

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 61

[Docket ID FEMA-2024-0004]

RIN 1660-AB06

### National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners within participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Homeowner Flood Form and endorsements would more closely align with property and casualty homeowners insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

**DATES:** Comments must be received on or before April 8, 2024.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2024-0004, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Kelly Bronowicz, Product and Policy Development Division Director, Federal Insurance Directorate, Resilience, (202) 646-2559, [FEMA-NFIP-Federal-Insurance-Policy@fema.dhs.gov](mailto:FEMA-NFIP-Federal-Insurance-Policy@fema.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA-2024-0004, indicate

the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. For more information about privacy and the docket, visit <https://www.regulations.gov/document?D=DHS-2018-0029-0001>.

*Viewing comments and documents:* For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

##### II. Executive Summary

The United States is experiencing increased flooding and flood risk from climate change.<sup>1</sup> In a recent study, researchers found that changes in precipitation contributed to one-third of the flooding financial costs in the United States over the past three decades, totaling almost \$75 billion of the estimated \$199 billion in flood damages from 1988 to 2017.<sup>2</sup> Intensifying precipitation associated with climate change, and the associated increases in precipitation extremes and flooding, thus presents a significant financial risk to homeowners.<sup>3</sup>

There are four main ways to manage any risk: (1) acceptance; (2) avoidance; (3) mitigation; and (4) transference. Flood risk is a reality. No home is completely safe from potential flooding. Just one inch of flood water in a home can cost more than \$25,000 in damage.<sup>4</sup> Homeowners must accept that the risk

<sup>1</sup> Climate change means that flood events are on the rise. Climate change is increasing flood risk through (1) more “extreme” rainfall events, caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. See Rob Bailey, Claudio Saffioti, and Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 3 and 8, MarshMcLennan (2021), found at [https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost\\_Socioeconomic-impacts-of-flooding\\_vF.pdf](https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost_Socioeconomic-impacts-of-flooding_vF.pdf) (last accessed Aug. 28, 2023).

<sup>2</sup> Frances V. Davenport, Marshall Burke, and Noah S. Diffenbaugh, *Contribution of historical precipitation change to US flood damages*, Proceedings of the National Academy of Sciences of the United States of America, Jan. 2021, 118 (4) e2017524118; DOI: 10.1073/pnas.2017524118, found at <https://www.pnas.org/content/118/4/e2017524118> (last accessed Aug. 28, 2023).

<sup>3</sup> See also Don Jergler, “Climate Change Could Push Flood Losses in U.S. to \$40B by 2050,” *Insurance Journal* (Feb. 17, 2022), found at <https://www.insurancejournal.com/news/national/2022/02/17/654831.htm> (last accessed Aug. 28, 2023) (noting annual flood losses forecasted to increase by 26.4% from \$32B to \$40.6B).

<sup>4</sup> See <http://www.floodsmart.gov/flood-insurance/why> (last accessed Aug. 28, 2023).

of flooding is increasing and with it, the potential for damage to their property. Homeowners can seek to reduce risk by building or purchasing homes away from natural flood hazards and can seek to mitigate risk by building or modifying homes to reduce potential damage from flooding. Homeowners can also transfer the risk by purchasing flood insurance.<sup>5</sup>

Congress created the National Flood Insurance Program (NFIP) in 1968 to help share the risk of flood losses through an insurance program to provide flood insurance coverage to those who need such protection.<sup>6</sup> In the context of risk, the NFIP helps communities avoid and mitigate flood risk through adoption of floodplain management ordinances and helps policyholders transfer flood risk to the Federal Government.

Over the past five decades, the NFIP has been implemented primarily by FEMA (the “Agency”) to provide insurance to reduce the economic impact of floods.<sup>7</sup> The Agency seeks to update the current Standard Flood Insurance Policy (SFIP) Dwelling Form to better serve a growing percentage of the public looking for ways to manage their risk through insurance, as they are now threatened by the increased risk of flooding. Most homeowners do not have flood insurance. Some homeowners are required to purchase flood insurance as a condition of any federal financial assistance for acquisition or construction of buildings in the special flood hazard area (SFHA) (e.g., mortgages, flood disaster grants) or as a condition of a loan secured by property in the SFHA while some homeowners choose to purchase it of their own volition. The decision to purchase flood insurance is frequently driven by whether they are subject to the mandatory purchase requirement rather than the actual flood risk to the property. Homeowners generally find it difficult to understand low probability/high impact risks such as flood damage to their property.<sup>8</sup> If purchasing flood

<sup>5</sup> Flood insurance is one risk management tool. “Governments tend to spend significantly more on disaster response than disaster prevention.” Rob Bailey, Claudio Saffioti & Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 9, MarshMcLennan (2021), found at [https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost\\_Socioeconomic-impacts-of-flooding\\_vF.pdf](https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost_Socioeconomic-impacts-of-flooding_vF.pdf) (last accessed Aug. 28, 2023).

<sup>6</sup> See 42 U.S.C. 4001(a).

<sup>7</sup> From 1968 to 1979, the Department of Housing and Urban Development housed the Federal Insurance Administration, which administered the NFIP until its transfer to FEMA in Executive Order 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

<sup>8</sup> See Peter John Robinson, W.J. Wouter Botzen, Howard Kunreuther, Shereen J. Chaudhry, *Default Options and Insurance Demand*, Journal of

insurance is not mandatory, then homeowners may not be convinced that they should purchase it. Given the cost of customer acquisition is high, private insurance companies generally are not focused on homeowners that are not required to purchase flood insurance.<sup>9</sup>

FEMA has not substantively updated its flood insurance products—the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP)—since 2000. While these products have performed ably over two decades of service, they are overdue for revision. Consistent with the National Flood Insurance Act (NFIA) of 1968, FEMA must provide by regulation the general terms and conditions of insurability for properties eligible for flood insurance coverage. 42 U.S.C. 4013(a). Further, Executive Order 13563, “Improving Regulation and Regulatory Review,” requires agencies to complete retrospective analyses of

Economic Behavior and Organization at 2 (2020), found at <https://www.sciencedirect.com/science/article/pii/S0167268120304765> (last accessed Aug. 28, 2023). See also Rachel Cleetus *Overwhelming Risk: Rethinking Flood Insurance in a World of Rising Seas*, found at <https://www.ucsusa.org/sites/default/files/2019-09/Overwhelming-Risk-Full-Report.pdf> (last accessed Aug. 28, 2023) at 9: “In the wake of Sandy, it was estimated that only 15 to 25 percent of at-risk properties in Special Flood Hazard Areas (SFHAs) in the Northeast were insured for flood losses. Many coastal property owners do not carry adequate insurance or are simply not insured at all. It is estimated that, nationally, only 18 percent of households in flood zone areas, which include inland (lakeside and riverside) and coastal areas, have flood insurance.”

<sup>9</sup> See Rob Bailey, Claudio Saffioti & Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 24, MarshMcLennan (2021), found at [https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost\\_Socioeconomic-impacts-of-flooding\\_vF.pdf](https://www.marshmcclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost_Socioeconomic-impacts-of-flooding_vF.pdf) (last viewed accessed May 2, 2022 Aug. 28, 2023). See also Noelwah R. Netusil, Carolyn Kousky, Shulav Neupane, Will Daniel & Howard Kunreuther, *The Willingness to Pay for Flood Insurance* at 33. “Among those who can afford a policy, they may not feel it provides value—that it is not ‘worth it’—if they fail to understand the role of insurance in their recovery, have challenges in assessing low probability events, or the policy terms do not meet their need,” found at <https://le.uwpress.org/content/wple/97/1/17.full.pdf> (last accessed Aug. 28, 2023). See also Tom Hammond *Lowering Costs of Customer Acquisition* found at <https://www.insurancethoughtleadership.com/customer-experience/lowering-costs-customer-acquisition> (last accessed Aug. 28, 2023); Becky Yerak *Direct insurers paying less to attract customers*, found at <https://www.chicagotribune.com/business/ct-customer-acquisition-costs-0515-biz-20150515-story.html> (last accessed Aug. 28, 2023); *How to Lower Customer Acquisition Cost in the Insurance Industry* found at <https://www.amsive.com/2021/09/14/how-to-lower-customer-acquisition-cost-in-the-insurance-industry-amsive/> (last accessed Aug. 28, 2023); and *Insurtechs Need to Ace Customer Acquisition Cost (CAC) Optimization* found at <https://rintupatnaik.medium.com/insurtechs-need-to-ace-customer-acquisition-cost-cac-optimization-b695bc45bf7b> (last accessed Aug. 28, 2023).

existing rules and periodically review existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed to better achieve the Agency’s regulatory objective. 76 FR 3821 (Jan. 21, 2011). FEMA seeks to make these revisions consistent with the requirements under the NFIA and Executive Order 13563. The proposed new Homeowner Flood Form would update the general terms and conditions of insurability under the NFIP while also modifying the existing regulations and policy to make the program more effective and less burdensome for homeowner policyholders as explained below. Additionally, consistent with Executive Order 14058, “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,”<sup>10</sup> FEMA seeks to improve the homeowner policyholder experience with the NFIP through the proposed Homeowner Flood Form, by simplifying coverage terms, reducing complexity, and resolving key challenges faced by homeowner policyholders.

The proposed new Homeowner Flood Form provides a more personalized, customized product than the NFIP has ever offered during its more than 50 years in existence. Currently, the Dwelling Form serves homeowners, renters, landlords, mobile homeowners, and condo unit owners all in a single policy. The Dwelling Form also includes different coverage terms for certain buildings constructed, or substantially damaged or improved, on or after the effective date of the community’s initial Flood Insurance Rate Map (generally referred to as “post-FIRM buildings”) in an attempt to capture all possibilities. The current structure results in confusion for the homeowner policyholders looking for the specific coverage that applies directly to their situation, and imposes a series of choices onto consumers without offering an ability to change them.

The proposed new Homeowner Flood Form offers more choices to policyholders who own their own homes,<sup>11</sup> which help inform policyholders and prospective policyholders of increased risk of flooding and flood damage, and how best to cover their property as a result.

<sup>10</sup> 86 FR 71357 (Dec. 16, 2021).

<sup>11</sup> The proposed Homeowner Flood Form would be offered to individuals owning a one-to-four family residential building. FEMA will evaluate any changes needed to forms for other types of policyholders (e.g., other residential and commercial) based on public comment associated with this rulemaking.

The proposed new Homeowner Flood Form offers enhanced comprehensive default coverages. For example, while much of the default coverage proposed would mirror existing default coverage in the Dwelling Form, FEMA is proposing to shift the default loss settlement from actual cash value to replacement cost value to help policyholders more effectively and more fully recover from loss. These decisions FEMA made in setting coverage defaults (1) nudge homeowner policyholders toward the more appropriate coverage to insure against their risk, and (2) represent FEMA’s strategic objective of positioning individuals to understand their risk and take well-informed actions.<sup>12</sup> This rulemaking also proposes new endorsements for additional coverages that homeowner policyholders may want in order to recover from flood events. A homeowner policyholder may want to expand their coverage and therefore increase their policy’s flood risk exposure (i.e., purchase the basement coverage endorsement) even if it means they will pay more for the additional coverage, or they may wish to reduce their premium (i.e., purchase the actual cash value endorsement) even if it means they stand to receive a smaller benefit post-loss. Until now, homeowner policyholders have been unable to make any personalized selections. FEMA is introducing choices consumers can make in several ways, through the use of endorsements that modify coverage. These choices will help homeowner policyholders learn about their coverages prior to loss.

The proposed new Homeowner Flood Form does not presuppose that homeowner policyholders are knowledgeable about floodplain management and flood risk. By changing coverage based on pre- or post-FIRM status, and by having certain terms only apply to certain zones, the Dwelling Form presupposes a level of homeowner policyholder floodplain management and flood risk knowledge. Unlike in the Dwelling Form, FEMA is not proposing to change coverage if the building covered is not a primary or principal residence, or if it is pre- or post-FIRM, or for any other reason. Ultimately, flood insurance coverage under the proposed new Homeowner Flood Form is there to help the homeowner policyholder recover. The premiums tied to the coverage choices homeowner policyholders make would

<sup>12</sup> FEMA, 2022–2026 FEMA Strategic Plan, found at <https://www.fema.gov/about/strategic-plan> (last accessed Aug. 28, 2023).

signal the underlying risk and prompt mitigation efforts.

The proposed new Homeowner Flood Form adds directly into the policy terms flexibilities the Agency has had to implement via bulletin or other means, such as special procedures during catastrophic flood events and advance payments. These changes would help homeowner policyholders better understand the options available to them and learn about special procedures under the policy up front, rather than making them wait to find out via a bulletin after a flood event.

The proposed new Homeowner Flood Form also allows for a single deductible rather than multiple deductibles, reducing unnecessary administrative burdens for the homeowner policyholder. Additionally, the proposed new Homeowner Flood Form would provide FEMA with greater flexibility in implementing the flood insurance program. The proposed new Homeowner Flood Form removes unnecessary provisions of the current Dwelling Form policy, reducing the reliance on lists and pushing certain provisions to the declarations page for clarity. The insurance industry recognizes that many policyholders will not read their insurance policy<sup>13</sup> and has endeavored to put critical information onto the declarations page to increase policyholder understanding of what is and is not covered. In the context of the NFIP, policyholders with basements continue to be surprised that under the current Dwelling Form, the policy provides limited coverage in a basement. Under the proposed new Homeowner Flood Form, the declarations page would include language along the lines that “This property includes a basement. The Homeowner Flood Form provides limited coverage in a basement.” This upfront tailoring of the policy to suit the homeowner policyholder’s choices and the placement of critical information on the declarations page would reduce the administrative sludge a homeowner policyholder faces during the claims process. Homeowner policyholders would better understand the coverages they have selected, information would be easily accessible on their declarations page, and their claims should reflect a better understanding of their coverages. This better understanding of their coverages should result in fewer denials, faster claims payments, and an

improved customer experience during a difficult time.

By making these changes and updating coverage, FEMA seeks to address the increased risk of flooding from climate change in several ways. These ways include (1) re-baselining the market, (2) introducing optionality, (3) creating market buzz, (4) creating the opportunity to build back in more resilient ways to reduce future flood risk post-loss, and (5) revamping increased cost of compliance coverage. First, the proposed rule would reset the market. Currently the existing and small private market for flood insurance sets the Dwelling Form as a baseline level of coverage. By revising the coverage in the proposed Homeowner Form, FEMA would drive the market in the right direction to ensure that homeowner policyholders are able to effectively transfer their flood risk. By increasing coverage, people are able to recover faster so that the last flood does not leave them more vulnerable to the next flood.<sup>14</sup>

Second, FEMA has utilized the “one size fits all” coverage for policyholders for 50 years. The proposed Homeowner Form seeks to address specific needs of specific homeowner policyholders through the choices being made available. FEMA proposes to increase optionality and require homeowners to assess their own risks, communicating those risks through coverage options and the costs associated with them.

Third, FEMA also anticipates that the changes in the proposed Homeowner Form would generate more interest in flood insurance as the last update occurred over 20 years ago. This interest could include insurance agents, for whom it will be easier to learn about flood insurance coverage. The proposed Homeowner Form would make flood insurance align more with other insurance products and thus more accessible to agents, who may then seek to sell more flood insurance as they better see the value of coverage for their clients.

Fourth, FEMA proposes to create the opportunity to build more resiliently by introducing provisions in its loss settlement clause that would enable homeowner policyholders to replace their damaged building elements with flood damage resistant materials. In addition, these same provisions would enable homeowner policyholders to

elevate flood damaged machinery and equipment to reduce the likelihood of future flood damage.

Finally, FEMA proposes to revamp its increased cost of compliance (ICC) provision. Previously, ICC appeared in the Dwelling Form as Coverage D, and its inclusion there was incongruous with the other coverages because it set out an eligibility framework and specifically listed out all the covered and uncovered compliance activities. FEMA proposes to simplify ICC so homeowner policyholders can better understand their ICC coverage, adjusters can more easily advise homeowner policyholders to consult their local floodplain management requirements, and local floodplain managers have appropriate discretion.

What follows below is an overview of the major changes in each section in the proposed Homeowner Flood Form as well as an analysis of the degree of change compared to the Dwelling Form. A detailed description of the changes is found later in this preamble.

*Section I: Insuring Agreement.* This section proposes a low level of change from the current Dwelling Form. It would simplify the language and organization of the global aspects of the Form, and replace references to Federal laws (e.g., the Coastal Barrier Resources Act and section 1316 of the NFIA) with a broader statement about conflicts with Federal law.

*Section II: Definitions.* This section proposes a moderate to high level of change from the current Dwelling Form. It would eliminate definitions for words only used once within the policy that are currently defined in the Dwelling Form; refine definitions for simplicity and clarity; make substantive changes to the definitions for “Basement,” “Building,” and “Flood”; and add definitions for new concepts such as “Flood Damage Resistant Materials” and “Replacement Cost Value.”

*Section III: What We Cover.* This section proposes a moderate to high level of change from the current Dwelling Form. It would combine sections III and IV from the Dwelling Form to present in one place all aspects of coverage (i.e., what is covered, what receives limited coverage, and what is not covered). It would also incorporate plain language, remove lists, and rephrase coverage currently phrased in the negative. In contrast to the Dwelling Form that offers different coverage based on flood zone and pre- or post-FIRM designation, the proposed Homeowner’s Form provides uniform coverage. In addition:

- *Coverage A.* It would allow homeowner policyholders to more

<sup>13</sup> See Louise Castoria, “Is there a duty to read insurance contracts?” available at <https://www.propertycasualty360.com/2019/11/07/is-there-a-duty-to-read-insurance-contracts/> (last accessed on Aug. 28, 2023).

<sup>14</sup> See Rob Bailey, Claudio Saffioti & Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 3, MarshMcLennan (2021), found at [https://www.marshmclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost\\_Socioeconomic-impacts-of-flooding\\_vF.pdf](https://www.marshmclennan.com/content/dam/mmc-web/insights/publications/2021/june/Sunk-Cost_Socioeconomic-impacts-of-flooding_vF.pdf) (last accessed Aug. 28, 2023).

easily determine the existence of a basement for coverage purposes as further explained below.

- *Coverage B.* Similar to homeowner insurance coverage, Coverage B would provide coverage to restore certain other, non-dwelling buildings to a functional level. The amount of coverage would be a sublimit of the amount selected for Coverage A, without requiring a separate insurance policy.

- *Coverage C.* Due to the recharacterization of Coverage B for other buildings, and to align with homeowners coverage, Coverage C would address contents coverage and would expand personal property coverage to contents located anywhere in the United States. It would also clarify that coverage for items stored in digital format (like cryptocurrency) is excluded given challenges with proving loss.

*Section IV: Exclusions.* This section proposes a low to moderate level of change from the current Dwelling Form. It would limit items excluded from coverage in this section to those items excluded based on cause of the loss consistent with industry practice. It would address earth movement, pollutants, increase in hazard, and other excluded losses under the general heading of “Excluded Losses,” consistent with other lines of property coverage. It would keep “Flood in Progress” as a separate provision, and explicitly exclude coverage for pre-existing damage in a standalone provision.

*Section V: Policy Conditions.* This section proposes a moderate to high level of change from the current Dwelling Form. It would separate out the provisions from section VII of the current Dwelling Form that specifically apply to how the policy is administered, the policyholder-facing underwriting aspects of the policy. It would state in simple, plain language the reasons a homeowner policyholder may cancel the policy in accordance with current regulation.<sup>15</sup> It would give FEMA discretion to extend the deadline to submit proof of loss to 365 days from the date of loss, and the deadline for policy renewal to 60 days from the policy’s expiration date (referred to as a “grace period”), following a presidentially-declared flood disaster in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA has established a business practice of issuing proof of loss extensions for claims following a major flood event and grace period extensions

for flood insurance renewals. The proposed Homeowner Flood Form would normalize this course of business and make the provision discretionary, not mandatory, so that these flexibilities not found in the current Dwelling Form can be leveraged where appropriate. It would also allow insurers to accept and make payment on the adjuster’s reports and allow FEMA to issue special terms for advance payments not currently provided in the Dwelling Form.

*Section VI: Procedures and Duties When A Loss Occurs.* This section proposes a moderate to high level of change from the current Dwelling Form. The current Dwelling Form includes various provisions under its section VII (General Conditions) and the proposed Homeowner Flood Form would separate out the provisions that specifically apply to how losses are proven and paid for the homeowner policyholder in this section (*i.e.*, claims issues). It would simplify the options after a loss and extend the proof of loss deadline from the current Dwelling Form deadline of 60 days to 90 days. It would allow insurers to issue a de minimis advance payment to insureds up to five percent of the Coverage A limit of liability (without requiring the mortgage company to be on the check). The proposed Homeowner Flood Form would fold the deductible section from the Dwelling Form into a larger section and introduce language that presents the deductible as a single deductible rather than separate deductibles. It would also simplify loss settlement by removing distinctions between principal and primary residences, using replacement cost value as the default rather than the current Dwelling Form’s actual cash value default, and removing all special situations where only actual cash value applies.

*Section VII: General Conditions.* This section proposes a low to moderate level of change from the current Dwelling Form. It would reorganize the sections alphabetically and simplify language, add language to capture the ability to have other insurance from a private flood carrier not in the current Dwelling Form, and add sections on “Death,” “Headings and Captions,” and “Your Options After Our Denial.” FEMA is proposing to add a section on death to address situations where there are questions regarding the household residents, and to help alleviate the challenges associated with claims involving a deceased homeowner policyholder for their survivors. Under the Dwelling Form, FEMA observed instances where the family of deceased policyholders would have their claims denied by insurers participating in the

NFIP, on grounds that the SFIP prohibits assignment of claims. FEMA is therefore proposing to add a section on death to address and alleviate the challenges associated with claims involving a deceased homeowner policyholder for their survivors. FEMA proposes the “Your Options After Our Denial” section to present in one location the homeowner policyholder’s options after denial. This proposed section would reaffirm to homeowner policyholders that there are additional administrative options to work with the insurer to reach a resolution to a claim, but also incorporate requirements from the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004<sup>16</sup> explaining the appeals process not currently found in the Dwelling Form.

### III. Background

Congress created the National Flood Insurance Program (NFIP) through enactment of the National Flood Insurance Act of 1968 (NFIA) (Title XIII of Pub. L. 90–448, 82 Stat. 572), found at 42 U.S.C. 4001 *et seq.* The NFIP is a voluntary Federal program enabling property owners in participating communities to purchase flood insurance as a protection against flood losses. In exchange, participating communities must enact floodplain management regulations that incorporate the NFIP minimum floodplain management criteria. The minimum floodplain management criteria are designed to: (1) constrict the development of land which is exposed to flood damage where appropriate; (2) guide the development of proposed construction away from locations which are threatened by flood hazards; (3) assist in reducing damage caused by floods; and (4) otherwise improve the long-range land management and use of flood-prone areas. 42 U.S.C. 4102(c). These NFIP requirements apply to areas known as special flood hazard areas (SFHA) in participating communities.

FEMA administers the NFIP so that the provision of insurance and adoption of minimum floodplain management criteria are mutually reinforcing. NFIP flood insurance indemnifies property owners from flood losses, reducing the need for Federal disaster assistance. And NFIP floodplain management requirements reduce future flood damages, thus further reducing the need for Federal disaster assistance.

In addition to providing flood insurance and reducing flood damages through floodplain management, the NFIP identifies and maps the Nation’s floodplains. FEMA disseminates maps

<sup>15</sup> See 44 CFR 62.5.

<sup>16</sup> Public Law 108–264 (June 30, 2004).

depicting flood hazard information to create broad-based awareness of flood hazards and to identify the areas where the minimum floodplain management requirements apply.

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) makes flood insurance mandatory for all federally-backed mortgages of properties located in special flood hazard areas. This is commonly referred to as the “mandatory purchase requirement.” Additionally, Federal agencies are prohibited from providing loans and grants to any property located in a special flood hazard area unless the property is covered by flood insurance. *See* 42 U.S.C. 4012a(a).

In general, the NFIP charges premium rates sufficient to cover the expected claims payouts and operating expenses. Such premium rates are commonly referred to as risk-based or actuarial rates. *See* 42 U.S.C. 4014(a)(1), 4015(b). In general, FEMA offers only actuarial rates to all buildings constructed, or substantially damaged or improved, on or after the effective date of the community’s initial Flood Insurance Rate Map (FIRM), generally referred to as “post-FIRM buildings.” *See* 42 U.S.C. 4015(c)(1). However, the NFIA makes available discounted rates for certain classes of properties. The most common discount is for certain policies covering buildings built or substantially improved prior to the community’s adoption of its initial FIRM, generally referred to as “pre-FIRM buildings.” *See* 42 U.S.C. 4014(a)(2), 42 U.S.C. 4015(a).

FEMA must also provide discounted rates for properties newly mapped into a SFHA for the first time. *See* 42 U.S.C. 4015(i). FEMA gradually phases out these discounts within the premium increase caps set by statute. For the “first policy year,” FEMA must provide homeowner policyholders of newly mapped-in properties the newly mapped discount and increase the premium “in accordance with” the Act’s annual limitation of premium increases until the premium reaches its full-risk rate. *Id.*; *see also* 42 U.S.C. 4014(a)(1) (full-risk rates); 42 U.S.C. 4015(e) (annual limitation).

The NFIA limits annual premium increases to not more than 18 percent for any property, with limited exceptions. 42 U.S.C. 4015(e)(1). However, this premium increase cap does not apply (1) to certain pre-FIRM properties for which the NFIA mandates FEMA to increase premiums by 25 percent a year until they reach full-risk rates; (2) to properties within a community which has experienced a downgrade in the NFIP’s community

rating system;<sup>17</sup> (3) where the homeowner policyholder has changed the amount of coverage or deductible amounts; and (4) where the property was misrated.<sup>18 19</sup>

The NFIA requires FEMA to provide by regulation the “general terms and conditions of insurability . . . applicable to properties eligible for flood insurance coverage.” 42 U.S.C. 4013(a). To comply with this requirement, FEMA adopts the Standard Flood Insurance Policy (SFIP) in regulation, which sets out the terms and conditions of insurance. *See* 44 CFR part 61, Appendix A. FEMA must use the SFIP for all flood insurance policies sold through the NFIP. *See* 44 CFR 61.13.

The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are three forms of the SFIP: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP) Form. The Dwelling Form insures a one-to-four family residential building or a single-family dwelling unit in a condominium building. *See* 44 CFR part 61, Appendix A(1). Policies under the Dwelling Form offer coverage for building property, up to \$250,000, and personal property up to \$100,000.<sup>20</sup> The General Property Form insures a five-or-more family residential building or a non-residential building. *See* 44 CFR part 61, Appendix A(2). The General Property Form offers coverage for building and contents up to \$500,000 each.<sup>21</sup> The RCBAP Form insures residential condominium association buildings and offers building coverage up to \$250,000 multiplied by the number of units and contents coverage up to \$100,000 per building. *See* 44 CFR part 61, Appendix A(3). RCBAP contents coverage insures property owned by the insured condominium association. Individual

<sup>17</sup> The Community Rating System (CRS) is a voluntary program for communities participating in the NFIP. The CRS offers NFIP policy premium discounts in communities that develop and execute extra measures beyond minimum floodplain management requirements to provide protection from flooding. *See* 42 U.S.C. 4022(b).

<sup>18</sup> A misrated policy occurs when a policy premium is incorrect because one or more rating characteristics are incorrect. Rating characteristics used to determine premium include items such as: loss history, building occupancy, building use, and primary residency status, among others. For more information, *see* [https://www.fema.gov/sites/default/files/documents/fema\\_nfip-flood-insurance-manual-sections-1-6\\_oct2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_nfip-flood-insurance-manual-sections-1-6_oct2021.pdf) (last accessed Aug. 28, 2023).

<sup>19</sup> There are other exceptions, which are seldom triggered, for properties where the policy has lapsed (42 U.S.C. 4014(g)(1)) and where the owner has refused mitigation assistance (42 U.S.C. 4014(g)(2)).

<sup>20</sup> *See* 42 U.S.C. 4013(b).

<sup>21</sup> *Id.*

unit owners must purchase their own Dwelling Form policy in order to insure their own contents.

In addition to coverage for building or contents losses, most NFIP policies also include Increased Cost of Compliance (ICC) coverage.<sup>22</sup> ICC coverage applies when flood damages are so severe that the local government declares the building “substantially damaged,” thus requiring the building owner to bring the building up to current community standards. If a community has a repetitive loss ordinance, ICC coverage will also cover compliance requirements for a repetitive loss structure. ICC coverage provides up to \$30,000 of the cost to elevate, demolish, floodproof, or relocate an insured building or any combination thereof.

#### IV. Discussion of the Proposed Rule

FEMA last substantively revised the SFIP in 2000. *See* 65 FR 60758 (Oct. 12, 2000).<sup>23</sup> In 2020, FEMA published a final rule that made non-substantive clarifying and plain language improvements to the SFIP. *See* 85 FR 43946 (July 20, 2020). However, many policyholders, agents, and adjusters continue to find the SFIP difficult to read and interpret compared to other, more modern, property and casualty insurance products found in the private market.<sup>24</sup> To achieve Objective 2.2 of FEMA’s 2022–2026 Strategic Plan of building a climate resilient nation (*i.e.*,

<sup>22</sup> ICC is authorized in 42 U.S.C. 4011(b).

<sup>23</sup> FEMA adopted another substantive change in 2003 when it increased the limits for ICC coverage from \$20,000 to \$30,000. *See* 68 FR 9895 (Mar. 3, 2003).

<sup>24</sup> *See, e.g.*, The Institutes’ Handbook of Insurance Policies, American Institute for Chartered Property Casualty Underwriters, 12th ed. (2018) (containing copies of modern property casualty forms). The Insurance Services Office (ISO)’s template homeowners form (“HO-3” form) appears on page 5 and demonstrates the simplicity of this policy compared to the SFIP. The NFIP receives a high volume of inquiries on the SFIP, further demonstrating the challenges in reading and interpreting the SFIP. Policy inquiries generally make up 43 percent of the total inquiries received by FEMA’s “Ask the Experts” tracking system between 2019 and May 2021. *See also* Barlow, Christine G., *Personal Flood Insurance Coverage Guide* (2018) at 51: “The historic flooding from hurricanes in 2017 has only continued to highlight the issues with the current NFIP program and its ability to provide coverage for the claims that continue to occur. Because of this . . . ISO has developed a personal flood program to provide the industry with standalone private flood forms.” The Chapter (Chapter 4) goes on to compare the coverage to standard homeowner coverage and reference existing endorsements that agents can use with their flood form. *See also id.* at chapter 6 (p. 85): “Because [the private flood form] was developed by ISO it bears similarities to the ISO Homeowners Policy, making it easier to dovetail coverages so that the insured has no gaps in coverage. Because of this, many sections of the flood policy are identical or very similar to the homeowners policy.”

increasing the number of properties with flood insurance and ensuring adequate insurance coverage),<sup>25</sup> FEMA consulted with property and casualty experts over time<sup>26</sup> and received valuable suggestions on ways to align the SFIP's design with industry standards and practices and improve its readability. Accordingly, FEMA incorporated these suggestions into a new form of the SFIP, the Homeowner Flood Form, as well as several accompanying endorsements to that form.<sup>27</sup> FEMA now proposes to adopt this new Homeowner Flood Form and its endorsements. FEMA intends that this new Homeowner Flood Form will be more user-friendly and comprehensible and, as a result, will make it easier for agents to sell flood insurance and close the insurance gap.

FEMA is committed to building a culture of preparedness, and such a culture necessarily includes individuals, communities, and businesses managing risks through proper insurance coverage. One of FEMA's roles is to help people understand their risk and the available options to best manage those risks. Flood insurance is an effective tool to transfer risk and enable rapid recovery. The proposed Homeowner Flood form would help build this culture by better advising homeowners of their flood risks and options to manage those risks.

Flooding can be an emotionally and financially devastating event. Experience has shown repeatedly that individuals, communities, and businesses who manage risk through insurance accelerate their financial recovery after a disaster.<sup>28</sup> If an individual does not have adequate savings to repair or replace their property, flood insurance will help fill

that gap when a flood occurs. Flood insurance allows homeowners to recover quicker by providing the funds needed to repair or replace property after a disaster. The proposed Homeowner Flood Form would provide homeowners with options to more quickly receive funds to help accelerate their financial recovery.

With flood insurance, individuals are able to financially recover faster. While grants provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")<sup>29</sup> may support survivors in the immediate aftermath of a presidentially-declared disaster, this Federal support is only intended to meet basic needs as a survivor moves forward with recovery. Federal disaster assistance typically comes in two forms to individuals: a loan, which must be paid back with interest, or a FEMA disaster grant, which averages approximately \$5,000 per household.<sup>30</sup> A disaster grant is not intended to make survivors whole and is not a substitute for insurance. The average flood insurance claim in 2019 was more than \$50,000.<sup>31</sup> Maintaining flood insurance is therefore critical to rebuilding a home and replacing belongings following a flood.

Moreover, when a flood results in a presidentially-declared disaster, flood insurance not only benefits those directly affected by a flood, it also reduces the need for Federal disaster assistance and lowers costs for taxpayers. Because one of FEMA's goals is to close the Nation's insurance gap, and because homeowners make up the majority of NFIP policyholders, FEMA is working to encourage homeowners to better understand their risk and purchase adequate insurance coverage to reduce their losses from flood.<sup>32</sup> FEMA is proposing this new Form for that purpose.

The new Homeowner Flood Form, which FEMA proposes to add to its regulations at 44 CFR 61 Appendix A(4), would protect property owners in a one-to-four family residence. Upon adoption, the Homeowner Flood Form

would replace the Dwelling Form as a source of coverage for this class of residential properties.<sup>33</sup> FEMA would continue to use the Dwelling Form to insure landlords, renters, and owners of mobile homes, travel trailers, and condominium units. (FEMA will evaluate any changes needed for these other types of residential policyholders, as well as commercial policyholders, based on public comment associated with this rulemaking). Compared to the current Dwelling Form, the new Homeowner Flood Form would clarify coverage and more clearly highlight conditions, limitations, and exclusions in coverage as well as add and modify coverages and coverage options. FEMA also proposes adding to its regulations five endorsements to accompany the new Form: Increased Cost of Compliance Coverage, Actual Cash Value Loss Settlement, Temporary Housing Expense, Basement Coverage, and Builder's Risk. These endorsements, which FEMA proposes to codify at 44 CFR 61 Appendices A(101)-(105), respectively, would give homeowner policyholders the option of amending the Homeowner Flood Form to modify coverage with a commensurate adjustment to premiums charged.<sup>34</sup> Together, the Homeowner Flood Form and accompanying endorsements would increase options and coverage for owners of one-to-four family residences.

#### A. 44 CFR 61.2: Definitions

44 CFR 61.2 provides that the definitions set forth in 44 CFR part 59 apply to 44 CFR part 61. FEMA proposes to revise this provision to clarify that the definitions set forth in part 59 apply to part 61, including appendices, but if an appendix defines a term differently, that definition controls for the purposes of that appendix. FEMA proposes this revision for clarity and accuracy.

#### B. 44 CFR 61.13: Standard Flood Insurance Policy

44 CFR 61.13 describes the Standard Flood Insurance Policy. Section 61.13(a), "Incorporation of forms," states that each of the SFIP forms included in Appendix A hereto (General

<sup>25</sup> FEMA. 2022–2026 FEMA Strategic Plan. [https://www.fema.gov/sites/default/files/documents/fema\\_2022-2026-strategic-plan.pdf](https://www.fema.gov/sites/default/files/documents/fema_2022-2026-strategic-plan.pdf).

<sup>26</sup> FEMA conducted interviews with flood insurance professionals in its loaned executive officer program in spring of 2017. FEMA procured insurance product expertise from Milliman, Stanley Parsons, and Hinshaw between 2017–2019. FEMA engaged with and sought feedback from ten Write Your Own companies in the summer of 2019.

<sup>27</sup> An endorsement is a written document attached to an insurance policy that modifies the policy by changing the coverage provided by the policy. Also known as a "rider," "addendum," or "attachment," an endorsement can add coverage for acts or things not covered by the original policy, limit or subtract coverage, add or remove exclusions or conditions, or otherwise modify the policy.

<sup>28</sup> In 2017, a costly year due to Hurricanes Harvey, Irma, and Maria, the NFIP paid an average claim amount of more than \$90,000, while the average disaster assistance grant was just \$9,000. See FEMA Fact Sheet on Flood Insurance: A Small Price to Pay for Peace of Mind at: [https://agents.floodsmart.gov/sites/default/files/flood-insurance-small-price-pay-peace-of-mind\\_fact-sheet\\_jun20.pdf](https://agents.floodsmart.gov/sites/default/files/flood-insurance-small-price-pay-peace-of-mind_fact-sheet_jun20.pdf) (last accessed Aug. 28, 2023).

<sup>29</sup> Public Law 93–288; 42 U.S.C. 5121 *et seq.*

<sup>30</sup> See <http://www.floodsmart.gov/flood-insurance/requirements> (last accessed Aug. 28, 2023).

<sup>31</sup> *Id.* See also <https://www.fema.gov/data-visualization/historical-flood-risk-and-costs> (last accessed Aug. 28, 2023).

<sup>32</sup> Although the NFIP does not maintain data on the ownership status of policyholders, FEMA estimates that a majority of policyholders are homeowners. This estimation stems from certain assumptions based on NFIP eligibility rules and coverage type (for instance, a policyholder with building coverage must own the building, and a policyholder with contents coverage only is likely a renter).

<sup>33</sup> FEMA estimates that roughly 88.4% of current Dwelling Form policyholders are homeowners and therefore would use the proposed Homeowner Flood Form. Homeowners as a percentage of policyholders was estimated using data from the PIVOT database from 2010 through 2019. The PIVOT database is the NFIP's official system of record which contains NFIP information.

<sup>34</sup> These endorsements would be available to homeowner policyholders to amend only the Homeowner Flood Form; they would not be available to amend the current SFIP forms for other types of policyholders.

Property, Dwelling, and Residential Condominium Building Association) and incorporated herein shall be incorporated into the SFIP. FEMA proposes to remove “(General Property, Dwelling, and Residential Condominium Building Association)” so that the provision states simply that each of the SFIP forms included in Appendix A hereto and by reference incorporated herein shall be incorporated into the SFIP. The removal of this phrase would allow FEMA to incorporate the new Homeowner Flood Form, as well as any additional forms that FEMA may implement in the future, without having to revise this section upon issuance of each new form.

*C. Appendix A(4): Homeowner Flood Form*

As mentioned above, FEMA has not substantively updated the SFIP since 2000. While the SFIP has performed ably over the last two decades, FEMA

recognizes that changes in consumer expectations, technology, and the insurance industry over the last 20 years warrant an update to it. The new Homeowner Flood Form and its accompanying endorsements would provide a more personalized, customizable product than the NFIP has offered during its 50 years. In addition to aligning with property and casualty homeowners insurance, the result would increase consumer choice. For instance, rather than universally limiting basement coverage, the new Form allows homeowner policyholders to choose their coverage based on their understanding of flood risk and the coverage they desire. The Form would also simplify coverage, such as offering the same coverage on a building regardless of whether it is a primary residence or not, or pre- or post-FIRM, and removing the importance of flood

zones for purposes of coverage.<sup>35</sup> Ultimately, the purpose of coverage is to help homeowner policyholders recover, and FEMA anticipates that the premiums tied to homeowner policyholders' coverage choices would signal the underlying risk and prompt mitigation efforts.

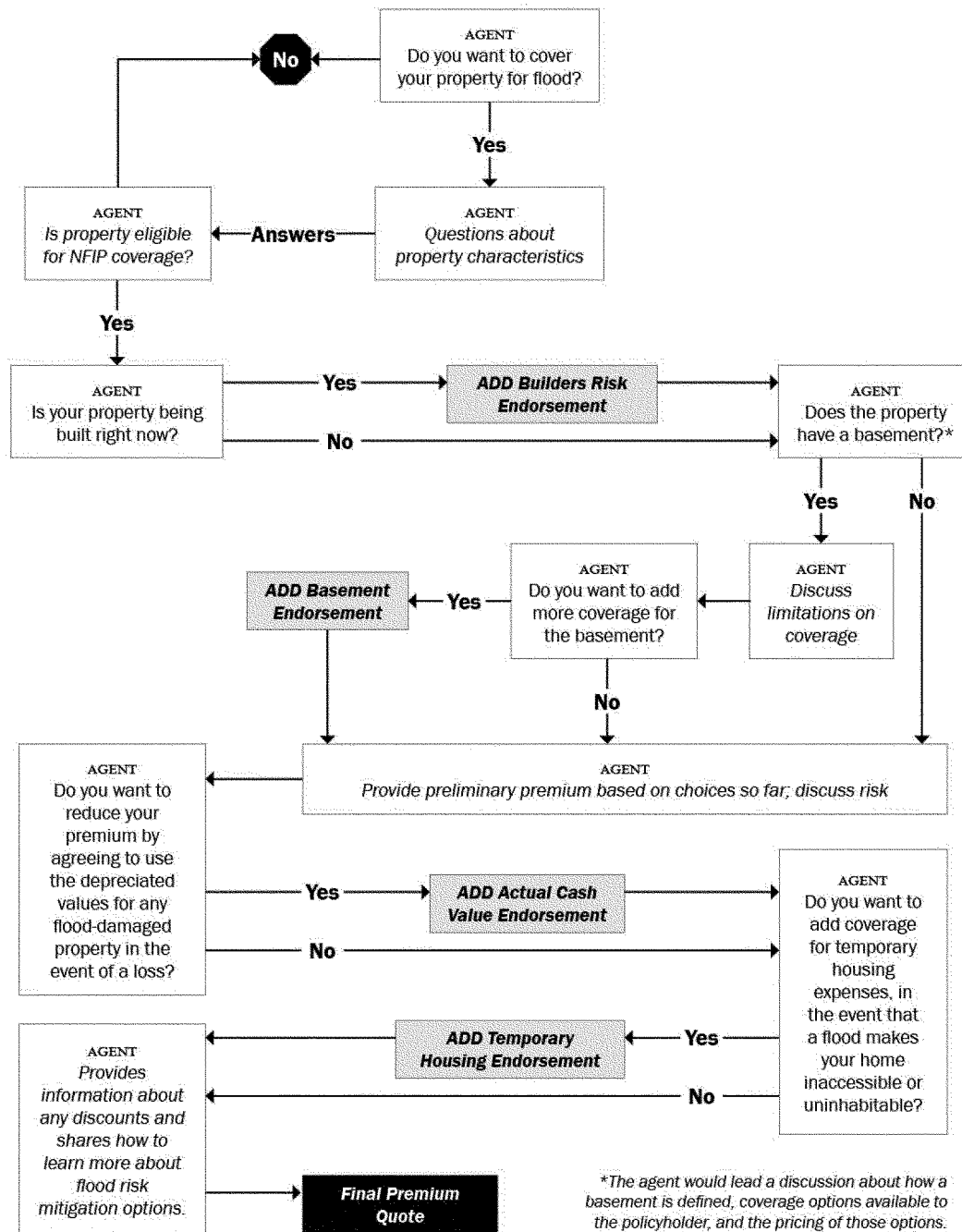
The following chart illustrates how homeowner policyholders could customize their policy at the point of sale:

**BILLING CODE 9111-52-P**

<sup>35</sup> Although the Form would offer the same coverage regardless of flood zone, the premiums charged would continue to differ based on risk. For instance, owners of riskier buildings, such as pre-FIRM buildings and buildings with the lowest level below Base Flood Elevation, would continue to pay more in premiums for the same level of coverage compared to a building carrying less risk. This is because the NFIP will continue charging the most accurate actuarial rates it can based not just on flood maps, but other information (such as distance to water sources and elevations) as improvements in technology allow, as discussed in greater detail below.



**Policyholder with Agent: Homeowner Flood Form Point of Sale—Choice Architecture**



**BILLING CODE 9111-52-C**

**Simplifying the Policy for Homeowner Policyholders and Plain Language Efforts**

The Form would provide FEMA with greater flexibility in administering flood insurance. Unlike the Dwelling Form, which is highly prescriptive and includes long lists of covered items, the new Form would further incorporate plain language, remove unnecessary provisions, reduce reliance on lists, and highlight certain specifics on the

declarations page. Moreover, the Form would add in flexibilities, like special procedures during catastrophic flood events.<sup>36</sup> Altogether, the proposed

<sup>36</sup> FEMA currently provides special procedures for catastrophic events through bulletins issued on a catastrophe-by-catastrophe basis. See e.g., Bulletin W-17030, "Activation of NFIP Catastrophic Event Enhanced Claim Payment Process for Hurricane Harvey," (Sept. 3, 2017), found at <https://nfipservices.floodsmart.gov/sites/default/files/w-17030.pdf> (last accessed Aug. 28, 2023); Bulletin W-17031a, "Guidance for Advance Payments for Hurricane Harvey," (Sept. 4, 2017), found at <https://nfipservices.floodsmart.gov/sites/default/files/w-17031a.pdf> (last accessed Aug. 28, 2023).

products would allow FEMA to provide homeowners with better, more tailored coverage.

[nfipservices.floodsmart.gov/sites/default/files/w-17031a.pdf](https://nfipservices.floodsmart.gov/sites/default/files/w-17031a.pdf) (last accessed Aug. 28, 2023); Bulletin W-17035, "Hurricane Harvey Enhanced Claim Handling for Prior Loss and Contents Claims under the Dwelling Form of the SFIP," (Sept. 9, 2017), found at <https://nfipservices.floodsmart.gov/sites/default/files/w-17035.pdf> (last accessed Aug. 28, 2023). FEMA proposes to incorporate these special procedures into the Homeowner Flood Form for ease of administration and to increase transparency.



As an insurance contract, the new Form has to be capable of being read from start to finish as well as quickly navigable to find the specific information in the event of an issue or a loss. To maintain certain decades-old foundational concepts, limit implementation errors, and minimize disruption to the administration of the NFIP, FEMA found it necessary to favor certain flood insurance terminology and/or terms of art even where the phrasing may seem stuffy or overworked. FEMA is proposing several changes with plain language in mind and seeks comment on whether the proposed changes result in the desired clarity. Specifically, FEMA proposed to change the organization of the policy, such that fewer sections are provided in the overall policy and similar concepts are grouped together to allow the reader to know what is and is not covered without having to review a section and then have to return to it again for clarity. FEMA is also proposing to add headers and captions to guide the reader and improve comprehension. Insurance professionals often “speak by citation,” quoting the policy provisions by location rather than name. The headers and captions will help non-insurance professionals quickly understand what is in those citations. FEMA proposes italicizing defined terms throughout the policy as a signal to the reader that this is one of those defined terms they read and thus allowing the reader to refer back to the definitions as appropriate. FEMA is also proposing to define specific terms not used elsewhere in the policy within the clause. For example, “pollutants” is defined in the proposed III.A.3.d, rather than in the proposed section II. FEMA is proposing to remove technical information. The Dwelling Form makes reference to specific flood zones, post-FIRM buildings, and defines numerous terms not relevant to the policyholder with coverage under the SFIP. FEMA also seeks comment on other ways the Form can be revised to improve the policy’s language and decrease confusion.

#### Potential Benefits and Impacts on Disadvantaged Communities

FEMA believes that the proposed changes to the Homeowner Flood Form will reduce burdens on low-income and other disadvantaged communities particularly affected by changing conditions and increased flooding. FEMA’s current authority requires actuarial rates, which can impact low-income and other disadvantaged communities. By offering choices such as options for actual cash value or replacement cost value coverage and

basement coverage options, FEMA believes that homeowner policyholders can make a value judgment regarding the extent of their coverage.<sup>37</sup> FEMA seeks specific comment on the potential benefits and impacts of this proposed rulemaking on various geographic regions and communities, including based on income, insurance access, and affordability.

#### Premium Rates

The changes proposed in this rule would generally not impact the NFIP’s premium structure. A decision to select more robust coverage, as with all insurance coverage, would result in increased premiums.

#### Homeowner Flood Form

##### 1. Section I: Insuring Agreement

FEMA proposes to consolidate multiple sections from the Dwelling Form into one larger section. Specifically, elements of sections I and X of the Dwelling Form appear in proposed section I.A on governing law to make clear that this is a Federal policy and is governed by Federal law.<sup>38</sup> Proposed section I.A would retain the language indicating that Federal law governs all disputes regarding the policy and claims handling. Standard Flood Insurance Policies are sold by private WYO insurance companies and directly to the public by FEMA’s direct servicing agent, NFIP Direct. Because the NFIP 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.<sup>39</sup> The Administrator intends that the same benefits should be available to all those insured wherever the insured property is located, or whether the policy is purchased from a WYO insurance company or from NFIP Direct. There is a continued need for uniformity in the interpretation of and standards

<sup>37</sup> FEMA believes additional equitable and affordability solutions require legislative change. See generally <https://www.fema.gov/flood-insurance/rules-legislation/congressional-reevaluation/legislative-proposals> (last accessed Aug. 28, 2023).

<sup>38</sup> See generally 42 U.S.C. 4011(a), 4053, 4072; 44 CFR 59.2, 61.5(e), 62.22, 62.23(g).

<sup>39</sup> See also *Nelson v. Becton*, 929 F.2d 1287, 1291 (8th Cir. 1991) (“The purpose of the National Flood Insurance Program is to provide flood insurance, which otherwise would not be available, on a uniform nationwide basis. To apply the varying reasonable expectations doctrines of the insurance laws of individual states would ‘frustrate [these] specific objectives of the Federal program[.]’” (citing *United States v. Kimbell Foods*, 440 U.S. 715, 728 (1979))).

applicable to the policies and their administration. FEMA is reiterating the policy language pertaining to applicable law to emphasize that matters pertaining to the SFIP are governed exclusively by Federal law. Proposed section I.B on conflicts with Federal law would eliminate the need to list specific legal authorities that currently or could eventually conflict with the policy.<sup>40</sup> Listing all potentially applicable laws here is unnecessary, unwieldy, and constrains any future flexibility. Consistent with the goals of updating the SFIP, this revised section would increase readability and comprehensibility.

Like the Dwelling Form at section I.C, proposed section I.C of the new Form would detail the terms of the agreement to pay for direct physical loss by or from flood and would also state that a homeowner policyholder would only receive compensation up to the limits of liability listed on the declarations page. This proposed section would continue to clarify that the “full amount due” includes applicable premiums, surcharges, and fees to help homeowner policyholders understand that the full amount due can be reduced by these outstanding amounts. Additionally, the section would require that the information furnished by the homeowner policyholder be “complete” and accurate to negate incomplete proof of loss issues that can delay claims processing.

Proposed section I.D would move the policy term (currently in the Dwelling Form at section VII.E.1) to the front of the agreement section, separated from the policy renewal content, to make clear to the homeowner policyholder at the top of the form, how long the agreement lasts. Proposed section I.E would incorporate the liberalization clause from the Dwelling Form (article IX), authorizing FEMA to make changes that broaden coverage without an additional premium and making those changes automatically apply to the policy as of the date the change is implemented with certain caveats. Throughout the policy, FEMA proposes to modify timeframes to ensure clarity on how days are calculated under the policy. For example, proposed section I.E. would specify a 60 “calendar” day window prior to or during the policy term rather than a 60-day window as the Dwelling Form provides. The NFIP

<sup>40</sup> For example, the current Dwelling Form contains references to other legal authority throughout, such as in sections IV.15 (referencing the Coastal Barrier Resources Act, the Coastal Barrier Improvement Act, and related amendments) and V.E (discussing leasing land from the Federal Government).

currently operates based on calendar days, and specifying this in the policy promotes consistency and transparency, reducing the likelihood that a homeowner policyholder might wrongly assume that “days” are “business” days. Finally, proposed section I.F would retain the right of review language currently in section I.D of the Dwelling Form and incorporate concepts from section VII.D of that form, including the right to request additional information and revising the amounts due from the homeowner policyholder based on any information reviewed. These revisions would ensure the homeowner policyholder is aware of the key terms of the agreement at the onset.

### 3. Section II: Definitions

First, FEMA proposes to retain in proposed section II.A the upfront clarification that the pronouns “you” and “your” refer to the insured(s), and that “we,” “us,” and “our” refer to the insurer. This clarification concerning the use of pronouns has been in the current SFIP forms since 1982,<sup>41</sup> and retaining this clarification comports with plain language guidelines.<sup>42</sup> FEMA proposes to move the language currently in section II.A of the Dwelling Form regarding the policyholder’s spouse and the language defining “insured(s)” to a new definition for “Insured(s).” FEMA also proposes not to retain the statement that some definitions are complex due to their presence in statute, regulation, or case law, because this sentence is unnecessary.

In section II.B, FEMA proposes to change the definition of “flood.” FEMA proposes “Flood” to mean a general and temporary condition of partial or complete inundation of normally dry land from (1) overflow of inland or tidal waters; (2) unusual and rapid accumulation or runoff of surface waters from any source; (3) mudflow, defined as a river of liquid and flowing mud on the surface of normally dry land, as when earth is carried by a current of water; or (4) sudden erosion or undermining of land along the shore of a lake or similar body of water caused by waves or currents of water exceeding anticipated cyclical levels that causes collapse or subsidence of land resulting in a flood. FEMA proposes not to retain the language currently in the Dwelling Form at section II.B.1 limiting flood to

two or more acres, or two or more properties, one of which is the policyholder’s, because it is unnecessarily restrictive: It deviates from the definition at 44 CFR 59.1, which does not include this limitation, and flood insurance adjusters can experience issues with finding a second property to qualify as a flood, or accessing other properties to investigate whether flooding occurred. FEMA proposes to define “mudflow” where it appears (*i.e.*, within the definition of flood), rather than later in the definitions, to save homeowner policyholders from having to reference a separate part of the policy for it. This is a change to the location of the definition, and not the meaning, as FEMA would continue to use the definition of “mudflow” from the Dwelling Form. FEMA’s proposed sub-definition for “erosion” is substantively the same as the Dwelling Form’s except that it specifies that the erosion must be *sudden*, making it clear that gradual erosion would not result in a flood under the policy. These proposed changes to the definition of “Flood” would simplify coverage; FEMA does not intend to broaden or narrow coverage here, and would continue to limit coverage where a homeowner policyholder causes a flood or where the cause is wind-driven rain (through a roof or window, etc.) or some other water source (*see* proposed section IV.A.5).

FEMA proposes to relocate and revise the definition of “Building” and incorporate a revised definition of “Basement” and add a definition for “Enclosure” within proximity of the definition of “Building” in section II.C. This relocation of terms will make it easier to read the definition of the structural elements applicable to buildings in context of one another. “Building” would be defined as “a structure, the construction of which has been completed, that has a fully secured roof and solid, vertical, load-bearing walls and is affixed to a permanent site.” FEMA proposes to replace the phrase “two or more outside rigid walls” with “solid, vertical, load-bearing walls” because this description is more accurate, and specifying a number is unnecessary as “walls” is already plural. This proposed definition would not include the sub-definitions for mobile homes or travel trailers because, as mentioned above, owners of these units would continue to be covered under the Dwelling Form.<sup>43</sup> In

addition, FEMA proposes to remove references to gas or liquid storage tanks, shipping containers, recreational vehicles, park trailers, or other similar vehicles—because as these are not buildings, specifically excluding them from the definition is unnecessary.

Under the current Dwelling Form at section II.C.5, a “Basement” is defined as “[a]ny area of a building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides.” Sometimes this definition does not align with homeowner policyholder expectations that may consider what is defined in the Dwelling Form as a basement to be the first floor of their home.<sup>44</sup> Under the current Dwelling Form, coverage is limited in basements to specific items and homeowner policyholders cannot choose to increase coverage if they want it for areas of their home they may not otherwise consider to be a “Basement.” The proposed definition for “Basement” would state that a basement is “any area of a building having its floor level below ground level on all sides, regardless of design or use.” The proposed definition would further clarify that “An area of a

updates to the underwriting rules used by the Program.

<sup>44</sup> See Donovan Finn and John Travis Marshall, *Superstorm Sandy at Five: Lessons on Law as Catalyst and Obstacle to Long-Term Recovery Following Catastrophic Disasters*, 48 *Env’tl. L. Rep.* 10494 (2018), found at [https://commons.library.stonybrook.edu/cgi/viewcontent.cgi?article=1004&context=somas\\_articles](https://commons.library.stonybrook.edu/cgi/viewcontent.cgi?article=1004&context=somas_articles) (last accessed Aug. 28, 2023). “For instance, consider flood insurance regulations and the seemingly simple question: what is a basement? In many parts of the country that would cause little confusion; according to the NFIP a basement is ‘[a]ny area of the building having its floor subgrade (below ground level) on all sides.’ However, this seemingly straightforward definition became a source of significant concern for many building owners after Sandy. In New York City, Hoboken, Jersey City, and other municipalities in the region, the NFIP definition of a basement also technically describes many thousands of housing and retail units at the lowest level of attached row houses that are known in the local vernacular as ‘ground floor’ or ‘garden units.’ Such units may be located anywhere from a few inches to three feet below grade and, if conforming to stipulations in local laws, are legal for use as individual apartments, shops, offices, or fully habitable levels of a single-family home. Many buildings containing this kind of unit actually have an additional cellar or basement level underneath this ‘ground’ level. However, while these units may sit above a second basement, and although they are discrete legal residences or commercial units according to local zoning and building codes, these units are classified by FEMA as basements and are therefore ineligible for NFIP reimbursement. One infamous case involved a Hoboken resident whose NFIP claim was denied because his apartment was determined to be 0.13 inches below grade.” *See also* <https://www.wxyz.com/news/what-does-fema-cover-if-youre-denied-help-after-floods-here-are-some-other-options> (last accessed Aug. 28, 2023) and <https://www.wxyz.com/news/why-many-people-are-being-denied-fema-flood-assistance> (last accessed Aug. 28, 2023).

<sup>41</sup> Prior to 1982, the forms referred to “insurer” and “insured” throughout. *See e.g.*, 44 CFR 61 App. A(1) (1981).

<sup>42</sup> *See* “Federal Plain Language Guidelines,” Mar. 2011, at 30, found at <https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf> (last accessed Aug. 28, 2023).

<sup>43</sup> The proposed Homeowner Flood Form may insure some manufactured homes. Guidance regarding this coverage will be detailed in future

building is below ground level when the land touching the exterior of the building is above its floor level. An area of a building is presumed to be below ground level when it is necessary to walk up steps or a slope to reach the land surrounding the building. A professional land survey or report may rebut this presumption.”

FEMA proposes this definition to better explain its application to the area in the building, to the extent the definition is not aligned with a homeowner policyholder’s conception of a basement. This proposed definition would better allow homeowner policyholders and their agents to identify whether they have a basement at the point of sale. The Homeowner Flood Form offers homeowner policyholders limited coverage for a basement by default. FEMA seeks comment on this proposed definition of basements to better address the needs and understanding of homeowner policyholders.

“Enclosure” would mean an area that exists below the dwelling and used in accordance with local floodplain management ordinances or law for the parking of vehicles, building access, or storage, and is shown on the declarations page. FEMA proposes this new definition to more clearly differentiate enclosures from basements.

FEMA is proposing to relocate the definitions currently found in section II.B of the Dwelling Form to section II.D and is proposing to include or modify several, but not all, definitions that are currently in the Dwelling Form, and to add several others. First, FEMA proposes to retain, with minimal to no changes, the definitions for “Act,” “Described Location,” “National Flood Insurance Program,” and “Policy.” “Act” would continue to be defined as the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*). “Described Location” would be defined as the location of the insured building, as shown on the declarations page. The “National Flood Insurance Program” would continue to be defined as FEMA’s program of flood insurance coverage and floodplain management administered under the “Act.” Lastly, the definition for “Policy” would specify that it is the entire written contract between the homeowner policyholder and FEMA to include: (1) the Homeowner Flood Form; (2) the completed application for insurance; (3) the declarations page; (4) any endorsements issued; and (5) any addenda FEMA attaches to the Form upon application or renewal.

FEMA proposes minor, but somewhat more meaningful changes to the

definitions for “Actual Cash Value,” “Declarations Page,” “Direct Physical Loss By or From Flood,” and “Dwelling.” The definition for “Actual Cash Value” would continue to be the cost to replace an insured item of property at the time of loss, but FEMA proposes to replace the phrase “less the value of its physical depreciation” with “less depreciation based on its age and condition.” FEMA proposes to specify that depreciation is based on the insured item’s age and condition to explain what “physical depreciation” means. The definition for “Declarations Page” would state that it is a document provided to homeowner policyholders summarizing the coverage limit(s), premium, insured(s), and other information about the policy, and that it is a part of the policy. FEMA proposes this definition because it is more modern than the Dwelling Form’s current definition of a “computer-generated summary. . . .” FEMA proposes “Direct Physical Loss By or From Flood” to mean actual physical loss or damage to the insured property directly caused by a flood. FEMA chose not to retain the sentence currently in the Dwelling Form that “there must be evidence of physical changes to the property.” The addition of the words “actual physical” to describe loss or damage to the insured property obviates the need for that sentence and makes it clearer that FEMA may only pay for physical loss or damage directly caused by a flood. Lastly, FEMA proposes to define “Dwelling” as a building in use as a one-to-four family residence, and specify that it is not a mobile home, travel trailer, or condominium unit. FEMA proposes to specify that mobile homes, travel trailers, or condominium units are not “dwellings” under this Form because FEMA intends that this Form only cover homeowners of one-to-four family site-built residential buildings. At this time, the Dwelling Form would continue to serve as the Standard Flood Insurance Policy Form covering mobile homes, travel trailers, and condominium units, as well as landlords and tenants.

FEMA proposes to add definitions for “Administrator,” “Claim,” “Flood Damage Resistant Materials,” “Insured(s),” “Machinery and Equipment,” “Proof of Loss,” and “Replacement Cost Value.” FEMA proposes to specify that “Administrator” refers to the FEMA Administrator or designee for clarity. FEMA proposes to define “Claim” as the homeowner policyholder’s assertion that (s)he is entitled to payment for a covered loss under the terms and

conditions of the policy and specify that there is only one claim per flood event. This definition would complement the proposed definition for “Proof of Loss.” FEMA proposes to define “Flood Damage Resistant Materials” as building materials identified by the Administrator as resistant to flood damage to encourage homeowner policyholders to rebuild smarter. Use of materials that are resistant to flood damage reduces the likelihood of replacement in a future flood, and the ability to clean and repair items instead of replacing them would likely result in net savings to the NFIP and its policyholders. The definition of “Insured(s)” would include the homeowner policyholder and (1) any additional persons identified on the declarations page; (2) any mortgagee or loss payee named in the application for insurance, as well as any other mortgagee or loss payee determined to exist at the time of loss; and (3) the homeowner policyholder’s spouse, if a resident of the same household. This definition is substantively the same as the definition of “you” from the Dwelling Form in ILA, but includes the homeowner policyholder’s spouse here, to simplify and consolidate in one place the concept of who has an interest under the policy. FEMA proposes to specify that “Machinery and Equipment,” when contained within a building at the described location, would include functional electrical, plumbing, heating, cooling, and safety elements necessary for the operation of a building, and elevators. Outside of a building, “Machinery and Equipment” would include a heating and air conditioning system’s condenser unit and heat pump, solar panels, and permanently installed whole house standby generators when these units are connected to and are servicing a building at the described location. FEMA proposes this definition to avoid long lists of items in the coverage section. The coverage limitations in the Dwelling Form (at III.A.8) appear in a list of 17 items. This new definition would condense these 17 entries into a single definition. While the new definition would still call out some items specifically, it is FEMA’s position that this more condensed, succinct approach would be less cumbersome to homeowner policyholders and give the Agency increased flexibility in its implementation of the NFIP.<sup>45</sup> FEMA

<sup>45</sup> The NFIP Claims Manual currently explains each of the 17 items listed in section III.A.8.a of the Dwelling Form, and the explanations of these items can also include several related items themselves. See National Flood Insurance Program Claims Manual (May 1, 2020), found at <https://>

also anticipates applying this definition during loss settlements to encourage homeowners to move these relatively costly items from their basements/lower enclosures to a less risky area of the property, increasing savings to the NFIP and its policyholders. FEMA would define “Proof of Loss” as a signed and sworn statement by the homeowner policyholder containing documentary evidence in support of one’s loss and the amount one is claiming. FEMA proposes to define this term to mitigate confusion over what a proof of loss is,<sup>46</sup> further differentiate proof of loss from a claim, and to facilitate implementation of proposed V.E, “Disaster Conditions.” Lastly, “Replacement Cost Value” would mean the necessary cost, without deduction of depreciation, to repair or replace an item of property at the time of loss with an item of like kind and quality. FEMA proposes to add this definition because the new Homeowner Flood Form would offer homeowner policyholders replacement cost value as the default, rather than actual cash value as the Dwelling Form does, so defining the term would assist FEMA in administering the Form.

Finally, FEMA proposes not to carry over into the new Homeowner Flood Form three definitions currently in the Dwelling Form: “Base Flood,” “Deductible,” and “Principal Residence.” Because “base flood” would not have any impact on the terms and conditions of insurability in the new Form, defining it would be

[www.fema.gov/sites/default/files/2020-07/fema\\_nfip\\_claims-manual\\_2020.pdf](http://www.fema.gov/sites/default/files/2020-07/fema_nfip_claims-manual_2020.pdf) (last accessed Aug. 28, 2023) (“Claims Manual”). For instance, the Claims Manual explains that “nonflammable insulation in a basement” [III.A.8.a(10)] includes the nonflammable insulation in walls and ceilings between joists in the lowest elevated floor and unfinished protective weather barriers affixed to floor joists and unattached protective barriers located in a crawlspace. *Id.* at 41. In addition, “well water tanks and pumps” [III.A.8.a(15)] include pressure switches, pressure valves, and gauges. *Id.* at 43. The removal of these lists would provide FEMA flexibility to the extent that the Agency can continue to clarify in the Claims Manual terms defined in the policy.

<sup>46</sup> During the aftermath of Superstorm Sandy, policyholders and their representatives attempted to submit “placeholder” proofs of loss where they filled out the coversheet for FEMA’s Proof of Loss Form (FEMA Form 086–0–9) with “TBD” on every line. This was not appropriate or within the terms of the SFIP, creating problems for these policyholders and for FEMA. (In this case, the insurance carriers had to deny these claims because these policyholders failed to meet the requirements of the SFIP. Many of these policyholders pursued litigation, creating the need for FEMA’s NFIP Transformation Task Force established in 2015). See NFIP Bulletin w–14036, found at <https://nfipservices.floodsmart.gov/sites/default/files/w-14036.pdf> (last accessed Aug. 28, 2023) and NFIP Bulletin w–12092a, found at <https://nfipservices.floodsmart.gov/sites/default/files/w-12092a.pdf> (last accessed Aug. 28, 2023).

unnecessary. Because “deductible” is a commonly understood term in the insurance industry, it is FEMA’s position that including a definition for it would be unnecessary. In addition, because the Homeowner Flood Form would not vary coverage between principal and secondary, etc., residences, defining the term “principal residence” would likewise be unnecessary.

#### 4. Section III: What We Cover

FEMA proposes to incorporate language currently in the Dwelling Form with section III to improve the customer experience by presenting the material in a more organized manner. The Dwelling Form addresses property covered (article III), property not covered (article IV), and exclusions (article V) in different sections. In proposed section III, FEMA addresses in a single section what the policy covers, where coverage is limited, any conditional coverage, and then property that is not covered.<sup>47</sup> The proposed changes to Coverages B and C also generally align with coverage specifically for homeowners, the focus of this proposed form. These changes also remove lists and “hidden” coverage and simplify policy language to enhance understanding and functionality of the policy. Relying on the definitional concepts instead of specific lists gives FEMA the opportunity to clarify coverage and improve readability of the form while also providing increased flexibility to implement the policy. FEMA proposes to rephrase coverage that is currently phrased in the negative in the Dwelling Form to ensure a better understanding of coverage. The proposed revisions would also remove all references to flood zones in special flood hazard areas, and instead provide universal default coverage that applies to all buildings regardless of flood zone. These revisions reduce the complexity of the policy, as homeowner policyholders may not immediately recall what zone they are in. These revisions also help alleviate concerns raised in understanding flood risks through mapping alone and allowing the premium to inform the homeowner policyholder about flood risk.

FEMA proposes to remove specific dollar amounts from the policy, giving the Agency the ability to increase these

<sup>47</sup> FEMA includes “property not covered” in proposed section III, “What We Cover,” rather than proposed section IV, “Exclusions,” to conform with industry standards and address in the same section those items for which the policyholder has the burden of proof. The burden of proving that property is covered falls on the insured, but the burden of proving that property is excluded falls on the insurer.

limits based on statutory changes. Eliminating these specific dollar amounts also allows FEMA to offer different coverage limit choices to different homeowner policyholders by placing special limit amounts on the declarations page of the policy.

FEMA proposes to allow more consumer choice by allowing homeowner policyholders to choose whether they want basement coverage under Coverage A through the Enhanced Basement Endorsement Option detailed below. FEMA has long presumed that homeowner policyholders would not want to pay for full coverage in a basement because it would be too expensive,<sup>48</sup> but in doing so inadvertently made it more likely that homeowner policyholders would not realize the limitations on basement coverage until they experienced a loss.<sup>49</sup> FEMA has offered this restrictive coverage in basements for four decades and the proposed new Homeowner Flood Form would not change that coverage absent a homeowner policyholder purchasing an endorsement. FEMA believes the limited basement coverage creates challenges in the flood insurance sales context for homeowner policyholders who want more coverage than the current Dwelling Form and new Form would allow and in the recovery context for homeowner policyholders who need it to more fully recover from a flood event. Given these challenges, FEMA considered three approaches to basement coverage: (1) the current Dwelling Form approach of retaining the current restricted coverage, with a focus on training agents selling flood insurance to further discuss what constitutes a basement under the

<sup>48</sup> Until 1983, FEMA offered coverage in a basement. See e.g., 44 CFR 61 App. A(1) Art. IV (1982). At that time, FEMA determined that it was paying out \$5 for every \$1 collected on buildings with damaged basements. See GAO Report on Flood Insurance: Federal Emergency Management Agency’s Basement Coverage Limitations, RCED–86–10FS (Jan. 31, 1986) found at <http://www.gao.gov/assets/rced-86-10fs.pdf> (last accessed Aug. 28, 2023). In the 1990s, FEMA explored but abandoned an effort to offer some level of basement coverage and throughout the entirety of the Dwelling Form (*i.e.*, the last 20 years), there has been no option for basement coverage.

<sup>49</sup> See Donovan Finn and John Travis Marshall, *Superstorm Sandy at Five: Lessons on Law as Catalyst and Obstacle to Long-Term Recovery Following Catastrophic Disasters*, 48 *Env’tl. L. Rep.* 10494 (2018), found at [https://commons.library.stonybrook.edu/cgi/viewcontent.cgi?article=1004&context=somas\\_articles](https://commons.library.stonybrook.edu/cgi/viewcontent.cgi?article=1004&context=somas_articles) (last accessed Aug. 28, 2023). See also <https://www.wxyz.com/news/what-does-fema-cover-if-youre-denied-help-after-floods-here-are-some-other-options> (last accessed Aug. 28, 2023) and <https://www.wxyz.com/news/why-many-people-are-being-denied-fema-flood-assistance> (last accessed Aug. 28, 2023).

Homeowner Flood Form and the restrictions on coverage at the point of sale to better inform homeowner policyholders and those seeking to purchase new homeowner flood insurance of the coverage restrictions; (2) FEMA's preferred approach of offering an endorsement to the proposed Homeowner Flood Form that would allow homeowner policyholders to purchase, for an additional premium, an enhanced basement endorsement to remove the restrictions in basement coverage ("Enhanced Basement Coverage Endorsement"); and (3) a third approach of offering a basement endorsement to remove coverage limitations, for an additional premium, for (a) homeowners with split-level homes or sunken room(s) (approach 3.1) and (b) homeowner policyholders who need to occupy part of their basement (approach 3.2). Occupancy means the basement is being used by the homeowner as bedrooms, bathrooms, and kitchens/kitchettes. Each of the approaches is further detailed in Appendix A(104): Basement Coverage Endorsement Option below.

FEMA does not expect the availability of optional basement coverage (approaches 2, 3.1, or 3.2 above) to encourage riskier behavior by homeowner policyholders. In general, policyholders do not wish to experience flood losses. The act of choosing an option will require the policyholder to envision their property being damaged by a flood. Accordingly, rather than encouraging risky behavior, FEMA believes the option would help homeowner policyholders to transfer their risk to better recover after a flood while also encouraging homeowner policyholders with basements to consider ways to mitigate their risks in those areas. The current inventory of housing in the United States contains homes built with basements. Recent studies on marginalized communities show that formerly redlined areas face higher flood risks, and several of the cities where this is most prevalent (New York, Boston, Chicago, Camden, Detroit, Newark) have older housing stock that are often built with basements.<sup>50</sup> By offering options to increase basement coverage, FEMA is proposing to increase the ability of these homeowners to better protect their investment from

flood risks. FEMA understands that the additional coverage will result in additional premiums for policyholders, but the pricing associated with these additional premiums will reflect the reality of the structure above all and will align with the risk. By offering choice, FEMA can better educate homeowner policyholders on their coverage options, discuss the flood risks associated with their property (*i.e.*, through the price signal provided by comparing the premium options), and how they can better protect their property and mitigate those risks. FEMA seeks specific comments on the expansion of basement coverage and the approaches considered in this proposed rule as detailed in the basement coverage endorsement options below.

Proposed section III would not include ICC as Coverage D for all homeowner policyholders as the Dwelling Form does (in section III.D), but instead would make it an endorsement required to be purchased only by those homeowner policyholders who may be eligible for it. Proposed section III would also remove buildings under construction from default coverage (as is the case under the Dwelling Form at section III.A.5), as a Builder's Risk Endorsement naming the builder as an additional insured party (with specific business rules associated with renewals) would provide homeowner policyholders the option to address such coverage. Finally, FEMA proposes to clarify that the policy would not cover certain losses to items stored in a digital format or other intangible format due to the complexity of demonstrating proof of loss.<sup>51</sup> Throughout the section, FEMA proposes minor edits to the Form for clarity. FEMA anticipates the proposed changes to section III would generally make the policy easier for agents to sell while also being more understandable and desirable for homeowner policyholders as the changes more closely align with other insurance policies with which homeowners are familiar and the changes generally provide homeowners with more flexibility by offering more coverage options.

#### a. Coverage A—Dwelling

FEMA proposes to label Coverage A as "Dwelling" (rather than retain the Dwelling Form's title of "Building Property") to differentiate coverage for the primary building—the dwelling—as opposed to other buildings that may be

covered. In proposed sections III.A.1.a, III.A.2.b, III.A.2.c, III.A.3.c(1), and III.A.4.f, FEMA proposes to update the language to clarify the coverage detailed in this section of the policy relates specifically to the dwelling and to distinguish between the dwelling and other buildings that may be covered under Coverage B. Proposed section III.A.2, "Limited Coverage for Basements and Enclosures," would remove the differentiation of coverage based on flood zone type or pre- or post-FIRM status found in the Dwelling Form at section III.A.8. This proposed section would clarify the limited coverage provided for basements regardless of where the property is located. As explained above, FEMA is proposing to remove differences in coverage based on flood zone type or pre- or post-FIRM status and provide universal default coverage that applies to all structures regardless of flood zone.<sup>52</sup> Maps generally create challenges for the application of policy coverage. In a flood event, the flood does not simply stop at the map boundary and a homeowner policyholder with property that is mapped in a higher risk zone could be paying more for less coverage than their neighbors across the street, when both are equally impacted by the flood event. By eliminating these distinctions in the policy, FEMA proposes to simplify the explanation of policy coverage for homeowner policyholders so that they have a full understanding of the risks associated with their property and can protect

<sup>52</sup> The Dwelling Form provides different types of coverage based on FIRM status and zone: basements receive limited coverage regardless of zone; certain post-FIRM elevated buildings receive limited coverage below the lowest elevated floor; and the remainder do not experience coverage limitations. The coverage limitations for post-FIRM elevated buildings are a passive enforcement mechanism for floodplain management rules concerning use of these spaces (*i.e.*, 44 CFR 60.3(c)(5), allowing parking of vehicles, building access, and storage). In practice, this often means policyholders do not learn about the coverage restrictions until they experience a loss. In the proposed Homeowner Flood Form, the policy would not provide different types of coverage based on FIRM status and zone. Basements continue to receive limited coverage regardless of zone. A building with an enclosure—meaning it is used in accordance with the floodplain management regulations—will continue to receive limited coverage. However, if a policyholder does not indicate that they have a basement or an enclosure at the time of application, they will receive full coverage, but will also pay additional premium based on the height of the first floor. The higher premium should also act as a more timely signal to the policyholder, who may then choose to not use the space for residential purposes. In other words, the insurance policy will no longer passively enforce floodplain management rules at the time of loss, but will complement those rules through risk signaling, and floodplain management officials may still take appropriate action on unacceptable uses of enclosures.

<sup>50</sup> See <https://www.redfin.com/news/redlining-flood-risk/> (last accessed Aug. 28, 2023) and <https://www.njspotlightnews.org/2021/04/redlining-atlantic-city-nj-overlooked-underfunded-minority-neighborhoods-back-bay-racist-maps-superstorm-sandy/> (last accessed Aug. 28, 2023). Note that in these areas, it is common to have a basement because of the necessity of building below the frost line, so that pipes do not burst.

<sup>51</sup> Digital storage was not a substantial concern when the SFIP was drafted in 1999. However, modern technology (allowing for cryptocurrency, etc.), renders it sufficiently important to include here.

themselves against flood peril by choosing their coverage accordingly.

The proposed changes in section III.A.2.a eliminate the list of covered items from current section III.A.8.a as these items are defined in proposed section II. Elimination of the list is intended to make the policy more readable. Additionally, FEMA proposes changes in section III.A.2.d to simplify the understanding of coverage for unfinished drywall in a basement or enclosure. The Dwelling Form details drywall coverage for walls and ceilings in a basement and the cost to nail it, unfinished and unfloat and not taped, to the framing (section III.A.8.a(3)). FEMA proposes to simplify this by covering any unfinished drywall in a basement and removing the restriction that the drywall must be unfloat and not taped. FEMA also proposes to continue coverage for nonflammable insulation in basements and enclosures. (See Dwelling Form section III.A.8.a(10)).

FEMA proposes to add section III.A.3, “Dwelling Limitations,” to summarize the limitations throughout the policy and list them in one location. Proposed section III.A.3.a, “Limitations on mold and mildew,” would revise Dwelling Form section V.D.4 to restate coverage in positive rather than negative terms, simplifying the explanation that the policy covers damage to the dwelling due to mold and mildew caused by a flood only when it is outside of the homeowner policyholder’s control, *i.e.*, when it is not in the homeowner policyholder’s control to inspect and maintain the property after a flood recedes. FEMA is proposing this change to help resolve current challenges faced with claims in this area, as the Agency has experienced that implementation of this coverage is more challenging than it should be. FEMA historically issued several bulletins to clarify this coverage and its limitations<sup>53</sup> and believes making these proposed changes would reduce complexity and simplify the process for homeowner policyholders, insurance adjusters, and companies. FEMA proposes similar updates in proposed sections III.A.3.b, “Limitations on power, heating, or cooling failure,”

III.A.3.c, “Limitations on flood in the area,” and III.A.3.d, “Limitations on pollutants,” for simplicity and readability, and to positively affirm coverage of specific items rather than stating coverage in the negative as the Dwelling Form does in sections V.D.7, V.D.5–6, and V.F.II.B.22 respectively. The policy would continue to cover damage to any covered building electrical system, such as the building’s main service or home security system, or to the HVAC system, when a flood physically damages equipment installed at the described location (proposed section III.A.3.b) as well as pollutant testing and monitoring after a flood when required by law or ordinance (proposed section III.A.3.d). FEMA also proposes to continue coverage for losses when there is a flood in the area and the flood causes a back-up of water or waterborne material through sewers or drains, discharge or overflow of a sump pump or related equipment, or seepage/leakage on or through the dwelling (proposed section III.A.3.c(1)) as well as losses by or from water pressure or weight (hydrostatic pressure) (proposed section III.A.3.c(2)). FEMA would also continue to cover losses to the dwelling by or from the pressure or weight of water on or below the land’s surface in proposed section III.A.3.c(2).

Proposed section III.A.4 addresses the items not covered under the policy, moving several provisions from article IV of the Dwelling Form (Property Not Covered) to keep all “coverage” elements together. FEMA proposes not to retain references to the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act<sup>54</sup> in this section because the language in proposed section I concerning conflicts with Federal law renders it unnecessary. FEMA is incorporating into proposed section III.A.4.a information from the Dwelling Form at sections V.A.2, V.A.3, and V.A.5 to confirm that the policy does not cover loss of use at the described location, including any living expenses incurred while the dwelling is inaccessible or is uninhabitable for any reason. FEMA proposes incorporating this into one section for simplicity and readability. In addition, FEMA proposes including it under this section rather than Section IV, “Exclusions,” because the new Form generally restricts “exclusions” to specific causes, and this language does not speak to causation. In sections III.A.4.b and III.A.4.c, FEMA proposes separating land and land values from lawns, trees, shrubs, plants, growing crops, and landscaping to clarify that land and land values are

distinct from items that are on the land. Proposed section III.A.4.d restates the current requirement in section IV.3 of the Dwelling Form that no open structures including but not limited to those in, on, or over water are covered, regardless of boat usage. In the proposed form, FEMA retains in section III.A.4.e the substance of the language currently in the Dwelling Form at section IV.2 except to remove the reference to “personal property” because Coverage A of this Form treats dwellings, not personal property. In section III.A.4.f, FEMA proposes to clarify that in addition to underground structures and equipment like wells and septic tanks/systems, which are currently explicitly listed as not covered in section IV.8 of the Dwelling Form, sewer, plumbing supply, waste lines, gas supply lines, electrical and HVAC system components (not addressed in the proposed definition of “machinery and equipment”) that are not located in the dwelling would also continue to not be covered. In section III.A.4.g, FEMA proposes not to retain the phrase “or the building in which the insured unit is located” (found in the Dwelling Form at IV.9) for clarity of coverage as the new Form would not be available to condominium unit owners. FEMA is proposing additional minor changes in section III.A.4.h for clarity regarding containers and related equipment. Proposed sections III.A.4.i detailing fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks and III.A.4.j detailing hot tubs and spas as well as swimming pools would be unchanged from Dwelling Form sections IV.12 and IV.14, respectively.

#### b. Coverage B—Other Buildings

Coverage B would insure buildings other than the residence located at the described location.<sup>55</sup> This coverage would contain fewer limitations than in the Dwelling Form, but with the same 10 percent limit (*see* Dwelling Form section III.A.3). FEMA is proposing to require the homeowner policyholder to specify the specific sublimits of this coverage applicable to each of the

<sup>55</sup> These proposed changes would restore coverage for other buildings to the NFIP’s 1970’s approach. *See* 24 CFR 1911.4(f)(5) (1970): “The insured may apply up to, but not in excess of, 10 percent of the face amount of the policy to appurtenant structures and outbuildings (such as carports, garages, and guest houses) if they do not constitute a separate residence. If they do constitute a separate residence, or a residential structure still under construction, they must be insured under a separate policy.” This approach insures what the homeowner policyholder has and that the modern consumer expects, an experience customized and tailored to themselves.

<sup>53</sup> *See* W-13009, found at <http://nfipservices.floodsmart.gov/sites/default/files/w-13009.pdf>, (last accessed Aug. 28, 2023); W-16061, found at <http://nfipservices.floodsmart.gov/sites/default/files/w-16061.pdf> (last accessed Aug. 28, 2023); W-20017, found at <http://nfipservices.floodsmart.gov/sites/default/files/w-20017.pdf> (last accessed Aug. 28, 2023); W-11062, found at <http://nfipservices.floodsmart.gov/sites/default/files/w-11062.pdf> (last accessed Aug. 28, 2023); and W-04020, found at <http://nfipservices.floodsmart.gov/sites/default/files/w-04020.pdf> (last accessed Aug. 28, 2023).

<sup>54</sup> 16 U.S.C. 3501 *et seq.*

buildings on the declarations page to make sure that both the homeowner policyholder and FEMA share an understanding of what is on the property, to spur the conversation between the homeowner policyholder and the insurance agent that higher coverage limits are available by separately insuring these properties, and to capture data points for repetitive loss purposes. The changes proposed to Coverage B would restore non-dwelling buildings to a functional level but would not fully restore these buildings. A homeowner policyholder seeking more robust coverage should purchase a separate policy for these other buildings. Coverage B is not an additional coverage, as it would reduce the liability limit for the main building.

Proposed section III.B.1 would clarify that FEMA would apply the terms of Coverage A to other buildings at the described location except as modified in proposed section III.B.2. As noted above, proposed section III.B.1.a would require the homeowner policyholder to schedule the buildings on the declarations page to confirm their location on the property. In doing so, FEMA anticipates homeowner policyholders would have discussions with agents regarding higher coverage limits if these buildings are separately insured. By capturing the information here, FEMA can also gather data on buildings that are repeatedly damaged during flooding. Proposed section III.B.1.b would replace section III.A.3 of the Dwelling Form and allow other buildings—not simply a detached garage—to receive coverage with fewer limitations than in the Dwelling Form, but with the same 10 percent limit.

FEMA proposes to add section III.B.2 to highlight the limitations of coverage for other buildings. FEMA is proposing to use Coverage A as a “base” layer of coverage specifically for the dwelling. Certain items previously covered under Coverage A related to other buildings are instead covered by this proposed section. Proposed section III.B.2.a would remind homeowner policyholders that FEMA would not cover anything already excluded under Coverage A. Proposed section III.B.2.b would state that FEMA would not cover basements or enclosures for any building that is not the dwelling. FEMA is proposing this addition as a public policy measure to ensure that the riskiest parts of a building that is not the property owner’s residence are not afforded coverage. For example, homeowner policyholders may have a building near the beach on a coastal property containing a bathroom and storage space, with an outdoor shower

in an enclosure for convenience. The proposed policy would allow for coverage of the building at the homeowner policyholder’s request, but would not cover the enclosure given the enhanced risks associated with the enclosure. If a homeowner policyholder wants to invest in these enclosures, a separate NFIP flood insurance policy could be purchased to cover the other building with the enclosure (*i.e.*, under Coverage A), with restricted coverage applied to the enclosure. Proposed section III.B.2.c would provide that FEMA would not cover other buildings held or used for commercial purposes. The purpose of Coverage B is to extend coverage to other buildings that may have a residential use, such as a living space built above a detached garage; buildings held or used for commercial purposes are more appropriately suited for a commercial policy. Proposed section III.B.2.d would provide that coverage can only extend to property the homeowner policyholder owns. This addition is consistent with the broader principle of “insurable interest,” which requires that the insured have a right or relationship to the item insured such that the insured can suffer a financial loss from damage, loss, or destruction to it. By affirming this requirement, FEMA seeks to reduce the risk of moral hazard, whereby a homeowner policyholder might have a financial incentive to allow or even cause a loss.

#### c. Coverage C—Personal Property

FEMA proposes to move personal property coverage to proposed section III.C and to further align it with common industry practices. In contrast to section III.B.1 of the Dwelling Form that is conditioned on whether or not the homeowner policyholder has purchased contents coverage, FEMA proposes to change coverage in section III.C.1 to insure all property inside a building at the described location with coverage up to the limits listed on the declarations page. (Separate coverage for personal property not at the described location is detailed in proposed section III.C.2). Section III.C.1.a would remain unchanged from section III.B.1.a of the Dwelling Form. Proposed section III.C.1.b would provide that FEMA would insure property owned by non-paying guests or laborers. By specifying that the guests be non-paying, FEMA seeks to specifically exclude the possibility of short-term rentals, such as vacation rentals, to clarify the rental agreement would govern any such arrangement and ensure there is no contractual overlay, and also to avoid the scenario where a renter seeks payment pursuant to this policy. By

changing “servants” to “laborers,” FEMA seeks to modernize the language and include more individuals that may have personal property in the described location.

In section III.C.2, FEMA is proposing to provide some coverage away from the described location to ensure that the homeowner policyholder gets an additional benefit of flood coverage to protect their personal property. Homeowner policyholders may experience flooding while on travel, may experience a flood loss if they have personal property at a family member’s house, or if they keep items in a storage unit. Under the Dwelling Form at section III.C.2.b, a homeowner policyholder may already claim this type of coverage at another location if they moved the property because of a reasonable threat of flood. Expanding coverage would eliminate the cumbersome adjudication analysis of whether the homeowner policyholder moved the property to safety in advance of a flood. With a storage unit, a homeowner policyholder could rent a storage locker and, following a flood event, claim that he or she relocated certain property from the dwelling to the storage unit for safety. Under the Dwelling Form, if a flood occurs at the storage unit, absent a dated photo showing the property located in the storage unit, in the same position, the insurer would be unable to determine when the property was placed in the storage unit. The proposed expansion avoids this complex adjudication by providing the homeowner policyholder with coverage in that situation. Moreover, expanding coverage to contents that are not at the described location aligns with industry standards for homeowners personal property coverage.

FEMA notes that although homeowners coverage can extend to personal property anywhere in the world, the NFIA only authorizes flood insurance in the United States.<sup>56</sup> Thus, FEMA proposes limited coverage for personal property anywhere in the United States. Under proposed section III.C.2.a, FEMA would pay no more than 10 percent of the Coverage C limits for personal property located anywhere in the United States if the property is in a building at a location other than the described location, or in a storage facility building. FEMA proposes these changes to reaffirm the requirement that the personal property be located inside a “building” (defined as a fully enclosed structure) for coverage and to align with other common insurance products.

<sup>56</sup> 42 U.S.C. 4011(a).



Under proposed section III.C.2.b, the 10 percent coverage limitation would not apply to personal property moved to a building reasonably safe from flood, and not in a basement or enclosure, due to flooding near the described location. This provision would not retain the language in section III.C.2.b(3) of the Dwelling Form requiring moving personal property outside of a special flood hazard area, but would instead just require a reasonable assurance of safety to expand coverage beyond the 10 percent limitation. It is difficult for homeowner policyholders to ascertain where special flood hazard areas are located, and an attic in a special flood hazard area may reasonably be more secure than a ground floor<sup>57</sup> just outside of that area. In section III.C.2.b(1), FEMA proposes language to clarify that it would cover personal property where a homeowner policyholder moves it from his or her home to another location for protection, but the home ultimately does not flood. Section III.C.2.b(2) would affirm coverage when an evacuation order is issued. Finally, in section III.C.2.b(3), FEMA proposes to extend coverage beyond the 10 percent limitation where the personal property was moved due to repairs, renovations, reconstruction, or other conditions rendering the described location uninhabitable or unsuitable for property storage.

In proposed section III.C.3, "Personal Property Limitations," subsection 3.a would provide that in a basement or enclosure, the policy would only cover appliances installed in their functioning locations and, if necessary for operation, connected to a power source. FEMA proposes not to retain the references to flood zones and pre- or post-FIRM status found in the current Dwelling Form (in section III.B.5) to conform with other proposed changes to the policy. FEMA anticipates that homeowner policyholders would better understand the scope of the coverage available without the additional complicating language around the property's flood zone location and the pre- or post-FIRM status of the property. Additionally, rather than listing out specific appliances, FEMA proposes to categorize the items listed in section III.B.4 of the Dwelling Form as "appliances" for simplicity. Proposed section III.C.3.b would further clarify the Dwelling Form's requirement at section III.B.3 that personal property in any portion of a building that is not fully enclosed must be secured to prevent flotation out of the building.

Like section III.B.8 of the Dwelling Form, proposed section III.C.4 would provide special limits for specific kinds of personal property. Rather than retaining the dollar limit in this section, FEMA proposes instead to move it to the declarations page for readability and ease of understanding. While proposed sections III.C.4.a, III.C.4.b, III.C.4.c, III.C.4.d and III.C.4.f mirror existing provisions in the Dwelling Form for special limits to personal property coverage, FEMA proposes to add a new provision (section III.C.4.e) to specifically clarify coverage limits for portable electronic devices. A homeowner policyholder should be able to transport such personal property away from a flood and such property may also have separate insurance available. For instance, cell phones come with an offer of cell phone insurance; laptops and tablets often come with offers of insurance as well. The distinction between whether something is designed as portable or not should serve as the bright line rule. For example, a laptop computer is portable while a desktop computer is not, and a Sony PlayStation and a Microsoft Xbox are not designed as portable whereas a Nintendo Switch is. Proposed section III.C.4.f would also clarify that personal property primarily used "for any commercial purposes," rather than the current "in any business" requirement in section III.B.6.e of the Dwelling Form, falls within these special limits. FEMA proposes to specify that coverage is limited for "commercial purposes" rather than "any business" to continue providing coverage for hobbyists who may occasionally sell what they create, but who do not operate as a business or have a Federal Employment Identification Number for commercial tax purposes. Finally, FEMA proposes to add section III.C.4.g to provide coverage for up to 10 percent of the special limit on the declarations page for valued paper, metals, or other similarly valued objects such as accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, or manuscripts. FEMA proposes this additional coverage because coverage of these items is the industry standard. Proposed section III.C.5 would retain the statement currently in the Dwelling Form at section III.B.9 that FEMA would only pay for the functional value of antiques.

In proposed section III.C.6, FEMA seeks to consolidate all exclusions specific to personal property into one section to enhance readability and ensure that homeowner policyholders

and insurance agents make appropriate decisions regarding how they insure the property. Proposed section III.C.6.a would make it clear that FEMA would not cover anything already excluded under Coverages A and B. FEMA proposes to categorically narrow the coverage for personal property in this respect to clarify that there can be no instance where something excluded from either Coverage A or Coverage B could be eligible for coverage under Coverage C. Proposed sections III.C.6.b and III.C.6.c (excluding coverage for loss of use of personal property at the described location, and personal property not inside a building) remain unchanged from existing language in the Dwelling Form. Consistent with coverage limitations in the current Dwelling Form, proposed section III.C.6.d of the Homeowner Flood Form provides that FEMA would not cover personal property in a basement or enclosure, except as stated in III.C.3 which limits coverage to appliances installed in their functioning locations consistent with the current Dwelling Form. FEMA is proposing to make a change to this section to eliminate references to flood zones or pre- or post-FIRM status of a building, consistent with other changes throughout the policy. Similarly, proposed section III.C.6.e, excluding coverage for personal property in a building constructed or substantially improved after September 30, 1982, that is located in, on, or over water or seaward of mean high tide, would include non-substantive, grammatical revisions to conform to other organizational changes within the policy. Proposed section III.C.6.f would clarify that personal property in any open structure that is in, on, or over water is not covered regardless of its use. FEMA proposes to add section III.C.6.g to exclude losses to items stored in digital or other intangible formats, consistent with broader industry standards and other insurance products. This addition would have the effect of excluding cryptocurrency and other such digital items, given the challenges with proving such losses. For example, a flood could cause a server or desktop computer with valuable information on it to stop working. The policy would not cover these losses given the challenges associated with proof of loss, such as demonstrating the existence of the information at the time of loss, the inability to access or restore the information through other means, the valuation of such information, and other concerns. In proposed section III.C.6.h, FEMA seeks to add items held in

<sup>57</sup> Property must be placed above ground level. See Dwelling Form section III.C.2.b(3).

violation of state or Federal law to the list of exclusions to clarify that the Agency would not pay to indemnify against inherently illegal activity. FEMA also proposes to add section III.C.6.i to exclude coverage for living things, consistent with current Agency policy, broader industry standards, and other insurance products. In section III.C.6.j, FEMA proposes a minor change to the exclusion from coverage of any self-propelled vehicle or machine to prohibit coverage for those vehicles or machines capable of transporting people or cargo while continuing to allow coverage for vehicles or machines not registered for use on public roads that are used solely to service the described location or to assist people with disabilities when such property is inside a building at the described location. FEMA is proposing this change to clarify that coverage would not extend to vehicles that do not service the property or aid those with a disability, as other insurance is more appropriate for those items.<sup>58</sup>

#### d. Coverage D—Other Coverages

FEMA proposes organizing section III.D to align with the policy's organizational structure. Section III.D.1, "Debris Removal," clarifies what debris is covered and what is not. Specifically, FEMA proposes in section III.D.1.a to cover labor and expense to remove debris from anywhere that comes onto or into the dwelling or other insured buildings, and debris of insured property anywhere. FEMA proposes the clarification in section III.D.1.a(1) to emphasize that labor is an element of the total covered expense. Additionally, FEMA proposes a slight broadening of coverage from the current Dwelling Form in proposed section III.D.1.a(1)(a) of the Homeowner Flood Form to state that the removal of any debris inside the insured buildings is covered. Proposed section III.D.1.a(2) would clarify that FEMA would pay the value of any debris removal work performed by the homeowner policyholder or a member of one's household using the Federal minimum wage, and that this coverage does not increase the coverage limit on the declarations page. Proposed section III.D.1.b, "Debris Not Covered," would provide that the policy does not cover debris from other locations on the land

surrounding the dwelling or other insured buildings or any non-covered items of property from the dwelling or buildings, even if the removal facilitates covered cleanup or repairs. FEMA proposes this clarifying language to ensure that homeowner policyholders appropriately insure their property and to avoid duplication of benefits to both owners of debris and the homeowner policyholder upon whose land the debris resides.

FEMA proposes to slightly broaden coverage in section III.D.2, "Loss Prevention." Section III.D.2.a would provide that FEMA would pay up to the coverage sublimit specified on the declarations page for the expenses a homeowner policyholder incurs to protect one's insured property from a flood or imminent danger of flood. These expenses would be limited to: (1) reasonable expenses to buy materials to use temporary measures to avoid or reduce the harm from an imminent flood, including sandbags, fill for temporary levees, and pumps; and (2) the value of work, at the Federal minimum wage, that a homeowner policyholder or a member of her household performs to protect the property. Section III.D.2.b would specify that this coverage for materials and labor only applies if damage to the insured property by or from flood is imminent and the threat of flood damage is apparent enough to reasonably anticipate flood damage, and only if one of the following occurs: (1) a general and temporary condition of flooding in the area near the described location occurs, even if the flood does not reach the insured building; or (2) a legally-authorized official issues an evacuation order or other civil order for the community in which the property is located to preserve life and property from flood. FEMA proposes this language for increased clarity and consistency with other sections in the Form. For instance, while the Dwelling Form at section III.C.2.a(1) limits coverage to \$1,000, this proposed section would remove the dollar limit from the Form itself, allowing it to be altered through the declarations page or other guidance. The proposed language would also limit the use of lists (compare with sections III.C.2.a(1)(a)(i)–(iv) of the Dwelling Form) and allow coverage where there may be technological or local variances in what items are used to prevent losses rather than restrict it to the specific items in the policy as is currently the case.

Proposed section III.D.3, "Property Removed to Safety," would provide that FEMA would pay up to the coverage limit on the declarations page, at the

Federal minimum wage, for reasonable expenses and labor a homeowner policyholder or member of her household, incurs for moving insured property to a secure location to protect it from flood or the imminent danger of flood. Consistent with other sections in the Form, this language would simplify coverage by removing mention of special flood hazard areas, as well as the coverage limit, allowing the limit to be altered through the declarations page or other guidance. Proposed section III.D.4 would specify that Coverage D does not increase the limits of Coverages A, B, or C.

#### 5. Section IV: Exclusions

Proposed section IV would replace article V of the Dwelling Form. By continuing to address exclusions separately from coverage, FEMA seeks to clearly delineate between the *types of property* covered and not covered from the *sources of damage* excluded. This is to conform with industry standards, as insurance companies generally combine what is covered and not covered in the coverage section of their policies, and address excluded causation in the exclusions section. As this is a single peril policy, it is FEMA's position that a shorter, simplified exclusions section would reduce confusion on the part of the homeowner policyholder. Proposed section IV is structured to address three main concepts: excluded losses; flood in progress; and pre-existing damage.

##### a. Excluded Losses

For excluded losses, FEMA proposes to exclude other perils, economic losses (including loss of business or losses associated with upgrading to code per law or ordinance), earth movement, gradual erosion, several non-flood but water-related causes of loss, and damage from defects, rot, or infestation. Many of the exclusions in the proposed policy mirror in substance those in the existing Dwelling Form. In proposed section IV.A.1, FEMA seeks to simplify the language to exclude other perils as this is a single-peril policy. Consistent with other changes in the policy, FEMA proposes to condense the list of economic losses excluded from coverage currently in sections V.A.1–7 of the Dwelling Form into section IV.A.2 for clarity.

The proposed earth movement section at IV.A.3 would clarify what is and what is not considered earth movement. In proposed section IV.A.3.a, FEMA would retain but revise the list of items in the corresponding sections of V.C of the Dwelling Form for clarity; this list describes what earth movement includes, even if caused by flood. While

<sup>58</sup> For example, a separate automobile insurance policy would be more appropriate for all-terrain vehicles (ATVs) and golf carts because their use is not limited to servicing the location or assisting those with disabilities. By contrast, this policy would cover farm vehicles not licensed for use on a public road. See NFIP Claims Manual (June 2023) at COVERAGE-19, available at [https://www.fema.gov/sites/default/files/documents/fema\\_nfip-claims-manual\\_062023.pdf](https://www.fema.gov/sites/default/files/documents/fema_nfip-claims-manual_062023.pdf) (last accessed Aug. 28, 2023).

FEMA would retain earthquake, landslide, subsidence, and sinkholes on the list in proposed sections of IV.A.3, other changes are being proposed for modest clarifications. For instance, proposed section IV.A.3.a(5) would not retain the phrase “movement of land that results from accumulation of water in subsurface land area” from section V.C.5 of the Dwelling Form for clarity. In addition, FEMA proposes to add section IV.A.3.a(6) (“Any other movement such as sinking, rising, shifting, expanding or contracting of the earth”) as a further catch all for any variety of geological phenomena not specifically listed in subsections (1)–(5).

In IV.A.3.b, FEMA proposes to provide further specificity that the earth movement coverage exclusion does not include hydrostatic pressures or hydrodynamic forces, buoyancy, and frictional force from floodwater moving along the surface of the ground. These terms are subsumed in the statutory definition of a “flood.”<sup>59</sup> These terms appear in the engineering reports included in claims files. The ability to line up an engineering report with the policy language should help provide policyholders with additional clarity regarding what is and is not excluded.

Proposed section IV.A.4 would exclude coverage for gradual erosion caused by the normal water action that wears an area of land away over time and contains minor clarifying edits for readability. FEMA proposes similar clarifying edits in section IV.A.5, “Other excluded causes of damage.” These clarifying edits include combining sections V.D.1 and V.D.2 of the Dwelling Form into proposed section IV.A.5.a because the listed items relate to ice; excluding in section IV.A.5.c damage from exposure to water of any form other than flood (as detailed in sections V.D.4.b(2), V.D.5, and V.D.6 of the Dwelling Form); and excluding in section IV.A.5.e actions taken by homeowner policyholders or any members of their household that deliberately cause direct physical loss by or from flood (see section V.D.9 of the Dwelling Form). Proposed section IV.A.5.b would remain unchanged from section V.D.3 of the Dwelling Form. In section IV.A.5.d, FEMA proposes to add other related conditions to clarify that design, structural, or mechanical defects; deterioration, rot, or corrosion; or damage from insects and rodents would be excluded as these are all pre-existing conditions at the time of claims adjustment. Homeowner policyholders may not be aware of these conditions

prior to experiencing a loss, but these conditions are generally not attributable to a single flood event and thus would not be covered under the policy.

The Dwelling Form currently excludes coverage for losses that occur because of an alteration to the insured property that significantly increases the risk of flooding at section V.D.10. Proposed section IV.A.6 would clarify that this exclusion covers any homeowner policyholder actions, whether an alteration to the insured property or a more general change, that causes the hazard to increase by any means within the homeowner policyholder’s control or with the homeowner policyholder’s knowledge. FEMA is proposing this revision to streamline the policy by stating in one location rather than the two sections found in the current Dwelling Form (sections V.D.10 and VII.F) that FEMA would not pay for a loss where the homeowner policyholder took action or allowed an action to happen that increased their risk of flooding.

#### b. Flood in Progress

In section IV.B, “Flood in Progress,” FEMA proposes to define what constitutes a flood in progress, and to address concerns where there is a strong moral hazard. This clarity would help ensure that policies are not written for a property while a flood is in progress at the described location. Further, this proposed revision ensures that if a policy is written while a flood is in progress, the exclusion is well-defined to help avoid disputes when the homeowner policyholder attempts to submit a claim. With this proposed revision, FEMA seeks to avoid situations where a homeowner policyholder purchases flood insurance as a means of “buying a claim” while also allowing homeowner policyholders to perceive their risk and take an appropriate action. FEMA proposes to explain in section IV.B.1 that a flood is in progress when (1) there is a near certainty of a flood loss at the described location from a flood control effort such as opening a spillway, breaching a levee, or releasing water from a dam, or (2) there is a flood at the described location. FEMA proposes to explain in section IV.B.2 that if the policy becomes effective in connection with a loan closing, FEMA would not pay for loss caused by a flood in progress at the time of the loan closing. Proposed section IV.B.3 would provide that in all other circumstances, FEMA would not pay for a loss caused by a flood in progress that existed on or before the day the homeowner policyholder submitted the application. While proposed sections

IV.B.2 and IV.B.3 mirror in substance the language in section V.B of the Dwelling Form, the added clarity in proposed section IV.B.1 would help ensure that policies are written and administered consistently.

#### c. Pre-Existing Damage

FEMA proposes in section IV.C to explicitly exclude coverage for pre-existing damage. This section would specify that pre-existing damage includes flood loss or damage that occurred prior to the date of loss, whether direct physical loss or not, and whether paid or unpaid, and damage attributable to any non-flood peril that occurred prior to the date of loss. Under section VII.H.2.e of the Dwelling Form, when an insurance company suspects that damage existed prior to the flood event, it can request evidence that prior flood damage has been repaired. In some instances, the property may have been sold without disclosure of a prior flood loss.<sup>60</sup> In other instances, the insurer may know that a homeowner policyholder had a loss from another peril and was paid for the same items. More explicitly excluding coverage for pre-existing damage would make the exclusion clearer to homeowner policyholders and help prevent disputes over unrepaired flood damage or from unrepaired items from other perils that often arise when property changes owners. It would also better align the policy with traditional insurance concepts and FEMA’s longstanding practice of not paying for pre-existing damage. Lastly, it would reinforce proposed VI.A.3.g(5) (requiring proof of repairs for prior losses to ensure coverage of damages occurring from the current loss). Note that FEMA is proposing not to retain in this section language regarding ICC coverage, as that would be detailed in the ICC Endorsement.

#### 6. Section V: Policy Conditions

Proposed section V would combine provisions from articles VII, “General Conditions,” and VIII, “Policy Nullification, Cancellation, and Non-Renewal,” of the Dwelling Form that specifically apply to how FEMA administers the policy. These provisions represent homeowner policyholder-facing underwriting aspects of the policy.

<sup>59</sup> See NFIA sec. 1370(b)–(c) (42 U.S.C. 4121(b)–(c)).

<sup>60</sup> State laws govern disclosures of prior losses in property transfers and the SFIP cannot change state disclosure laws that apply to prior losses.

#### a. Actions and Conditions That Can Void Your Policy

Proposed section V.A would describe the actions and conditions that can void a policy. Section V.A.1, “NFIP Ineligibility,” would provide scenarios where the policy is void from inception and has no legal force due to underlying ineligibilities. Retaining language from section VIII.B.1.a of the Dwelling Form, proposed section V.A.1.a would provide that the policy is void if the described location is in a community that was not participating in the NFIP at the policy’s inception and did not join or reenter the NFIP during the policy term and before loss occurred. Similarly, proposed section V.A.1.b would retain the substance of section VIII.B.1.b of the Dwelling Form and provide that the policy is void where the described location or other property is otherwise not eligible for coverage under the NFIA or its implementing regulations, for reasons of noncompliance with local floodplain ordinances or otherwise. Subsection A.1.c would provide that the policy is void where any other Federal law prevents coverage of property at the described location. FEMA proposes not to retain the language in sections VIII.B.1.c–e and VIII.B.2 of the Dwelling Form; because these provisions do not relate to coverage, they are better suited to guidance.

Section V.A.2, “Concealment or Fraud,” contains much of the same language in the Dwelling Form, with three primary clarifications. Proposed section V.A.2.a provides that the policy is void and cannot be renewed if the insured or agent, at any time before or after a loss, intentionally concealed or misrepresented any material fact or circumstance, engaged in fraudulent conduct relating to the policy, or knowingly made false statements relating to the policy or any other NFIP insurance at any time. FEMA proposes to add the word “intentionally” to clarify that a homeowner policyholder must intend to conceal or misrepresent in order for the policy to be void; a scrivener’s error would not result in avoidance. FEMA proposes to specify that the fraudulent activity must relate to the policy, because any fraudulent activity beyond the scope of the policy is not a cause for avoidance. FEMA also proposes to specify that any false statements must have been made “knowingly” to ensure that the policy is only voided in situations involving malfeasance on the part of the insured or agent. Like section VIII.A.3 of the Dwelling Form, proposed section V.A.2.b would specify that the policy would be void as of the date the acts

described in subsection A.2.a were committed. Proposed section V.A.2 would not retain the language in section VIII.A.4 of the Dwelling Form regarding applicable Federal laws, consistent with other changes.

#### b. Policy Renewal

Proposed section V.B, “Policy Renewal,” would require that FEMA receive the renewal premium within 30 calendar days of the expiration date of the prior policy; it would also state the FEMA would not renew the policy if Federal law prevents coverage of property at the described location. This section is considerably shorter than the corresponding section in the Dwelling Form (at section VII.E) and conforms to modifications elsewhere in the policy. For instance, this section would no longer contain the policy term or right for review, as those would be addressed in proposed sections I.D and I.F, respectively. Additionally, the Dwelling Form explains the consequences when the insurer fails to mail the renewal notice or makes a mistake, such as by mailing the notice to the incorrect address. There is no analogous provision in other property insurance contracts, and FEMA is proposing to eliminate this language given the rarity of these situations. Lastly, section V.B.2 would reference “Federal law” for brevity, as this would include section 1316 and other relevant provisions of the NFIA, relevant provisions of the Coastal Barrier Resources Act,<sup>61</sup> and any future statutory changes.

#### c. Cancellation of the Policy by You

Proposed section V.C, “Cancellation of the Policy by You,” would provide that the homeowner policyholder may cancel the policy when the homeowner policyholder (1) no longer has an insurable interest in the property, (2) is no longer required to maintain flood insurance pursuant to Federal law or lender requirements, or (3) has a duplicate NFIP policy. It would also provide that if a homeowner policyholder cancels the policy, he or she may be entitled to a full or partial refund of premium for the current policy term. While the NFIP uses over a dozen cancellation reason codes, not all of these are for homeowner policyholder cancellation. FEMA isolated the reasons specific to homeowner policyholder cancellation, found that they fell into the three broad categories outlined just above, and now proposes to highlight those categories in the policy itself. It is FEMA’s position that these changes offer increased clarity

for the homeowner policyholder compared to the language in the Dwelling Form at section VIII.C.

#### d. Reduction and Reformation of Coverage

Proposed section V.D, “Reduction and Reformation of Coverage,” would explain to homeowner policyholders what occurs when the premium FEMA receives is insufficient for the coverage sought, but in a shorter and easier to read format compared to the Dwelling Form (see section VII.D of the Dwelling Form). Proposed section V.D.1 would provide that where the premium is not enough to purchase the requested amount of coverage, FEMA would issue the policy, but only for the amount of coverage that the premium would purchase for a one-year term. This section would substantively mirror section VII.D.2 of the Dwelling Form but would be more readable. Proposed section V.D.2 would provide that FEMA would increase the reduced amount of coverage to the amount originally requested without regard to whether a loss occurred when FEMA bills for the additional premium, or if necessary to calculate the additional premium, requests information (V.D.2.a), and the homeowner policyholder responds to the request for additional premium within 30 calendar days, or responds to the request for additional information within 60 calendar days (V.D.2.b). Proposed section V.D.2.c would provide that a homeowner policyholder’s failure to timely respond may result in a waiting period for additional coverage if a loss has not occurred within the policy term, or the settlement of a claim under the reduced limit if a loss has occurred within the term. Functionally, there is no difference between determining that there is an insufficient premium before loss or after loss, so treating these concepts together should simplify the policy. Altogether, section V.D.2 would condense sections VII.D.3.a and b of the Dwelling Form into one more concise and readable section and would conform to other changes in the policy (e.g., specifying “calendar” days).

#### e. Disaster Conditions

FEMA proposes to add section V.E, “Disaster Conditions,” which would be a new section. This section would incorporate existing practices when a flood reaches such a magnitude that FEMA anticipates logistical challenges with adjusting losses and reasonably expects increased competition for limited contractor services in the disaster-affected area, or where homeowner policyholders may not be in a position to receive and respond to

<sup>61</sup> 16 U.S.C. 3501 *et seq.*

mail regarding the renewal of their flood insurance policy. In these scenarios, FEMA has, as a courtesy to homeowner policyholders, extended both the proof of loss deadline beyond the 60 days stated in the policy and the grace period to renew coverage without experiencing a lapse. (For example, FEMA extended the proof of loss and grace period deadlines for Hurricanes Harvey, Irma, and Maria in 2017 and Hurricane Michael in 2018). FEMA has issued these extensions via bulletin to the WYO companies, and via public communications to policyholders who would otherwise lack awareness of these extensions and the flexibility they bring. In the absence of policy language governing extensions, however, stakeholders have often requested longer proof of loss timeframes for smaller flooding events, or have asked FEMA to continue to extend deadlines indefinitely for even longer periods following major flooding. To provide clarity and uniformity, therefore, proposed section V.E.1 would provide that in the event of a flood associated with a major disaster or emergency declared by the President under the Stafford Act,<sup>62</sup> the FEMA Administrator may, after written notice, extend the timeframes for proof of loss up to 365 calendar days from the date of loss, and the timeframes for policy renewal up to 60 calendar days from the policy's expiration date. Placing an explicit, objective trigger in the policy would allow it to indicate when these "special" provisions might apply to any homeowner policyholder. In addition, establishing clear upper limits for proof of loss and policy renewal extensions would enhance clarity and reduce requests for indefinite extensions. Furthermore, by making the provision discretionary and not mandatory, FEMA seeks to continue to offer flexibility. These flexibilities would allow FEMA to extend one or both deadlines when necessary and choose shorter timeframes when appropriate.

Proposed section V.E.2 would provide new flexibilities that in the event of a flood associated with a declared major disaster or emergency, the Administrator may, after written notice, conditionally waive the requirement in proposed sections VI.A.3 and VI.B.2 that an insured must sign or swear to a proof of loss or an adjuster's report. This would authorize the insurer to accept and make payment on the adjuster's report. This payment based on the adjuster's report is "undisputed" which allows the insurer to accept that a

covered loss took place without any further action needed from the policyholder. The flexibility provided here would not stop the homeowner policyholder from seeking additional payment through a proof of loss but would help ensure payment as quickly and safely as possible to the homeowner policyholder.

Proposed section V.E.3 would provide new flexibilities that in the event of a flood associated with a declared major disaster or emergency, the Administrator may, after written notice, establish special procedures for advance payments to insured(s) in accordance with proposed section VI.C.3. (As discussed below at section III.A.7.c of this preamble, this section would allow the insurer to make an advance payment for up to 5 percent of the Coverage A limit to a homeowner policyholder without putting the mortgage company on the check). Under the current Dwelling Form, a homeowner policyholder with Coverage A receives a check issued to the homeowner policyholder and any secured interest (*i.e.*, a mortgage or second mortgage, etc.) and the homeowner policyholder may have to negotiate with the secured interest holder before the check can be cashed to provide payment to a contractor for repairs. Some secured interest holders may be reluctant to endorse the check until they know the repairs have been made to protect their financial position. Doing so, however, can negatively impact the homeowner policyholder who is then required to secure the contractor with out-of-pocket funds. By allowing for advance payment, homeowner policyholders without contents coverage should be able to secure a contractor without necessarily utilizing out-of-pocket funds while not affecting the mortgage company's ability to file its own claim. FEMA understands the proposed 5 percent advance payment would benefit the homeowner policyholder so they can rebuild more quickly. FEMA believes the proposed 5 percent advance payment is an insurance industry standard and seeks comment from the public specifically on whether or not the 5 percent advance payment is standard.

Finally, proposed section V.E.4 would provide new flexibilities that in the event of a flood associated with a declared major disaster or emergency, the Administrator may, after written notice, settle losses in accordance with any formula established under Federal law that allocates covered damages amongst multiple perils, including flood. This would add flexibility if a declared disaster allows the use of the

COASTAL Formula for settling losses that allocate damages amongst multiple perils.<sup>63</sup>

## 7. Section VI: Procedures and Duties When a Loss Occurs

The Dwelling Form includes various provisions under article VII, "General Conditions." FEMA proposes to combine all provisions relating to how losses are proven and paid (traditionally claims issues) in proposed section VI, "Procedures and Duties When A Loss Occurs." The organization of this section would mirror the sequence that a homeowner policyholder would use the policy following a loss, first addressing what the homeowner policyholder must do, then what insurer options exist, how the claims adjustment process works, what deductible applies, how loss is settled, and how the appraisal process works when required. It is FEMA's position that organizing this section according to the logical progression of the process would aid homeowner policyholders who experience a loss, helping ensure that they understand the policy's terms and conditions as well as the process.

### a. Your Duties After a Loss

In organizing section VI.A, "Your Duties After a Loss," FEMA focused extensively on proof of loss. The proof of loss is an industry standard concept and is the foundation of payment of any claim. In the NFIP, the proof of loss is a crucial customer service tool, ensuring that the flood adjuster takes the time to explain coverage and helps the homeowner policyholder understand how to address situations where the insurance estimate and contractor estimate (or quote) deviate. Absent the proof of loss, an adjuster can submit a report to an examiner and the insurer can make payment without the homeowner policyholder ever understanding what they did or did not get paid for as part of the claim. In proposed section VI.A, FEMA seeks to simplify the language around proof of loss where possible and address what is

<sup>63</sup> Section 1337(b)(1) of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4057(b)(1)), as added by section 100253 of the Consumer Option for an Alternative System to Allocate Losses Act of 2012 (also referred to as the COASTAL Act of 2012) (Pub. L. 112-141, div. F, title II), requires FEMA to "establish by rule a standard formula to determine and allocate wind losses and flood losses for claims involving indeterminate losses." This formula is referred to as the "COASTAL Formula" pursuant to NFIA sec. 1337(a)(2) (42 U.S.C. 4057(a)(2)). Once FEMA adopts a COASTAL Formula in regulation, FEMA may use the formula to oversee the handling of claims involving indeterminate losses and, for floods resulting in a Federal disaster declaration, make claim payments based on the formula. See NFIA sec. 1337(c) (42 U.S.C. 4057(c)).

<sup>62</sup> Public Law 93-288, as amended; 42 U.S.C. 5121 *et seq.*

expected of the homeowner policyholder separately from what options the insurer has (proposed section VI.B). These changes align with other property insurance forms in the marketplace<sup>64</sup> and make clear that certain duties exist for both parties to the insurance transaction.

Proposed section VI.A would provide that if the described location experiences a direct physical loss by or from flood, the homeowner policyholder must comply with all of the duties listed in VI.A.1–7. This would ensure that the homeowner policyholder knows they must comply with these duties, and that substantial compliance would not suffice. Proposed section VI.A.1 outlines the first duty, which is to give prompt notice to the insurer. This would be a change from the Dwelling Form (see section VII.G) and allow for a reasonable form of prompt notice to the insurer when a loss occurs rather than specifically requiring a written notice. The critical element of the notice requirement is timing, not the form the notice takes. This proposed revision provides flexibility to the homeowner policyholder regarding the ways prompt notification can be given and reflects current practice, as some homeowner policyholders provide prompt notice by calling or emailing their insurance agents when a loss occurs. Proposed section VI.A.2 would require that the homeowner policyholder separate the damaged and undamaged property as soon as possible so that it can be examined and take all reasonable measures to protect covered property from any further loss. This section would not retain the phrase “best possible order” found in section VII.G.2 of the Dwelling Form because this language is unnecessary, as FEMA does not deny claims because there was a better possible order available. In addition, the requirement that homeowner policyholders take reasonable measures to protect undamaged property would help avoid scenarios where avoidable damage or intervening causes of loss occur, which could result in denial of coverage. This additional language reinforces the duty to mitigate loss and reduce the potential for intervening causes of loss which generally result in denial of insurance claims.

Proposed section VI.A.3 makes a significant change from the Dwelling Form (see section VII.G.4) regarding timing of submission of the proof of

loss. It would require that within 90 calendar days after the loss, the homeowner policyholder must send FEMA a signed and sworn proof of loss containing the date and time of loss, how the loss occurred, details of any other insurance, changes in title or occupancy of the property during the policy term, names of mortgagees or anyone else with a lien, charge, or claim against the property, a description of all damages and detailed repair estimates (if available), and an inventory of the lost, damaged, or destroyed property. The inventory must show the quantity, description, replacement cost value or actual cash value (whichever is applicable), amount of loss, evidence that prior flood damage has been repaired, any written plans for repair of the property that the homeowner policyholder can reasonably make available, and all funds the homeowner policyholder spends recovering from the loss. The homeowner policyholder must also attach copies of all bills, receipts, invoices, written estimates, and related documents.

This proposed section would increase the timeframe to submit a proof of loss from 60 to 90 days, and, consistent with other provisions in the Homeowner Flood Form, specify that these are calendar days. FEMA has historically provided a 60-day window for providing proof of loss. FEMA recognizes that 60 days, the industry standard,<sup>65</sup> is normally a sufficient timeframe for homeowner policyholders to provide the proof of loss information in a non-disaster scenario. FEMA proposes, however, to surpass the industry standard regarding this timeframe given the nature of the peril involved—flooding—the governmental nature of the NFIP,<sup>66</sup> and the fact that as mentioned previously, FEMA has often provided homeowner policyholders with extensions of the 60-

day window in catastrophic conditions.<sup>67</sup> Flooding, often resulting from severe storms, can require extended evacuation periods. After a flood, securing contractors to determine the full scope of damage to a property can be challenging given the increased demand in impacted areas for these services. Increasing the timeframe to provide proof of loss should assist homeowner policyholders by providing additional time to return to the property after an evacuation and secure a contractor. FEMA anticipates that this increased timeframe would also result in fewer homeowner policyholder requests for additional payment that FEMA currently sees with the 60-day window. In a catastrophic event, homeowner policyholders need to coordinate with contractors to obtain price quotes which can take time given the volume of demand after an event. While the insurance policy would provide payment based on an adjuster's estimate, it is just that—an estimate. An occasion may arise where an estimate is insufficient to cover the cost of repairs that are within the policy's coverage that a contractor's quote would capture. Additionally, there may be an occasion where a contractor's quote may include repairs that are not covered under the policy. For example, a garage door is damaged by flood. The adjuster finds coverage and identifies the scope of the

<sup>67</sup> For example, FEMA extended these deadlines for Hurricane Maria (see e.g., Bulletin W–17057, “Activation of NFIP Catastrophic Event Enhanced Claim Payment Process and Proof of Loss Extension for Hurricane Maria,” (Sept. 28, 2017), found at <https://nfip-services.floodsmart.gov/sites/default/files/w-17057.pdf> (last accessed Aug. 28, 2023)), Hurricane Irma (see e.g., Bulletin W–17040, “Activation of NFIP Catastrophic Event Enhanced Claim Payment Process and Proof of Loss Extension of Hurricane Irma,” (Sept. 17, 2017), found at <https://nfip-services.floodsmart.gov/sites/default/files/w-17040.pdf> (last accessed Aug. 28, 2023)), and the August 2016 floods in Louisiana (see e.g., Bulletin W–16028, “Notice of the Limited Waiver of the Standard Flood Insurance Policy (“SFIP”) to Extend the Time for Sending Proofs of Loss in the States of Louisiana and Mississippi for Claims Related to Severe Winter Storms Commencing on March 7, 2016 through March 19, 2016,” (Apr. 21, 2016), found at <https://nfip-services.floodsmart.gov/sites/default/files/w-16028.pdf> (last accessed Aug. 28, 2023)); Bulletin W–16038, “Notice of the Limited Waiver of the Standard Flood Insurance Policy (“SFIP”) to Extend the Time for Sending Proofs of Loss in the State of Louisiana for Claims Related to Severe Spring Storms Commencing on April 17, 2016 through April 20, 2016,” (Jun. 15, 2016), found at <https://nfip-services.floodsmart.gov/sites/default/files/w-16038.pdf> (last accessed Aug. 28, 2023)); Bulletin W–16067, “Notice of the Limited Waiver of the Standard Flood Insurance Policy (“SFIP”) to Extend the Time for Sending Proofs of Loss in the State of Louisiana for Claims Related to the Mid-Summer Severe Storms Commencing on August 9, 2016 through August 31, 2016,” (Sept. 9, 2016), found at <https://nfip-services.floodsmart.gov/sites/default/files/w-16067.pdf> (last accessed Aug. 28, 2023)), among others.

<sup>64</sup> The changes align with the Insurance Services Office's “HO–3” form, the template behind most standard homeowners insurance policies. See *supra* note 24.

<sup>65</sup> See Nevada Department of Insurance Allstate Homeowner's Form, page 12, Section 1 Conditions 3.g (stating that signed, sworn proof of loss statements must be submitted within 60 days after the loss), found at [http://docs.nv.gov/doi/documents/home\\_policies/AllStateForms/AP783.pdf](http://docs.nv.gov/doi/documents/home_policies/AllStateForms/AP783.pdf) (last accessed Aug. 28, 2023).

<sup>66</sup> As a government program, the NFIP does not have the variety of flexibilities available to the private sector regarding post-loss options. If a policyholder experiences a loss, a private industry insurer can send over their preferred contractors to handle everything for the policyholder after the payment of the deductible. In the NFIP, utilizing treasury funds and other governmental requirements generally require a greater degree of precision and puts an added burden on SFIP policyholders as compared to their general homeowners coverage through private insurance. By providing more time in this proposed revision, FEMA is offering SFIP customers extra time beyond the industry standard to help alleviate this added burden.

covered damage and estimates the value of the covered damage at \$500. The contractor's quote may indicate a \$1,000 price to replace the garage door. The additional \$500 in the contractor's quote may be due to an increase in the price of the unit following the disaster and such cost may be covered. The additional \$500 in the contractor's quote could be for rewiring to conform to local building codes and such a code upgrade would generally not be covered. The proposed additional time would allow homeowner policyholders to obtain contractor services and resolve these questions in advance, improving the efficiency of the process overall.

FEMA proposes to retain in proposed section VI.A.3 the Dwelling Form's existing requirements in section VII.G.4 for documenting the proof of loss with a few minor adjustments. These include proposed VI.A.3.c's requirement that the homeowner policyholder provide details of any other insurance that may cover some or all of the loss, as this would make the insurer aware of the other insurance regardless of the extent of coverage it may provide for the loss. In addition, VI.A.3.f's requirement that the homeowner policyholder provide a description of all damages to the dwelling and other covered buildings with detailed repair estimates would help remind homeowner policyholders of the requirements to prepare their claim for Coverages A and B. While much of the required inventory list remains the same, FEMA highlights a few changes here. First, proposed section VI.A.3.g would require homeowner policyholders to list not only damaged property, but also property that may have been lost or destroyed, as that property may still be eligible for coverage. Second, proposed section VI.A.3.g(3) would add in replacement cost value, as Coverage C would be eligible for replacement cost value loss settlement instead of only actual cash value. Third, proposed section VI.A.3.g(7)'s requirement of information on all funds actually spent recovering from the loss, including copies of all bills, receipts, invoices, written estimates, and related documents, would enhance the insurer's ability to accurately and completely settle the loss.

FEMA proposes minor clarifying edits in proposed sections VI.A.4, VI.A.5, VI.A.6, and VI.A.7. Like section VII.G.5 of the Dwelling Form, proposed section VI.A.4 would continue requiring homeowner policyholders to use their own judgment concerning the amount of loss and justify that amount before signing it. Like section VII.G.6 of the Dwelling Form, proposed section VI.A.5

would clarify that there may be additional parties beyond an adjuster involved in the investigation of a claim. In proposed section VI.A.6, FEMA would add an industry standard provision requiring the homeowner policyholder make the damaged property accessible for inspection, to ensure that the insurer can inspect the damaged property as appropriate for the claims review process. FEMA also proposes conforming changes in section VI.A.7 (section VII.G.7 of the Dwelling Form) to the deadline for submission of proof of loss to 90 calendar days as reflected in proposed section VI.A.3.

#### b. Our Options After a Loss

In proposed section VI.B, "Our Options After a Loss," FEMA seeks to simplify and further clarify the insurer's options. Section VI.B.1. would provide that after a loss and at the insurer's sole discretion, it may require that the homeowner policyholder provide it access to the damaged property, submit to examination under oath upon request and sign the transcript from such examination, and permit the insurer to examine and make copies of all or any portion of any policies of property insurance against loss and the deed establishing ownership of the insured property, and all bills, invoices, receipts, and other records pertaining to the damaged property (or certified copies if originals are lost). Section VI.B.2 would allow the insurer to accept its adjuster's report of the loss in lieu of a proof of loss and require the homeowner policyholder to sign the report, and it would also allow the insurer to require the homeowner policyholder to swear to the report. This section does not mirror its counterpart in the Dwelling Form (at section VII.H) because the section in the Dwelling Form includes several concepts that the Homeowner Flood Form would cover in other sections (*e.g.*, inventory requirements, which the Form would cover in VI.A.g, discussed above). FEMA proposes to add the requirement in VI.B.1.a that the homeowner policyholder provide the insurer access to the damaged property as this would formally enable the inspection of damaged property to better facilitate the claims review process. FEMA's proposed reorganization and restatement of the requirement to provide transactional and other records related to the damaged property in section VI.B.1.c(2) would increase clarity for homeowner policyholders and ensure they understand that insurers can examine and make copies of these records. The language in proposed VI.B.2 is currently in the

Dwelling Form (at section VII.G.9), but FEMA proposes not to retain the language describing what the adjuster's report includes (information about the loss and damages sustained) because this language is unnecessary. This section would also not retain the option currently in section VII.H.3.a of the Dwelling Form for insurers to make repairs directly, as it is unnecessary. This repair option has been a part of the Dwelling Form for several years, yet FEMA data show that insurers have not invoked this option.

#### c. Loss Payment

Proposed section VI.C, "Loss Payment," would retain much of the current Dwelling Form's language at VII.J with minor changes. In section VI.C.1, "Adjustment of Claims," paragraph a. would state that the insurer has not authorized the adjuster to approve or disapprove any claim. This language would eliminate the redundancy currently in the Dwelling Form and clarify that the adjuster is not authorized to approve or disapprove any claim. Paragraph VI.C.1.b would retain the language in section VII.J.1 of the Dwelling Form except for the clarification that the 60 and 90-day timeframes are calendar days, consistent with other proposed changes. Proposed section VI.C.2 would similarly retain the language in the Dwelling Form at section VII.J.2, except it would increase the timeframe a homeowner policyholder has to file an amended proof of loss from 60 to 90 calendar days from the date of loss, and would add references to the appeal, appraisal, and litigation sections of the policy to make clear to homeowner policyholders the additional rights available to them.

FEMA proposes to add a section on "Advance Payments" at proposed VI.C.3. Section VI.C.3.a would provide that the insurer may provide the homeowner policyholder with an advance payment prior to the completion of the claim, and the homeowner policyholder may request an advance payment after providing the notice of loss. It would further provide that these payments may include amounts totaling no more than 5 percent of the Coverage A limit to an insured without regard to proposed section VII.F ("Mortgage Clause," discussed below). Section VI.C.3.b would provide that the insurer may approve or reject the request for advance payment, and that such approval or rejection does not affect the final adjustment of the claim and does not change the homeowner policyholder's duties or insurer's options. Section VI.C.3.c would state that if the insurer provides an advance



payment that exceeds the covered loss, the insurer would send written notice of the overpayment, and the homeowner policyholder must repay the excess amount or dispute the validity of the overpayment within 30 calendar days. It would further provide that failure to repay any overpayment may result in a debt collection by the Federal Government. Current guidance requires the insurer to contact the homeowner policyholder with a description of the remedies available to the NFIP upon failure to repay the amount due by the deadline.<sup>68</sup> Providing this information in the policy would ensure the homeowner policyholder is aware of this option in advance. FEMA proposes this section to increase flexibility for insurers and transparency for the homeowner policyholder, as giving insurers the option to issue advance payments comports with industry practice. The language in VI.C.3.a permitting up to 5 percent of the Coverage A limit of liability as an advance payment would allow the insurer to issue a de minimis amount of payment to an insured without having to include a mortgagee on the check. Lastly, proposed section VI.C.3.c explains that an advance payment cannot provide for a beneficial loss as this is an indemnity policy. Indemnity insurance is a contractual agreement in which the insurer guarantees compensation for actual losses or damages sustained and thus, the homeowner policyholder must repay any excess amount issued.

#### d. Deductible

The Dwelling Form addresses deductibles in a standalone article (“VI. Deductibles”). For the Homeowner Flood Form, however, FEMA proposes to place the deductible section within section VI, “Procedures and Duties When a Loss Occurs,” as treating it within the loss context is more logical. FEMA also proposes to present the deductible as a single deductible instead of several deductibles for simplicity. Proposed section VI.D.1 would retain language in the Dwelling Form at VI.A, providing that when a loss is covered under the policy, the insured would pay only that part of the loss that exceeds the homeowner policyholder’s deductible amount (subject to the applicable coverage limit), and that the deductible amount is shown on the declarations page. This section would not retain the additional language in the Dwelling Form at VI.A regarding buildings under construction, as the Homeowner Flood Form would treat

buildings under construction in a separate endorsement. Proposed section VI.D.2 would provide that in each loss from flood, a single deductible applies to losses to the dwelling and all other insured property. Proposed section VI.D.3 would clarify that the deductible does not apply to any loss avoidance measures specified in proposed sections III.D.2 or III.D.3. Although offering separate deductibles for building and personal property coverage are long-time conditions of the flood insurance policy,<sup>69</sup> it is FEMA’s position that offering a single deductible for property and contents aligns with industry standards and customer expectations. A single deductible is also permissible under the NFIP’s statutory authority, as the NFIA sets the minimum deductible for buildings,<sup>70</sup> but no minimum deductible for personal property. Most claims for personal property loss also contain a building loss claim because personal property must be inside a building for coverage and it is unlikely that personal property would be damaged without corresponding building losses. The Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12)<sup>71</sup> requires policyholders be paid only for damage to property covered under their policy and a single deductible applying to losses from the dwelling and all other property insured by the policy comports with this. In proposed section VI.D.3, FEMA retains the reference to loss avoidance measures, but does not retain references

<sup>69</sup> The National Flood Insurance Act authorizes FEMA to deliver the NFIP in one of two ways. The first (Part A), envisions an industry program supported by the Federal Government whereby FEMA serves as a backstop for a pool of private insurers which sell a flood insurance policy containing terms provided by FEMA. The second (Part B, under which the NFIP currently operates), envisions a Government program with industry support whereby FEMA leads a program where private insurers agree to sell and service a Federal flood insurance policy. When the NFIP operated under Part A, the Department of Housing and Urban Development (HUD) set certain flood insurance terms and conditions by regulation that FEMA continued to utilize even after the switch to operating under Part B. See generally 24 CFR 1911(f)(3) (1970): “The policy contains a deductible clause. Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of this deductible is either \$100 for each type of loss (that is, \$100 on the structure and \$100 on the contents) or 2 percent of the amount of insurance applicable to the type of loss, whichever is greater;” and 44 CFR 61.5(d)(1980): “Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) For structural losses, \$200, and (2) for contents losses, \$200.”

<sup>70</sup> 42 U.S.C. 4019(b).

<sup>71</sup> Public Law 112–141, 126 Stat. 916 (2012).

to condominium loss assessments or Increased Cost of Compliance. As mentioned previously, the Homeowner Flood Form would not cover condominium units, and would include ICC coverage through an endorsement.

#### e. Loss Settlement

FEMA proposes in section VI.E, “Loss Settlement,” to simplify the provisions regarding loss settlement compared to the Dwelling Form’s section on the same (see section VII.R). This section would make it clear that replacement cost value—the method of valuation using the amount that it would cost to replace an asset—rather than actual cash value, would be the default loss settlement. (As noted previously, a homeowner policyholder seeking coverage at actual cash value may do so by endorsement.) Section VI.E.1 would explicitly state that the policy provides both replacement cost value and actual cash value as possible methods of settling losses based on whether property is insured to value. (1) Section VI.E.1.a would apply replacement cost value to the dwelling, if at the time of loss, the coverage limit that applies to the dwelling is 80 percent or more of full replacement cost immediately before the loss or is the maximum coverage limit available under the NFIP. It would also apply replacement cost value to claims arising under Coverage B or C of the policy. Extending replacement cost value loss settlement beyond Coverage A to Coverage B and C aligns the Form with customer expectations and comports with other proposed changes for consistency across coverages. (2) Section VI.E.1.b would apply actual cash value if the dwelling is not eligible for replacement cost value because it does not meet the conditions of VI.E.1.a, (insured to value) or if actual cash value is specified in an endorsement (allowing homeowner policyholders to elect actual cash value loss settlement at the time of policy inception, with an appropriately adjusted premium requirement reflecting the lowered expected loss).<sup>72</sup> Proposed section VI.E.1 would not retain special loss settlement, as it is only applicable to

<sup>72</sup> Using replacement cost value allows FEMA to pay a policyholder to replace what he or she had at the time of loss with new like and kind quality. Actual cash value allows FEMA to pay a policyholder to replace what he or she had at the time of loss while considering the quality of the item and applying depreciation. For example, if a floor is damaged by a flood, under replacement cost value, the policyholder would receive payment for the type of flooring at the same quality at current prices. Under actual cash value, the policyholder would receive payment for the type of flooring at the same quality less depreciation (wear and tear, etc.), resulting in a reduced payment.

<sup>68</sup> See Claims Manual at 217.

certain mobile homes (which would not be covered under the Form).

Proposed section VI.E.2, “Replacement Cost Value Settlement,” would provide that if the loss is subject to replacement cost value under VI.E.1.a, the insurer would pay to repair or replace the damaged dwelling or other buildings at the described location or covered personal property, but not more than the lesser of (1) the coverage limit applicable to the loss as shown on the declarations page; (2) the replacement cost of the damaged part of the dwelling using materials of like kind and quality and for like use; or (3) the amount necessary to repair or replace the damaged part of the dwelling for like use. Proposed section VI.E.2 would also provide that where the loss is subject to replacement cost value and the dwelling is rebuilt at a new location, the insurer would pay only the cost that would have been incurred if the dwelling had been rebuilt at its former location. Proposed section VI.E.3, “Actual Cash Value,” would provide that if actual cash value loss settlement applies, the insurer would pay the lesser of the actual cash value of the covered property, or the policy limits stated on the declarations page. Compared to the Dwelling Form, these sections contain conforming edits (such as not retaining the distinction between primary and nonprimary residences), and nonsubstantive edits for readability. These sections would also not retain the special situations listed in the Dwelling Form where only actual cash value applies, consistent with other proposed changes.

FEMA proposes a new section VI.E.4, “Flood Mitigation Expenses,” to give customers and those who have suffered loss additional options to receive payment for modest mitigation efforts.<sup>73</sup> Section VI.E.4.a would provide that the insurer would reimburse for post-loss expenses that mitigate against future flood events as long as post-loss expenses do not exceed the policy limits. Section VI.E.4.b would allow the homeowner policyholder to choose to replace any damage under Coverage A or B with Flood Damage Resistant Materials; after completing installation of these materials, the homeowner policyholder may request reimbursement. Section VI.E.4.c would allow the homeowner policyholder to choose to elevate his or her machinery and equipment above a basement or enclosure. Such elevated machinery or equipment must be elevated to a height

<sup>73</sup> Any payment for mitigation efforts must be within statutory limits and within the context of repairs of damaged items where applicable.

reasonably expected to avoid future direct physical loss by or from flood. After elevating machinery and equipment, the homeowner policyholder may request reimbursement. The NFIP is not strictly an insurance program, but rather a program that combines studying flood risk, mapping it, creating national minimum floodplain management standards, and transferring flood risk.<sup>74</sup> Under these revisions, FEMA would not only pay to repair damaged property to the status quo ante, it would pay for the additional higher costs of flood damage resistant materials or additional labor to move machinery and equipment. In the same way that many insurers currently take efforts to reduce the likelihood or size of future claim payments pre-loss,<sup>75</sup> these revisions would allow FEMA to pay for similar actions, just after the loss. Ultimately, the coverage is there to help the homeowner policyholder recover; FEMA anticipates that the premiums tied to the coverage choices would signal the underlying risk and promote mitigation efforts.

Lastly, proposed section VI.E.5 would provide that the Form is not a valued policy and would explain that a valued policy is a policy in which the payable amount in the event of a total loss is agreed upon by the insured and insurer. This reference puts the homeowner policyholder on notice that, in the event of a total loss, the homeowner policyholder would not automatically receive the policy limits. Although the Dwelling Form also states that it is not a valued policy, it contains this statement in the Definitions section. FEMA proposes to place this in the Form’s Loss Settlement section (1) because this is the only location where it uses the term, and (2) to acknowledge the frequency with which insurers cite to the term in denial letters, so that homeowner policyholders would better understand the policy’s loss parameters.

<sup>74</sup> See 42 U.S.C. 4001 *et seq* generally. Note that 42 U.S.C. 4001 addresses the intent of Congress to create a program that is not strictly a flood insurance program; 42 U.S.C. 4014(a) authorizes the agency to conduct studies and investigation for premium rate estimation; 42 U.S.C. 4101b authorizes the agency to map flood risk; 42 U.S.C. 4102 authorizes the agency to conduct studies and investigations for land management, floodplain management, and zoning; 42 U.S.C. 4122 authorizes the agency to study perils other than flood; and 42 U.S.C. 4127(c) authorizes the agency to utilize appropriations for studies.

<sup>75</sup> *E.g.*, many insurers offer defensive driving discounts for automobile policies, premium credits if a policyholder installs a security system in his or her home, a reduction in premium for a commercial liability policy if the business has sprinkler systems installed throughout, etc. In essence, these efforts “pay” for actions pre-loss through reductions in premium collected.

#### f. Appraisal

In section VI.F, “Appraisal,” FEMA proposes to revise provisions regarding appraisal to more closely mirror the NFIP’s guidance issued by bulletin,<sup>76</sup> as appraisal carries a different meaning for the NFIP than it does for property insurance under some state laws.<sup>77</sup> Under section VI.F, if the homeowner policyholder and the insurer fail to agree on the replacement cost value, or if applicable, actual cash value, and are thus unable to settle the amount of loss, either party may demand an appraisal of the loss. Section VI.F.1 outlines the conditions before a homeowner policyholder can request an appraisal. Before requesting an appraisal, the homeowner policyholder must agree with the insurer on a list of damaged items to be appraised (VI.F.1.a) and must have complied with proof of loss requirements (VI.F.1.b). (If the homeowner policyholder is uncertain about their loss and has not finalized a proof of loss claim, the appraisal process is not appropriate). Section VI.F.1.c would provide that appraisal is only available when the dispute involves the price to be paid for the covered property. Other disputes, such as disputes regarding coverage or causation, or the extent of the loss, would not be able to be resolved through the appraisal process. Section VI.F.2, “Appraisal Process,” retains the language from section VII.M of the Dwelling Form with minor conforming changes regarding actual cash value and replacement cost value, and clarifying that the timeframes are in calendar days, consistent with other proposed changes in the form. In proposed section VI.F.3, FEMA seeks to more closely mirror the guidance set out by previous bulletins to confirm that appraisals can only be used when it would result in complete resolution of the entire claim and

<sup>76</sup> See Bulletin W-13029, “Proper Invocation and Usage of the Appraisal Clause Provisions in the Standard Flood Insurance Policy” (May 15, 2013), found at <https://nfipservices.floodsmart.gov/sites/default/files/w-13029.pdf> (last accessed Aug. 28, 2023).

<sup>77</sup> In traditional claims handling, one first addresses eligibility (*i.e.*, is there a valid policy, insurable interest, etc.), then coverage (*i.e.*, is there a loss caused by flood?), then the scope of the loss (*i.e.*, how much damage did floodwater cause?), then finally pricing (*i.e.*, the value of the loss items). For the NFIP, appraisal only comes into play when there is a dispute regarding pricing (*i.e.*, the insurer and policyholder agree on eligibility, coverage, and scope, just not on price). Many states, by contrast, use appraisal in a variety of other ways, such as determining causation (especially when there are multiple perils) or other aspects of the claim. Because each state has specific insurance laws that govern in the absence of a Federal law on point, appraisal often serves as a “catch-all” for a range of dispute resolution programs that exist for insurance which vary from state-to-state.

cannot be used to resolve only part of the claim or to determine the value of some items and not others.

#### 8. Section VII: General Conditions

Proposed section VII, “General Conditions,” would contain items of general applicability to the policy. While article VII of the Dwelling Form contains most of these provisions, the Homeowner Flood Form would reorganize them alphabetically to make it easier for the policyholder to find relevant information. It would also add three new provisions (“Death,” “Headings and Captions,” and “Your Options After Our Denial”) discussed in further detail below.

In proposed section VII.A, “Abandonment,” FEMA proposes to add the word “unilaterally” so that the provision would read that the policyholder may not unilaterally abandon to the insurer, damaged or undamaged property insured under the policy. This is to ensure an agreement for salvage, as the policyholder cannot invoke salvage for the insurer. Proposed section VII.B, “Amendments, Waivers, and Assignment,” would break out the first two sentences of section VII.C of the Dwelling Form into separate clauses for readability, and would change the reference to “Federal Insurance Administrator” to “Administrator” to conform with the policy’s proposed terminology. Although the current Dwelling Form provides conditions under which the policyholder may assign the policy, proposed section VII.B.3 would prohibit the assignment of the policy or claim to any other party in order to avoid claims-related issues in states that allow assignment of benefits.<sup>78</sup> Because the increased choice and flexibility of the Homeowner Flood Form allows homeowner policyholders to tailor it to their needs, it is FEMA’s position that it would not be necessary or desirable for a homeowner policyholder to assign the policy to another party.<sup>79</sup> This is because the policy, as tailored by the original homeowner policyholder, would not

<sup>78</sup> FEMA notes that while the Agency does permit assignment of ICC benefits to a community in the context of grants, the extent to which the FEMA will continue to permit assignment of ICC benefits would be addressed in the ICC Endorsement.

<sup>79</sup> For instance, a homeowner policyholder may want actual cash value while an assignee might want replacement cost value coverage, a homeowner policyholder may want additional living expenses while an assignee might not, or a policyholder may not want to cover other buildings under Coverage B, while an assignee might want to cover one or more. In addition, to the extent that FEMA permits different values for sublimits (*e.g.*, loss avoidance, etc.), this is another choice that may differ between homeowner policyholders and assignees.

necessarily provide adequate insurance coverage for the assignee. Eliminating the option to assign should result in more fulsome discussions between agents and homeowner policyholders regarding available options and would allow each homeowner policyholder to choose the options that are right for them, rather than having to accept a policy tailored to another individual’s choices.

Proposed section VII.C, “Death,” would be a new provision and would provide that in the event of the homeowner policyholder’s death during the policy term, the coverage under the policy would continue automatically for any other insured(s). If no other insured exists, the policy would insure the administrator, executor, or other legal representative of the homeowner policyholder’s estate as previously determined by the homeowner policyholder or the intestacy laws of the state where the described location is located, but only for the dwelling, building(s), and personal property of the deceased at the time of death. Issues involving the death of a homeowner policyholder arise with frequency. These can include situations where insurers deny claims by invoking the assignment clause, questions arise over whether the spouse was a resident of the same household, or more simply, remaining family who are still grieving the loss become frustrated with the insurance process. Addressing this scenario in the policy would align it with industry practice, as homeowners’ policies include a death clause, and would reduce complexity for the remaining insured(s) and/or family of the deceased.

Proposed section VII.D, “Duplicate Policies Not Allowed,” would provide that FEMA would not insure personal property at the described location under more than one NFIP policy. It would further provide that if there is more than one NFIP policy for buildings at the described location, FEMA would apply the NFIP rules concerning duplicate policies and cancel or nullify one of the policies, whichever is applicable, which may result in a refund. Compared to the Dwelling Form (*see* sections I.F and VIII.D.3), the proposed language here contains updates to capture the ability to have other insurance from a private carrier (but not multiple NFIP policies), to reflect 44 CFR 62.5(e), “Cancellation or Nullification of Duplicate NFIP Policies,” as well as other minor and conforming updates for clarity and readability.

Proposed section VII.E, “Headings and Captions,” would be a new provision and would provide that the

headings and captions used in the policy are for convenience of reference only and shall not affect or control the meaning or interpretation of any of the terms, conditions, or provisions of the policy. FEMA proposes this provision for clarity and to prevent dependence on meta-textual information.

In sections VII.F, “Mortgage Clause,” VII.G, “No Benefit to Bailee,” VII.H, “Other Insurance,” and VII.I, “Pair and Set Clause,” FEMA proposes to retain the language from the Dwelling Form with minor edits. Proposed section VII.F, “Mortgage Clause,” would retain the language in the Dwelling Form at VII.N and make minor conforming and clarifying changes. For example, FEMA proposes conforming edits to proposed VII.F.1 to describe coverages of buildings, and edits to proposed VII.F.4 to extend to mortgagees the same right to access claim files as that available to the named insured as they both have equity in the property and both are already entitled to receive loss payment. Proposed section VII.G., “No Benefit to Bailee,” would retain the language from the Dwelling Form at section VII.I as this language is industry standard, with minor grammatical edits. FEMA proposes minor conforming edits to proposed section VII.H, “Other Insurance,” (such as updating cross references and not retaining the language in the Dwelling Form at section VII.B.2 regarding insurance for condominium associations, as the Homeowner Flood Form would only cover homeowners). Proposed section VII.I, “Pair and Set Clause,” would include language from the Dwelling Form at section VII.A with grammatical changes, except that it would not retain the language regarding depreciation as the loss settlement provision would be at replacement cost value, not actual cash value.

Proposed section VII.J, “Salvage,” would retain the language from section VII.L of the Dwelling Form at proposed VII.J.2, but would include a new provision at VII.J.1 stating that after providing written notice, the insured may take all or any part of the damaged property at the value that the parties agree upon or its appraised value. (This provision is currently in the Dwelling Form at VII.H.3.b, “Our Options After A Loss” [proposed VI.B of the Homeowner Flood Form], and FEMA proposes to include this language in proposed section VII.J instead because it relates to salvage).

In proposed section VII.K, “Subrogation,” FEMA proposes to rewrite the provision on subrogation because the language in the Dwelling Form at VII.P has been a source of

confusion to homeowner policyholders. Section VII.K would define “subrogation” upfront to mean that the homeowner policyholder’s right to recover for a loss that was partly or totally caused by someone else is automatically transferred to the insurer, to the extent the insurer has paid for the loss. It would state that the insurer may require the homeowner policyholder to acknowledge the transfer in writing. The provision would continue by explaining the subrogation process in more detail, providing that whenever the insurer pays for a loss under the policy, the insurer is subrogated to the homeowner policyholder’s right to recover for that loss from any other person. After the loss, the homeowner policyholder must deliver all related papers to the insurer, must cooperate with the insurer, and may not interfere with or do anything that would prevent the insurer’s right to recover this money. If the insurer pays for a loss under this policy and the homeowner policyholder: (1) makes a claim against any person who caused the loss; and (2) recovers any money from that person, the homeowner policyholder must return the insurer’s payment before keeping the recovered funds, without regard to any non-covered losses occurring at the described location.

Finally, FEMA proposes a new section VII.L, “Your Options After Our Denial,” to place the options that a homeowner policyholder has after denial in a single location within the General Conditions section. Proposed section VII.L.1, “Request Additional Payment,” would provide that the homeowner policyholder may request additional payment and amend the initial proof of loss, and must submit this request of amended proof of loss as set forth in proposed VI.A. It would further provide that a denial letter does not extend the deadline in proposed VI.A.3 to submit a proof of loss. This section would reaffirm to homeowner policyholders that there are additional administrative options through which they can come to a resolution with the insurer on a claim. Giving homeowner policyholders options to work with insurers in order to reach a satisfactory agreement aligns with industry practice and should result in fewer appeals or lawsuits. Proposed section VII.L.2, “Appeal,” would provide that if the insurer denies a claim, in whole or in part, the insurer would send the homeowner policyholder a denial letter. If the homeowner policyholder wishes to appeal the denial, he or she must send an appeal letter explaining his or her position and a copy of the denial

letter to FEMA within 60 calendar days of the date of the insurer’s letter. It would further provide that filing an appeal to FEMA does not limit or affect the homeowner policyholder’s ability to file suit, or to seek an additional payment or file an amended proof of loss with the insurer. Proposed section VII.L.2 incorporates requirements from the Flood Insurance Reform Act of 2004<sup>80</sup> on the appeals process and other conforming changes (*i.e.*, specifying “calendar” days). Proposed section VII.L.3, “File a Lawsuit Against Us,” would retain the language currently in the Dwelling Form at VII.F, “Suit Against Us,” with minor grammatical changes.

Finally, in the signature section, FEMA proposes to update the signee from “Administrator, Federal Insurance Administration,” to “Federal Insurance Administrator, a position set in statute.”<sup>81</sup>

#### *D. Appendix A(101): Increased Cost of Compliance Coverage Endorsement*

As mentioned above, in addition to the Homeowner Flood Form, FEMA also proposes to offer five endorsements to expand or exclude coverage for various risks. The first of these endorsements is for Increased Cost of Compliance (ICC) coverage. Under section III.D of the Dwelling Form, when an insured building sustains a flood loss and the community declares the building substantially or repetitively damaged, ICC coverage will pay up to \$30,000 for the cost to elevate, demolish, or relocate the building. FEMA proposes to offer this additional coverage for the cost to comply with State or community floodplain management laws or ordinances after a direct loss from flood not within the Homeowner Flood Form itself, but as an endorsement to the new Form.

The ICC Endorsement would modify the Homeowner Flood Form in six locations. First, it would add to section II of the Form definitions for “Community Official” and “Compliance Activities.” “Community Official” would mean the non-Federal official enforcing floodplain management ordinances that meet or exceed the minimum standards of the NFIP on a damaged building. “Compliance Activities” would mean legally required mitigation activities approved by the Administrator that reduce or remove the risk of future flood damage to a building at the described location. Second, it would add to section III, “What We Cover,” a new section E, “Increased

Cost of Compliance.” Section E would provide that FEMA would pay up to the ICC limit for the cost of compliance activities actually incurred when required by a community official. It would specify that use of this coverage is at the homeowner policyholder’s option, but the combined payments from FEMA under Coverage A, Coverage B, and Coverage E may not exceed the maximum amount of coverage permitted by the NFIA. It would also require that 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. It would also explicitly state that the Homeowner Flood Form, as modified by the ICC Endorsement, would not cover (1) anything already excluded anywhere in the policy, (2) costs of compliance activities for either flood loss pre-dating the current loss, or for additions or improvements to the dwelling made after the loss occurred, and (3) any standard that does not meet the minimum requirements of the NFIP. Third, the ICC Endorsement would add to section IV, “Exclusions,” a sentence to paragraph IV.A.2. to specify that the economic loss exclusion would not apply to any eligible activities described in added Coverage E. Fourth, it would amend section V, “Policy Conditions,” by adding to paragraph E.1 that in the event of a flood associated with a Presidentially-declared disaster or emergency, the Administrator may extend the timeframe for requesting ICC for a period not to exceed 6 years from the date of loss. Fifth, it would amend section VI, “Procedures and Duties When A Loss Occurs,” by expanding paragraph D.3 to specify that the deductible would not apply to ICC coverage, and adding to paragraph E, “Loss Settlement,” a sixth subparagraph to specify that FEMA would pay a homeowner policyholder for eligible ICC costs when (s)he has completed his or her compliance activities as soon as reasonably possible after the loss, not to exceed 2 years. Finally, the ICC Endorsement would modify section VII, “General Conditions,” to provide an exception to the prohibition against assigning the policy in paragraph B.3 to allow a homeowner policyholder to assign a claim under Coverage E to a state or local government or nonprofit organization to apply toward the non-Federal cost share of a Federal grant.

FEMA proposes offering ICC coverage as an endorsement to the new Form rather than providing it within the Form (as the Dwelling Form does) to streamline its implementation. Its

<sup>80</sup> Flood Insurance Reform Act of 2004, Public Law 108–264 (2004).

<sup>81</sup> 42 U.S.C. 4129

placement within the text of the current Dwelling Form has created transactional difficulties as ICC involves more stakeholders than the rest of the insurance contract. While the Dwelling Form generally involves just the policyholder and the WYO, ICC involves the homeowner policyholder, WYO, and local officials. Moreover, while the timelines for processing claims under Coverages A, B, and C occur relatively quickly under current practices, the timelines for processing ICC claims can extend for years. This is largely because homeowner policyholders must receive a letter from the relevant community official, permits, claims for partial and complete payments, certificates of occupancy, etc. Because ICC is a different coverage with a different process, offering it as an endorsement would help create a break between the two tracks and enable the NFIP to more easily monitor and analyze information concerning ICC coverage. For any homeowner policyholder who could receive ICC benefits, FEMA would automatically add the ICC Endorsement to the policy. (This endorsement is the only one out of the five proposed endorsements that would be “mandatory” in this respect).<sup>82</sup> In almost every possible situation for the Homeowner Flood Form, the homeowner policyholder will have ICC coverage but FEMA is still proposing that ICC coverage be available through an endorsement to allow for more flexibility in future flood policy form revisions.

#### *E. Appendix A(102): Actual Cash Value Loss Settlement Endorsement*

The Dwelling Form uses actual cash value rather than replacement cost value as the general default loss settlement.<sup>83</sup> Most property owners, however, intend to insure buildings for replacement cost or up to the statutory limit of \$250,000 for a single-family building in order to come as close as possible to being made whole. It is for this reason that FEMA proposes to offer replacement cost value as the Homeowner Flood Form’s default loss settlement. Nevertheless, FEMA proposes to offer homeowner

policyholders the choice of insuring their building for actual cash value for a reduced premium.

The Actual Cash Value Loss Settlement Endorsement would modify the Homeowner Flood Form to provide actual cash value as the only available valuation for settling covered losses. It would amend subparagraph E.1 (“Loss Settlement”) in section VI to provide that the policy offers actual cash value loss settlement, and remove from the Homeowner Flood Form subparagraph E.2, “Replacement Cost Value Loss Settlement.”

#### *F. Appendix A(103): Temporary Housing Expense Endorsement*

The Dwelling Form expressly excludes coverage for additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason. (See section V.A.5). The insurance industry, however, generally offers coverage for additional living expenses. Accordingly, FEMA proposes to offer homeowner policyholders the option of purchasing additional coverage to receive compensation in the event they are displaced from their insured property due to flood while their home is undergoing repair. This optional coverage would align with the NFIA’s directive to provide coverage “against loss resulting from physical damage to or loss of real property or personal property,” 42 U.S.C. 4011(a), because it would protect homeowner policyholders from certain economic harms directly resulting from physical damage to their home. Making this optional coverage available would also decrease the need for post-disaster housing assistance through FEMA’s Individuals and Households Program.

The Temporary Housing Expense Endorsement would cover temporary housing expenses actually incurred by homeowner policyholders up to the coverage sublimit for an additional premium when the dwelling is uninhabitable or the homeowner policyholder is ordered to evacuate.<sup>84</sup> The endorsement would modify Homeowner Flood Form section III, paragraph A.4.a to state that the policy does not cover loss of use of the described location while the dwelling is inaccessible, being repaired, or is uninhabitable for any reason except as provided in III.D.4 as modified by endorsement. The endorsement would also modify section III by redesignating

paragraph D.4 as D.5, and adding a new subparagraph D.4, “Temporary Housing Expense.” This subparagraph would provide two scenarios where FEMA would cover temporary housing expenses actually incurred by the homeowner policyholder up to the coverage sublimit for an additional premium received. First, FEMA would provide coverage when the dwelling at the described location is uninhabitable due to direct physical loss by or from flood. Payment in this scenario would be for the shortest amount of time required to repair or replace the damage or, if the homeowner policyholder permanently relocates, the shortest time required for his or her household to settle elsewhere. Second, FEMA would provide coverage when a legally authorized official has issued an evacuation or civil order for the community in which the dwelling is located calling for measures to preserve life and property from the peril of flood. Payment in this scenario would be for the shortest time period covered by the order. This subparagraph would also provide that the time period for temporary housing expense coverage is not limited by the expiration of the policy term specified in I.D, but in any case, would not exceed 24 consecutive months from the date of the covered flood loss.

#### *G. Appendix A(104): Basement Coverage Endorsement Approaches*

The current Dwelling Form restricts coverage in a basement. Under the Dwelling Form, FEMA limits basement coverage to drywall for walls and ceilings and the cost to nail it, unfinished and unfloated and not taped, to the framing (section III.A.8.a(3)); nonflammable insulation (section III.A.8.a(10)); foundation elements; stairways; and certain kinds of machinery and equipment. In addition, the Dwelling Form limits personal property coverage in a basement to portable or window type air conditioning units, clothes washers and dryers, and non-walk-in food freezers and food in any freezer as long as these are installed in their functioning locations and, if necessary for operation, connected to a power source (section III.B.3).

As FEMA describes above in sections III.A.3.a and III.A.3.c of this preamble, FEMA includes in the proposed Homeowner Flood Form limited, simplified coverage for basements. FEMA recognizes, however, that homeowners may value their basements, and contents within, more than the amount covered by the policy. FEMA has offered this restrictive coverage for

<sup>82</sup> 42 U.S.C. 4011(b).

<sup>83</sup> See section VII.R.1.c. The Dwelling Form uses actual cash value as the default in the following contexts: when the dwelling is underinsured (coverage purchased is <80% of replacement cost value and less than the maximum amount available under the NFIP); two-to-four family dwellings; units not used exclusively as single-family dwellings; detached garages; personal property; appliances, carpets, carpet pads; outdoor awnings, outdoor antennas/aerials, or other outdoor equipment; post-loss abandoned property that remains at the described location; and any residence that is not a principal residence. Art. VII.R.4.

<sup>84</sup> This endorsement would not cover expenses beyond those directly related to an inhabitable dwelling, such as tolls for an increased commute or childcare costs.

four decades and the proposed new Homeowner Flood Form would not change that coverage absent an endorsement. FEMA believes the limited basement coverage creates challenges in the flood insurance sales context for homeowner policyholders who want more coverage than the current Dwelling Form allows and in the recovery context for homeowner policyholders who need it to more fully recover from a flood event.

FEMA further believes that expanded basement coverage would not significantly impact the financial soundness of the NFIP. Basements are not typical in many of the areas that experience a higher frequency of hurricanes and catastrophic flooding, *e.g.*, Florida and Louisiana. In its efforts to develop this coverage, FEMA undertook an analysis of the impact of expanded basement coverage on the financial soundness of the NFIP. Using Superstorm Sandy (2012) as a proxy for catastrophic flooding in an area with a higher incidence of basements, FEMA determined that it would have paid an additional 6 percent in loss payments (over \$500,000,000 in expenses) if every claim involving a basement opted for expanded coverage. FEMA notes that it would have brought in additional premium to offset this amount, though it had no means to determine the specific amounts of premium across all policies. The relatively low percentage for the overall cost reflects that NFIP coverage already pays for multiple high-cost items typically located in basements (*e.g.*, HVAC, water heaters, etc.). While a low percentage, there is a corresponding benefit to policyholders who would no longer have to make up that difference as they recovered from the flood event. FEMA believes that offering better coverage may attract policyholders in other regions of the country that do not typically face catastrophic hurricane risk but where basements are more prevalent; however FEMA seeks comment on whether offering additional basement coverage would attract policyholders.

Given these factors, FEMA considered three approaches to basement coverage: (1) the current approach of retaining the current restricted coverage, with a focus on training agents selling flood insurance to further discuss what constitutes a basement under the Homeowner Flood Form and the restrictions on coverage at the point of sale to better inform homeowner policyholders and those seeking to purchase new homeowner flood insurance of the coverage restrictions; (2) FEMA's preferred approach of offering an endorsement to the proposed

Homeowner Flood Form that would allow homeowner policyholders to remove the restrictions currently on basement coverage for an additional premium ("Basement Coverage Endorsement"); and (3) a third approach of offering an endorsement (a) to allow homeowners with split-level homes or sunken room(s) to remove the restrictions for additional premium, while also allowing limited building coverage, for additional premium, and (b) to homeowner policyholders who need to occupy (occupancy) part of their basement to remove the restrictions to allow limited coverage, for additional premium. Occupancy would focus additional coverage on rooms in the basement such as bedrooms, bathrooms, and kitchens/kitchettes. Maintaining current basement coverage restrictions and providing additional training to agents under the first approach could better equip agents to explain the coverage and identify basements at the time of application. The potential benefit of this approach could increase basement coverage understanding for insurance agents that could be conveyed to homeowners during the time of application. FEMA rejected this basement coverage alternative approach because the current restricted basement coverage fails to adequately meet the insurance needs of the American people. FEMA does not expect additional insurance agent training to greatly improve homeowner policyholder coverage understanding because homeowners only have one standard flood insurance policy for selection. This lack of consumer choice limits policyholder engagement of coverage details and discussions with agents at the time of application.

FEMA's preferred approach is the approach (approach two) to remove restrictions, as it would offer homeowner policyholders a Basement Coverage Endorsement where they can purchase coverage up to specified sublimits for an additional premium. For approach two, FEMA proposes that the endorsement to remove restrictions currently on basement coverage for an additional premium. ("Basement Coverage Endorsement") would replace section III.A.2 ("Limited Coverage for Basements and Enclosures") with a new subparagraph A.2, "Coverage for Basements." This subparagraph would state that for an additional premium received, FEMA insures up to the selected Coverage A sublimit against direct physical loss by or from flood to the basement. FEMA further proposes that the endorsement for approach two would also replace III.C.3.a

("Limitations on Property in a Basement or in an Enclosure") with a new subparagraph C.3.a providing that (1) for an additional premium, FEMA would insure up to the selected Coverage C limit against direct physical loss by or from flood to personal property in a basement; and (2) in an enclosure, the policy would only cover appliances installed in their functioning locations and, if necessary for operation, connected to a power source. The proposed Homeowner Flood Form enhanced basement coverage (approach two) addresses several deficits currently present in the Dwelling Form and enhances available coverage for homeowners. It is aligned with common industry practice, which standardizes available coverage to homeowners with basements, and coverage is clear to the homeowner policyholder, reducing asymmetric information. The levels of coverage and risk of damage would be appropriately reflected in the premiums, directly signaling to homeowner policyholders their level of risk. For these reasons, FEMA selected the Homeowner Flood Form (approach 2) for this proposed rule.

Approach three includes two potential endorsements (approaches 3.1 and 3.2). First, approach 3.1 would include an endorsement option for split-level and sunken rooms that would replace the definition of "Basement" in proposed paragraph C.2 of section II to define a basement as any area of a building having its floor level below ground level on all sides, regardless of design or use and further clarify that an area of a building is below ground level when the land directly touching the exterior of the building is above its floor level; and that an area of a building is presumed to be below ground level when it is necessary to walk up steps or a slope to reach the land surrounding the building. A professional land survey or report may rebut this presumption. Further, the "Basement" definition under approach three would clarify that a sunken or recessed portion of a room or area that is otherwise above ground level is not a basement and that the first level below the main entrance to the dwelling, commonly referred to as a split-level home, is not a basement. Approach 3.2 would offer an additional endorsement option for basement occupancy. This additional endorsement would amend the proposed Homeowner Flood Form to replace paragraph A.2 of section III, specific to building coverage, on what FEMA covers with the following language: "Basement occupancy. For additional premium received, we insure

a bedroom, bathroom, or kitchen in a basement when required for the occupancy of the dwelling, where no other room in another part of the dwelling meets this need.”

The Design and Occupancy approaches (approaches 3.1 and 3.2) address specific deficits currently present in the Dwelling Form and enhances available coverage for certain homeowners. These approaches introduces choice and expands coverage options for homeowners that meet the Design or Occupancy eligibility. FEMA considers the Design and Occupancy alternative approaches a partial improvement but did not select this alternative because of the limited portion of eligible homeowner policyholders and the complexity of the approach for FEMA, homeowner policyholders, and insurance agents.

FEMA seeks comment on the agency’s current restricted coverage (approach one), the agency’s preferred approach of removing the restrictions on current coverage (approach two) and the additional approach to basement coverage considered (approaches 3.1 and 3.2). Specifically, FEMA seeks comment on whether the Homeowner Flood Form should either (1) retain the current restricted coverage, with a focus on training agents selling flood

insurance to further discuss what constitutes a basement under the Homeowner Flood Form and the restrictions on coverage at the point of sale to better inform homeowner policyholders and those seeking to purchase new homeowner flood insurance of the coverage restrictions; (2) offer an endorsement to the proposed Homeowner Flood Form that would allow homeowner policyholders to remove the restrictions currently on basement coverage for an additional premium (“Basement Coverage Endorsement”); or (3) offer an endorsement to allow homeowners with split-level homes or sunken room(s) or for basement occupancy to remove the restrictions for additional premium, while also allowing limited building coverage, for additional premium.

In drafting this rule, FEMA undertook a preliminary analysis of its policies in force for properties with a basement (as of September 30, 2022) to see how basement coverage would impact the cost of insurance for policyholders. The cost of insurance includes annual premiums, fees, assessments, and surcharges. Assuming all other rating factors remain the same, the analysis of the proposed rule across all policies with the default basement coverage, *i.e.*, restricted, would result in a total annual

average cost of insurance of \$1,827. Fully expanded basement coverage, proposed by FEMA as an endorsement, would result in a total annual average cost of insurance of \$2,756. The alternative, limited expansion of basement coverage, would result in a total annual average cost of insurance of \$2,518.

In total, for all NFIP policyholders with a basement as of September 30, 2022, those paying a total annual cost of insurance of \$1,000 or less would pay an average of \$648 annually with restricted basement coverage, \$952 annually with fully expanded basement coverage, and \$870 annually with a limited expansion of basement coverage. Policyholders who currently pay between \$1,000 to \$2,000 annually would see the total annual cost of insurance at \$1,426, \$2,140, and \$1,970, respectively. For policyholders who currently pay between \$2,000 to \$3,000 annually, the total annual cost of insurance would be \$2,451, \$3,706, and \$3,416, respectively. This is shown more fully in the chart directly below, which appears in FEMA’s Regulatory Impact Analysis (located in the docket) under the heading “Table 9.21: Cost of Insurance Scenarios for Single Family Home with Basements, 2022”:

TABLE 1—COST OF INSURANCE SCENARIOS FOR SINGLE FAMILY HOME WITH BASEMENTS [2022\$]

Current range of cost of insurance	Policyholders in Force (PIF) distribution (%)	Average Replacement Cost Value (RCV) (\$)	Average risk-based cost of insurance with current basement coverage (\$)	Hypothetical average risk-based cost of insurance (\$)	
				Fully expanded basement coverage (\$)	Limited expansion of basement coverage (\$)
				Note 1	Note 2
		2022\$	2022\$	2022\$	2022\$
\$0–\$1,000 .....	41	\$596,319	\$648	\$952	\$870
\$1,000–\$2,000 .....	29	562,203	1,426	2,140	1,970
\$2,000–\$3,000 .....	14	567,245	2,451	3,706	3,416
\$3,000–\$4,000 .....	7	601,448	3,447	5,229	4,793
\$4,000–\$5,000 .....	4	638,888	4,456	6,772	6,180
\$5,000–\$6,000 .....	2	657,637	5,444	8,290	7,488
\$6,000–\$7,000 .....	2	675,366	6,453	9,841	8,837
\$7,000–\$8,000 .....	<1	755,335	7,451	11,377	10,198
\$8,000–\$9,000 .....	<1	827,914	8,452	12,917	11,545
\$9,000–\$10,000 .....	<1	979,791	9,439	14,435	12,894
\$10,000–\$11,000 .....	<1	1,082,634	10,462	16,008	14,310
\$11,000–\$12,000 .....	<1	1,356,362	11,508	17,618	15,815
\$12,000–\$13,000 .....	<1	914,762	12,388	18,972	17,075
\$13,000 .....	<1	3,671,109	13,209	20,235	18,123
Average .....		592,982	1,827	2,756	2,518



#### *H. Appendix A(105): Builder's Risk Endorsement*

FEMA has witnessed issues arise for homeowner policyholders who are constructing a building, but who do not have a building (as defined by the SFIP) at the time of loss. The Dwelling Form covers buildings under construction at section III.A.5. When FEMA provides coverage for a building under construction, it typically issues the policy in the builder's name. If the builder fails to assign the policy to the property owner prior to loss, however, both the property owner and the builder would be left without coverage. (The property owner would lack coverage because he or she was not listed on the policy, and the builder would lack coverage because it would no longer have an insurable interest in the property). In some cases, FEMA issues the policy jointly to the builder and property owner. If the parties do not revise the policy to remove the builder's name after completion, however, this could cause considerable delays because FEMA would have to stop and void the claim payment, then reissue the payment once the builder's name is removed. To simplify coverage, align with property and casualty practices, and eliminate insurable interest issues, the Homeowner Flood Form would require that the building has been constructed, while the Builder's Risk Endorsement would cover buildings under construction.

The Builder's Risk Endorsement would name the builder as an additional insured party and provide business rules within the endorsement to avoid automatic renewal billing of the policy for the builder. Section I of the endorsement would replace section I.D of the Homeowner Flood Form with language that confirms the builder's coverage expires on the date the dwelling is completed and occupied, the date the endorsement is deleted by the insurer, and the Homeowner Flood Form becomes effective in its entirety; or at 12:01 a.m. on the last day of the policy term stated on the declarations page. This change ensures the builder is not a named party to the policy following completion of construction. In addition, this endorsement would define "Construction" as any new development of land at the *described location* resulting in a *building* or

alteration or repair of a *building*, including a *dwelling* at the *described location*. This endorsement would also replace section III of the Form in its entirety. While generally mirroring the Form's language in section III, the endorsement would offer changes to clarify the coverage for the builder. Proposed section III.A.1.a of the endorsement would clarify that coverage is for the dwelling under construction at the described location. It would further specify that if the dwelling is not yet walled or roofed as described in the definition of "building," then coverage applies (1) only while construction is in progress, or (2) if construction is halted only for a period of 90 consecutive days thereafter. This is to limit the use of this endorsement to a building actively under construction, as FEMA would not offer coverage for an incomplete building that has been sitting for several months. Proposed section III.A.1.b of the endorsement would remove the words "alteration, or repair" from the phrase "materials and supplies to be used for construction" because these words are superfluous given that they are included in this endorsement's definition of "Construction." Proposed section III.A.2 would make a minor organizational change. Proposed section III.C would clarify that unlike the proposed Homeowner Flood Form, personal property would not be covered until the dwelling is completed and occupied, the endorsement is deleted by the insurer, and the Homeowner Flood Form becomes effective in its entirety. The endorsement would also revise section V of the Form by adding a section to V.B to allow only one renewal for a policy with a Builder's Risk Endorsement attached to it. Finally, the endorsement would add language in section VII.F of the Form regarding mortgagees to clarify that a holder of a construction loan upon which draws have been paid shall be considered the "mortgagee" under the policy.

#### **V. Regulatory and Economic Analysis**

*A. Executive Order 12866, Regulatory Planning and Review, as Amended, and Executive Order 13563, Improving Regulation and Regulatory Review*

Executive Orders 12866 ("Regulatory Planning and Review"), as amended by

Executive Order 14094 ("Modernizing Regulatory Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule is designated as a significant regulatory action that is economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed it. This Regulatory Impact Analysis (RIA) provides an assessment of the potential costs, benefits, and transfer payments resulting from the National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form under the criteria of Executive Orders 12866 and 13563.

FEMA proposes to amend the Standard Flood Insurance Policy (SFIP) at 44 CFR part 61, Appendix A. The existing Dwelling Form, found at 44 CFR part 61, Appendix A(1), and proposed Homeowner Flood Form (Appendix A(4)) are the subjects of this RIA. Specifically, the proposed Homeowner Flood Form would replace the current Dwelling Form for one-to-four family residences, excluding mobile homes, trailers, condominiums, and rental properties, which would continue to use the Dwelling Form. The Homeowner Flood Form would include language altering the availability and limits of flood insurance coverage in numerous ways. The most substantial of these are in the areas of coverage for basements, enclosures, secondary buildings that are not detached garages, and replacing Actual Cash Value (ACV) with Replacement Cost Value (RCV) as the valuation method for structural property and contents.

TABLE 2—SUMMARY OF THE IMPACTS OF THE PROPOSED RULE  
[2019\$]

Category	Summary
Proposed Changes .....	Basement Endorsement: Allows homeowner policyholder to enhanced coverage, introducing choice regarding the level of coverage. Enclosures: Reference to flood zone and FIRM status would be removed, which would extend coverage restrictions currently applicable to post-FIRM buildings in SFHAs to all enclosures, regardless of FIRM status or location. Other Buildings: Expands the definition of “other buildings” beyond just detached garages to all other buildings at the insured property. Property Valuation Method: Formally defines “replacement cost value” and makes it the default method of property valuation for both structural property and contents, thereby replacing the “actual cash value” valuation method in most instances. Loss Mitigation: Covering Flood Damage Resistant Materials; adjusting the limits to imminent loss protection. Personal Property: Also referred to as “contents.” Availability of coverage changes in basements, enclosures, other buildings, other locations. Limits on certain items changed. Death of Homeowner Policyholder: Upon the death of the homeowner policyholder, automatically continues coverage provided under the policy for any other insured, or for a legal representative of the estate if another insured does not exist. Temporary Housing Expense Endorsement: Offers homeowner policyholders the option of purchasing additional coverage to receive compensation in the event they are displaced from their insured property due to flood. Other: All changes are addressed in the Marginal Analysis Table in Appendix A.
Affected Population .....	Property owners of one-to-four family residences within the over 22,500 communities participating in NFIP. A total of 2,806,642 distinct policies as of 2019.
Cost Savings .....	Qualitative cost savings by reductions in litigation costs, reductions of fraudulent claims, and time savings.
Costs (qualitative) .....	None.
Costs (quantitative) .....	Annualized implementation and familiarization costs of \$706,477 and \$651,896 discounted at 3 and 7 percent respectively.
Benefits (qualitative) ....	Premiums more reflective of actual risk. Environmental benefits from loss mitigation. Extending coverage beyond death of homeowner policyholder improves fairness and human dignity. Reduces the need for Federal disaster aid. More closely aligns with property insurance industry standards.
Benefits (quantitative) ..	None.
Transfers .....	Transfer payments between FEMA and the homeowner policyholder are generally through premiums, claims, and fees and overhead. FEMA estimates this rule would result in annualized transfer payments of \$253,321,497 and \$252,835,214 from homeowner policyholders to FEMA in the form of additional premiums, discounted at 3 percent and 7 percent respectively; \$166,221,455 and \$165,902,372 from FEMA to policy holders in the form of claims payments, discounted at 3 and 7 percent; and, \$87,100,042 and \$86,932,843 from homeowner policyholders to States, FEMA, and insurance companies in the form of fees and overhead, discounted at 3 and 7 percent respectively.

Need for Regulation

The National Flood Insurance Act of 1968 (NFIA) requires FEMA to provide by regulation the “general terms and conditions of insurability . . . applicable to properties eligible for flood insurance coverage.” 42 U.S.C. 4013(a). To comply with this requirement, FEMA adopts the Standard Flood Insurance Policy (SFIP) in regulation, which sets out the terms and conditions of insurance. See 44 CFR part 61, Appendix A. FEMA must use the SFIP for all flood insurance policies sold through the NFIP. See 44 CFR 61.13. The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are currently three forms of the SFIP: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP) Form.

The current Dwelling Form is out of date and no longer aligned with insurance industry standards for homeowners of one-to-four family residences. It is difficult to understand

and cumbersome for policyholders and insurance agents alike.<sup>85</sup> Keeping the SFIP modern, unburdensome, and improving flexibility are key elements to cultivating and administering an effective flood insurance program. This enables FEMA to better meet the needs of the American people and close the insurance gap.<sup>86</sup> Revising the

<sup>85</sup> See, e.g., The Institutes’ Handbook of Insurance Policies, American Institute for Chartered Property Casualty Underwriters, 12th ed. (2018) (containing copies of modern property casualty forms). The Insurance Services Office’s template homeowners form (“HO-3” form) appears on page 5 and demonstrates the simplicity of this policy compared to the SFIP. The NFIP has a high volume of inquiries on the SFIP, further demonstrating the challenges in reading and interpreting the SFIP. Policy inquiries generally make up 43 percent of the total inquiries received by FEMA’s “Ask the Experts” tracking system between 2019 and May 2021.

<sup>86</sup> NFIP has experienced significant challenges because FEMA is tasked with two competing goals—keeping flood insurance affordable and keeping the program fiscally solvent. Emphasizing affordability has led to premium rates that in many cases do not reflect the full risk of loss and produce insufficient premiums to pay for claims. In turn, this has transferred some of the financial burden of flood risk from individual property owners to the

regulations is necessary to implement these changes to the SFIP for homeowners.

Affected Population

The population of affected homeowner policyholders would be property owners of one-to-four family residences who were previously covered by the Dwelling Form and would now be covered by the Homeowner Flood Form. As of 2019, there were 3,174,934 residential policies covered using the Dwelling Form. Of that number, FEMA estimates that 88.4%, or 2,806,642 policyholders, were property owners residing in the insured one-to-four family residence.<sup>87</sup> FEMA would

public at large. <https://files.gao.gov/reports/GAO-21-119SP/index.html> See “HIGH-RISK Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas,” found at <https://www.gao.gov/assets/gao-21-383t.pdf#:~:text=Dedicated%20agency%20leadership%20is%20essential%20to%20address%20the,have%20made%20to%20reduce%20the%20government%E2%80%99s%20high-risk%20challenges> (last accessed Aug. 28, 2023).

<sup>87</sup> FEMA used data from the NFIP’s PIVOT database to determine the number of policies that

continue to use the Dwelling Form to insure landlords, renters, and owners of mobile homes, travel trailers, and condominium units.

The population of affected Write Your Own (WYO) companies includes 61 companies as of 2019. Of the 61 companies, 2 had fewer than 10 policies, 15 companies had between 11 and 500 policies, 11 companies had between 501 and 5,000 policies, 22 companies had between 5,001 and 50,000 policies, 8 companies had between 50,001 and 250,000 policies, 2 companies had between 250,001 and 500,000 policies, and 1 company had 553,187 policies.

**Baseline**

Pursuant to OMB Circular A-4, FEMA assessed the impacts of this proposed rule against a baseline. The baseline used for this analysis is the “no action” baseline, or what the world would be like absent the proposed changes. The no action baseline is the scenario where no changes are made to the existing Dwelling Form and the projections over the next 10 years assuming the same climate conditions that exist today, and accounts for projected housing growth. It includes the value of claims payments and premiums estimated over the next 10 years if the current Dwelling Form

were to continue to be used for property owners of one-to-four family residences. FEMA recognizes that it cannot precisely predict or forecast future flood events over a 10-year period, given their unpredictable nature and therefore a future 10-year period of flood insurance claims could vary drastically from the 2010–2019 period analyzed; however, these are the best data available to derive the estimates.

**Costs**

The policy change would have implementation and familiarization costs. FEMA expects that States, WYOs, and, at the time of renewal, policyholders would spend time familiarizing themselves with this rule. In addition, FEMA anticipates adding additional training over three years for SFIP updates to the standard annual training package provided to insurers. The cost of the training is borne by FEMA who is responsible for developing the content. The annual training is one that insurance agents are required to attend each year, with the training content changing year to year but the number of training hours required remaining the same. Since the training hours required for insurers is not impacted by the rule, FEMA assumes companies would neither

expand the number of hours of training given to agents in response to the policy changes proposed here and training costs for agents would not be different from the baseline. The familiarization and training cost estimates have been adjusted for inflation using Consumer Price Index (CPI-U) data and reported in the table below in year 2019 dollars.<sup>88</sup> The familiarization cost and new training content is expected to total \$6.4 million, or \$705,963 and \$791,133 annualized using a 3 percent and 7 percent discount rate, respectively.

FEMA does not anticipate new costs for existing homeowner policyholders. At the time of renewal, existing homeowner policyholders would have the choice to engage their agent or not engage their agent. The policy defaults will provide similar coverage to what they currently receive if the homeowner policyholder chooses to do nothing. NFIP outreach, whether directly by FEMA or through the WYOs, would highlight the availability of choices and opportunities to customize coverage. However, agents could also quote new options at renewal time and give homeowner policyholders options there, akin to how agents currently may suggest additional coverage amounts when not currently insuring to statutory limits.

**TABLE 3—ESTIMATED COSTS OVER A 10 YEAR PERIOD**  
[2019\$]

Year	FEMA training costs	State and WYO familiarization costs	Total costs	Discounted at 3%	Discounted at 7%
1 .....	\$1,800,000	\$51,483	\$1,851,483	\$1,797,556	\$1,730,358
2 .....	1,778,064	0	1,778,064	1,675,996	1,553,030
3 .....	2,784,767	0	2,784,767	2,548,457	2,273,200
4 .....	0	0	0	0	0
5 .....	0	0	0	0	0
6 .....	0	0	0	0	0
7 .....	0	0	0	0	0
8 .....	0	0	0	0	0
9 .....	0	0	0	0	0
10 .....	0	0	0	0	0
<b>Total .....</b>	<b>6,362,831</b>	<b>51,483</b>	<b>6,414,315</b>	<b>6,026,394</b>	<b>5,556,588</b>
<b>Annualized .....</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>	<b>705,963</b>	<b>791,133</b>

**Benefits**

FEMA was unable to quantify the benefits of this proposed rule because data does not explicitly exist for the types of benefits that would be incurred. The benefits of this rule would include

a more accurate signaling of risk to homeowner policyholders through additional coverage choices and associated premium increases, thus incentivizing them to reduce their risks, environmental benefits of loss mitigation, reducing moral hazard,

qualitative benefits of extending coverage beyond the death of a homeowner policyholder, reducing the need for Federal assistance, and collaborating with industry stakeholders to create a policy that meets the needs of those involved.

would be affected by this proposed rule. PIVOT is a web-based system designed to help facilitate and consolidate in one system the NFIP’s core business processes including, but not limited to: validation of insurance policies, claims, and data; complex modeling; website hosting (including

floodsmart.gov); claims administration; policy management; claims review; approvals; and status inquiries. FEMA’s PIVOT database can be found at <https://www.dhs.gov/publication/dhsfemapia-050-national-flood-insurance-program-nfip-pivot-system> (last accessed Aug. 28, 2023).

<sup>88</sup> Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, index averages. Accessed November 2022. <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202106.pdf>.

The benefits of this rule would also include increasing fairness through clearer communication of flood risk, additional flexibility and choice for homeowner policyholders, and claims payments that cover a greater portion of loss. Additionally, this rule would allow claims payments when the original homeowner policyholder is deceased, causing less stress for surviving family members.

Transfers

The impacts the proposed rule would have on transfer payments are reflected in premiums and associated claims payments resulting from the proposed changes in coverage. As these changes to premiums and claims payments are monetary payments from homeowner

policyholders to FEMA or FEMA to homeowner policyholders that do not affect total resources available to society, these effects are not a cost but rather a transfer payment. The main areas of these proposed changes to coverage are in basements, enclosures, other buildings, and property valuation method. Several additional changes are less substantial but collectively impactful and also result in transfer payments.

The policy changes would generally result in additional coverage, and therefore higher expected claims payments for homeowner policyholders in aggregate. These higher expected claims payments would be matched by higher premiums. Premiums are

calculated by actuarial formulas which take into account the expected claims payments and the fees and overhead associated with administering flood insurance.<sup>89</sup> FEMA estimates this proposed rule would result in annualized transfer payments of \$253,321,497 and \$252,835,214 from policyholders to FEMA in the form of additional premiums, discounted at 3 percent and 7 percent respectively; \$166,221,455 and \$165,902,372 from FEMA to policyholders in the form of claims payments, discounted at 3 and 7 percent; and \$87,100,042 and \$86,932,843 from policyholders to States, FEMA, and insurance companies in the form of fees and overhead, discounted at 3 and 7 percent.

TABLE 4—ESTIMATED TRANSFER PAYMENTS OVER A 10-YEAR PERIOD  
[2019\$]

Year	A. Premiums/transfers from policyholders to FEMA	B. Expected losses/ transfers from FEMA to policyholders	C. Fees and overhead/ transfers from policyholders to FEMA, insurance companies, and states
1	\$246,705,082	\$161,879,976	\$84,825,106
2	248,234,654	162,883,631	85,351,023
3	249,773,708	163,893,510	85,880,199
4	251,322,305	164,909,649	86,412,656
5	252,880,503	165,932,089	86,948,415
6	254,448,362	166,960,868	87,487,495
7	256,025,942	167,996,026	88,029,918
8	257,613,303	169,037,601	88,575,703
9	259,210,506	170,085,634	89,124,872
10	260,817,611	171,140,164	89,677,447
Total	2,537,031,979	1,664,719,146	872,312,832
Year	Premiums/transfers from policyholders to FEMA	3% Discount rate	7% Discount rate
1	\$246,705,082	\$239,519,497	\$230,565,497
2	248,234,654	233,984,969	216,817,761
3	249,773,708	228,578,326	203,889,748
4	251,322,305	223,296,613	191,732,583
5	252,880,503	218,136,943	180,300,304
6	254,448,362	213,096,497	169,549,687
7	256,025,942	208,172,520	159,440,089
8	257,613,303	203,362,320	149,933,288
9	259,210,506	198,663,269	140,993,341
10	260,817,611	194,072,797	132,586,448
Total	2,537,031,976	2,160,883,752	1,775,808,745
Annualized		253,321,497	252,835,214
Year	Expected losses/ transfers from FEMA to policyholders	3% Discount rate	7% Discount rate
1	\$161,879,976	\$157,165,025	\$151,289,697
2	162,883,631	153,533,444	142,268,872
3	163,893,510	149,985,779	133,785,924
4	164,909,649	146,520,087	125,808,782
5	165,932,089	143,134,478	118,307,286
6	166,960,868	139,827,098	111,253,076

<sup>89</sup> For additional context about potential policyholder costs, FEMA calculated hypothetical

insurance cost scenarios for homeowners with basements under the proposed endorsement

coverage option located in the RIA document Table 6.16 of this rule.

Year	Expected losses/ transfers from FEMA to policyholders	3% Discount rate	7% Discount rate
7 .....	167,996,026	136,596,143	104,619,482
8 .....	169,037,601	133,439,843	98,381,423
9 .....	170,085,634	130,356,476	92,515,315
10 .....	171,140,164	127,344,355	86,998,981
<b>Total</b> .....	<b>1,664,719,148</b>	<b>1,417,902,728</b>	<b>1,165,228,838</b>
<b>Annualized</b> .....	.....	166,221,455	165,902,372

Year	Fees and overhead/ transfers from policyholders to FEMA, insurance companies, and states	3% Discount rate	7% Discount rate
1 .....	\$84,825,106	\$82,354,472	\$79,275,800
2 .....	85,351,023	80,451,525	74,548,889
3 .....	85,880,199	78,592,548	70,103,824
4 .....	86,412,656	76,776,526	65,923,802
5 .....	86,948,415	75,002,467	61,993,018
6 .....	87,487,495	73,269,400	58,296,612
7 .....	88,029,918	71,576,379	54,820,609
8 .....	88,575,703	69,922,478	51,551,866
9 .....	89,124,872	68,306,793	48,478,025
10 .....	89,677,447	66,728,443	45,587,467
<b>Total</b> .....	<b>872,312,834</b>	<b>742,981,029</b>	<b>610,579,911</b>
<b>Annualized</b> .....	.....	87,100,042	86,932,843

TABLE 5—CIRCULAR A—4 ACCOUNTING STATEMENT, YEARS 1–10  
[2019\$]

Category	3 Percent discount rate	7 Percent discount rate	Source
<b>Benefits</b>			
Annualized Monetized .....	N/A	N/A	RIA Section 8.
Annualized quantified, but unmonetized benefits .....	N/A	N/A	
Qualitative (unquantified) benefits .....	<ul style="list-style-type: none"> <li>• Signaling of risk through premiums reflective of risk.</li> <li>• Environmental benefits from loss mitigation.</li> <li>• Social benefit of extending coverage beyond death of homeowner policyholder.</li> <li>• Reduces need for Federal assistance.</li> <li>• Collaborative with industry; unilaterally addresses needs.</li> <li>• Increased fairness through clearer communication of flood risk; additional flexibility and choices for homeowner policyholders, and increased claims payments</li> </ul>		
<b>Costs</b>			
Total annualized costs .....	\$705,963	\$791,133	RIA Section 8.
<b>Transfers</b>			
Annualized Monetized from FEMA to policyholders for claims payments (claims payments).	166,221,455	165,902,372	RIA Section 8.
Annualized Monetized from policyholders to FEMA and Insurance Companies and States for the expected loss portion of premiums and the fees, taxes, and overhead portion of premiums (expected loss, fees and overhead).	253,321,497	252,835,215	RIA Section 8.
<b>Effects</b>			
Effects on State, local, and/or Tribal governments .....	\$24,006 in year-1 familiarization costs for 56 States and Territories. \$4,827,686 in total additional annual tax revenue across all States and Territories due to higher premiums.		RIA Sections 5, 8.

Category	Effects	Source
Effects on small businesses .....	Additional revenue to 12 small WYO companies. Total annualized revenue: \$1,151,914 discounted at 3 percent and \$1,149,703 discounted at 7 percent. \$451 in year-1 familiarization costs.	Regulatory Flexibility Act Analysis (NPRM).
Effects on wages .....	None	N/A.
Effects on growth .....	None	N/A.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that a rule, if promulgated, will not have a significant impact on a substantial number of small entities. FEMA believes this rule does not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA examined the effects of the proposed changes to the SFIP Homeowner Form on small entities. A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small organization, defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field (5 U.S.C. 601); or

a small governmental jurisdiction (locality with fewer than 50,000 people) per 5 U.S.C. 601.

This proposed rule would primarily impact individuals and households, which are not considered small entities under the RFA. However, it would impact WYO companies, some of which could be small entities. In 2019, there were 61 unique WYO companies. WYO companies serviced 83.6 percent of policies, while 16.4 percent were serviced directly by the NFIP. Of the 61 companies, 2 had fewer than 10 policies, 15 companies had between 11 and 500 policies, 11 companies had between 501 and 5,000 policies, 22 companies had between 5,001 and 50,000 policies, 8 companies had between 50,001 and 250,000 policies, 2 companies had between 250,001 and 500,000 policies, and 1 company had 553,187 policies. Most company names imply multiple lines of coverage (fire, casualty, auto, property, mutual). Of the 61 unique WYO companies,<sup>90</sup> 12 meet the SBA size standard for a small entity (less than \$16.5 million in revenue for Other Direct Insurance (except Life, Health, and Medical) Carriers, NAICS 524298),<sup>91</sup> and 49 of them are large companies with greater than \$16.5 million in revenue. These 12 companies hold an estimated 1.4 percent of total flood insurance premiums, or 1.7

percent of premiums held by WYO companies.<sup>92</sup>

FEMA estimates that the changes proposed through the Homeowner Flood Form would, on net, expand coverage. This expansion would lead to increased or higher claims payment in the aggregate. These higher claims payments would be matched by higher premiums. Premiums are calculated by actuarial formulas which take into account the expected claims payments and the fees and overhead associated with administering flood insurance.

In the RIA, FEMA estimated the fees and overhead as a percentage of expected losses (*i.e.*, claims payments): 52.4 percent.<sup>93</sup> Of that, 2.9 percentage points are for State premium taxes.<sup>94</sup> Accordingly, FEMA estimates that the fees and overhead expenses that would be paid to WYOs as a result of this rule are 49.5% of the estimated increase in claims payments.

FEMA estimated the impact of this proposed rule on small entities by multiplying the total percentage of premiums held by the 12 WYO companies (1.4 percent) by the total estimated increase in Fees and Overhead expenses paid to WYOs as a result of this proposed rule (*i.e.*, 49.5 percent of the estimated increase in claims payments).

TABLE 6—ADDITIONAL FEES AND OVERHEAD EXPENSES TO INSURANCE COMPANIES<sup>95</sup>

Year	Increase in fees and overhead expenses for all insurance companies	Increase in fees and overhead for small companies	Increase for small companies (discounted 3%)	Increase for small companies (discounted 7%)
1 .....	\$80,130,587	\$1,121,828	\$1,089,153	\$1,048,437
2 .....	80,627,398	1,128,784	1,063,987	985,924
3 .....	81,127,287	1,135,782	1,039,401	927,136
4 .....	81,630,276	1,142,824	1,015,384	871,855
5 .....	82,136,384	1,149,909	991,922	819,869
6 .....	82,645,630	1,157,039	969,002	770,984
7 .....	83,158,033	1,164,212	946,611	725,013
8 .....	83,673,613	1,171,431	924,738	681,784

<sup>90</sup> The PIVOT database shows 61 WYOs with policies within scope of this analysis in 2019.

<sup>91</sup> Small Business Administration Size Standards Matched to North American Industry Classification

System Codes, effective May 2, 2022, found at <https://www.sba.gov/document/support-table-size-standards> (last accessed Aug. 28, 2023).

<sup>92</sup> Data retrieved from the PIVOT database.

<sup>93</sup> For more information about 52.4 percent, see Section 5.6 of the Regulatory Impact Analysis, located in the docket.

<sup>94</sup> See RIA Table 5.3: Premium Breakout.

TABLE 6—ADDITIONAL FEES AND OVERHEAD EXPENSES TO INSURANCE COMPANIES<sup>95</sup>—Continued

Year	Increase in fees and overhead expenses for all insurance companies	Increase in fees and overhead for small companies	Increase for small companies (discounted 3%)	Increase for small companies (discounted 7%)
9 .....	84,192,389	1,178,693	903,370	641,131
10 .....	84,714,382	1,186,001	882,496	602,903
Total .....	824,035,979	11,536,503	9,826,064	8,075,036
Annualized .....	.....	.....	1,151,914	1,149,703

Applying the 1.4 percent share for small WYO companies, FEMA estimated an impact to small entities of \$1,151,914 of additional annualized revenue to the small WYO companies discounted at 3 percent or \$1,149,703 discounted at 7 percent. The 12 small WYOs had a total revenue of \$949,140,309 in 2019. Applying the annual increase in transfers for fees and overhead to these WYOs, FEMA estimated an increase of 0.12 percent in payments to WYOs due to the proposed changes to the SFIP Homeowner Form. Because these payments are included in the premiums paid by policyholders to the WYOs to cover the cost of providing insurance, FEMA estimates no net impact to WYOs as a result of the proposed changes. As previously stated, the policyholders are not considered small entities under the RFA. Additionally, FEMA estimated a one-time familiarization cost of \$451 per company to read and understand the changes from this proposed rule.<sup>96</sup>

FEMA believes that this proposed rule would not place these small entities at a significant competitive disadvantage, cause inefficiency, or lead to insolvency. All companies participating in the WYO program would be similarly affected by this proposed rule. Additionally, WYO companies are compensated for their participation in the program. WYOs may also choose to exit the program and transfer their book of business citing terms and conditions in the WYO Arrangement.

Pursuant to 5 U.S.C. 605(b), FEMA certifies this proposed regulation would not have a significant economic impact on a substantial number of small entities. FEMA invites comments on the impact this rule would have on small entities.

#### C. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and Tribal governments and the private sector. The proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

#### D. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507. This proposed rulemaking would call for no new collections of information under the PRA. This proposed rule includes information currently collected by FEMA and approved in OMB information collection 1660–0006 (National Flood Insurance Policy Forms). With respect to this collection, this proposed

rulemaking would not impose any additional burden and would not require a change to the forms, the substance of the forms, or the number of recipients who would submit the forms to FEMA.

#### E. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbols, or other identifying particular assigned to the individual. An agency cannot disclose any record that is contained in a system of records except by following specific procedures. The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this proposed rule. DHS/FEMA has determined that this proposed

<sup>95</sup> See RIA Table 8.5: 10-year Transfers Discounted at 3 and 7 percent.

<sup>96</sup> See RIA section 8.3.2.



rulemaking does not affect the 1660–0006 OMB Control Number’s current compliance with the E-Government Act of 2002 or the Privacy Act of 1974, as amended. DHS/FEMA has concluded that the 1660–0006 OMB Control Number is already covered by the following Privacy Impact Assessments (PIA): DHS/FEMA/PIA–050 National Flood Insurance Program PIVOT System—March 2018. Additionally, DHS/FEMA has decided that the 1660–0006 OMB Control Number is already covered by the DHS/FEMA–003 National Flood Insurance Program Files, 79 FR 28747, May 19, 2014, System of Records Notice (SORN).

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

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA has reviewed this proposed rule under Executive Order 13175 and has determined that it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*G. Executive Order 13132, Federalism*

Executive Order 13132, “Federalism,” 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” 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.

FEMA has determined that this proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order.

*H. National Environmental Policy Act of 1969 (NEPA)*

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, an agency must consider impacts of its actions on the environment and prepare an environmental assessment or environmental impact statement for any rulemaking that has potential to significantly affect the quality of the human environment. A categorical exclusion (CATEX) is a form of NEPA compliance that applies to actions that do not need to undergo detailed environmental analysis because it has been determined through experience that they typically do not have a significant impact on the human environment. An agency may apply a CATEX if the project fits within the identified criteria of the CATEX.

Rulemaking is a major Federal action subject to NEPA. CATEX M1(d) included in the list of exclusion categories in the Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers activities in support of FEMA’s administration of the National Flood Insurance Program, including revisions to the Standard Flood Insurance Policy. This proposed rule for the NFIP meets CATEX M1(d) and does not require further analysis under NEPA.

*I. Executive Order 11988 Floodplain Management*

Pursuant to Executive Order 11988, “Floodplain Management,” 42 FR 26951 (May 24, 1977), each agency must provide leadership and take action to reduce the risk of flood loss; to minimize the impact of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains in carrying out the agency’s

responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency’s floodplain management regulations. It must also prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this proposed rule is to revise the SFIP by adding a new Homeowner Flood Form, which would replace the current Dwelling Form as a source of coverage for one-to-four family residences and provide increased options and coverage. In accordance with 44 CFR part 9, “Floodplain Management and Protection of Wetlands,” FEMA determines that the changes proposed in this rule would not have an effect on floodplains.

*J. Executive Order 11990 Protection of Wetlands*

Executive Order 11990, “Protection of Wetlands,” 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities. These responsibilities include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken,

financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this proposed rule is to revise the SFIP by adding a new Homeowner Flood Form, which would replace the current Dwelling Form as a source of coverage for one-to-four family residences and provide increased options and coverage. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes proposed in this rule would not have an effect on wetlands.

#### *K. Executive Order 12898 and 14096 Environmental Justice*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381, (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not

have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin. Further, Executive Order 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All," 88 FR 25251 (Apr. 26, 2023), charges Federal agencies to make achieving environmental justice part of their missions, consistent with statutory authority, by identifying, analyzing, and addressing the disproportionate and adverse human health and environmental effects and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.

This rulemaking would not have a disproportionately high or adverse effect on human health or the environment, nor would it exclude persons from participation in FEMA programs, deny persons the benefits of FEMA programs, or subject persons to discrimination because of race, color, or national origin.

#### *L. Congressional Review of Agency Rulemaking*

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

A "major" rule is one that has an annual effect on the economy of \$100,000,000 or more; results in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Pursuant to the CRA, the Office of Information and Regulatory Affairs has designated this rule as "major" within the meaning of the CRA as defined by 5 U.S.C. 804(2), as the annual effect on the economy will be over \$100,000,000. As such, FEMA will send this rule to the Congress and to GAO pursuant to the CRA at least 60 days before the effective date of any final rule.

#### **List of Subjects in 44 CFR 61**

Flood insurance, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FEMA proposes to amend 44 CFR part 61 as follows:

#### **PART 61—INSURANCE COVERAGE AND RATES**

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

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

- 2. Revise § 61.2 to read as follows:

##### **§ 61.2 Definitions**

The definitions set forth in part 59 of this subchapter apply to this part, including the appendices. If an appendix defines a term differently, that definition controls for the purposes of that appendix.

- 3. Amend § 61.13 by revising paragraph (a) to read as follows:

##### **§ 61.13 Standard Flood Insurance Policy**

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in appendix "A" hereto and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

\* \* \* \* \*

- 4. Add Appendix A(4) to Part 61 to read as follows:

##### **Appendix A(4) to Part 61**

**Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Standard Flood Insurance Policy**

##### **Homeowner Flood Form**

*Please read this policy carefully. The flood insurance provided under this policy is subject to limitations, conditions, and exclusions. This policy insures only one dwelling that is specified on the declarations page.*

##### *Section I: Insuring Agreement*

A. *Governing Law.* The Federal Emergency Management Agency ("FEMA") provides this flood insurance *policy* under the terms of the National Flood Insurance Act of 1968, as amended ("Act"), and title 44 of the Code of Federal Regulations. The Act, applicable regulations, and federal common law exclusively govern this *policy* and all disputes involving this *policy*.

B. *Conflict With Federal Law.* This *policy* does not insure any real or personal property that is not eligible for flood insurance pursuant to federal law.

C. *Agreement.* We will pay you for *direct physical loss by or from flood* to your insured property up to the limits stated on the *declarations page* if you:

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

2. Complied with all terms and conditions of this *policy*; and

3. Furnished complete and accurate information and statements to us.

D. *Policy Term*. This *policy* will expire at 12:01 a.m. on the last day of the *policy* term stated on the *declarations page*.

E. *Liberalization*. If we make a change that broadens coverage under this edition of our *policy* and that does not require an additional premium charge, that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 calendar days prior to or during the *policy* term stated in the *declarations page*.

F. *Our Right of Review*. We may at any time review the information you give us and request additional information from you. We may revise your *policy* based on such review or additional information, including revising the amounts due from you.

#### Section II: Definitions

A. *Use of Pronouns*. In this *policy*:

1. “You” and “your” refer to the *insured(s)* shown on the *declarations page* of this *policy*.

2. “We,” “us,” and “our” refer to the insurer providing coverage under this *policy*.

B. *Flood*. In this *policy*, *flood* means:

1. A general and temporary condition of partial or complete inundation of normally dry land from any of the following:

- a. Overflow of inland or tidal waters;
- b. Unusual and rapid accumulation or runoff of surface waters from any source;
- c. Mudflow, which is a river of liquid and flowing mud on the surface of normally dry land, as when earth is carried by a current of water; or

d. Sudden erosion or undermining of land along the shore of a lake or similar body of water caused by waves or currents of water exceeding anticipated cyclical levels that causes collapse or subsidence of land resulting in a *flood*.

C. *Buildings*. In this *policy*, the following definitions apply:

1. *Building*. A structure, the construction of which has been completed, that has a fully secured roof and solid, vertical, load-bearing walls, and is affixed to a permanent site.

2. *Basement*. Any area of a *building* having its floor level below ground level on all sides, regardless of design or use.

a. An area of a *building* is below ground level when the land touching the exterior of the *building* is above its floor level.

b. An area of a *building* is presumed to be below ground level when it is necessary to walk up steps or a slope to reach the land surrounding the *building*. A professional land survey or report may rebut this presumption.

3. *Enclosure*. An area that exists below the *dwelling* and is used in accordance with local floodplain management ordinances or law for the parking of vehicles, building access, or storage. The *enclosure* is shown on the *declarations page*.

D. *Other Defined Terms*.

1. *Act*. The National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*).

2. *Actual Cash Value*. The cost to replace an insured item of property at the time of

loss, less depreciation based on its age and condition.

3. *Administrator*. The Administrator of the Federal Emergency Management Agency or designee.

4. *Claim*. Your assertion that you are entitled to payment for a covered loss under the terms and conditions of this *policy*. There is only one *claim* per flood event.

5. *Declarations Page*. A document we provide to you based on information that you provided to us that summarizes the coverage limit(s), premium, *insured(s)*, and other information about your *policy*. The *declarations page* is a part of this *policy*.

6. *Described Location*. The location of the insured *building*. The *described location* is shown on the *declarations page*.

7. *Direct Physical Loss By or From Flood*. Actual physical loss or damage to the insured property directly caused by a *flood*.

8. *Dwelling*. A *building* in use as a one-to-four family residence. A *dwelling* is not a mobile home, travel trailer, or a condominium unit.

9. *Flood Damage Resistant Materials*. Building materials identified by the *Administrator* as resistant to *flood* damage.

10. *Insured(s)*. Includes you and:

- a. any additional persons identified on the *declarations page*;
- b. any mortgagee or loss payee named in your application for insurance, as well as any other mortgagee or loss payee determined to exist at the time of loss; and
- c. your spouse, if a resident of the same household.

11. *Machinery and Equipment*. *Machinery and equipment* includes, only when contained within a *building* at the *described location*, functional electrical, plumbing, heating, cooling, and safety elements necessary for the operation of a *building*, and elevators. Outside of a *building*, *machinery and equipment* only includes the condenser unit for a central air conditioning system, heat pump unit for heating and air conditioning systems, solar panels, and permanently installed whole house standby generators when such units are connected to and servicing a *building* at the *described location*.

12. *National Flood Insurance Program (NFIP)*. The program of flood insurance coverage and floodplain management administered under the *Act*.

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

- a. this Homeowner Flood Form;
- b. the completed application for insurance;
- c. the *declarations page*;
- d. any endorsement(s) issued to you by us; and
- e. any addenda attached to this form by us at the time of application or renewal.

14. *Proof of Loss*. The *proof of loss* is a signed and sworn statement by you containing documentary evidence in support of your loss and the amount you are claiming.

15. *Replacement Cost Value*. The necessary cost, without deduction of depreciation, to repair or replace an item of property at the time of loss with an item of like kind and quality.

#### Section III: What We Cover

##### A. Coverage A—Dwelling

1. We insure up to the coverage limit on the *declarations page* at the *described location* against *direct physical loss by or from flood* to:

a. The *dwelling*.  
b. Materials and supplies to be used for construction, alteration, or repair of the *dwelling* or any other *building(s)* scheduled under Coverage B at the *described location*. The materials and supplies must be stored in a *building* at the time of loss.

2. Limited Coverage for *Basements and Enclosures*. We only cover *direct physical loss by or from flood* to the interior of all *basements* and *enclosures* as follows:

a. *Machinery and equipment* installed and, if necessary for operation, connected to a power source.

b. Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a *dwelling*.

c. Stairways and staircases directly attached to the *dwelling*.

d. Unfinished drywall and nonflammable insulation.

3. *Dwelling Limitations*.

a. Limitations on mold and mildew. We cover damage to the *dwelling* due to mold or mildew caused by a *flood* only when it is not within your control to inspect and maintain the property after a *flood* recedes.

b. Limitations on power, heating, or cooling failure. We cover damage caused by a power, heating, or cooling failure that is the result of *direct physical loss by or from flood* to covered power, heating, or cooling equipment at the *described location*.

c. Limitations on *flood* in the area. We cover damage to the *dwelling* when there is a *flood* in the area and the *flood* causes:

(1) water or waterborne material to back up through sewers or drains; to discharge or overflow from a sump, sump pump, or related equipment; or to seep or leak on or through the *dwelling*; or

(2) losses to the *dwelling* by or from the pressure or weight of standing or resting water on or below the surface of the land.

d. Limitations on pollutants. We pay for the testing or monitoring of pollutants after a *flood* only when required by law or ordinance. “Pollutants” refers to any 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.

4. This *policy* does not cover:

a. Loss of use of the *described location* including any living expenses incurred while the *dwelling* is inaccessible, being repaired, or is uninhabitable for any reason;

b. Land and land values;

c. Lawns, trees, shrubs, plants, growing crops, and landscaping;

d. Any open structures, including but not limited to a building used as a boathouse, when located entirely in, on, or over water.

e. *Buildings* constructed or substantially improved after September 30, 1982, when (1)

they are located entirely in, on, or over water or (2) if they are seaward of mean high tide;

f. Underground structures and equipment that are not located within the *dwelling*, such as wells, septic, sewer, plumbing supply, waste lines, gas supply lines, and electrical and HVAC system components;

g. 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*;

h. Containers and related equipment, such as tanks containing gases or liquids;

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

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

#### B. Coverage B—Other Buildings

1. We apply the terms of Coverage A to other *buildings* at the *described location* except as modified in III.B.2.

a. For this Coverage B to apply, the other *buildings* must appear on the *declarations page*.

b. Use of this coverage is at your option, but reduces the *dwelling* coverage limit provided under Coverage A. The maximum available coverage limit for other *buildings* is 10% of Coverage A limits, regardless of how many *buildings* are scheduled on the *declarations page*.

2. We do not cover:

a. Anything already excluded under the terms of Coverage A.

b. *Basements* or *enclosures* for any *building* that is not the *dwelling*.

c. Any *building* used or held for use for commercial purposes, such as agricultural and business use.

d. Any *building(s)* at the *described location* that is not owned by the *insured*, such as a *building* owned by a homeowners association.

#### C. Coverage C—Personal Property

1. We insure up to the coverage limit stated on the *declarations page* against *direct physical loss by or from flood* to personal property inside a *building* at the *described location* when:

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

b. The property is at the *described location* and is owned by non-paying guests or laborers.

2. We insure your personal property against *direct physical loss by or from flood* anywhere in the United States as follows:

a. We will pay no more than 10% of Coverage C limits for:

(1) Personal property located in a *building* at a location other than the *described location*; or

(2) Personal property located in a storage facility *building*.

b. The 10% coverage limit in III.C.2.a. will not apply if you have moved the personal property to a *building* reasonably safe from *flood* and not in a *basement* or *enclosure* due to:

(1) A general and temporary condition of flooding in the area near the *described*

*location*, even if the *flood* does not reach the *described location*;

(2) An evacuation order or other civil order from an authorized local official; or

(3) Repairs, renovations, or reconstruction or other conditions that make the *described location* uninhabitable or unsuitable for the storage of property.

#### 3. Personal Property Limitations.

a. Limitations on Property in a *Basement* or in an *Enclosure*. In a *basement* or an *enclosure*, this *policy* will only cover appliances installed in their functioning locations and, if necessary for operation, connected to a power source.

b. Limitations on Property in a *Building Without Walls on All Sides*. This *policy* will only cover personal property in any portion of a building that is not fully enclosed when it is secured to prevent flotation out of the building.

4. Special Limits. We will pay no more than the coverage sublimit specified on the *declarations page* for any *claim* 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 semiprecious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur for which the fur represents its principal value;

e. Portable electronic devices, including cell phones, smart phones, video game devices, electronic tablets, and laptop computers; or

f. Personal property primarily used for any commercial purposes.

g. No more than 10% of the special limit shown on the *declarations page* may be applied to valued paper, metals, or other similarly valued objects such as accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, or manuscripts.

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

6. We do not cover:

a. Anything already excluded under Coverages A and B;

b. Loss of use of any personal property at the *described location*;

c. Personal property not inside a *building*;

d. Items of personal property in a *basement* or an *enclosure*, except as stated in III.C.3;

e. Personal property in a *building* constructed or substantially improved after September 30, 1982 when the *building* is (1) located entirely in, on, or over water or (2) seaward of mean high tide;

f. Personal property located in an open structure located in, on, or over water;

g. Losses to items stored in a digital or other intangible format, whether created, owned, licensed, or otherwise in your possession;

h. Items held in violation of state or federal law;

i. Living things; and

j. Any self-propelled vehicle or machine capable of transporting a person(s) or cargo, by land, water, or by air, including any of its

equipment and parts. However, this limitation does not apply to personal property inside a *building* at the *described location* that is not registered for use on public roads, and:

(1) Used solely to service the *described location*; or

(2) Designed and used to assist people with disabilities.

#### D. Coverage D—Other Coverages

##### 1. Debris Removal

###### a. Covered Debris.

(1) We will pay the labor and expense to remove:

(a) debris from anywhere that comes onto or into the insured *dwelling* or other insured *buildings* at the *described location*; and

(b) debris of insured property anywhere.

(2) If you or a member of your household perform the debris removal work, we will pay you for the value of this work using the federal minimum wage. This coverage does not increase any coverage limit stated on the *declarations page*.

b. Debris Not Covered. This *policy* does not cover the cost to remove:

(1) debris from other locations on the land surrounding the *dwelling* or other *building(s)* at the *described location*, or

(2) any non-covered items of property from the *dwelling* or *building(s)*, even if the removal facilitates covered cleanup or repairs.

##### 2. Loss Prevention

a. Materials and Labor. We will pay up to the coverage sublimit specified on the *declarations page* for the expenses you incur to protect your insured property from a *flood* or imminent danger of *flood*. Such expenses are limited to the following:

(1) Your reasonable expenses to buy materials reasonably understood to be, or commonly used as, temporary measures to avoid or reduce the harm from an imminent *flood*, including sandbags, fill for temporary levees, and pumps; and

(2) The value of work, at the federal minimum wage, that you or a member of your household perform to protect your property.

b. This coverage for materials and labor only applies if:

(1) Damage to the insured property by or from *flood* is imminent; and

(2) The threat of *flood* damage is apparent enough to lead a reasonably prudent person to anticipate *flood* damage.

(3) In addition, one of the following must occur:

(i) 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

(ii) A legally authorized official has issued an evacuation order or other civil order for the community in which your insured property is located calling for measures to preserve life and property from the peril of *flood*.

3. Property Removed to Safety. We will pay up to the coverage sublimit specified on the *declarations page* for the reasonable expenses you incur to move insured property to a secure location other than the *described location* to protect it from *flood* or the imminent danger of *flood*. Reasonable

expenses include the value of work, at the federal minimum wage, performed by you or a member of your household.

4. This coverage does not increase the Coverage A, Coverage B, or Coverage C limits.

#### Section IV: Exclusions

**A. Excluded Losses.** We do not pay you for damage from:

1. Other perils;
2. Economic losses, even if caused by *flood*, whether direct or indirect, including losses from a disruption of business, or complying with any ordinance or law.
3. Earth movement, even if the earth movement is caused by *flood*, as follows:
  - a. Earth movement includes:
    - (1) Earthquake;
    - (2) Landslide;
    - (3) Subsidence;
    - (4) Sinkholes;
    - (5) Destabilization; or
    - (6) Any other movement such as sinking, rising, shifting, expanding, or contracting of the earth.

b. This earth movement coverage exclusion does not include:

- (1) Hydrostatic pressure or hydrodynamic forces;
- (2) Buoyancy; or
- (3) Frictional force from floodwater moving along the surface of the ground.
4. Gradual erosion caused by the normal water action that wears an area of land away over time.

5. Other excluded causes of damage. We do not insure for damage caused directly or indirectly by any of the following:

- a. The pressure, weight, freezing, or thawing of ice;
- b. Rain, snow, sleet, hail, or water spray;
- c. The exposure to water of any form other than *flood*, including failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment;
- d. Design, structural, or mechanical defect(s); deterioration, rot, or corrosion; or insect or rodent infestation; and
- e. Anything you or any member of your household does or conspire(s) to do to deliberately cause *direct physical loss by or from flood*.

6. Increase in hazard. We will not cover any loss that occurs due to any hazard that is increased by you, by any means within your control, or with your knowledge.

#### **B. Flood in Progress.**

1. A *flood* is in progress when one of the following is true:

a. There is a near certainty of a *flood* loss at the *described location* from a flood control effort such as:

- (1) Opening of a spillway,
  - (2) Breaching of a levee, or
  - (3) Releasing of water from a dam.
- b. There is a *flood* at the *described location*.

2. Loan closing. If this *policy* became effective in connection with a loan closing, we will not pay for a loss caused by a *flood* in progress at the time of loan closing.

3. No loan closing. In all other circumstances, we will not pay for a loss caused by a *flood* in progress that existed on or before the day you submitted the application for coverage under this *policy*.

**C. Pre-existing Damage.** We do not pay you for pre-existing damage. Pre-existing damage includes:

1. *Flood* loss or damage that occurred prior to the date of the loss, whether direct physical loss or not, and whether paid or unpaid on a prior event; and
2. Damage attributable to any non-*flood* peril that occurred prior to the date of loss.

#### Section V: Policy Conditions

**A. Actions and Conditions That Can Void Your Policy.**

1. NFIP Ineligibility. This *policy* is void from its inception and has no legal force if:

- a. The *described location* is in a community that was not participating in the NFIP on the *policy's* inception date and did not join or reenter the NFIP during the *policy* term and before the loss occurred;

b. The *described location* or other property is otherwise not eligible for coverage under the *Act* or regulations of the NFIP, for reasons of noncompliance with local floodplain ordinances or otherwise; or

c. Any other federal law prevents coverage of property at the *described location*.

2. Concealment or Fraud. With respect to all *insureds* under this *policy*,

a. This *policy* is void and has no legal force or effect, and cannot be renewed, 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 relating to this *policy*; or
  - (3) Knowingly made false statements relating to this *policy* or any other NFIP insurance when applying for coverage, when making a *claim*, or at any other time.
- b. This *policy* will be void as of the date acts described in V.A.2.a. were committed.

#### **B. Policy Renewal.**

1. We must receive the renewal premium from you within 30 calendar days of the expiration date of your prior *policy* term.

2. We will not renew this *policy* if federal law prevents coverage of property at the *described location*.

#### **C. Cancellation of the Policy by You.**

1. You may cancel this *policy* when:

- a. You no longer have an insurable interest in the subject property;

b. You are no longer required to maintain a flood insurance policy pursuant to federal law or lender requirements; or

c. You have a duplicate NFIP *policy*.

2. If you cancel this *policy*, you may be entitled to a full or partial refund of premium for the current *policy* term under the applicable rules and regulations of the NFIP.

#### **D. Reduction and Reformation of Coverage.**

1. If the premium we receive from you is not enough to purchase the amount(s) of insurance you requested, we will issue the *policy*, but only for the amount of coverage that the premium will purchase for a one-year term.

2. We will increase the reduced amount of coverage described in V.D.1 to the amount you originally requested without regard to whether a loss occurred, provided that:

- a. We will bill you for the additional premium or, if necessary to calculate the

additional premium, request information from you.

b. You respond to our request for:

- (1) Additional premium within 30 calendar days of the date of our bill; or
- (2) Additional information within 60 calendar days of the date of our request.

c. Failure to timely respond may result in a waiting period for additional coverage if a loss has not occurred within the *policy* term, or the settlement of a *claim* under reduced *policy* limits if a loss has occurred within the *policy* term.

**E. Disaster Conditions.** In the event of a *flood* associated with a major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the *Administrator* may, after written notice:

1. Extend the stated timeframes in the following sections below:

a. Proof of Loss, VI.A.3, and VI.A.7, for a period not to exceed 365 calendar days from the date of loss; and

b. Policy Renewal, V.B.1, for a period not to exceed 60 calendar days from the expiration date.

2. Conditionally waive the requirement in VI.A.3 and VI.B.2 that an *insured* must sign or swear to a *proof of loss* or an adjuster's report.

3. In accordance with VI.C.3, establish special procedures for advance payments to *insured(s)*.

4. Settle losses in accordance with any formula established under federal law that allocates covered damages amongst multiple perils, including *flood*.

#### Section VI: Procedures and Duties When a Loss Occurs

**A. Your Duties After a Loss.** If the *described location* experiences a *direct physical loss by or from flood*, you must comply with all of the following duties:

1. Give prompt notice to us;
2. As soon as possible, separate the damaged and undamaged property so that we may examine it. You must also take all reasonable measures to protect covered property from any further loss;

3. Within 90 calendar days after the loss, send us a *proof of loss*, signed and sworn to by you, furnishing us with the following information:

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Details of any other insurance that may cover some or all of the loss;
- d. Changes in title or occupancy of the covered property during the term of the *policy*;

e. Names of mortgagees or anyone else having a lien, charge, or *claim* against the covered property;

f. A description of all damages to your *dwelling* and other covered *buildings* and detailed repair estimates (if estimates are available); and

g. An inventory of the lost, damaged or destroyed property showing the

- (1) Quantity;
- (2) Description;
- (3) *Replacement Cost Value* or *Actual Cash Value* (whichever is applicable);

(4) Amount of loss;  
 (5) Evidence that prior *flood* damage has been repaired;  
 (6) Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and  
 (7) All funds actually spent by you recovering from the loss. You must attach to the inventory copies of all bills, receipts, invoices, written estimates, and related documents.

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

5. You must cooperate with our adjuster and other representative(s) in the investigation of your *claim*.

6. You must make the damaged property accessible for inspection.

7. The insurance adjuster we hire to investigate your *claim* may furnish you with a *proof of loss* form and may help you complete it. However, this help is a matter of courtesy only and you must still send us a *proof of loss* within 90 calendar days after the loss even if the adjuster does not furnish the form or help you complete it.

**B. Our Options After a Loss.** After a loss and at our sole discretion, we may exercise the following options:

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

a. You must provide us access to the damaged property;

b. If we request, you must submit to examination under oath, while not in the presence of another *insured*, and sign the transcript from such examination; and

c. Permit us to examine and make copies of all or any relevant portion of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property; and

(2) All bills, invoices, receipts and other records pertaining to the damaged property, or certified copies if the originals are lost.

2. At our option, we may accept our adjuster's report of the loss in lieu of a *proof of loss*. You must sign the adjuster's report. At our option, we may also require you to swear to the report.

**C. Loss Payment.**

1. Adjustment of *Claims*.

a. We have not authorized the adjuster to approve or disapprove any *claim*.

b. 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 calendar days after we receive your *proof of loss*, or within 90 calendar days after the insurance adjuster files the adjuster's report signed and, if required by us, sworn to by you in lieu of a *proof of loss*, and:

(1) We reach an agreement with you;

(2) There is an entry of a final judgment;

or

(3) There is a filing of an appraisal award with us, as provided in VI.F. of this *policy*.

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

a. Accept our denial of your *claim*;

b. File an amended proof of loss (see VII.L.1) within 90 calendar days of the date of the loss;

c. Exercise your rights under this *policy* including:

(1) Appeal (see VII.L.2)

(2) Appraisal (see VI.F) or

(3) Litigation (see VII.L.3).

3. Advance Payments.

a. At our option, we may provide you with an advance payment prior to the completion of your *claim*. You may request an advance payment after providing the notice of loss required in VI.A. Such advance payments may include amounts totaling no more than 5% of the Coverage A coverage limit to an *insured* without regard to VII.F.

b. We may approve or reject your request for an advance payment at any time. Such approval or rejection does not affect the final adjustment of your *claim* and does not change your duties or our options under this *policy*.

c. If we provide you with an advance payment that exceeds your covered loss, we will send you notice in writing of the overpayment. You must repay any excess amount to us or dispute the validity of the overpayment within 30 calendar days of the date on our letter. Failure to repay any overpayment from us may result in a debt collection action by the Federal Government.

**D. Deductible.**

1. 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 applicable coverage limit). Your deductible amount is shown on the *declarations page*.

2. In each loss from *flood*, a single deductible applies to losses to your *dwelling* and all other property insured by this *policy*.

3. The deductible does NOT apply to any Loss Avoidance Measures specified in III.D.2 or III.D.3.

**E. Loss Settlement.**

1. This *policy* provides two possible methods of settling losses: *Replacement Cost Value* and *Actual Cash Value*.

a. *Replacement Cost Value* loss settlement, described in VI.E.2, applies:

(1) To your *dwelling*, if at the time of loss, the coverage limit in this *policy* that applies to the *dwelling* is 80% or more of full replacement cost immediately before the loss or is the maximum coverage limit available under the *NFIP*.

(2) To *claims* arising under Coverage B or Coverage C of this *policy*.

b. *Actual Cash Value* loss settlement applies:

(1) If your *dwelling* is not eligible for *Replacement Cost Value* settlement because it does not meet the conditions under VI.E.1.a.; or

(2) If *Actual Cash Value* is specified in an endorsement.

2. *Replacement Cost Value* Loss Settlement. If your loss is subject to *Replacement Cost Value* settlement under VI.E.1.a., the following conditions apply:

a. We will pay to repair or replace the damaged *dwelling* or other *building(s)* at the *described location* or personal property covered under this *policy* but not more than the lesser of the following amounts:

(1) The coverage limit that is applicable to the loss as shown on your *declarations page*;

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

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

b. If the *dwelling* is rebuilt at a new location, we will pay you only the cost that would have been incurred if the *dwelling* had been rebuilt at its former location.

3. *Actual Cash Value* Loss Settlement. If *actual cash value* loss settlement applies, we will pay the lesser of the following amounts:

a. The *actual cash value* of the covered property; or

b. The *policy* limits stated on the *declarations page*.

4. *Flood Mitigation Expenses*. We will reimburse you for post-loss expenses that mitigate against future *flood* events as follows:

a. Post-loss expenses may not exceed the *policy* limits stated on the *declarations page*.

b. At your option, you may choose to replace any damage under Coverage A or Coverage B with *Flood Damage Resistant Materials*. After you complete installation of the *Flood Damage Resistant Materials*, you may then request reimbursement.

c. At your option, you may choose to elevate your *machinery and equipment* above a *basement* or an *enclosure*. Such elevated *machinery and equipment* must be elevated to a height reasonably expected to avoid future *direct physical loss by or from flood*. After you complete elevation of the *machinery and equipment*, you may then request reimbursement.

5. This is not a valued *policy*. A valued *policy* is a *policy* in which the payable amount in the event of a total loss is agreed upon by the *insured* and the insurer.

**F. Appraisal.** If you and we fail to agree on the *Replacement Cost Value* or, if applicable, *Actual Cash Value*, of your damaged property and are thus unable to settle the amount of loss, then either party may demand an appraisal of the loss.

1. Conditions Before You Can Request an Appraisal.

a. You must agree with us on a list of damaged items to be appraised.

b. You must have complied with the requirements of the *proof of loss* (see VI.A.3).

c. Appraisal is only available when the dispute between parties involves the price to be paid for the property covered under this *policy*. Other disputes, such as disputes regarding coverage or causation, or the extent of the loss, cannot be resolved through the appraisal process.

2. Appraisal Process. If the conditions under VI.F.1. are satisfied and an appraisal is properly invoked, you and we will each choose a competent and impartial appraiser within 20 calendar days after receiving a written request to do so from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 calendar 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* or the

*Replacement Cost Value* (as applicable), 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 Value* and loss. Each party will:

- a. Pay its own appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

3. Appraisal can only be used when it will result in complete resolution of the entire *claim*. Appraisal cannot be used to resolve only part of your *claim* or to determine the value of some items and not others.

#### Section VII: General Conditions

**A. Abandonment.** You may not unilaterally abandon to us damaged or undamaged property insured under this *policy*.

#### **B. Amendments, Waivers, Assignment.**

1. This *policy* cannot be changed nor can any of its provisions be waived without the express written consent of the *Administrator*.

2. No action we take under the terms of this *policy* constitutes a waiver of any of our rights.

3. You may not assign your *policy* or your *claim* to any other party.

**C. Death.** In the event of your death during the *policy* term, the coverage provided under this *policy* continues automatically for any other *insured(s)*. If no other *insured* exists, this *policy* will insure the administrator, executor or other legal representative of your estate as previously determined by you or the intestacy laws of the state where the *described location* is located, but only for the *dwelling, building(s)*, and personal property of the deceased at the time of death.

**D. Duplicate Policies Not Allowed.** We will not insure your personal property at the described location under more than one NFIP *policy*. If there is more than one NFIP *policy* for buildings at the described location, we will apply the NFIP rules concerning duplicate policies and cancel or nullify one of the policies, whichever is applicable, which may result in a refund.

**E. Headings and Captions.** The headings and captions used in this *policy* are for convenience of reference only and shall not affect or control the meaning or interpretation of any of the terms, conditions or provisions of this *policy*.

**F. Mortgage Clause.** The word “mortgagee” includes trustee.

1. Any loss payable under III.A or III.B of this *policy* will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee determined to exist at the time of loss, including 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.

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

- a. Notifies us prior to a loss of any change in the ownership or occupancy, or substantial change in risk, of which the mortgagee is aware;

b. Pays any premium due under this *policy* on demand if you have neglected to pay the premium; and

c. Submits a signed, sworn *proof of loss* within 90 calendar days after receiving notice from us of your failure to do so.

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

4. The mortgagee has the right to access your *claim* file and receive loss payment even if the mortgagee has started foreclosure or similar action on the property insured under this *policy*.

5. If we decide to cancel or not renew this *policy*, it will continue in effect only for the benefit of the mortgagee for 30 calendar days after we notify the mortgagee of the cancellation or non-renewal.

6. 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*.

**G. No Benefit to Bailee.** No person or organization having custody of covered property other than you will benefit from this insurance.

**H. Other Insurance.** Subject to the limitations and restrictions of VII.D., if a loss covered by this *policy* is also covered by other insurance, we will pay no more than the coverage limit you are entitled to for lost, damaged, or destroyed property insured under this *policy*, subject to the following:

1. We will pay only the proportion of the loss that this *policy*’s coverage limit bears to the total coverage limit covering the loss; unless VII.H.2. or VII.H.3. applies.

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

3. This *policy* will be primary up to the other policy’s deductible amount. After the other policy’s deductible amount is reached, this *policy* will participate in the same proportion that this *policy*’s amount of insurance bears to the total amount of both policies for the balance of the loss. This *policy* is subject to its own deductible.

**I. Pair and Set Clause.** In case of loss to an item of property that is part of a pair or set, we will have the option to pay you either:

1. The cost to replace only the lost, damaged, or destroyed item; or
2. The amount that represents the fair proportion that the lost, damaged or destroyed item bears to the total value of the pair or set.

#### **J. Salvage.**

1. After we give you written notice, we may take all or any part of the damaged property at the value that we agree upon or its appraised value.

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

**K. Subrogation.** “Subrogation” 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. Whenever we pay for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. After the loss, you must deliver all related papers to us, you must cooperate with us, and you may not interfere with or do anything that would prevent our right to recover this money. If we pay for a loss under this *policy* and you (1) make a *claim* against any person who caused your loss and (2) recover any money from that person, you must return our payment before you may keep any recovered funds, without regard to any non-covered losses occurring at the *described location*.

#### **L. Your Options After Our Denial.**

1. Request Additional Payment. You may request additional payment and amend your initial *proof of loss*. You must submit this request or amended *proof of loss* as set forth in VI.A. A denial letter does not extend the deadline in VI.A.3 to submit a *proof of loss*.

2. Appeal. If we deny your *claim*, in whole or in part, we will send you a denial letter. If you wish to appeal our denial, you must send an appeal letter explaining your position and a copy of our denial letter to FEMA within 60 calendar days of the date on our letter. Filing an appeal to FEMA does not limit or affect your ability to file suit, or to seek an additional payment or file an amended *proof of loss* with us.

3. File a Lawsuit Against Us. You may not sue us to recover money under this *policy* unless you have complied with all of the requirements of the *policy*. If you do sue, you must file the suit within one year after the date of the written denial of all or part of your *claim*, and you must file the suit in the United States District Court of the district in which the covered property or the major part thereof was located at the time of loss. These requirements apply to any *claim* that you may have under this *policy* and to any dispute that you may have arising out of or resulting from the handling of any *claim* under this *policy*.

*In witness whereof*, we have signed this policy below and hereby enter into this Insurance Agreement.

Federal Insurance and Mitigation Administration

■ 5. Add Appendix A(101) to Part 61 to read as follows:

#### **Appendix A(101) to Part 61**

##### **Increased Cost of Compliance Coverage Endorsement**

The terms of the *policy* apply to this increased cost of compliance coverage unless modified by this endorsement.

#### **Definitions**

This endorsement adds the following definitions to Section II of the *policy*:

#### **C. Additional Defined Terms.**

1. *Community Official* means the non-federal official enforcing floodplain management ordinances that meet or exceed the minimum standards of the *NFIP* on a damaged *building*.

2. *Compliance Activities* means legally required mitigation activities approved by the *Administrator* that reduce or remove the risk of future flood damage to a *building* at the *described location*.



### Coverages

This endorsement adds the following coverage to Section III of the *policy*:

#### E. Increased Cost of Compliance

1. We will pay you up to the Increased Cost of Compliance coverage limit indicated on the *declarations page* for the cost of *compliance activities* actually incurred when required by a *community official*.

2. Use of this coverage is at your option, but the combined payments under Coverage A, Coverage B, and this increased cost of compliance coverage under Coverage E may not exceed the maximum amount of coverage permitted by the *Act*.

3. Limitation. 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.

4. This *policy* does not cover:

a. Anything already excluded anywhere in the *policy*;

b. Costs of any *compliance activities*:

I. For a *flood loss* that pre-dates the current loss; or

II. Necessary for additions or improvements to the *dwelling* made after such loss occurred.

c. Any standard that does not meet the minimum requirements of the *NFIP*.

### Exclusions

Paragraph A.2 of Section IV, *Exclusions*, is replaced with the following:

2. Economic losses, even if caused by flood, whether direct or indirect, including losses from a disruption of business, or complying with any ordinance or law. This exclusion does not apply to any eligible activities we describe in Coverage E—Increased Cost of Compliance.

### Policy Conditions

Paragraph E.1 of Section V, *Policy Conditions*, is amended by adding the following:

c. Increased Cost of Compliance, VI.E.6, for a period not to exceed six years from the date of loss.

### Procedures and Duties When a Loss Occurs

Paragraph D.3 of Section VI, *Procedures and Duties When a Loss Occurs*, is replaced with the following:

3. The deductible does NOT apply to any Loss Avoidance Measures specified in III.D.2 or III.D.3. or to III.E, Increased Cost of Compliance coverage.

Paragraph E of Section VI is amended by adding the following:

6. Increased Cost of Compliance Loss Settlement. We will pay you for your eligible increased Cost of Compliance costs when you have completed your *compliance activities* as soon as reasonably possible after the loss, not to exceed two years.

### General Conditions

Paragraph B.3 of Section VII, *General Conditions*, is replaced with the following:

3. Assignment.

a. Except as provided in VII.B.3.b, you may not assign your *policy* or your *claim* to any other party.

b. You may assign a *claim* under Coverage E to a state or local government or non-profit

organization to apply towards the non-federal cost share of a federal grant.

■ 6. Add Appendix A(102) to Part 61 to read as follows:

#### Appendix A(102) to Part 61

##### Actual Cash Value Loss Settlement Endorsement

*Read the endorsement carefully for changes to the policy.*

This endorsement provides *Actual Cash Value* as the only available valuation for settling your covered losses under the *policy*.

Paragraphs E.1 through E.5 of Section VI, *Procedures and Duties When a Loss Occurs*, are replaced with the following:

1. This *policy* provides *Actual Cash Value* loss settlement.

2. *Actual Cash Value* Loss Settlement. If *actual cash value* loss settlement applies, we will pay the lesser of the following amounts:

a. The *actual cash value* of the covered property; or

b. The policy limits stated on the *declarations page*.

3. *Flood Mitigation Expenses*. We will reimburse you for post-loss expenses that mitigate against future *flood* events as follows:

a. Post-loss expenses may not exceed the policy limits stated on the *declarations page*.

b. At your option, you may choose to replace any damage under Coverage A or Coverage B with *Flood Damage Resistant Materials*. After you complete installation of the *Flood Damage Resistant Materials*, you may then request reimbursement.

c. At your option, you may choose to elevate your *machinery and equipment* above a *basement* or an *enclosure*. Such elevated *machinery and equipment* must be elevated to a height reasonably expected to avoid future *direct physical loss by or from flood*. After you complete elevation of the *machinery and equipment*, you may then request reimbursement.

4. This is not a valued policy. A valued policy is a policy in which the payable amount in the event of a total loss is agreed upon by the *insured* and the insurer.

■ 7. Add Appendix A(103) to Part 61 to read as follows:

#### Appendix A(103) to Part 61

##### Temporary Housing Expense Endorsement

The terms of the *policy* apply to this temporary housing expense coverage unless modified by this endorsement.

##### What We Cover

Paragraph A.4.a of Section III, *What We Cover*, is replaced with the following:

a. Except as provided in III.D.4 as modified by endorsement, loss of use of the *described location* while the *dwelling* is inaccessible, being repaired, or is uninhabitable for any reason;

Paragraph D.4 of Section III, *What We Cover*, is replaced with the following:

4. Temporary Housing Expense. For additional premium received, we will cover temporary housing expenses actually incurred by you up to the coverage sublimit specified on the *declarations page* when:

(i) The *dwelling* at the *described location* is uninhabitable due to *direct physical loss by or from flood*. Payment will be for the shortest amount of time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

(ii) A legally authorized official has issued an evacuation or civil order for the community in which the *dwelling* is located calling for measures to preserve life and property from the peril of *flood*. Payment will be for the shortest time period covered by the order.

(b) The time period for temporary housing expense coverage is not limited by the expiration of the policy term specified in I.D but in any case will not exceed 24 consecutive months from the date of the covered *flood loss*.

5. This coverage does not increase the Coverage A, Coverage B, or Coverage C limits.

■ 8. Add Appendix A(104) to Part 61 to read as follows:

#### Appendix A(104) to Part 61

##### Basement Coverage Endorsement

The terms of the *policy* apply to this basement coverage endorsement unless modified by this endorsement.

##### What We Cover

Paragraph A.2 of Section III, *What We Cover*, is replaced with the following:

2. Coverage for *Basements*. For additional premium received, we insure up to the selected Coverage A sublimit on the *declarations page* against *direct physical loss by or from flood* to the *basement*.

Paragraph C.3.a of Section III, *What We Cover*, is replaced with the following:

a. Limitations on Property in a *Basement* or in an *Enclosure*.

i. For additional premium received, we insure up to the selected Coverage C sublimit on the *declarations page* against *direct physical loss by or from flood* to personal property in a *basement*.

ii. In an *enclosure*, this *policy* will only cover appliances installed in their functioning locations and, if necessary for operation, connected to a power source.

■ 9. Add Appendix A(105) to Part 61 to read as follows:

#### Appendix A(105) to Part 61

##### Builder's Risk Endorsement

This *NFIP policy* is amended to provide coverage for a *building* under construction as set forth in this endorsement. The terms of the *policy* apply to this builder's risk endorsement unless modified by this endorsement.

##### Insuring Agreement

Paragraph D of Section I, *Insuring Agreement*, is replaced with the following:

D. *Policy term*. This policy will expire at the earlier of the following two dates:

1. The date your *dwelling* is completed and occupied by you, this endorsement is deleted by us, and the Homeowner Flood Form becomes effective in its entirety; or

2. 12:01 a.m. on the last day of the policy term stated on the *declarations page*.

### Definitions

This endorsement adds the following definitions to Section II of the *policy*:

#### C. Additional Defined Terms.

1. **Construction.** *Construction* as used in this endorsement means any new development of land at the *described location* resulting in a *building* or alteration or repair of a *building*, including a *dwelling* at the *described location*.

#### What We Cover

Section III, What We Cover, is replaced in its entirety with the following:

#### Section III: What We Cover

##### A. Coverage A—Dwelling

1. We insure up to the coverage limit on the *declarations page* at the *described location* against *direct physical loss by or from flood* to:

a. The *dwelling* under *construction* at the *described location*. If the *dwelling* is not yet walled or roofed as described in the definition of *building*, then coverage applies;

(1) Only while *construction* is in progress; or

(2) If *construction* is halted only for a period of 90 consecutive days thereafter.

b. Materials and supplies to be used for *construction* of the *dwelling* or any other *building(s)* scheduled under Coverage B at the *described location*. The materials and supplies must be stored in a *building* at the time of loss.

##### 2. Coverage for Basements and Enclosures.

a. Limited coverage. We only cover *direct physical loss by or from flood* to the interior of all *basements* and *enclosures* as follows:

(1) *Machinery and equipment* installed and, if necessary for operation, connected to a power source.

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

(3) Stairways and staircases directly attached to the *dwelling*.

(4) Unfinished drywall and nonflammable insulation.

##### 3. Dwelling Limitations.

a. Limitations on mold and mildew. We cover damage to the *dwelling* due to mold or mildew caused by a *flood* only when it is not within your control to inspect and maintain the property after a *flood* recedes.

b. Limitations on power, heating, or cooling failure. We cover damage caused by a power, heating, or cooling failure that is the result of *direct physical loss by or from flood* to covered power, heating, or cooling equipment at the *described location*.

c. Limitations on *flood* in the area. When there is a *flood* in the area and the *flood* causes:

(1) water or waterborne material to back up through sewers or drains; to discharge or overflow from a sump, sump pump, or related equipment; or to seep or leak on or through the *dwelling*; or

(2) losses to the *dwelling* by or from the pressure or weight of standing or resting water on or below the surface of the land.

d. Limitations on pollutants. We pay for the testing or monitoring of pollutants after a *flood* only when required by law or

ordinance. "Pollutants" refers to any 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.

4. This *policy* does not cover:

a. Loss of use of the *described location* including any living expenses incurred while the *dwelling* is inaccessible, being repaired, or is uninhabitable for any reason;

b. Land and land values;

c. Lawns, trees, shrubs, plants, growing crops, and landscaping;

d. Any open structures, including but not limited to a building used as a boathouse, when located entirely in, on, or over water.

e. *Buildings* constructed or substantially improved after September 30, 1982, when (1) they are located entirely in, on, or over water or (2) if they are seaward of mean high tide;

f. Underground structures and equipment that are not located within the *dwelling*, such as wells, septic, sewer, plumbing supply, waste lines, gas supply lines, electrical and HVAC system components;

g. 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*;

h. Containers and related equipment, such as tanks containing gases or liquids;

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

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

##### B. Coverage B—Other Buildings

1. We apply the terms of Coverage A to other *buildings* at the *described location* except as modified in III.B.2.

a. For this Coverage B to apply, the other *buildings* must appear on the *declarations page*.

b. Use of this coverage is at your option, but reduces the *dwelling* coverage limit provided under Coverage A. The maximum available coverage limit for other *buildings* is 10% of Coverage A limits, regardless of how many *buildings* are scheduled on the *declarations page*.

2. We do not cover:

a. Anything already excluded under the terms of Coverage A.

b. *Basements* or *enclosures* for any *building* that is not the *dwelling*.

c. Any *building* used or held for use for commercial purposes, such as agricultural and business use.

d. Any *building(s)* at the *described location* that is not owned by the insured, including an entity, such as a homeowners association.

##### C. Coverage C—Personal Property

There is no personal property coverage under this *policy* until your *dwelling* is completed and occupied by you, this endorsement is deleted by us, and the Homeowner Flood Form becomes effective in its entirety.

##### D. Coverage D—Other Coverages

###### 1. Debris Removal

a. Covered Debris.

(1) We will pay the labor and expense to remove:

(a) debris from anywhere that comes onto or into the insured *dwelling* or other insured *buildings* at the *described location*; and

(b) debris of insured property anywhere.

(2) If you or a member of your household perform the debris removal work, we will pay you for the value of this work using the federal minimum wage. This coverage does not increase any coverage limit stated on the *declarations page*.

b. Debris Not Covered. This *policy* does not cover the cost to remove:

(1) debris from other locations on the land surrounding the *dwelling* or other *building(s)* at the *described location*, or

(2) any non-covered items of property from the *dwelling* or *building(s)*, even if the removal facilitates covered cleanup or repairs.

###### 2. Loss Prevention

a. Materials and Labor

(1) We will pay up to the coverage sublimit specified on the *declarations page* for the expenses you incur to protect your insured property from a *flood* or imminent danger of *flood*. Such expenses are limited to the following:

(a) Your reasonable expenses to buy materials reasonably understood to be, or commonly used as, temporary measures to avoid or reduce the harm from an imminent *flood*; including sandbags, fill for temporary levees, and pumps; and

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

b. This coverage for materials and labor only applies if damage to the insured property by or from *flood* is imminent and the threat of *flood* damage is apparent enough to lead a reasonably prudent person to anticipate *flood* damage. In addition, one of the following must occur:

(1) 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

(2) A legally authorized official has issued an evacuation order or other civil order for the community in which your insured property is located calling for measures to preserve life and property from the peril of *flood*.

3. Property Removed to Safety. We will pay up to the coverage sublimit specified on the *declarations page* for the reasonable expenses you incur to move insured property to a secure location other than the *described location* to protect it from *flood* or the imminent danger of *flood*. Reasonable expenses include the value of work, at the federal minimum wage, performed by you or a member of your household.

4. This coverage does not increase the Coverage A, Coverage B, or Coverage C limits.

*Policy Conditions*

The following subsection is added to paragraph B of Section V, *Policy Conditions*:  
3. Builders Risk. Notwithstanding V.B.1 or V.B.2, any *NFIP policy* written with a builder's risk endorsement is eligible for only one renewal.

*General Conditions*

The following subsection is added to the beginning of paragraph F of Section VII, *General Conditions*:

A holder of a *construction* loan upon which draws have been paid shall be considered the "mortgagee."

**Deanne B. Criswell,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2024-02204 Filed 2-5-24; 8:45 am]

**BILLING CODE 9111-52-P**