I.I.C.2, of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80 percent of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that

represents 80 percent of its full replacement cost. But if 80 percent of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two-, three-, or four-family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets, and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property insured under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in R.5.a above, that are below the surface of the ground inside the foundation walls if there is no basement; and

c. Excavations and underground flues, pipes, wiring, and drains.

Note: The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

VIII. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;
b. Engaged in fraudulent conduct; or
c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies

a. Except as allowed under Article I.G, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy

and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 14. Revise Appendix A(2) to Part 61 to read as follows:

Appendix A(2) to Part 61

Federal Emergency Management Agency, Federal Insurance and Mitigation Administration

Standard Flood Insurance Policy

General Property Form

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. Coverage Under This Policy

1. Except as provided in I.A.2, this policy provides coverage for multifamily buildings (residential buildings designed for use by 5 or more families that are not condominium buildings), non-residential buildings, and their contents.

2. There is no coverage for a residential condominium building in a regular program community, except for personal property

coverage for a unit in a condominium building.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

II. Definitions

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy. Insured(s) also includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the

eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Condominium Building.* A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page.* A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible.* The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee.* A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the dwelling or apartment in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building.* A condominium building, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA).* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

28. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping. Stock does not include any property not insured under Section IV. Property Not Insured, except the following:

a. Parts and equipment for self-propelled vehicles;

b. Furnishings and equipment for watercraft;

c. Spas and hot-tubs, including their equipment; and

d. Swimming pool equipment.

29. *Unit.* A single-family residential or non-residential space you own in a condominium building.

30. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. Building property located at another location for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are insured under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials attached to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment;

o. Wall mirrors, permanently installed; and

p. In the units within the building, installed:

- (1) Built-in dishwashers;
- (2) Built-in microwave ovens;
- (3) Garbage disposal units;
- (4) Hot water heaters, including solar water heaters;
- (5) Kitchen cabinets;
- (6) Plumbing fixtures;
- (7) Radiators;
- (8) Ranges;
- (9) Refrigerators; and
- (10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.B.6.a.) then coverage applies:

- (1) Only while such work is in progress; or
- (2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 or the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone. Coverage is limited to the following:

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

- (1) Central air conditioners;
- (2) Cisterns and the water in them;
- (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unflashed and not taped, to the framing;
- (4) Electrical junction and circuit breaker boxes;
- (5) Electrical outlets and switches;
- (6) Elevators, dumbwaiters, and related equipment, except for related equipment

installed below the base flood elevation after September 30, 1987;

- (7) Fuel tanks and the fuel in them;
 - (8) Furnaces and hot water heaters;
 - (9) Heat pumps;
 - (10) Nonflammable insulation in a basement;
 - (11) Pumps and tanks used in solar energy systems;
 - (12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
 - (13) Sump pumps;
 - (14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
 - (15) Well water tanks and pumps;
 - (16) Required utility connections for any item in this list; and
 - (17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.
- b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2–4 below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. When this policy insures personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy insures household personal property, it will insure household personal property usual to a living quarters, that:

- (1) Belongs to you, or a member of your household, or at your option:
- (a) Your domestic worker;
- (b) Your guest; or
- (2) You may be legally liable for.

b. If this policy insures other than household personal property, it will insure your:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) Stock; and
- (4) Other personal property owned by you and used in your business, subject to IV, Property Not Insured.

4. Coverage for personal property includes the following property, subject to B.1.a and B.1.b above, which is insured under Coverage B, only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. "Cook-out" grills;
- f. Food freezers, other than walk-in, and food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

- h. Ovens and the like; and
- i. Portable microwave ovens and portable dishwashers.

5. Coverage for items of property below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

6. Special Limits. We will pay no more than \$2,500 for any loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.
- b. Rare books or autographed items.
- c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.

d. Furs or any article containing fur that represents its principal value.

7. We will pay only for the functional value of antiques.

8. If you are a tenant, you may apply up to 10 percent of the Coverage B limit to improvements:

- a. Made a part of the building you occupy; and
- b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a condominium unit owner, you may apply up to 10 percent of the Coverage B limit to cover loss to interior:

- a. walls,
- b. floors, and
- c. ceilings,

that are not insured under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

10. If you are a tenant, personal property must be inside the fully enclosed building.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:
 (i) Sandbags, including sand to fill them;
 (ii) Fill for temporary levees;
 (iii) Pumps; and
 (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

(3) Any property removed, including a moveable home described in II.6, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

3. Pollution Damage

We will pay for damage caused by pollutants to insured property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is \$10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the insured property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or

ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

a. Non-residential buildings.

b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6(b) or (c)].

2. Limits of Liability

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. However, the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood

elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "free-board" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to the exclusion at III.D.5.g.

e. This coverage will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance), we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

All other conditions and provisions of the policy apply.

IV. Property Not Insured

We do not insure any of the following property:

1. Personal property not inside the fully enclosed building.

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.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the I.I.C.6.c, whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads and are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings or units and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts.

16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy.

17. A residential condominium building located in a Regular Program community.

V. Exclusions

A. We only pay for "direct physical loss by or from flood," which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress.* If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 611.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically insured under our definition of flood (*see* II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. The deductible does NOT apply to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

VII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or
2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VII.B.1.b or c below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VII.B.1.b above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. Where this policy insures a condominium association and there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that insures the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or
2. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VII.D.1 and VII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested pursuant to VII.D.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to

the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amounts requested in VII.D.3.a or the additional information requested in VII.D.3.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VII.D.3.b is provided.

5. Falsifying Information. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of VIII.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:

a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an

expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us.
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
 - a. The date and time of loss;
 - b. A brief explanation of how the loss happened;
 - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
 - d. Details of any other insurance that may cover the loss;
 - e. Changes in title or occupancy of the insured property during the term of the policy;
 - f. Specifications of damaged buildings and detailed repair estimates;
 - g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
 - h. Details about who occupied any insured building at the time of loss and for what purpose; and
 - i. The inventory of damaged personal property described in G.3 above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the

adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

- a. Show us or our representative the damaged property;
- b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
- c. Permit us to examine and make extracts and copies of:

- (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
- (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and
- (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:

- a. Quantities and costs;
- b. Actual cash values or replacement cost (whichever is appropriate);
- c. Amounts of loss claimed;
- d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
- e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

- a. We reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us, as provided in VII.M.

2. If we reject your proof of loss in whole or in part you may:

- a. Accept our denial of your claim;
- b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

- a. To make no further claim under this policy;
- b. Not to seek renewal of this policy;
- c. Not to apply for any flood insurance under the Act for property at the described location;
- d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation

exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

- (1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or

agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q.2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

We will pay the least of the following amounts after application of the deductible:

1. The applicable amount of insurance under this policy;
2. The actual cash value; or
3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

VIII. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

- a. Concealed or misrepresented any material fact or circumstance;
- b. Engaged in fraudulent conduct; or
- c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on Policy. This policy will be cancelled, pursuant to VII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Your property may not be insured by more than one NFIP policy, and payment for

damages to your property will only be made under one policy.

b. If the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.4.b, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

IX. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

X. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

■ 15. Revise Appendix A(3) to Part 61 to read as follows:

Appendix A(3) to Part 61

**Federal Emergency Management Agency,
Federal Insurance and Mitigation
Administration**

Standard Flood Insurance Policy

Residential Condominium Building
Association Policy

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

I. Agreement

A. This policy insures only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

B. The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations.

C. We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the full amount due (including applicable premiums, surcharges, and fees);

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

D. We have the right to review the information you give us at any time and revise your policy based on our review.

E. This policy insures only one building. If you own more than one building, coverage will apply to the single building specifically described in the Flood Insurance Application.

F. Subject to the exception in Section I.G below, multiple policies with building coverage cannot be issued to insure a single building to one insured or to different insureds, even if issued through different NFIP insurers. Payment for damages may only be made under a single policy for building damages under Coverage A—Building Property.

G. A Dwelling Form policy with building coverage may be issued to a unit owner in a condominium building that is also insured under a Residential Condominium Building Association Policy (RCBAP). However, no more than \$250,000 may be paid in combined benefits for a single unit under the Dwelling Form and the RCBAP. We will only pay for damage once. Items of damage paid for under a RCBAP cannot also be claimed under the Dwelling Form policy.

II. Definitions

A. In this policy, “you” and “your” refer to the named insured(s) shown on the Declarations Page of this policy. The named insured must also include the building owner if building coverage is purchased. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to have an existing interest

at the time of loss, in the order of precedence. “We,” “us,” and “our” refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases.

B. *Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

- a. Overflow of inland or tidal waters;
- b. Unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in B.1.a above.

C. The following are the other key definitions we use in this policy:

1. *Act*. The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application*. The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy.

4. *Base Flood*. A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement*. Any area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.

6. *Building*

a. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

b. A manufactured home, also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation; or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws.

Building does not mean a gas or liquid storage tank, shipping container, or a recreational vehicle, park trailer, or other similar vehicle, except as described in C.6.c above.

7. *Cancellation*. The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium*. That form of ownership of one or more buildings in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other buildings in which the unit owners have use rights; where membership in the entity is a required condition of ownership.

10. *Condominium Building*. A type of building for which the form of ownership is one in which each unit owner has an undivided interest in common elements of the building.

11. *Declarations Page*. A computer-generated summary of information you provided in your application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

12. *Deductible*. The fixed amount of an insured loss that is your responsibility and that is incurred by you before any amounts are paid for the insured loss under this policy.

13. *Described Location*. The location where the insured building or personal property are found. The described location is shown on the Declarations Page.

14. *Direct Physical Loss By or From Flood*. Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

15. *Elevated Building*. A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

16. *Emergency Program*. The initial phase of a community’s participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act and the regulations prescribed pursuant to the Act.

17. *Federal Policy Fee*. A flat rate charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program.

18. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

19. *Mudflow*. A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy*. The entire written contract between you and us. It includes:

- a. This printed form;
- b. The application and Declarations Page;
- c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term. Only one building, which you specifically described in the application, may be insured under this policy.

22. *Pollutants*. Substances that include, but are not limited to, any solid, liquid, gaseous,

or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building*. A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Surcharge*. A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program*. The final phase of a community’s participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act and the regulations prescribed pursuant to the Act.

26. *Residential Condominium Building*. A building, condominium, containing one or more family units and in which at least 75 percent of the floor area is residential.

27. *Special Flood Hazard Area (SFHA)*. An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

28. *Unit*. A single-family residential space in a residential condominium building.

29. *Valued Policy*. A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

III. Property Insured

A. Coverage A—Building Property

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2.b, Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured.

Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are insured under Coverage A only:

- a. Awnings and canopies;
- b. Blinds;
- c. Carpet permanently installed over unfinished flooring;

- d. Central air conditioners;
- e. Elevator equipment;
- f. Fire extinguishing apparatus;
- g. Fire sprinkler systems;
- h. Walk-in freezers;
- i. Furnaces;
- j. Light fixtures;
- k. Outdoor antennas and aerials fastened to buildings;
- l. Permanently installed cupboards, bookcases, paneling, and wallpaper;
- m. Pumps and machinery for operating pumps;
- n. Ventilating equipment;
- o. Wall mirrors, permanently installed; and
- p. In the units within the building, installed:

- (1) Built-in dishwashers;
- (2) Built-in microwave ovens;
- (3) Garbage disposal units;
- (4) Hot water heaters, including solar water heaters;
- (5) Kitchen cabinets;
- (6) Plumbing fixtures;
- (7) Radiators;
- (8) Ranges;
- (9) Refrigerators; and
- (10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (*see* II.B.6.a.) then coverage applies:

- (1) Only while such work is in progress; or
- (2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1-30, AR, AR/AE, AR/AH, AR/A1-30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1-30.

The lowest floor level is based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 or top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, and AR/AO.

7. A manufactured home or a travel trailer, as described in the II.C.6. If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

- a. By over-the-top or frame ties to ground anchors; or
- b. In accordance with the manufacturer's specifications; or
- c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone. Coverage is limited to the following:

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

- (1) Central air conditioners;
 - (2) Cisterns and the water in them;
 - (3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloats and not taped, to the framing;
 - (4) Electrical junction and circuit breaker boxes;
 - (5) Electrical outlets and switches;
 - (6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;
 - (7) Fuel tanks and the fuel in them;
 - (8) Furnaces and hot water heaters;
 - (9) Heat pumps;
 - (10) Nonflammable insulation in a basement;
 - (11) Pumps and tanks used in solar energy systems;
 - (12) Stairways and staircases attached to the building, not separated from it by elevated walkways;
 - (13) Sump pumps;
 - (14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
 - (15) Well water tanks and pumps;
 - (16) Required utility connections for any item in this list; and
 - (17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.
- b. Clean-up.

B. Coverage B—Personal Property

1. If you have purchased personal property coverage, we insure, subject to B.2 and B.3 below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

- a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or
- b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

2. We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b, Property Removed to Safety.

3. Coverage for personal property includes the following property, subject to B.1. above, which is insured under Coverage B only:

- a. Air conditioning units, portable or window type;
- b. Carpets, not permanently installed, over unfinished flooring;
- c. Carpets over finished flooring;
- d. Clothes washers and dryers;
- e. "Cook-out" grills;
- f. Food freezers, other than walk-in, and food in any freezer;
- g. Outdoor equipment and furniture stored inside the insured building;
- h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

4. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in 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 the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

- a. Air conditioning units, portable or window type;
- b. Clothes washers and dryers; and
- c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:

- a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards.
- b. Rare books or autographed items.
- c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum.

d. Furs or any article containing fur which represents its principal value.

6. We will pay only for the functional value of antiques.

C. Coverage C—Other Coverages

1. Debris Removal

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

(1) We will pay up to \$1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

- (a) Your reasonable expenses to buy:
 - (i) Sandbags, including sand to fill them;
 - (ii) Fill for temporary levees;
 - (iii) Pumps; and
 - (iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood. Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there.

(3) The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements. Any property removed, including a moveable home described in II.6.b and c, must be placed above ground level or outside of the special flood hazard area.

(4) This coverage does not increase the Coverage A or Coverage B limit of liability.

D. Coverage D—Increased Cost of Compliance

1. General

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a building suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your building. Eligible floodproofing activities are limited to:

- a. Non-residential buildings.
- b. Residential buildings with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. Limit of Liability

We will pay you up to \$30,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But, the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. Eligibility

a. A building insured under Coverage A (Building Property) sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss building." A repetitive loss building is one that meets the following conditions:

(a) The building is insured by a contract of flood insurance issued under the NFIP.

(b) The building has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25 percent of

the market value of the building at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the building; or

(2) Be a building that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the building.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.1 above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged buildings in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged building must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged buildings to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a building must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of buildings in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. Coverage D will pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a building during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g below relating to improvements.

e. Coverage D will pay to bring a flood-damaged building into compliance with State or local floodplain management laws or ordinances even if the building had received a variance before the present loss from the applicable floodplain management requirements.

4. Conditions

a. When a building insured under Coverage A—Building Property sustains a loss caused

by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. Exclusions

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any building insured under an NFIP Group Flood Insurance Policy.

1. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under Art. VIII.R. ("Loss Settlement").

b. All other conditions and provisions of this policy apply.

IV. Property Not Insured

We do not insure any of the following:

1. Personal property not inside a building.
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.

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water.

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.C.6.c) whether affixed to a permanent foundation or on wheels.

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location; or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location.

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals.

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers.

8. Underground structures and equipment, including wells, septic tanks, and septic systems.

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building.

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids.

11. Buildings and all their contents if more than 49 percent of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques.

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

13. Aircraft or watercraft, or their furnishings and equipment.

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their

equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located.

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts.

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

V. Exclusions

A. We only pay for "direct physical loss by or from flood," which means that we do not pay you for:

1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. *Flood in Progress*. If this policy became effective as of the time of a loan closing, as provided by 44 CFR 61.11(b), we will not pay for a loss caused by a flood that is a continuation of a flood that existed prior to coverage becoming effective. In all other circumstances, we will not pay for a loss caused by a flood that is a continuation of a flood that existed on or before the day you submitted the application for coverage under this policy and the correct premium. We will determine the date of application using 44 CFR 61.11(f).

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;

4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.B.1.c and II.B.2).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold

damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through the insured property; unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

VI. Deductibles

A. When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

VII. Coinsurance

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80 percent of its replacement cost; or

2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII.B above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1 above.

3. Subtract the deductible from the figure determined in C.2 above.

We will pay the amount determined in C.3 above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

Examples

Example #1 (Inadequate Insurance)

Replacement value of the building—\$250,000

Required amount of insurance—\$200,000

(80 percent of replacement value of \$250,000)

Actual amount of insurance carried—

\$180,000

Amount of the loss—\$150,000

Deductible—\$500

Step 1: $180,000/200,000 = .90$

(90 percent of what should be carried.)

Step 2: $150,000 \times .90 = 135,000$

Step 3: $135,000 - 500 = 134,500$

We will pay no more than \$134,500. The remaining \$15,500 is not covered due to the coinsurance penalty (\$15,000) and application of the deductible (\$500).

Example #2 (Adequate Insurance)

Replacement value of the building—\$500,000

Required amount of insurance—\$400,000

(80 percent of replacement value of \$500,000)

Actual amount of insurance carried—

\$400,000

Amount of the loss—\$200,000

Deductible—\$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than \$199,500 (\$200,000 amount of loss minus the \$500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any insured building property will be included;

2. The replacement cost value of any building property not insured under this policy will not be included; and

3. Only the replacement cost value of improvements installed by the condominium association will be included.

VIII. General Conditions

A. Pair and Set Clause

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or

2. The amount that represents the fair proportion of the total value of the pair or set

that the lost, damaged, or destroyed article bears to the pair or set.

B. Other Insurance

1. If a loss insured by this policy is also insured by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless VIII.B.1.b or c immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in VIII.B.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a National Flood Insurance Program flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

C. Amendments, Waivers, Assignment

This policy cannot be changed, nor can any of its provisions be waived, without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy insures only personal property; or

2. When this policy insures a building under construction.

D. Insufficient Premium or Rating Information

1. Applicability. The following provisions apply to all instances where the premium paid on this policy is insufficient or where the rating information is insufficient, such as where an Elevation Certificate is not provided.

2. Reforming the Policy with Reduced Coverage. Except as otherwise provided in VIII.D.1 and VIII.D.4, if the premium we received from you was not sufficient to buy the kinds and amounts of coverage you requested, we will provide only the kinds and amounts of coverage that can be purchased for the premium payment we received.

a. For the purpose of determining whether your premium payment is sufficient to buy the kinds and amounts of coverage you requested, we will first deduct the costs of all applicable fees and surcharges.

b. If the amount paid, after deducting the costs of all applicable fees and surcharges, is not sufficient to buy any amount of coverage, your payment will be refunded. Unless the policy is reformed to increase the coverage amount to the amount originally requested

pursuant to VIII.E.3, this policy will be cancelled, and no claims will be paid under this policy.

c. Coverage limits on the reformed policy will be based upon the amount of premium submitted per type of coverage, but will not exceed the amount originally requested.

3. Discovery of Insufficient Premium or Rating Information. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, the policy will be reformed as described in VIII.D.2. You have the option of increasing the amount of coverage resulting from this reformation to the amount you requested as follows:

a. Insufficient Premium. If we discover that your premium payment was not sufficient to buy the requested amount of coverage, we will send you, and any mortgagee or trustee known to us, a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If it is discovered that the initial amount charged to you for any fees or surcharges is incorrect, the difference will be added or deducted, as applicable, to the total amount in this bill.

(1) If you or the mortgagee or trustee pay the additional amount due within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount, effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If you or the mortgagee or trustee do not pay the additional amount due within 30 days of the date of our bill, any flood insurance claim will be settled based on the reduced amount of coverage.

(3) As applicable, you have the option of paying all or part of the amount due out of a claim payment based on the originally requested amount of coverage.

b. Insufficient Rating Information. If we determine that the rating information we have is insufficient and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request.

(1) If we receive the information within 60 days of our request, we will determine the amount of additional premium for the current policy term and follow the procedure in VIII.D.3.a above.

(2) If we do not receive the information within 60 days of our request, no claims will be paid until the requested information is provided. Coverage will be limited to the amount of coverage that can be purchased for the payments we received, as determined when the requested information is provided.

4. Coverage Increases. If we do not receive the amount requested in VIII.D.3.a or VIII.D.4.a, or the additional information requested in VIII.D.3.b or VIII.D.4.b by the date it is due, the amount of coverage under this policy can only be increased by endorsement subject to the appropriate waiting period. However, no coverage increases will be allowed until you have provided the information requested in VIII.D.3.b or VIII.D.4.b.

5. Falsifying Information. However, if we find that you or your agent intentionally did

not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of IX.A apply.

E. Policy Renewal

1. This policy will expire at 12:01 a.m. on the last day of the policy term.
2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.
3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:
 - a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.
 - b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.
 - c. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

F. Conditions Suspending or Restricting Insurance

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

G. Requirements in Case of Loss

- In case of a flood loss to insured property, you must:
1. Give prompt written notice to us.
 2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it.
 3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents.
 4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
 - a. The date and time of loss;
 - b. A brief explanation of how the loss happened;
 - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
 - d. Details of any other insurance that may cover the loss;
 - e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged buildings and detailed repair estimates;

- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
 - h. Details about who occupied any insured building at the time of loss and for what purpose; and
 - i. The inventory of damaged personal property described in G.3 above.
5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
 6. You must cooperate with the adjuster or representative in the investigation of the claim.
 7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.
 8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
 9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

H. Our Options After a Loss

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
 - a. Show us or our representative the damaged property;
 - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
 - c. Permit us to examine and make extracts and copies of:
 - (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
 - (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and
 - (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.
2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:
 - a. Quantities and costs;
 - b. Actual cash values or replacement cost (whichever is appropriate);
 - c. Amounts of loss claimed;
 - d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
 - e. Evidence that prior flood damage has been repaired.
3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

- a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
- b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

I. No Benefit to Bailee

No person or organization, other than you, having custody of insured property will benefit from this insurance.

J. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:
 - a. We reach an agreement with you;
 - b. There is an entry of a final judgment; or
 - c. There is a filing of an appraisal award with us, as provided in VIII.M.
2. If we reject your proof of loss in whole or in part you may:
 - a. Accept our denial of your claim;
 - b. Exercise your rights under this policy; or
 - c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

K. Abandonment

You may not abandon damaged or undamaged insured property to us.

L. Salvage

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. Appraisal

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

- Each party will:
1. Pay its own appraiser; and
 2. Bear the other expenses of the appraisal and umpire equally.

N. Mortgage Clause

1. The word "mortgagee" includes trustee.

2. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

3. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

c. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

4. All terms of this policy apply to the mortgagee.

5. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

6. If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

7. If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

O. Suit Against Us

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

P. Subrogation

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

Q. Continuous Lake Flood

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably

certain that a continuation of this flooding will result in an insured loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location;

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph Q.1 will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph Q.1 above or this paragraph Q.2 (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph Q.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake floodwaters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph Q.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas

protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs Q.1.a through Q.1.d above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph Q.2.b above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph Q.2.b above, except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph Q.2.b above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph Q.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph Q.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph Q.2 will be in effect for a community when the FEMA Regional Administrator for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs Q2.e and Q.2.f above; and

(2) The date by which you must have flood insurance in effect.

R. Loss Settlement

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a–c below.

a. Replacement Cost Loss Settlement, described in R.2 below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement, described in R.3 below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value Loss Settlement applies to all other property insured under this policy, as outlined in R.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is:

(1) A manufactured home or travel trailer, as defined in II.C.6.b and c; and

(2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The building limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in R.2 above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement:

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location;

(3) Outside antennas and aerials, awnings, and other outdoor equipment;

(4) Carpeting and pads;

(5) Appliances; and

(6) A manufactured home or mobile home or a travel trailer as defined in II.C.6.b or c that does not meet the conditions for special loss settlement in R.3 above.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value, as defined in II.C.2; or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

IX. Policy Nullification, Cancellation, and Non-Renewal

A. Policy Nullification for Fraud, Misrepresentation, or Making False Statements

1. With respect to all insureds under this policy, this policy is void and has no legal force and effect if at any time, before or after a loss, you or any other insured or your agent have, with respect to this policy or any other NFIP insurance:

a. Concealed or misrepresented any material fact or circumstance;

b. Engaged in fraudulent conduct; or

c. Made false statements.

2. Policies voided under A.1 cannot be renewed or replaced by a new NFIP policy.

3. Policies are void as of the date the acts described in A.1 above were committed.

4. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

B. Policy Nullification for Reasons Other Than Fraud

1. This policy is void from its inception, and has no legal force or effect, if:

a. The property listed on the application is located in a community that was not participating in the NFIP on this policy's inception date and did not join or reenter the program during the policy term and before the loss occurred;

b. The property listed on the application is otherwise not eligible for coverage under the NFIP at the time of the initial application;

c. You never had an insurable interest in the property listed on the application;

d. You provided an agent with an application and payment, but the payment did not clear; or

e. We receive notice from you, prior to the policy effective date, that you have determined not to take the policy and you are not subject to a requirement to obtain and maintain flood insurance pursuant to any statute, regulation, or contract.

2. In such cases, you will be entitled to a full refund of all premium, fees, and

surcharges received. However, if a claim was paid for a policy that is void, the claim payment must be returned to FEMA or offset from the premiums to be refunded before the refund will be processed.

C. Cancellation of the Policy by You

1. You may cancel this policy in accordance with the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

D. Cancellation of the Policy by Us

1. Cancellation for Underpayment of Amounts Owed on This Policy. This policy will be cancelled, pursuant to VIII.D.2, if it is determined that the premium amount you paid is not sufficient to buy any amount of coverage, and you do not pay the additional amount of premium owed to increase the coverage to the originally requested amount within the required time period.

2. Cancellation Due to Lack of an Insurable Interest.

a. If you no longer have an insurable interest in the insured property, we will cancel this policy. You will cease to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred ownership, or the contents were completely removed from the described location.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the applicable rules and regulations of the NFIP.

3. Cancellation of Duplicate Policies.

a. Except as allowed under Article I.F, your property may not be insured by more than one NFIP policy, and payment for damages to your property will only be made under one policy.

b. Except as allowed under Article I.G, if the property is insured by more than one NFIP policy, we will cancel all but one of the policies. The policy, or policies, will be selected for cancellation in accordance with 44 CFR 62.5 and the applicable rules and guidance of the NFIP.

c. If this policy is cancelled pursuant to VIII.D.3.a, you may be entitled to a full or partial refund of premium, surcharges, or fees under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

4. Cancellation Due to Physical Alteration of Property.

a. If the insured building has been physically altered in such a manner that it is no longer eligible for flood insurance coverage, we will cancel this policy.

b. If your policy is cancelled for this reason, you may be entitled to a partial refund of premium under the terms and conditions of this policy and the applicable rules and regulations of the NFIP.

E. Non-Renewal of the Policy by Us

Your policy will not be renewed if:

1. The community where your insured property is located is suspended or stops participating in the NFIP;

2. Your building is otherwise ineligible for flood insurance under the Act;

3. You have failed to provide the information we requested for the purpose of rating the policy within the required deadline.

X. Liberalization Clause

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

XI. What Law Governs

This policy and all disputes arising from the insurer's policy issuance, policy administration, or the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

In Witness Whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

Administrator, Federal Insurance and Mitigation Administration

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 16. Revise the authority citation for Part 62 to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; 6 U.S.C. 101 *et seq.*

■ 17. Revise § 62.3 to read as follows:

§ 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Federal Insurance Administrator may enter into an agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Federal Insurance Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Federal Insurance Administrator.

(b) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

■ 18. Revise § 62.5 to read as follows:

§ 62.5 Nullifications, cancellations, and premium refunds.

(a) *Nullification*—(1) *Property ineligible at time of application.* FEMA

will void a policy for a property that was not eligible for coverage at the time of the initial application from the commencement of the policy. FEMA must pay the policyholder a refund of all premium, fees, and surcharges paid from the date of commencement of the policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was ineligible for coverage at the time of the initial application. If FEMA paid a claim for an ineligible property, the policyholder must return the claim payment to FEMA, or offset the payment from the premiums to be refunded, before FEMA will process the refund.

(2) *Property later becomes ineligible.* FEMA may not renew a policy for a property that was eligible for coverage at the time of the initial application, but later became ineligible for coverage. In such instances, FEMA must nullify the policy from the first renewal date after the property became ineligible. FEMA must refund all premium, fees, and surcharges paid from the first renewal date after the property became ineligible, but no more than 5 years prior to the date of receipt of verifiable evidence that the property was eligible for coverage at the time of the initial application, but later became ineligible for coverage. If FEMA paid a claim for a property after it became ineligible for coverage, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before FEMA may process the refund.

(3) *Nullification prior to policy effective date.* If FEMA nullifies a policy prior to the policy effective date, that policy will be void from the commencement of the nullified policy term. In such case, FEMA will refund all premium, fees, and surcharges paid for the current policy term only. If FEMA paid a claim for a policy that was improperly issued, the policyholder must return the claim payment to FEMA or FEMA must offset the amount of claim payment from the premiums to be refunded before the NFIP may process the refund.

(b) *Cancellation due to lack of an insurable interest.* If the policyholder had an insurable interest, but no longer has an insurable interest, in the insured property, FEMA must cancel the policy on the insured property. If FEMA cancels a policy for this reason, FEMA must refund the policyholder a pro rata share of the premium from the date the policyholder lost an insurable interest in the property, but no more than 5 years prior to the date of the cancellation request. FEMA must pay

the policyholder a refund of all fees or surcharges for any full policy term during which the policyholder had no insurable interest in the insured property, but no more than 5 years prior to the date of the cancellation request. A policyholder ceases to have an insurable interest if:

(1) For building coverage, the building was sold, destroyed, or removed.

(2) For contents coverage, the contents were sold or transferred, or the contents were completely removed from the described location.

(c) *No insurance coverage requirement.* A policyholder may cancel a policy if the policyholder was subject to a requirement by a lender, loss payee, or other Federal agency to obtain and maintain flood insurance pursuant to statute, regulation, or contract, but there is no longer such a requirement. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, calculated from the date of the cancellation request, but will not receive a refund of any fees or surcharges.

(d) *Establishment of a common expiration date.* A policyholder may purchase a new policy and cancel an existing policy in order to establish a common expiration date between flood insurance coverage and other coverage. The policyholder will receive a refund of a pro rata share of the premium calculated from the effective date of the new policy to the end date of the previous policy. The policyholder will not receive a refund of any fees or surcharges. In order to rewrite and cancel the policy, the following conditions must apply:

(1) The new policy must be written with the same company for the same or higher amount of coverage. If the policy is written for a higher amount or different type of coverage, the waiting period in § 61.11 will apply.

(2) The other insurance coverage for which the common expiration date is being established must be for coverage on the same building that is insured by the flood policy being cancelled and rewritten.

(3) The coverage for the new policy must be effective prior to cancelling the existing policy.

(e) *Cancellation or nullification of duplicate NFIP policies*—(1) *Generally.*

(i) Except as described in 44 CFR 62.5(e)(2), if an insured property is insured by more than one NFIP policy not in accordance with applicable regulations and the Standard Flood Insurance Policy, FEMA must nullify the policy with the later effective date. The policy with the earlier effective date will continue. The policyholder will

receive a pro rata refund of all premium for the nullified policy from the effective date of the nullified policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy. The policyholder will receive a refund of all fees or surcharges for any full policy term during which the policyholder was insured by more than one policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(ii) If both policies have the same policy effective date, the policyholder may choose which policy will remain in effect, and the policyholder will receive a refund of all premium, fees, and surcharges for the cancelled policy from the effective date of the cancelled policy, but no more than 5 years prior to the date of receipt of verifiable evidence that the insured property is insured by more than one NFIP policy.

(2) *Exceptions.* In the following cases, the policyholder may maintain the policy with the later policy effective date while cancelling the policy with the earlier policy effective date:

(i) The policy with the earlier effective date has expired for more than 30 days. In such cases, the policyholder will receive a refund of a pro rata share of the premium, calculated from the effective date of the policy with the later effective date to the end date of the policy with the earlier effective date, but no more than 5 years prior to the date of cancellation. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the insured property is insured by both policies, but no more than 5 years prior to the date of the cancellation request.

(ii) The policy with the earlier policy effective date is a Group Flood Insurance Policy. In such cases, there will be no refund of any premium, fees, or surcharges.

(iii) The policy with the earlier effective date is cancelled to establish a common policy expiration date pursuant to paragraph (d) of this

section. In such cases, refunds will be provided in accordance with paragraph (d) of this section.

(iv) The policy with the earlier effective date was force placed pursuant to 42 U.S.C. 4012a using the NFIP's Mortgage Portfolio Protection Program. In such cases, the policyholder will receive a refund of the pro rata share of the premium calculated from the policy effective date of the new policy to the expiration date of the cancelled policy. There will be no refund of any fees or surcharges.

(v) The policy with the earlier effective date is a Dwelling Form policy with building coverage on a condominium unit that is also insured by a Residential Condominium Building Association Policy (RCBAP) that is issued at the statutory maximum coverage limit for buildings. In such cases, the policyholder will receive a refund of a pro rata share of the premium for the building coverage issued under the Dwelling Form policy, as calculated from the effective date of the RCBAP policy to the end date of the Dwelling Form policy. The policyholder will also receive a refund of all fees and surcharges for any full policy terms during which the condominium unit is insured by both a Dwelling Form policy and an RCBAP in which the coverage equals the statutory maximum coverage limits for buildings, but no more than 5 years prior to the date of the cancellation request.

(f) *Other cancellations and nullifications.* Except as indicated below, FEMA will not refund premiums, assessments, fees, or surcharges if FEMA cancels a policy for any of the following reasons:

(1) *Fraud.* FEMA will cancel a policy for fraud committed by the policyholder or the agent. FEMA may cancel a policy for misrepresentation of a material fact by the policyholder or agent. Such cancellations will take effect as of the date of the fraudulent act or material misrepresentation of fact.

(2) *Administrative cancellation.* FEMA may cancel and rewrite a policy to correct an administrative error, such as when the policy is written with the

wrong policy effective date. In such cases, FEMA will apply any premium, assessments, fees, or surcharges to the new policy. FEMA will refund any excess premium, fees, surcharges, or assessments paid.

(3) *Nullification for properties ineligible due to physical alteration of property.* A policy insuring a building or its contents, or both, may be cancelled if the building has been physically altered in such a manner that the building and its contents are no longer eligible for flood insurance coverage. The policyholder will receive a refund of a pro rata share of the premium for the current policy term only, but the policyholder will not receive a refund of any fees or surcharges.

■ 18. Revise § 62.6 to read as follows:

§ 62.6 Brokers and agents writing NFIP policies through the NFIP direct servicing agent.

(a) A broker or agent selling policies of flood insurance placed with the NFIP at the offices of its servicing agent must be duly licensed by the state insurance regulatory authority in the state in which the property is located.

(b) The earned commission which will be paid to any property or casualty insurance agent or broker, 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, will not be less than \$10 and is computed as follows:

§ 62.22 [Amended]

■ 19. In § 62.22, amend paragraph (a) by removing "Federal Insurance Administration" wherever it appears and adding in their place "Federal Insurance and Mitigation Administration."

Peter T. Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020-09260 Filed 7-17-20; 8:45 am]

BILLING CODE 9111-52-P