

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Parts 59 and 61**

RIN 3067-AD01

**National Flood Insurance Program  
(NFIP); Insurance Coverage and Rates****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Final Rule.

**SUMMARY:** We (the Federal Insurance Administration of FEMA) are changing the Standard Flood Insurance Policy (SFIP). The revisions include rendering the SFIP in "plain language" and restructuring its format to resemble the homeowners policy. We are also making some changes in the policy's coverage.

**EFFECTIVE DATE:** December 31, 2000.**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION****Proposed Revisions to the Standard  
Flood Insurance Policy and Public  
Comments**

On May 31, 2000, we published a proposed rule at 65 FR 34823 that would revise the Standard Flood Insurance Policy (SFIP) so that it conforms with "plain language" standards. The rule also proposed changes that would bring the three forms of the SFIP more in line with the format of the insurance industry's homeowners policy. We also proposed a number of changes in coverage.

We received 22 letters and email messages about the proposed rule. Many of these contained multiple comments, and, in a number of cases, the submissions raised similar issues and concerns. One organization submitted two separate sets of comments.

The following submitted comments on the proposed rule:

- Three national trade associations for lenders,
- Three individual lending institutions,
- Six private insurance companies writing flood insurance under the Write Your Own program,
- One claims adjuster,
- Three vendors that provide specialized insurance services,
- Two insurance agents,
- Two private citizens, and
- One private business consulting firm.

Each of the following sections treats an issue raised by the public during the comment period and explains our reasons for adopting, rejecting, or modifying a given recommendation.

*General Comments.* One of the private insurance companies that write flood insurance under the Write Your Own program commended the proposed plain language revision of the SFIP in this way:

"The proposed language changes in the flood policy are excellent. The coverage additions and deletions are acceptable, and the changes in wording to 'plain language' make the policy more readable and understandable."

This company also recommended that we "prepare a document \* \* \* to flood policyholders and agents to explain all coverage changes." This is a good suggestion. In fact, this is a practice that we follow whenever we make any major change in coverage under the National Flood Insurance Program (NFIP). We will continue that practice and put a summary of changes in the revised policy document that the policyholder receives. This will help policyholders and agents understand the most significant changes in coverage that result from this final rule. We also plan to include a summary of significant coverage changes in the updated claims manual we are preparing for adjusters to implement the new policy.

Several national associations representing the interests of lending institutions, however, expressed disappointment that we had failed in the preamble of the proposed rule to mention lenders in the paragraph titled "External Customers." The associations also expressed concern that representatives of the lending community did not sit on the work group that rewrote the SFIP.

The express purpose of the proposed rule was to make the SFIP easier to read for policyholders and easier to use by the producers and agents that sell and service flood insurance policies. The focus of our revision of the SFIP, as expressed in the preamble to the proposed rule, was to address the needs of the "two largest external groups that use the SFIP." That statement was not meant to be a complete list of our customers but rather to define the specific purposes of the revision: to render the policy in plain language and conform the SFIP with the homeowners policy. In spite of our not mentioning lenders as a constituent group in the preamble of the proposed rule, we felt that we had preserved the protections and interests of lenders by modeling the proposed revision of the SFIP's "Mortgage Clause" on the mortgage

clause of the homeowners policy. However, after reviewing lenders' specific comments and recommendations, we understand their concerns and have made a number of adjustments that address those concerns.

Several of the lenders' recommendations that we did not accept would have involved duplicating coverage already available in the private market or changing long-standing practices, such as changing the length of time flood insurance coverage continues for the benefit of the mortgagee after cancellation or non-renewal. We plan to invite representatives of the lending industry to join us in a series of meetings to discuss these and other issues.

*Mortgagee as a Named Insured.* We received five comments that objected to our description of the named insured under the proposed changes in "Definitions." In the proposed rule we said, "In this policy, 'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy." The five respondents expressed concern that our revision did not specifically mention the mortgagee as a named insured and potentially jeopardized the mortgagee's financial interest. The respondents requested that we reinsert in the description of the named insured(s) language that specifically mentions the mortgagee. Several respondents also pointed out that we had not included in the Dwelling Form any mention of the "spouse," if a member of the same household, as a named insured.

We have reinserted language similar to that in the current policy identifying mortgagees as a named insured and added a reference to the named insured's spouse. The final version of the Dwelling Form reads: "In this policy, 'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. 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 exist at the time of loss in the order of precedence."

The final versions of the General Property Form and the Residential Condominium Building Association Policy have similar language mentioning the mortgagee as a named insured. Absent from the description of the named insured in these two forms, however, is a reference to "your spouse, if a resident of the same household."

*Mortgagees as Loss Payees.* Five representatives from the lending

industry also expressed concern that the proposed change to the "Mortgage Clause" limited protection only to mortgagees of whom we had actual notice. They interpreted "mortgagees of whom we had actual notice" to mean only those on the Declarations Page, rather than to any other mortgagee or loss payee determined to exist at the time of loss. The commenters urged that we add language in the final rule that explicitly protects the rights of any mortgagee or trustee determined to exist at the time of loss.

That was our intent, and we agree to clarify this. We have modified a provision of the "Mortgage Clause" of the three policy forms to read as follows:

"The word 'mortgagee' includes trustee. 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."

We believe that the addition of this language in the "Mortgage Clause" as well as the added language in the "Definitions" section described above addresses the lending community's major concerns, adopts their recommendations, and preserves the rights and interests of the mortgagee.

**Mortgage Clause and Foreclosure.** Two representatives from the lending community expressed concern that the proposed revision was silent about the rights of the mortgagee as a loss payee after a flood loss when the lender has started foreclosure on the building.

We believed we were simplifying the policy without affecting the mortgagee's rights. However, we understand this concern, and we have added the following language to the "Mortgage Clause" of the final version of the SFIP:

"The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure."

**Transfer of Mortgage Note to the Insurer.** Two respondents commented that we had removed language from the existing policy's "Mortgage Clause" that gives us the option to pay the whole principal due and to receive transfer of the mortgage under certain conditions and recommended that we reinsert similar language in the final rule.

We disagree. This provision is an option for us. We have never in the program's history exercised this option nor do we intend to do so in the future

because we do not wish to become a mortgagee. As a result, we have left any reference to our option to receive transfer of the mortgage out of the final revision of the SFIP.

**Continuation of coverage for after non-renewal for the mortgagee's benefit.** Three respondents objected that 30 days—the length of time we continue coverage for the benefit of the mortgagee after non-renewal—is not enough time and recommended that we increase that benefit to 45 days. The commenters pointed out that the National Flood Insurance Reform Act of 1994 gives a borrower 45 days to cure a deficiency regarding flood insurance before the lender may force-place coverage. The commenters argued that we should increase the benefit of continued coverage for the lender to 45 days to be consistent with the statute.

First, the proposed rule does not change what is currently in the policy. Our continuation of coverage under the current SFIP for the benefit of the mortgagee is 30 days, and 30 days has been the continuation of coverage benefit for years. So in the proposed rule we were not reducing a benefit for lenders. Second, there is "gap" insurance coverage in the private sector available for lenders to address such contingencies, and it is our understanding that most lenders have such coverage for all perils to protect their interests in the event a borrower fails to renew required property insurance protection. While we believe it is appropriate for us to provide some cushion for lenders, such as our 30-day benefit, providing 45 days to match the statute is unnecessary since gap coverage is available in the private market. It is not, in our view, appropriate public policy to duplicate under the NFIP coverage that is readily available in the private sector. Third, during the six years since the enactment of the National Flood Insurance Reform Act of 1994, lenders have not reported any difficulties with our long-standing practice of providing 30 days continuation of coverage for their benefit when a borrower fails to renew required property insurance coverage. We do not believe we need to change our current practice. In our continuing dialogue and planned meetings with the lending community on flood insurance, we will make certain that we carefully monitor this issue.

**Policy Cancellation.** Five commenters expressed concern that our proposed revision of the "Cancellation of the Policy by You" provision in the "General Conditions" section makes it appear that a policyholder may unilaterally cancel the flood policy

regardless of whether there is an existing mortgage obligation. Our intention was to remove, from the cancellation provision, language that had weighed down the policy with a number of examples of when the policyholder may be eligible for a premium refund. We did not intend in our proposed revision to undermine the mortgagee's interest, and we considered our applicable rules and regulations that the insurance agent must follow before we allow cancellation of any flood insurance policy to be sufficient to safeguard the lender's interest, i.e., when the lender has required flood insurance as a condition for the mortgage loan. Those rules and regulations remain unchanged.

We understand the concern expressed by the commenters. To make it clearer that we do not permit a unilateral cancellation of flood insurance by the policyholder, we have in this final rule changed the wording in the "Cancellation of the Policy by You" clause to read, "you may cancel this policy in accordance with the applicable rules and regulations of the NFIP."

First of all, it is not in the interests of the program to allow cancellation of policies without good reasons or adequate safeguards in our processing system. In that connection, we publish in the Flood Insurance Manual that Write Your Own companies and agents must follow when canceling an NFIP policy. Under the terms of the current "Cancellation Section," in this manual, the agent must submit a Cancellation/Nullification request to the insurer citing one of the approved reasons cited in the manual for a policy cancellation. Without documentation that the cancellation request meets approved criteria the policy does not get cancelled.

In the cases where there is a mortgage loan on the property, the manual says that the NFIP permits cancellation when, through a map revision, the property is no longer in a special flood hazard area and "the lender no longer requires the flood insurance policy." The mortgagee must confirm this in writing to the NFIP insurer. The applicable rules and regulations for agents also permit cancellation when the borrower has paid off the mortgage; however, before we allow a cancellation the agent must submit a "statement from the mortgagee stating that the mortgage has been paid off and that flood insurance was required as part of the mortgage must be attached to the Cancellation/Nullification Request Form."

In both cases, the agent must furnish documentation from the lender. In short, there are safeguards built into the program's processing and reporting system that we will continue to require before we will permit cancellation of a policy.

Our revision of the "Cancellation of the Policy by You" in the final rule then does two things: It removes from the policy unnecessary examples of situations when we will refund premiums while preventing any unilateral cancellation of the policy by the policyholder. We achieve the latter purpose by cross-referencing the applicable rules and regulations that the agent and the NFIP insurer must follow before the insurer can honor a request to cancel a policy.

**Policy Reformation.** We received one comment that we were using the word "restoration" incorrectly in the "General Conditions" section of the three policy forms and that we should substitute "reformation" instead. We agree with this comment and have changed the heading in the "General Conditions" section of each of the policy forms to read, "Reduction and Reformation of Coverage." We have also modified the wording in this clause to be consistent with the more precise title.

Another person expressed concern that the "Reduction and Reformation of Coverage" clause gives the insured and the mortgagee only 30 days from the date of our notification that there is insufficient premium for the requested coverage to submit the shortfall in premium. The commenter recommended that we increase the grace period to 45 days to conform with the National Flood Insurance Reform Act of 1994 which gives an insured that amount of time to make premium payment before the lender may force-place coverage.

As we mentioned in our discussion of continuation of coverage for the benefit of the mortgagee above, we do not believe we need to change our current practice. In our continuing dialogue and planned meetings with the lending community on flood insurance, we will make certain that we carefully monitor this issue as well.

**Duplicate policies.** Five respondents objected to the "Duplicate Policies Not Allowed" provision in "General Conditions" and argued that our allowing duplicate policies would ensure that there would be no gap between the limit of an existing SFIP and the amount required by law. The commenters cited situations involving multiple mortgagees where allowing duplicate policies would preserve every lender's interest at the time of loss. One

of the commenters suggested we develop a product like the "Contributing Insurance Endorsement" which permits multiple insurance carriers.

We considered this recommendation but believe that any perceived benefit does not outweigh our overriding concern over the problems that multiple policies present for us to assure that the statutory limits of coverage not be exceeded on any property. Duplicate policies also allow an opportunity for abuse and fraud at claim time.

The changes to those sections in the final rule, which we have already discussed, have addressed those concerns, and there is no need to alter our long-standing practice to prohibit duplicate policies under the NFIP. We have therefore not adopted this recommendation to allow duplicate policies.

**Definitions: Flood.** We received one comment asking us to revise our definition of "flood" that refers to the inundation of "two or more properties (one of which is your property) \* \* \*." The respondent recommended that we replace the term "property" with "premises."

We considered the comment but believe adopting the suggestion would hurt the policyholder by making our definition of "flood" more restrictive than we intend. "Properties" is general enough for us to consider not only an insured property but also some other property such as a public road. This wording is particularly appropriate for rural or low density development areas. We have therefore retained the word "properties" in the definition of "flood" in the final rule.

The respondent also pointed out that "premises" would be more accurate in our treatment of debris removal under "Coverage C—Other Coverages." We disagree, but we have addressed this concern by simplifying the debris removal provision.

**Definition: Manufactured home.** We received one comment that the qualifiers ("built on a permanent chassis," "affixed to a permanent foundation" and "transported to its site in one or more sections") in the definition of "manufactured home" seem misplaced in the proposed rule and that we should modify the definition. The correspondent also suggested that we did not need the criterion of affixing the manufactured home to a permanent foundation because we have the requirement that manufactured homes be tied down.

We agree that we need to change the order of the qualifiers for the definition. This is how the revised definition reads

in the final rule: "b. A manufactured home ('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)." We feel however we need to continue our requirements that all manufactured homes be affixed to a permanent foundation and those in special flood hazard areas be tied down to be consistent with the NFIP's floodplain management requirement.

**Land subsidence.** We received one comment that the exclusion of "land subsidence" in the proposed rule is confusing since we do pay for land subsidence losses whose cause is from the kind of erosion described in the definition of "flood."

We agree with this comment and have modified the language in the policy's "Exclusions" section to clarify the difference between land subsidence not caused by this kind of erosion in contrast with subsidence caused by this kind of erosion. The final policy clarifies that we cover land subsidence caused by erosion covered under the definition of "flood."

**Sewer back-up.** Three people expressed concern that we had added a new criterion for honoring claims for losses from sewer back-up, namely, that flood waters had to damage, *i.e.*, touch, the building before we would pay for sewer back-up losses. (We added this criterion because we believed it was a more objective standard than just having a flood in the general area.) The argument of those objecting to the proposed criterion ran this way: for us to require that the water "touch" the building could actually prove a disincentive for policyholders to take loss avoidance measures, such as sandbagging, to hold losses to a minimum. Such a requirement, the respondents wrote, also fails to take into account consumer expectations that have built up during the program's history for such coverage since we have historically covered sewer back-up and marketed flood insurance without such a criterion. Their arguments were convincing.

Since our proposal was a major departure in flood insurance coverage for consumers from the current policy, we have removed the proposed criterion that flood waters touch the insured building in order for us to honor sewer back-up losses, and we have restored the criterion that the proximate cause of the sewer back-up damage must be from general and temporary condition of flooding in the area.

Still, we believe this issue warrants further study and monitoring, and we

plan to look into future loss experience to see whether we need to adjust coverage or the criteria for coverage in the future regarding sewer back-up.

*References to Adjusters.* We received one comment on the use of the term "our adjuster" in "J. Requirements in Case of Loss" in the "General Conditions" section of the policy forms. The commenter pointed out that because the adjuster is an independent contractor we should therefore change the term to "the adjuster."

We agree with this comment and have made the change in the policy forms since we say later that "we have not authorized the adjuster to approve or disapprove claims" to describe the independent stature of the adjuster.

The same person also made this point about the use of the indefinite article when we say "at our option, we may accept an adjuster's report" in the same section of the policy forms. We have changed the wording to read "at our option, we may accept the adjuster's report."

*Manuscripts.* Two people pointed out that there are discrepancies in the proposed rule between the exclusion of coverage for manuscripts in "Property Not Covered" and the coverage in "Coverage B—Personal Property" for manuscripts in a list of covered property subject to a \$2,500 limit.

We have remedied the discrepancy by removing manuscripts from the list of covered property subject to the \$2,500 limit under "Coverage B—Personal Property." There is available in the private market special limits coverage for items, such as manuscripts, against all perils including flood. Since the private market provides such coverage, we will not duplicate it in our policy.

*Functional Value for Antiques.* One person questioned why the revised policy would pay only the "functional value" for flood losses to antiques rather than actual cash value (ACV)—the conventional approach in the property insurance industry. The current SFIP excludes antique value to the property. The use of the phrase "functional value" is meant to be a clarification of but not a change to our current policy.

*Detached garages.* We received one comment on detached garages. The writer pointed out that the phrase "used as such" in the "III. Property Covered, A.3" for detached garages is "indistinct" since many homeowners use garages for a variety of purposes such as workshops or business storage.

We agree with this point and have modified the language related to detached garages in the final rule to make clearer the conditions under which we cover a detached garage. We

have removed the phrase "used as such" from "III. Property Covered, A.3." We have also included in "III. Property Covered, A.3." language to make it clear when certain uses render a detached garage ineligible for coverage. This is what we say in the final rule about the restrictions on coverage for detached garages: "We do not cover any detached garage used or held for use for residential (*i.e.*, dwelling), business, or farming purposes." Our modification in the final rule addresses the comment.

*Personal property in basements.* One person recommended that we add refrigerators to the list of items we will cover in basements since we provide coverage for freezers.

We do not see any justification in adding flood coverage for more items in basements, which are at higher flood risk than other parts of a building. We developed the current list of items we will cover in basements based on several factors. First, we wanted to cover items essential for the operation and maintenance of the building itself, such as machinery and mechanical equipment. Second, there are certain items such as freezers that seem to be better suited for basements than in other parts of a dwelling since there are few alternative locations for freezers. Third, we have resisted, appropriately, offering coverage for items such as beds, sofas, recreational items, normal kitchen equipment such as stoves and refrigerators in basements since flood insurance coverage for such items might be at odds with the NFIP's floodplain management efforts: The NFIP would on the one hand be trying to guide development and occupancy away from the riskier flood-prone areas while inviting such uses with its coverage. We have decided not to add refrigerators to the list of what we cover in basements.

*Swimming pools, hot tubs, equipment, and machinery.* Two people expressed concern about our exclusions of coverage in the proposed rule for swimming pools, hot tubs, and spas. The proposed rule under "Property Not Covered" excludes coverage for "swimming pools, hot tubs and spas, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located \* \* \*." One correspondent said, "These items are \* \* \* often bathroom fixtures, especially hot tubs."

We agree with the latter point, and we provide in the final rule coverage for hot tubs and spas and their equipment, if they are bathroom fixtures. We still believe that it is not in the public's interest to provide flood insurance coverage for hot tubs or spas which are not part of bathrooms or for swimming

pools because of their inherent exposure to flood risk. Also, the difficulties in underwriting just the machinery and equipment of swimming pools outweigh any conceivable benefit.

*Condominium loss assessments.* One person recommended that we allow up to \$1,000 coverage for loss assessment for a condominium unit owner. This would, the writer believes, track more closely with loss assessment coverage in private commercial policies for other perils and would cover the deductible under the association's coverage which may be passed on to the unit owner.

We currently have no restriction on how much building coverage, within policy limits, the unit owner may apply to an assessment from the condominium association. To limit the benefit for loss assessments to \$1,000 is a considerable reduction in coverage. We have decided not to put such a restriction in the revised policy. We will not, on the other hand, pay for another policy's deductible, such as the deductible of the Residential Condominium Building Association Policy. We have therefore decided to retain the language in this final rule regarding loss assessment coverage for individual condominium unit owners.

*Replacement cost coverage for multi-family structures.* Four people recommended that we provide replacement cost coverage for multi-family structures since we provide this coverage for owner-occupied single family dwellings if the policyholder insures the building to value.

We decided not to accept this recommendation since adopting it would raise rates and would run counter to our efforts to reduce costs for the NFIP. We believe this issue bears looking into further, and we will study the economic impacts of providing replacement cost coverage for multi-family dwellings and examine the costs and benefits of such an approach.

*Pollution-pollutants.* Six respondents expressed concern about the proposed rule's exclusion of pollution. (Under the current policy, an insured may receive, up to policy limits, payment to repair damage to the building from flood-borne pollutants. The pollution exclusion in the current policy, which applies to Increased Cost of Compliance coverage, will remain.)

The following two comments are representative of this concern:

(1) "A flood by its very nature contains pollutants. This definition would exclude virtually all flooding events since flood by its very nature would always contain contaminants, especially waste."

(2) "A property owner will be unable to secure coverage elsewhere for pollution caused by flooding. Since the loss settlement will still be restricted to policy limits, pollution caused by flooding should be made available."

Several who submitted comments on this issue recommended that we use language similar to that in the Insurance Services Organization (ISO)'s homeowners policy treating the subject of pollution. They recommended the following language:

"We do not insure any of the following: discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a peril insured against."

Several other commenters cited the pollution benefit of \$10,000 in the ISO commercial property insurance form and recommended we use that as an available coverage benefit for pollution caused by flood.

We considered the comments objecting to our proposed exclusion of losses from pollution. The arguments were convincing, and we have decided to remove the exclusion for pollution from the final revisions for the Dwelling Form and the Residential Condominium Building Association Policy and permit these policyholders, as they are able to do under the current policy, to apply up to their policy limits under Coverage A to pay for damage from pollution caused by flood. We believe it is appropriate to continue the benefit we have traditionally offered for the owners of single family dwellings and for the owners of units within a residential condominium since property owners have no other recourse in the private market to protect themselves from losses from pollution caused by flood. We exclude, however, from the Dwelling Form and the Residential Condominium Building Association Policy, any payment for the testing for or monitoring pollutants unless a law or ordinance requires the testing or the monitoring.

We believe some limitation on pollution for commercial properties is appropriate, and we have adopted one commenter's recommendation that we model limited coverage for pollution from the ISO private commercial policy. We are therefore limiting the amount we will pay under the General Property Form to \$10,000 for each occurrence, but this amount, when combined with other benefits under the policy, cannot exceed the policy limits or the replacement cost or actual cash value of the covered property, whichever settlement amount is appropriate. As a

result of our revision, we will pay for the removal and clean-up of such pollutants from covered property after a flood loss, but, as we have for the Dwelling Form and the Residential Condominium Building Association Policy, we exclude the cost of testing for or monitoring pollutants unless law or ordinance requires the testing or the monitoring.

*Property removed to safety.* In the proposed revision of the SFIP, we increased from \$750 to \$1,000 to help defray the costs of moving property out an endangered flood area. One person expressed concern that this benefit was not enough to cover the costs of moving personal property such as business inventories and that the benefit would not cover the deductible.

We believe that the increase in benefits over what we have offered in the past is a relatively sizable one. We do not believe we can justify a higher increase in the face of our need to make the program actuarially sound, but we will monitor the issue to see if future increases may be justifiable from our loss experience.

*Self-propelled vehicles.* One person commented that the reference to self-propelled vehicles in the "Property Not Covered" section was unclear since the qualification "while the vehicles are inside a building at the desired location" seems to apply only to vehicles for the handicapped and should apply both to vehicles for the handicapped and to vehicles "used mainly to service the described location."

This is a good point. The qualification applies to both types of vehicles, and we will format the policy to make this clear.

*Interpretation of "common wall" and additions and extensions.* Two people commented on references to additions and extensions under "Property Covered, A. Coverage A—Building Property." One respondent limited comments to the errors and omissions that might arise from giving the insured the option of insuring an addition or extension (explained below) either as a separate building or consider it part of the insured building. The second commenter raised three issues related to "additions and extensions": Clarity over what is meant by a common wall, competitive pricing, and the concern about errors and omissions. This commenter said:

"It has been our experience that a solid, load-bearing interior wall and a common wall are the same definition. In theory, we agree that the common wall issue needs to be changed but this draft still leaves unresolved issues by not specifically listing these definitions (*i.e.*,

solid, load-bearing wall, common interior wall). Additionally, by allowing the option of issuing a separate policy we then fall into a competitive pricing issue. The insured may be offered two policies with one carrier therefore paying the expense/policy service fee twice or shop around and find another carrier that can issue one policy for his additions and extensions. Lastly, if we are required to offer two policies then will we be required to re-underwrite our current policies?"

The difference between a common interior wall that is not a solid, load-bearing wall and an interior wall that is load-bearing, we believe, is clear enough, and there is no need to revise the language in the policy on additions and extensions. On the issue of competition, one of the advantages of the Write Your Own program—with currently about 90 participating insurance companies—is that the consumer has a choice based on service since the same rates and rules apply to all companies selling flood insurance.

The policyholder has the advantage under the cited provision to insure additions and extensions connected by a rigid exterior wall, a solid load-bearing interior wall, a stairway, elevated walkway, or a roof, as a separate building or consider the addition as part of the insured building. This, we believe, is an advantage for the policyholder. It is incumbent on the agent and the insurance company to explain those options to the property owner to avoid any concern over errors and omissions while giving the property owner information to make an informed choice about coverage. Regarding the commenter's inquiry about the need to "re-underwrite" every policy, as with any change in coverage, companies need to reexamine their existing book of business, as appropriate.

*Minor word changes (Loss Avoidance Measures vs. Avoidance and Mitigation).* One person suggested that we change the heading "Loss Avoidance Measures" to "Avoidance and Mitigation." We considered the suggested title change and believe the wording as proposed is preferable, and we are keeping the wording from the proposed rule in the final version of the policy.

*Expense for Sandbags.* Two people agreed with our proposed increase of how much we will reimburse the insured for the expense of sandbags as a loss avoidance measure. One commenter wondered why, however, we could not pay more for the expense of sandbags.

We increased from \$750 to \$1,000 the amount we will pay for sandbags to

avoid losses. Again, we believe that the increase in benefits over what we have offered in the past is a relatively sizable one. We do not believe we can justify a higher increase in the face of our need to make the program actuarially sound, but we will monitor the issue to see if future increases may be justifiable from our loss experience.

*Payment for floodproofing.* We received one suggestion that we pay for floodproofing of buildings without basements. The person argued that since we pay under Increased Cost of Compliance coverage (Coverage D) for floodproofing of basements of residential structures, we should also pay for permanent floodproofing of residential structures without basements. The writer also argued that since we pay for temporary protective measures when there is the threat of flooding, we should pay for permanent floodproofing. The writer also contended that the installation of a permanent device, such as a flood shield, would pay for itself over time in prevented flood losses and fewer flood claims. And because of those potential savings in flood claims, we should pay for such a device.

First of all, we only pay for the floodproofing of basements under Increased Cost of Compliance coverage (Coverage D) under very limited circumstances. The property must have suffered substantial damage by flood or repetitive flood losses, and the community must be requiring the repair or other mitigation measure to bring the building into compliance with a local or State floodplain management ordinance or law. Also, for us to pay under Coverage D to bring a basement into compliance with a local floodplain management law or ordinance, the community must meet rigorous standards for floodproofing residential basements approved by FEMA. Only 53 communities out of 19,000 participating communities have been approved for this option. We would also point out an essential difference between the standards for floodproofing residential basements in approved communities and the flood shield that the commenter recommends: a basement once floodproofed requires no further intervention on the part of the occupant for the floodproofing to be effective. The flood shield on the other hand requires human intervention just before a flood for the device to be effective.

Finally, certain devices and equipment clearly make buildings safer and reduce the risk to certain perils. The installation of sprinklers in residential dwellings is a good example of a loss mitigation measure that adds protection,

increases safety, and reduces the building's exposure to fire loss; however, property insurance companies will not and should not pay for the permanent installation of such devices that reduce the risk. Such devices if worthwhile will sell themselves or be required by code. They are not eligible for nor should they become eligible for payment as a covered loss in the insurance sense.

For these reasons, we have therefore rejected the recommendation for the SFIP to pay for the installation of loss mitigation measures as a preventive step.

*Miscellaneous Questions.* We received several sets of comments asking us to clarify whether coverage for certain items or under certain conditions had changed in the revised policy. We will restate the each question and follow with our answer.

*Question.* Can two properties be a house and the street in front of the house or does it have to be two houses? NFIP has taken the position in the past that two properties can be the insured house and the street in front of the house; however, we want to verify that this has not changed with the new policy.

*Answer.* Our position has not changed. "Two properties" can still mean under the new policy the insured house and the street in front of the building.

*Question.* Under Coverage C—Other Coverages, Contents Removal, it states that any property removed must be placed aboveground level or outside the special flood hazard area. This appears to mean that we can still cover personal property that is moved to a special flood hazard area if it is above ground level and in a fully enclosed building. This doesn't sound logical since the point is to move it outside of the special flood hazard area.

*Answer.* Coverage C—Contents Removal under the new policy requires that the contents must be removed above ground or outside a special flood hazard area. This is not inconsistent. There are situations where moving property to a safer location within a floodplain, e.g., within a broad floodplain or in a coastal area, is the best available mitigation option available to a policyholder. Moving property inland away from an approaching hurricane to a location that may still be within a special flood hazard area, may be enough to move property out of harm's way.

*Question.* The policy is silent on who makes substantial improvements. Does the responsibility of determining substantial improvement still rest with

the community officials? This is important because we are talking about the denial of coverage for post-FIRM enclosures.

*Answer.* The responsibility for making a determination whether a building has suffered substantial damage and must meet the substantial improvement requirement still rests with the community official.

*Question.* The policy mentions special coverage for handicapped persons, but does not define "handicapped" in the definition section. Is it intended that "handicapped" means only people protected by Federal law, or can it mean someone with a broken leg, etc. This could become an issue if not properly defined.

*Answer.* A temporary handicap, such as a broken leg, would qualify for special coverage for handicapped persons under the new policy.

*Question.* There is an exclusion for decks outside the perimeter walls of the dwelling. NFIP has taken the position in the past that we could pay for sixteen square feet of decking outside the perimeter walls of the dwelling, which is not spelled out in the policy. Are we still allowing the sixteen square feet or do we totally exclude decking outside the perimeter walls of the dwelling.

*Answer.* Our interpretation under the new policy has not changed. We will still pay, as we currently do, for sixteen square feet of space that permits entrance and exit to a building.

*Question.* We insure against direct physical loss by or from flood for "clean-up." But what does "clean-up" include?

*Answer.* "Clean-up" includes the removal of muck from the interior of the insured building, cleaning the flood-soiled surfaces of the insured building, and the removal of debris from the boundaries of the insured property.

*Question.* How can this policy state that it will not insure for direct physical loss caused directly or indirectly by rain? Rain is one of the major reasons for flooding. This seems contradictory.

*Answer.* Rain without surface flooding is not covered under the SFIP. This is not a new interpretation or a change from previous version of the SFIP. Conversely, damage from rain alone can be covered under the homeowners policy.

*Question.* Does the NFIP intend to settle losses for manufactured homes with materials on a replacement cost basis but never more than 1.5 times the actual cash value apply to repairs as well as total losses?

*Answer.* Under VII General Conditions, V. Loss Settlement, 3.a. and

3.b., we explain how losses will be adjusted under the policy for manufactured homes: Under 3.a., we will pay for total losses on a replacement cost basis or 1.5 times the actual cash value, whichever is less; under 3.b., we will pay for repairs on a replacement cost basis.

*Question.* How will an adjuster know, *i.e.*, for sewer back-up claims, if the flood waters actually touch the structure if it does not leave a visible water line or debris? (Flood waters may briefly touch the structure but leave no visible water line.)

*Answer.* This is no longer an issue since we have removed the criterion that water touch a building in order for us to pay for damages from sewer back-up. (See our earlier discussion of sewer back-up.)

*Question.* What is “loss in progress”? Is it the threat of flooding? When water touches the building? What about when water touches the detached garage?

*Answer.* “Loss in progress” does not merely mean the threat of flooding. “Loss in progress” means when water touches the insured building. If the policyholder has elected to apply up to 10% of the building’s coverage on the dwelling and flood waters touch the detached garage, the loss would be a loss in progress. If the policyholder has elected to insure the detached garage separately from the dwelling, the flood waters touching the detached garage would involve a loss in progress for the detached garage, insured separately, but not the separately insured dwelling.

*Question.* When does a carport become a garage?

*Answer.* If a structure has two walls and a roof it is a building that is eligible for coverage under the NFIP. Normally, carports do not meet the definition of a building. We do not agree that we need to add a definition for “carport” which the questioner implied since our definition of building is in our view clear enough.

*Decision to Retain Scheduled Building Policies.* During the comment period, we received no comments on the deletion in the proposed rule of the provision for scheduled building policies. We have decided, however, to retain in the final rule the provision in the definition of “policy” that permits us to offer scheduled buildings policies, *i.e.*, one policy that provides coverage for several buildings. We are retaining this product option since we have become aware of recent interest in and a potential need for scheduled building policies for municipal buildings.

### Closed Basin Lake Endorsement

*Interim Final Rule.* On August 2, 1999, we published at 64 FR 41825 an interim final rule, with a request for comments. That rule added an endorsement to the Standard Flood Insurance Policy (SFIP) that provides a permanent procedure for honoring claims for buildings damaged by continuous lake flooding from closed basin lakes or under imminent threat of flood damage from those lakes.

During the comment period, we received seven sets of comments. After reviewing those comments, we have adopted several recommendations for making textual changes to the policy. For the other recommendations, which we decided not to adopt, we explain our decisions in each of the following sections.

#### *Size Standard for Closed Basin Lakes.*

We received one comment that we should use a standard less than one square mile as the basis for our definition of a closed basin lake. We have selected the one square mile standard to agree with the scope of our flood insurance studies found in “Flood Insurance Study: Guidelines and Specifications” (FEMA 37, January 1995). The guidelines state that our flood insurance studies should be terminated where the 100-year floodplain narrows to a width of 200 feet or less, or “where the drainage area of the flooding source is less than one square mile.” We felt that some measurable cut-off was reasonable for our definition of closed basin lakes in the SFIP so we used one square mile as the limit to conform with our published standard for flood insurance studies. For that reason, we have retained that one square mile standard in the revised closed basin lake section of the SFIP.

*Physical Damage or Imminent Threat.* One person argued that the closed basin lake endorsement should not require that flooding from a closed basin lake “touch” the structure in order for us to pay a claim under the closed basin lake endorsement. The endorsement does not impose such a requirement. The endorsement says, “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: 1. Lake waters must damage or 2. imminently threaten your building.” We review closed basin lake claims filed under the SFIP on a case-by-case basis to determine whether a structure—not physically damaged by flooding—is “imminently threatened” by flood waters from a closed basin lake.

*Imminent Threat.* Three people objected to the concept of “imminent threat” and wanted us to base eligibility for claim payments on predictions by the National Weather Service (NWS) that conditions from a designated closed basin lake will inundate certain areas. Our policy for the payment of claims from closed basin lakes has evolved. Initially, we based eligibility for claims on NWS predictions of inundation for broad areas. Program experience has prompted us to change this policy. Now, we apply the concept of “imminent threat” which we can apply on a case-by-case basis to claims. The reason for this shift is that, by using prediction as the standard for claim payment, the NFIP could be liable for claims on buildings neither damaged by flooding nor imminently threatened by flooding. Rather, the building’s location in a general area exposed to closed basin lake flooding would make it eligible for claim payment. Using “imminent threat” as the basis for paying claims in closed basin lake areas however is much more defensible for several reasons. First “imminent threat” means that it is reasonably certain that surface water will damage an insured structure due to existing conditions in the Area of Special Consideration (ASC). Second, using “imminent threat” allows us to evaluate claims on a case-by-case basis.

*Buildings with Basements.* Several people raised concerns that the concept of “imminent threat” did not expressly apply to basements as well. We have responded to those concerns by interpreting the concept of “imminent threat,” as it applies to buildings with basements, as follows: In the event a building located in the ASC has water in the basement, we will consider the building to be “imminently” threatened by damage from closed basin lake flooding when:

- The building is in such close proximity to the closed basin lake that it is probable that the lake flooding is the cause of the basement flooding;
- The lake level is higher than the basement floor level; and
- Either: (1) the owner is currently taking reasonable preventive measures to manage the flow of lake water into the building and has done so for at least the last 30 days or (2) lake water has been in the basement for the last 30 days.

The adjuster may base the evidence of both reasonable preventive measures and the presence of lake water in the basement for the specified period on any documented source.

*Date Coverage Must be in Effect.* We received three comments urging that the date by which continuous flood

insurance coverage must be in effect, in order for the policyholder to be eligible for coverage, should be later than October 31, 1999. The rule is silent about a specific date. The endorsement says, "You (the policyholder) must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this endorsement." FEMA had set October 31, 1999, as the continuous coverage date for the Devils Lake area of North Dakota and communicated that to public officials. To give local property owners additional time to buy flood insurance and meet the requirements of the endorsement, however, FEMA changed that date to November 30, 1999.

One person argued that the continuous flood insurance coverage date for the Devils Lake area should be postponed until after the Flood Insurance Rate Map (FIRM) showing the Area of Special Consideration (ASC) has become effective. He said:

"All hazards illustrated by the NFIP on a FIRM must be identified on a scientific and technical basis, even the ASC which approximates the 500-year flood hazard surrounding Devils Lake. As such, the ASC is subject to the review and the appeal process (44 CFR part 67) simply because it is on a revised preliminary FIRM which lists the proposed flood elevation determinations for the lake."

The endorsement states that we 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." The endorsement does not require that the map be a Flood Insurance Rate Map (FIRM). However, because we were in the process of either revising existing maps or producing new maps for the communities around Devils Lake in connection with an ongoing Flood Insurance Study, we decided to show the ASC on the preliminary FIRMs. We established the ASC for advisory purposes; the advisory ASC is considered final and is not subject to the statutory and regulatory appeal period as base flood elevations are. Additionally, the statutory and regulatory intent of the appeals process is to give individuals and communities every opportunity to appeal, with scientific and technical data, the elevations we derive from our studies since the base flood elevations trigger full risk premiums and building standards for new construction. On the other hand, the ASC, which we delineated in close coordination with

State and local governments, is an area that identifies the areas eligible for the benefits under the closed basin lake endorsement. The ASC in itself does not impose a statutory requirement for flood coverage. We did not therefore adopt this recommendation.

**Tracking Continuous Coverage Requirement.** We received one comment expressing concern that FEMA would have difficulty in tracking the continuous coverage requirement when one owner sells the property. The endorsement addresses the issue of continuous coverage when a property owner sells a property affected by a closed basin lake in this way:

"You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this endorsement. If a subsequent owner buys NFIP insurance that goes in 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."

FEMA's tracking the ownership of an insured property is not an issue since the burden of proof of continuous flood insurance coverage will be on the property buyer. In this regard, we have been working with and will continue to work with State and local officials to make sure that the affected members of the public know their responsibilities under the endorsement and are able to take full advantage of the endorsement's benefit. We believe our current efforts address this concern.

**Textual Comments.** We also received recommendations to revise the wording of the endorsement in two places. Specifically, one person recommended we change "floodplain management permit" (see criterion number 4 in the endorsement) to "floodplain development permit." We adopted this recommendation.

The same person also pointed out that the wording "grant the conservation easement to be recorded on the deed of the property" was imprecise since an easement "runs with the land" and cannot be recorded "on the deed." We agree with this recommendation too. We believe the following change in the policy language achieves greater precision: "Grant a conservation easement \* \* \* to be recorded in the office of the local recorder of deeds."

**Clarification of Coverage Requirement.** The interim final rule was silent about how much coverage had to be continuously in force for benefits under the closed basin lake coverage. Under the interim final rule,

policyholders had to have "NFIP flood insurance continuously in effect from a date established by FEMA until" the policyholder filed a claim. This meant that a policyholder could technically meet this criterion for continuous coverage by buying a minimal amount of flood coverage initially, keeping the minimal amount of coverage in effect, and then increasing the face amount of the policy when the structure is eligible for relocation. This final rule now requires that policyholders have the same amount of insurance in effect continuously from the date set by FEMA until the policyholder files a claim. This change still allows the policyholder to buy recommended increases in coverage at policy renewal to keep pace with inflation.

**Incorporation in the Revised SFIP.** As an aid for readers, we have incorporated language on the policyholder's requirements and benefits regarding closed basin lake flooding under "Continuous Lake Flooding" in the text itself of the "OTHER PROVISIONS" section of the revised policy. We feel this is a more logical place for information on closed basin lake coverage and will be easier for affected policyholders to access rather than in a separate endorsement.

#### Definition of "Structure"

This final rule changes several key definitions including the definition for "building." Our revised definition of "building" cross-references the term "structure" found in the "Definitions" section of the program's regulations at 44 CFR 59.1. Therefore, we have revised the definition of "structure" to be consistent with our new definition of "building." This change does not affect the definition of "structure" for floodplain management purposes, only for insurance purposes.

#### Group Flood Insurance Policy

Changing the Dwelling Form requires us to change in this final rule several cross-references to the Dwelling Form in § 61.17, which establishes the Group Flood Insurance Policy. We have made those reference changes in this final rule.

#### Coverage Changes

We have made several changes in coverage for the three policy forms. The following tables compare the previous coverage under the SFIP with the new changes established by this rule:

TABLE 1.—LAND SUBSIDENCE, SEWER BACK-UP, AND SEEPAGE

New changes in SFIP coverage	Former coverage under the SFIP
The new changes will not affect the coverage for losses from “subsidence of land” along the shore of a lake or other body of water as a result of flood-related erosion. We will not pay for any losses from other land subsidence .....	Pay for losses from subsidence of land along the shore of a lake or other body of water as a result of flood-related erosion. Pay for losses from other land subsidence under certain circumstances.
We will pay for losses from sewer back-up if there is a general condition of flooding in the general area. We are removing the current requirement for replacement cost coverage on the building. We are removing the criterion that the loss must occur within 72 hours after the flood has receded. We will not apply a separate deductible to claims for sewer back-up and seepage.	Pay for losses from sewer-back-up and seepage: If there is a general condition of flooding in the general area; If the building has replacement cost coverage; and If the loss occurs within 72 hours after the flood has receded. Apply a separate deductible to claims for these losses.

As noted in the preceding table, we will pay for losses from sewer backup if flooding is “in the area.” Also, as the preceding table shows, there are two references to the subsidence of land in the current policy. The first is in our definition of “flood.” Section 1370 of the National Flood Insurance Act of 1968 mandates that the term “flood” shall also include “the collapse or

subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels.” The second reference to land subsidence is in the Dwelling Form: currently we pay for losses from land subsidence when certain criteria are met such as amount of insurance coverage in force on the

dwelling, the duration of flooding (“no later than 72 hours after the flood has receded”), and the proximity of the flood (“in the area”). The changes do not include any revision to the statutory reference to “subsidence of land” in the policy’s definition of “flood.” The revisions however eliminate coverage for land subsidence in any other situation.

TABLE 2.—LOSS MITIGATION MEASURES AND LOSS ASSESSMENTS

New changes in SFIP coverage	Former coverage under the SFIP
We are increasing the amount we pay for the labor and materials of certain mitigation activities (e.g., sandbagging) to \$1,000. We are increasing to \$1,000 the amount we will pay for removal of personal property from a flood-threatened building.	We currently pay up to \$750 for materials and labor for mitigation efforts such as sandbagging. We currently pay up to \$500 for the removal of personal property in anticipation of the flood.

TABLE 3.—PERSONAL PROPERTY, MOTORIZED VEHICLES AND SPECIAL NEEDS

New changes in SFIP coverage	Former Coverage under the SFIP
We will permit a renter to apply 10% of contents coverage to cooking stoves, ranges, or refrigerators belonging to the renter, as well as to improvements by the renter to the building.	No coverage under the Dwelling Form.
We will permit a condominium unit owner to apply 10% of the contents coverage to losses to interior walls, floors, and ceilings under the Dwelling Form.	No coverage.
We will increase to \$2,500 what we will pay for flood losses to collectibles, artwork, furs, etc., and we will add these items to the list business contents.	We now pay only up to \$250 for eligible flood losses to collectibles, artwork, furs, etc.
We will pay for losses to self-propelled vehicles that service the premises and assist handicapped persons provided the vehicles are in a building on the premises.	We only pay for losses to self-propelled vehicles that service the building.

TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL

New changes in SFIP coverage	Former coverage under the SFIP
We are changing how we settle losses for double-wide manufactured homes. We will settle total losses for these structures with materials on a replacement cost basis but never more than 1.5 times the actual cash value.	Replacement cost interpreted for total losses as the value shown in NADA guide for mobile homes.

TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL—Continued

New changes in SFIP coverage	Former coverage under the SFIP
We treat as part of the building additions or extensions attached by a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At the insured's option, these additions and extensions may be separately insured. If the addition or extension is attached by a common interior wall, it may not be insured as a separate building.	We currently only treat, as part of the building, extensions or additions that are connected by a common wall. Additions and extensions connected by a covered breezeway, for example, are treated as separate buildings—not as part of the building.

TABLE 5.—REDUCTION AND REFORMATION OF COVERAGE LIMITS

New changes in SFIP coverage	Former coverage under the SFIP
We are adding a policy reformation provision for situations when an application or endorsement is received without all the necessary information. We are requiring the applicant to submit the missing information within 60 days. If the missing information is not received within 60 days, and a loss occurs, the maximum amount of insurance available is limited to the lesser of: the amount originally requested or the amount of coverage the original premium paid would buy, using the correct rating information.	No such provision.

We are also adding coverage in basements and in enclosures of elevated buildings for water softeners and the chemicals in them, water filters and faucets. In addition, we are adding coverage for damage from the pressure or weight of water against the structure with the requirements that there be surface flooding in the area and that the flooding be the cause of the damage. On the other hand, we are excluding from coverage scrip and stored value cards. The revisions to the policy also exclude any losses caused by the policyholder's failure to inspect and maintain the property after the flood recedes.

We are retaining coverage for detached garages, but we are eliminating coverage for detached carports since they do not have two walls—one of the criteria under the definition of building. We are also eliminating the requirement for a minimum premium. The final rule adds to the definition of "flood" criteria previously found elsewhere in the policy. Those criteria require that a qualifying flood event under the policy must inundate two properties or two acres. The consolidation of the criteria into the definition of "flood" is much more useful for the policyholder to understand the scope of coverage under the policy.

In addition to these coverage changes, we are changing how we define loss in progress to make our intent clearer on when coverage begins in connection with loan closings.

#### Inspection Procedure of Insured Structures

On June 27, 2000, FEMA published a final rule establishing an inspection procedure on a pilot project basis for

Monroe County, Florida and the Village of Islamorada, which is located in Monroe County. The rule also added endorsements to the SFIP making the renewal of certain flood insurance policies for certain properties in these communities contingent on the property owner's submission of a completed community inspection report by local officials. These optional endorsements affect some 30,000 policies in these two pilot project communities.

We revised these endorsements in this final rule to match the new policy format. Also, in our efforts to simplify the Standard Flood Insurance Policy, we have shortened the endorsements to each of the policy forms in this final rule. We have retained the language regarding the inspection report and the policy renewal, but we have removed a number of redundancies from the policy language.

#### Exclusive Federal Jurisdiction and Applicable Law

Standard Flood Insurance Policies are sold by a number of private Write Your Own (WYO) insurance companies and directly to the public by the Federal Insurance Administration. Because the National Flood Insurance Program is national in scope and accomplishes a number of programmatic missions in addition to making affordable flood insurance generally available to the public, the SFIP provides that its terms cannot be altered, varied or waived except by the written authority of the Federal Insurance Administrator. The Administrator intends that the same benefits should be available to insureds wherever the insured property is

located, or whether the policy is purchased from a WYO insurance company or from the Federal government. Thus, there is a need for uniformity in the interpretation of and standards applicable to the policies and their administration. Therefore, we have clarified the policy language pertaining to jurisdiction, venue and applicable law to emphasize that matters pertaining to the Standard Flood Insurance Policy, including issues relating to and arising out of claims handling, must be heard in Federal court and are governed exclusively by Federal law.

#### National Environmental Policy Act

This final rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

#### Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order

defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule accomplishes three principal changes: (1) it renders the SFIP in "plain English"; (2) it restructures the format to resemble the basic homeowners policy; and (3) it makes several changes in the policy's coverage. In all other substantive aspects the SFIP is unchanged from its past version.

Of 18 changes that affect coverage, we summarize 11 in Tables 1 through 5 of this preamble. We summarize the remaining 7 changes in the paragraphs that immediately follow the tables. The 18 proposed changes are evenly divided between changes that add or increase coverage and changes that reduce or remove coverage or require certain coverage from a date certain to the time a claim is filed for "closed basin lake" claims.

For each revised policy provision, we made two estimates: the first was the percentage of claims that would be impacted by the revised provision; the second estimate was the dollar impact that provision would have on each affected claim. We multiplied these two amounts to develop the dollar impact of each change spread over all program claims. We then summed those dollar amounts to arrive at an estimated increase of \$62.88 in the average paid claim under these revised policy provisions. We estimate that during the first fiscal year after enactment the NFIP would have about 4.3 million policyholders and about 55,900 total flood losses. If so, that would result in an annual cost to the Program of approximately \$3.5 million resulting from the proposed changes to the policy.

The Office of Management and Budget has reviewed this rule under the principles of Executive Order 12866.

#### Paperwork Reduction Act

This rule requires the collection of information. Under the Paperwork Reduction Act (Act) we must consider the impact of paperwork and other information collection burdens imposed on the public. The Act mandates specific reductions in the amount of paperwork requirements imposed by agencies. It requires specific approval by the Office of Management and Budget (OMB) of any new requirements for collection of information imposed on ten or more persons by an agency; without such approval, the agency lacks the authority to enforce any such requirement. The Act also requires us to inform respondents that a response is not required unless the collection of information displays a valid OMB control number.

OMB has previously approved the following information collection requirements covered by this final rule under the provisions of the Paperwork Reduction Act, as amended:

OMB control No.	Title
3067-0021	National Flood Insurance Claims Forms.
3067-0022	National Flood Insurance Policy Forms.
3067-0077	Post Construction Elevation Certificate/Floodproofing Certificate.
3067-0195	Community Rating System (CRS) Program, Application Worksheets and Commentary.
3067-0235	Residential Basement Floodproofing Certificate.
3067-0275	Inspection of Insured Structures by Communities.

In addition, FEMA has submitted for OMB clearance and approval one other information collection package: Closed Basin Lake Endorsement. When approved by OMB we will publish a separate notice of this collection of information and its expiration date. Any person who is to respond to this collection of information is not required to respond unless the collection of information displays a currently valid OMB control number.

#### Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 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, or on the

distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule is a plain language revision of the Standard Flood Insurance Policy. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

#### Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104-121. The rule is not a "major rule" within the meaning of that Act. It is a "plain English" revision of the existing Standard Flood Insurance Policy and any substantive changes in the rule will not result in an annual effect on the economy of \$100,000,000 or more. We do not expect that it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor do we expect that it will 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.

#### List of Subjects in 44 CFR Parts 59 and 61

Flood insurance.

Accordingly, we amend 44 CFR Parts 59 and 61 as follows:

#### PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O.

12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We revise the definition of "Structure" found in § 59.1 Definitions to read as follows:

#### § 59.1 Definitions.

\* \* \* \* \*

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure," for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) A manufactured home ("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

(3) 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.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

\* \* \* \* \*

## PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 61.10 [Removed]

4. We remove § 61.10.

5. We revise § 61.17 to read as follows:

#### § 61.17 Group Flood Insurance Policy.

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under section 411 of the Stafford Act (42 U.S.C. 5178) of an Individual and Family Grant (IFG) program award for flood damage as a result of a major disaster declaration by the President.

(b) The premium for the GFIP is a flat fee of \$200 per policyholder. We may adjust the premium to reflect NFIP loss experience and any adjustment of benefits under the IFG program.

(c) The amount of coverage is equivalent to the maximum grant amount established under section 411 of the Stafford Act (42 U.S.C. 5178).

(d) The term of the GFIP is for 37 months and begins 60 days after the date of the disaster declaration.

(e) Coverage for individual grantees begins on the thirtieth day after the NFIP receives the required data for individual grantees and their premium payments.

(f) We will send a Certificate of Flood Insurance to each individual insured under the GFIP.

(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:

(1) VI. DEDUCTIBLES does not apply to the GFIP. A special deductible of \$200 (applicable separately to any building loss and any contents loss) applies to insured flood-damage losses sustained by the insured property in the course of any subsequent flooding event during the term of the GFIP. The deductible does not apply to:

(i) III.C.2. Loss Avoidance Measures; or

(ii) III. C.3. Condominium Loss Assessments coverage.

(2) VII. GENERAL CONDITIONS, E. Cancellation of Policy by You, does not apply to the GFIP.

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

(h) We will send a notice to the GFIP certificate holders approximately 60 days before the end of the thirty-seven month term of the GFIP. The notice will encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP to apply for a conventional NFIP Standard Flood Insurance Policy, and advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The IFG program will provide the NFIP the amount of flood insurance coverage to be maintained by certificate holders.

6. We revise Appendix A(1) to Part 61, Dwelling Form, to read as follows:

#### APPENDIX A(1) TO PART 61

##### Federal Emergency Management Agency, Federal Insurance Administration

##### Standard Flood Insurance Policy

##### DWELLING FORM

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

1. A non-condominium residential building designed for principal use as a dwelling place of one to four families, or
2. A single family dwelling unit in a condominium building.

#### I. Agreement

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.

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

1. Have paid the correct premium;
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

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

#### II. Definitions

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. 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 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. The precise definitions are intended to protect you.

*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 A.1.a. above.

B. 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. For us to issue you a policy, the correct premium payment must accompany the application.

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

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) 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 (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 or a recreational vehicle, park trailer or other similar vehicle, except as described in B.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 real property 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 real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the 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.

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

12. *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.

13. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.

14. *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.

15. *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.

16. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

17. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to

defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the Expense Constant.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured dwelling or the 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 dwelling, 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 Premium.* 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.

26. *Special Flood Hazard Area.* 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.

27. *Unit.* A single-family unit you own in a condominium building.

28. *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 Covered

#### 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% 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 levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 and the top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, AR/AO.

6. A manufactured home or a travel trailer as described in the Definitions section (see II.B.6.b. and II.B.6.c.).

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 covered 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 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. 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.

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

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.

2. Coverage for personal property includes the following property, subject to B.1. above, which is covered 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.

3. 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.

4. 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% 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.

5. 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 covered under a flood insurance policy purchased by your condominium association) for not more than 10% 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.

6. 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; or

- e. Personal property used in any business.
- 7. 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.

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.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

### 3. Condominium Loss Assessments.

a. If this policy insures a 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 as a result of direct physical loss by or from flood during the policy term, to the building's common elements.

b. We will not pay any loss assessment charged against you:

(1) 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) That 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% or more of its full replacement cost; or

(b) The maximum amount of insurance permitted under the Act;

(5) To the extent that payment under this policy for a condominium building loss, in combination with payments under any other NFIP policies for the same building loss, exceeds the maximum amount of insurance permitted under the Act for that kind of building; or

(6) To the extent that payment under this policy for a condominium building loss, in combination with any recovery available to you as a tenant in common under any NFIP condominium association policies for the same building loss, exceeds the amount of insurance permitted under the Act for a single-family dwelling.

Loss assessment coverage does not increase the Coverage A 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 structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures.

b. Residential structures 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 \$20,000 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 declare 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 structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

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

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure 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% of the market value of the structure 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 structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure 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 structure.

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 structures 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 structure 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 structures 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 structure 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

structures 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 also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure 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.

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

### 4. Conditions.

a. When a structure covered 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 or other structure 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 structure 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% insurance-to-value requirement for replacement cost coverage as set forth in VII. General Conditions, V. Loss Settlement.

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

### IV. Property Not Covered

We do not cover 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% 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. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

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 covered under our definition of flood (see II.A.1.c. and II.A.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 covered 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.

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 covered 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. Concealment or Fraud and Policy Voidance

1. With respect to all insureds under this policy, this policy:

- a. Is void;
- b. Has no legal force or effect;
- c. Cannot be renewed; and
- d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

- (1) Intentionally concealed or misrepresented any material fact or circumstance;
- (2) Engaged in fraudulent conduct; or
- (3) Made false statements; relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts described in B.1.above were committed.

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

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

- a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or reenter the program during the policy term and before the loss occurred; or
- b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

### C. Other Insurance

1. If a loss covered by this policy is also covered 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 C.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 C.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 in the name of your condominium association covering the same property covered by this policy, then this policy will be in excess over the other insurance.

### D. 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 covers only personal property; or
2. When this policy covers a structure during the course of construction.

### E. Cancellation of the Policy by You

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

### F. Non-Renewal of the Policy by Us

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or
2. If your building has been declared ineligible under section 1316 of the Act.

### G. Reduction and Reformation of Coverage

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:

- a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss:
  - (1) If we discover before you have a flood loss that your premium payment was not enough 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 you or the mortgagee or trustee pay the additional premium 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 we determine before you have a flood loss that the rating information we have is incomplete 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. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss:

(1) If we discover after you have a flood loss that your premium payment was not enough 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 and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of 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 prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. 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 Condition B. Concealment or Fraud and Policy Voidance apply.

### H. 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.

#### *I. 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.

#### *J. 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 covered 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 J.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.

#### *K. 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.

#### *L. No Benefit to Bailee*

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

#### *M. 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. P.

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.

#### *N. Abandonment*

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

#### *O. 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.

#### *P. 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 covered 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.

#### *Q. Mortgage Clause*

The word "mortgagee" includes trustee.

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.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

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.

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.

#### *R. 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 covered 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.

#### *S. 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.

#### *T. 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 a covered 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; and
- 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 T.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 T.1. above or T.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 T.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 flood waters 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 T.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 T.1.a. through T.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 T.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 T.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 T.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 T.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 T.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 T.2. will be in effect for a community when the FEMA Regional Director 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 T.2.e. and T.2.f. above, and

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

#### *U. Duplicate Policies Not Allowed*

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage

under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

#### V. 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 V.2. below, applies to a single-family dwelling provided:

(1) It is your principal residence, which means that, at the time of loss, you or your spouse lived there for 80% of:

(a) The 365 days immediately preceding the loss; or

(b) The period of your ownership, if you owned the dwelling for less than 365 days; and

(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80% 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 V.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 V.4. below.

##### 2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in V.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% of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under V.2.a. above or

V.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 V.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 II.B.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 V.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 V.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 V.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% 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 II.B.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% 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% of its full replacement cost. But if 80%

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 covered 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 V.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. 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.

#### IX. What Law Governs

This policy and all disputes arising from 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.

**Jo Ann Howard,**  
*Administrator, Federal Insurance Administration.*

7. We revise Appendix A(2) to Part 61, General Property Form, to read as follows:

## APPENDIX A(2) TO PART 61

Federal Emergency Management Agency,  
Federal Insurance Administration

## Standard Flood Insurance Policy

## GENERAL PROPERTY FORM

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

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and
2. Except for personal property coverage, for a unit in a condominium building.

## I. Agreement

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.

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

1. Have paid the correct premium;
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

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

## II. Definitions

A. In this policy, “you” and “your” refer to the insured(s) shown on the Declarations Page of this policy. 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 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. The precise definitions are intended to protect you.

*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. The 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 A.1.a. above.

B. 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. For us to issue you a policy, the correct premium payment must accompany the application.

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

5. *Basement*. Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) 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 (“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 or a recreational vehicle, park trailer, or other similar vehicle, except as described in B.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 real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association*. The entity, formed by the unit owners, responsible for the maintenance and operation of:

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

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

10. *Declarations Page*. A computer-generated summary of information you provided in the 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.

11. *Described Location*. The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *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.

13. *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.

14. *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.

15. *Expense Constant*. A flat charge you must pay on each new or renewal policy to

defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee*. A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements*. Fixtures, alterations, installations, or additions comprising a part of the insured building.

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

19. *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.

20. *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.

21. *Pollutants*. Substances that include, but that 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.

22. *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.

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

24. *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.

25. *Residential Condominium Building*. A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area*. 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, V.

27. *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 covered under Section IV. Property Not Covered, 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.

28. *Unit.* A unit in a 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 Covered

#### 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. We also insure 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, which are covered 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; and
- o. Wall mirrors, permanently installed;
- 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. 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 levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions

Section (see II.B.6.b. and II.B.6.c.).

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 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. 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, subject to B. 2., 3., and 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.

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.

2. When this policy covers 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 covers 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 covers 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 Covered.

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

- a. Air conditioning units installed in the building;
- b. Carpet, 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 the 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. 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 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, articles of gold, silver, or platinum;
  - d. Furs or any article containing fur which represents its principal value; or
6. We will pay only for the functional value of antiques.

7. If you are a tenant, you may apply up to 10% 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.

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

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

that are not covered 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.

9. 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 the 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; and

(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 insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured 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, that you perform.

(2) If you 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, 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.

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.

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 covered 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 covered 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 structure suffering flood damage.

Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures. b. Residential structures 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 \$20,000 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 structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

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

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on 2 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, equalled or exceeded 25% of the market value of the structure 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 structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure 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 structure.

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 structures 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 structure 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 structures 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 structure 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 structures 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 also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure 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.

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

#### 4. Conditions.

a. When a structure covered 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 or other structure 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 structure 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 Covered

A. We do not cover 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 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, provided they are 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% of the actual cash value of the building or unit 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 of 1990 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 provide coverage 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 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 that we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

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 A.1.c. and II.A.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 covered 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 situated on the described location;

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

9. Anything that 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.

## VI. Deductibles

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable 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. 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, less depreciation, or

2. An amount which 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. Concealment or Fraud and Policy Voidance

1. With respect to all insureds under this policy, this policy:

- a. Is void,
- b. Has no legal force or effect,
- c. Cannot be renewed, and
- d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts described in B.1. above were committed.

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

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

### C. Other Insurance

1. If a loss covered by this policy is also covered 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 C.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 C.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 covers a condominium association and there is a flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

### D. 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 covers only personal property; or

2. When this policy covers a structure during the course of construction.

### E. Cancellation of Policy by You

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

### F. Non-Renewal of the Policy by Us

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP; or

2. If your building has been declared ineligible under section 1316 of the Act.

### G. Reduction and Reformation of Coverage

1. If the premium we received from you was not enough to buy the kind and amount of coverage that you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough 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 you or the mortgagee or trustee pay the additional premium 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 we determine before you have a flood loss that the rating information we have is incomplete 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. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

#### b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough 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 and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of 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 prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. 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 Condition B. above apply.

#### H. 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 nonreceipt 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 re-certify, 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.

#### I. 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.

#### J. 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 property described in J.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 sixty 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.

#### K. 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;
- 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.

#### L. No Benefit to Bailee

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

#### M. 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 an 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. P.
2. If we reject your proof of loss in whole or in part you may:
- a. Accept such 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.

#### *N. Abandonment*

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

#### *O. 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.

#### *P. 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.

#### *Q. Mortgage Clause*

The word "mortgagee" includes trustee.

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. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

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.

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.

#### *R. 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.

#### *S. 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.

#### *T. 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 a covered 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; and
- 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 T.1. will apply when as 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 T.1. above or this paragraph T.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 T.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 flood waters 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 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 T.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 T.1.a. through T.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 that 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 T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 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 T.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 T.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 T.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 T.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 T.2. will be in effect for a community when the FEMA Regional Director 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 T.2.e. and T.2.f. above, and

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

#### *U. Duplicate Policies Not Allowed*

1. Property may not be insured under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy.

The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under this Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

#### *V. 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. 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.

#### **IX. What Law Governs**

This policy and all disputes arising from 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.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

8. We revise Appendix A(3) to Part 61, Residential Condominium Building Association Policy, to read as follows:

#### **APPENDIX A(3) TO PART 61**

**Federal Emergency Management Agency  
Federal Insurance Administration**

**Standard Flood Insurance Policy**

**RESIDENTIAL CONDOMINIUM BUILDING  
ASSOCIATION POLICY**

#### **I. Agreement**

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

This policy covers 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.

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.

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

1. Have paid the correct premium;
2. Comply with all terms and conditions of this policy; and
3. Have furnished accurate information and statements.

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

#### **II. Definitions**

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. 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 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. The precise definitions are intended to protect you.

"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 A.1.a above.

B. 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. For us to issue you a policy, the correct premium payment must accompany the application.

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

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) 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 ("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 or a recreational vehicle, park trailer or other similar vehicle, except as described in B.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 real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

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

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

10. *Declarations Page.* A computer-generated summary of information you provided in the 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.

11. *Described Location.* The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *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.

13. *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.

14. *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.

15. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

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

19. *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.

20. *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.

21. *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.

22. *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.

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

24. *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.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* 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.

27. *Unit.* A single-family unit in a residential condominium building.

28. *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 Covered

#### 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 covered 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 levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-V30 and the top of the floor in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions Section (See II.B.b. and c.).

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 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. 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, 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.

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.

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

- a. Air conditioning units—portable or window type;
- b. Carpet, 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 the 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.

3. 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.

4. 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.

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

(2) This coverage for Sandbags, Supplies, and Labor applies only 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 insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured 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, that you 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.

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.

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 structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

- a. Non-residential structures.
- b. Residential structures 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 \$20,000 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 structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

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

- (a) The structure is covered by a contract of flood insurance issued under the NFIP.
- (b) The structure has suffered flood damage on 2 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% of the market value of the structure 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 structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure 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 structure.

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 structures 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 structure 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 structures 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 structure 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 structures 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 also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure 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. This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

#### 4. *Conditions.*

a. When a structure covered 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 or other structure 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 structure 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 coinsurance requirement for replacement cost coverage under VIII. General Conditions, V. Loss Settlement.

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

#### IV. *Property Not Covered*

We do not cover any of the following:

- 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 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, provided they are 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 and all their contents if more than 49% 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 that we describe in Coverage D—Increased Cost of Compliance; or
  7. Any other economic loss.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or
2. Coverage is added at your request.
- 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.A.1.c. and II.A.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,
    - (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 insured property; unless there is a flood in the area and the flood is the proximate cause of the sewer, drain, or 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 situated 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 covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of insurance 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% 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% of replacement value of \$250,000)  
 Actual amount of insurance carried—  
 \$180,000  
 Amount of the loss—\$150,000  
 Deductible—\$500  
 Step 1:  $180,000 \div 200,000 = .90$   
 (90% 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% 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 covered building property will be included;
2. The replacement cost value of any building property not covered 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, less depreciation; or
2. An amount which 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. Concealment or Fraud and Policy Voidance.**

1. With respect to all insureds under this policy, this policy:

- a. Is void,
- b. Has no legal force or effect,
- c. Cannot be renewed, and
- d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

- (1) Intentionally concealed or misrepresented any material fact or circumstance,
- (2) Engaged in fraudulent conduct, or
- (3) Made false statements, relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date the wrongful acts described in B.1. above were committed.

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

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is not otherwise eligible for coverage under the NFIP.

**C. Other Insurance.**

1. If a loss covered by this policy is also covered 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 C.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 C.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 flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

**D. 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 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 covers only personal property; or
2. When this policy covers a structure during the course of construction.

**E. Cancellation of Policy by You.**

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

**F. Non-Renewal of the Policy by Us.**

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or
2. Your building has been declared ineligible under section 1316 of the Act.

**G. Reduction and Reformation of Coverage.**

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above the amount that you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough 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 you or the mortgagee or trustee pay the additional premium 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 we determine before you have a flood loss that the rating information we have is incomplete 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. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

**b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.**

(1) If we discover after you have a flood loss that your premium payment was not enough 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 and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of 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 prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. 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 Condition B. Concealment or Fraud and Policy Voidance above apply.

**H. 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 nonreceipt 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 re-certify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

#### *I. 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.

#### *J. 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 personal 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 insured 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 J.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 sixty 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.

#### *K. Our Options After a Loss.*

Options that 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 make reasonably 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 we agree upon or its appraised value.

#### *L. No Benefit to Bailee.*

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

#### *M. 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 an 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. P.

2. If we reject your proof of loss in whole or in part you may:

- a. Accept such 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.

#### *N. Abandonment.*

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

#### *O. 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.

#### *P. 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.

#### *Q. Mortgage Clause.*

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building 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.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk, of which the mortgagee is aware;
2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

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.

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.

#### *R. 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.

#### *S. 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.

#### *T. 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 a covered 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; and
- 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 T.1. will apply as long as 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 T.1. above or this paragraph

T.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 T.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 flood waters 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 T.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 T.1.a. through T.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 T.2.b. above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 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 T.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 T.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 T.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 T.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 T.2. will be in effect for a community when the FEMA Regional Director 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 T.2.e. and T.2.f. above, and

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

#### *U. Duplicate Policies Not Allowed.*

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits

exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under this condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

#### V. 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 V.2. below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement described in V.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 covered under this policy, as outlined in V.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.B.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 V.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, awning, 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.B.6.b. or c. that does not meet the conditions for special loss settlement in V.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.B.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. 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 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.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

9. We revise Appendix A (4) to Part 61 to read as follows:

#### APPENDIX A (4) TO PART 61

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

#### Standard Flood Insurance Policy

#### ENDORSEMENT TO DWELLING FORM POLICY

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

10. We revise Appendix A (5) to Part 61 to read as follows:

#### APPENDIX A(5) TO PART 61

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

#### Standard Flood Insurance Policy

#### ENDORSEMENT TO GENERAL PROPERTY FORM

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

11. We revise Appendix A (6) to Part 61 to read as follows:

#### **APPENDIX A(6) TO PART 61**

#### **Federal Emergency Management Agency, Federal Insurance Administration**

#### **Standard Flood Insurance Policy**

#### **ENDORSEMENT to RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY**

This endorsement replaces the provisions of VIII.B.4. and VIII.H.2, and also adds a new paragraph, VIII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VIII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VIII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VIII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent. (Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: October 2, 2000.

**Jo Ann Howard,**  
*Administrator, Federal Insurance  
Administration.*

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