

**REPORT TO THE COUNTY EXECUTIVE
OF BALTIMORE COUNTY, MARYLAND
ON THE RESPONSE TO FLOOD VICTIMS
OF HURRICANE ISABEL BY
INSURANCE COMPANIES AND
AGENCIES OF THE STATE AND
FEDERAL GOVERNMENT**

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February 2, 2004

EXECUTIVE SUMMARY

The authors were engaged by the County Executive for Baltimore County to evaluate the responses of private insurers, and state and federal agencies, to the victims of Hurricane Isabel in Baltimore County. The report was based on the following sources of information:

- Responses to the questionnaires by 89 residents
- Interviews with 23 residents
- Review of email correspondence among residents
- Review of proofs of loss prepared by flood insurance adjusters
- Review of correspondence from state and federal agencies, and insurers, supplied by homeowners
- Interviews with officials from the National Flood Insurance Program (NFIP)
- Review of materials on the FEMA and NFIP websites, including:
 - NFIP Flood Insurance Manual
 - NFIP Adjusters Manual
 - NFIP Control Plan for WYO Companies
 - NFIP Bulletins and Tip Sheets
 - Standard Flood Insurance Policy (SIP)
 - NFIP Claims Guidelines for Policyholders
 - The Financial Assistance/ Subsidy Arrangement with WYO carriers.
- Information from the website on the Maryland Insurance Administration (MIA), and material the MIA distributed to victims regarding Hurricane Losses and the NFIP
- Review of Maryland Insurance Law
- Review of the Federal law governing the Federal Flood Insurance Program, including statutes, regulations and case law.
- Review of FEMA Flood Zone Maps.

HURRICANE ISABEL

Hurricane Isabel had a particularly devastating effect on Baltimore County. The storm surge exceeded records established in 1933, and in some cases exceeded the 500-year flood boundary. The homes of over 250 residents were declared “substantially damaged,” meaning damage exceeded 50% of the assessed value of the home.

SUMMARY OF SURVEY RESPONSES

We received 89 surveys from County residents. While not all residents responded to all questions, clear patterns emerged from the responses:

- 94% lived within 300 feet of the water.

- Of those that lived within 300 feet of the water, 57% did not have flood coverage for contents.
- By contrast, 16% of those close to the water did not have flood coverage on their dwelling.
- 53% sustained damage greater than 50% of the assessed value of the house and had not lived in the house since the hurricane.
- 97% of those who answered responded that the amount offered by their flood insurer to settle their flood claims was inadequate to compensate them for the damages they had sustained.
- Of those responding to the questions of whether the respondent received: “sufficient information from your agent and/ or insurer about the types of damage your homeowner’s policy covers, whether you needed flood insurance, the type of damage this is covered under a flood insurance policy, and how much coverage you needed”
 - 85% answered no.
- 72% of those who responded to the question of whether coordination was good or not good among federal, state and county officials said it was not good.
- 75% who offered an opinion on whether their agent was helpful indicated the agent was not helpful in making a flood claim or obtaining information about coverage.

Our findings and recommendations are set out below.

FINDING: Even if full and fair payments were made under NFIP flood insurance policies, most homeowners with such policies would not be fully reimbursed for flood losses because of limitations in the NFIP policies.

Recommendations: Congress or the NFIP should consider revisiting the scope of coverage for flood policies, and the financial impact fuller coverage would have on premiums and the costs to NFIP. At a minimum, the public and insurance professionals must be better educated on the significant limitations of the flood policies.

FINDING: The majority of homeowners affected by Isabel had flood insurance covering their primary dwelling, but a substantial minority lacked coverage for contents in the dwelling and for other property, resulting in significant uninsured losses.

Recommendations: The NFIP should consider requiring the purchase of contents coverage when dwelling coverage is purchased, or in the alternative, require a signed, yearly waiver if it is not purchased. Under current federal law, lenders are supposed to ensure that mortgages covering property in flood zones have flood policies. This requirement applies to dwelling coverage only. This requirement has had the desired effect of increasing the number of flood-prone homes that have coverage. To the extent that more homeowners who purchase dwelling coverage also purchase contents coverage, the expense of contents coverage may come down to a more affordable level as costs are spread.

FINDING: Insurance agents and the WYO companies were not viewed as being helpful to flood victims or knowledgeable about the flood insurance policies.

Recommendations: The NFIP should develop more rigorous requirements that specify the level of training for agent and company personnel in the WYO program. These standards should be enforced through the Control Plan and its oversight by NFIP. WYO carriers should not be allowed to participate in the program and benefit financially unless they are willing to educate the agents who sell the policies and earn commissions, and company personnel, regarding the details of the program. The Maryland Insurance Administration should adopt educational standards that apply to agents that sell flood insurance. Only those agents that satisfy the standards should be permitted to sell and service flood insurance policies.

FINDING: Homeowners were not familiar with and/or did not understand the exclusions and limits of their flood insurance coverage prior to, or even after, the flood.

Recommendations: NFIP, with the assistance of professionals inside and outside the insurance industry, must develop: 1) a policy form that is more readable than the current form; 2) an extensive education and disclosure program for insureds, including signed acknowledgement forms, so insureds do not learn the limits of their coverage only after a disaster occurs. Accountability standards should be imposed on WYO carriers that measure the level of success WYO carriers have in educating their insureds about the flood policy, its coverage and limitations. Financial incentives or disincentives should be built into the program based on the success of the WYO companies have in educating their insureds.

FINDING: Homeowners have been provided conflicting, incorrect or incomplete information about their flood claims, allowed amounts, coverages, and rights, and in some cases this incomplete or incorrect information may have prejudiced their rights to full and fair compensation.

Recommendations: NFIP must develop a "claims handbook" for all victims of flooding who have flood insurance. This handbook, written in plain English must set out, step by step, the process, rules and forms for making claims. *The current claims settlement process for homeowners is opaque, and it must be made transparent to flood victims.* The process for settling should be revised so it is less coercive and fairer to policyholders.

FINDING: The coordination among federal agencies in responding to the flood aftermath was widely viewed as poor.

Recommendations: One of the most important steps that can be taken in the future to address the problems identified here is to create an integrated flooding response program. While the pieces of the program exist, homeowners are in many cases left alone to navigate difficult administrative and regulatory program requirements.

FINDING: The evidence shows that the current process for settling damage claims may result in significant losses to property that should be, but will not be, covered under the applicable flood policies.

Recommendations: Maryland should establish a relief fund or program for Isabel victims who have experienced uncompensated losses from Isabel. The mortgage assistance program proposed in House Bill 3 can serve to address the inadequate reimbursement many homeowners may receive, provided its provisions can be implemented in a timely and expeditious manner. House Bill 3 will not address the needs of all Isabel victims, and additional consideration should be given to expanded assistance to those not eligible for the program proposed in House Bill 3.

Congress, through the GAO or other agency, should undertake a review of the appropriateness of the methods NFIP adjusters use to settle claims based on the findings above. While it is important to preserve and protect federal funds, it is also appropriate to ensure that policyholders who pay premiums receive their contractual right to full replacement cost coverage. It is unlikely such a review could be completed so as to assist the current victims of Isabel.

FINDING: The issue of whether WYO companies issuing NFIP flood policies are subject to state insurance laws and the jurisdiction of state insurance regulators must be clarified. There are strong arguments to be made that some or all of the regulatory jurisdiction of the Maryland Insurance Administration over WYO companies is not preempted. If, however, it is determined that state law does not apply, Congress should either establish standards for settling NFIP insurance claims comparable to state law, and create some independent oversight for compliance with those standards, or expressly authorize states to enforce state law.

Recommendations: Clarification must be obtained regarding the jurisdiction of the state over private companies that write flood policies. If the state has jurisdiction, then the state should undertake a review of those complaints to determine compliance with state laws.

FINDING: Many homeowners have experienced significant delays in settling their claims. In some cases this has led to additional damage in the form of mold damage.

Recommendations: The NFIP should immediately conduct an inventory of unsettled claims for homeowners in Baltimore County and report on any reasons for delays. It should further insist, in those cases in which the homeowner has not requested or caused the delay, that the WYO adjusters comply with the requirements in the adjuster's manual.

FINDING: Some homeowners' insurers have offered blanket denials for all damage their insured may have sustained, claiming it was all flood related.

Recommendations: While many homeowners report that their non-flood claims were paid, many others report the opposite. Homeowners should be advised that claims not involving flood damage, such as wind, sewer and water back-up, and

driven rain, are subject to state laws and the jurisdiction of the Maryland Insurance Administration.

FINDING: In some cases financial institutions have contributed to the difficulties homeowners have experienced. There were several instances where banks had failed to keep up flood insurance payments from escrow and insureds were left without coverage.

Recommendations: State law should be clarified so that lenders doing business in the state are responsible for damages incurred by flood victims if, through the lender's failure to pay flood premiums from escrow accounts, insureds are left without coverage. Insureds should not be required to incur the expense of protracted litigation if the lender had responsibility to pay premiums out of the escrow account.

PART I. BACKGROUND

A. Introduction

This Report

The authors were engaged by the County Executive for Baltimore County to report on and analyze the problems Baltimore County residents experienced in the aftermath of Hurricane Isabel. The engagement was for a limited duration, and was made for the purpose of evaluating the response of private insurers, and state and federal agencies, in responding to losses sustained by Isabel victims. The ultimate purpose of the engagement was to develop recommendations that would assist the current victims of Isabel, and ensure the current problems experienced by Isabel victims are not repeated in the future. The engagement was effective December 16, 2003, and requires that the final report be completed by January 31, 2004.

Given the short amount of time to complete the requested task, we developed a detailed questionnaire for residents to complete to assist us in gathering information. With the help of county and local community leaders, we distributed the questionnaire at two meetings scheduled in Baltimore County, one meeting at Bowley's Quarters on January 6, 2004 and one in Edgemere on January 7, 2004. Additional questionnaires were made available to residents who attended assistance forums organized by Senator Barbara Mikulski's office. The summary results of the questionnaire are set out below.

Due to time constraints, we were not able to conduct a survey of every Baltimore County resident affected by the storm. The residents who completed the questionnaire were "self selected" and as a consequence may represent those most dissatisfied with their post-flood experience. Nonetheless, their common experiences suggest patterns that have most likely been shared by other victims. The sample we obtained did, however, represent a significant portion of those individuals whose homes we determined to have been "substantially damaged" by the county, i.e., damage estimated to exceed 50% of the assessed value of the property.

We also interviewed many victims to supplement the information gathered for the questionnaires. We advised residents that their identities and privacy would be preserved, and that survey results would be confidential. In those portions of the report that contain excerpts from questionnaires, the identity of the respondent is indicated by reference to an anonymous, random, identification number, set out in parentheses. All questionnaires will be retained in a confidential manner, and all quotes and excerpts can be verified. We collated some but not all answers to the questionnaires and these findings are described in the report and summarized below.

In preparing the report, we relied on the following sources:

- Responses to the questionnaires by 89 residents
- Interviews with 23 residents

- Review of email correspondence among residents
- Review of proofs of loss prepared by flood insurance adjusters
- Review of correspondence from state and federal agencies, and insurers, supplied by homeowners
- Interviews with officials from the National Flood Insurance Program (NFIP)
- Review of materials on the FEMA and NFIP websites, including:
 - NFIP Flood Insurance Manual
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 - NFIP Control Plan for WYO Companies
 - NFIP Bulletins and Tip Sheets
 - Standard Flood Insurance Policy (SFIP)
 - NFIP Claims Guidelines for Policyholders
 - The Financial Assistance/ Subsidy Arrangement with WYO carriers.
- Information from the website on the Maryland Insurance Administration (MIA), and material the MIA distributed to victims regarding hurricane losses and the NFIP
- Review of Maryland Insurance Law
- Review of the Federal law governing the Federal Flood Insurance Program, including statutes, regulations and case law.
- Review of FEMA Flood Zone Maps.

B. Hurricane Isabel

Hurricane Isabel impacted numerous states up and down the East Coast of the United States. Due to the hurricane's track, Isabel had a particularly devastating effect on certain coastal areas of Maryland. Areas of Baltimore County adjacent to Chesapeake Bay waters and its tributaries were particularly hard hit. A review of the maps made available by Baltimore County show the extent to which the storm surge penetrated inland. In many cases entire peninsulas were overrun with water, some that were over 2000 feet wide. We reviewed the flood zone maps prepared by FEMA and the impact maps prepared by Baltimore County and noted in some cases the high water mark of the surge appears to have exceeded the 500 year flood boundary. According to the National Weather Service (NWS), the storm surge exceeded the previous record level in Baltimore, Annapolis, and Washington, D.C. set by the Chesapeake-Potomac Hurricane of 1933.

In addition to the storm surge, Isabel carried damaging winds. According to information from Baltimore County, at one point wind gusts at the Francis Scott Key Bridge reached 99 mph. Such winds are equivalent to a Class 2 Hurricane on the Safer-Simpson Scale. The NWS lists the peak wind gusts at 38 knots at Tolchester Beach, 60 knots at Andrews Air Force Base, and 56 knots at Solomons Island. Obviously there was great variability in the strength and location of wind gusts during the storm.

C. Isabel Victims

We were struck by the tone of desperation, frustration, and in some cases hopelessness conveyed by the Isabel victims. Some told their stories in tears. Most we spoke with had lost their homes, including many personal effects, and this understandably results in great stress, a sense of loss, and trepidation about the ability to rebuild and resume a normal life. Many complained of health problems they attributed to their post-Isabel experience. Many complained that they still had an obligation to make mortgage payments on a house that was uninhabitable. Many had homes made uninhabitable not by the flood water damages, but by mold, or in some cases fuel oil that had permeated what remained of their dwelling structure.

As winter set in, many continue to live in trailers on their property. *In fact according to our survey, 58 out of 89 respondents, or 65% had been displaced from their homes and had not returned yet.* Most had not settled their insurance claims, so the process of rebuilding had not even begun. Many had their own horror stories – no heat, no hot water, etc. However, much of the despair we observed was attributed to the frustration and disappointment with the institutions in which they had to rely to get back on their feet. Throughout this Report we have included sample comments that we hope convey a flavor of the numerous sentiments that were expressed orally and in writing. The frustration with the insurers, and various government agencies was deep. There is a sense that the system currently in place to protect the residents from the financial consequences of flooding has failed them.

Brief Overview of Survey Results

We received 89 surveys from County residents. While not all residents responded to all questions, clear patterns emerged from the responses:

- 94% lived within 300 feet of the water.
 - Of those that lived within 300 feet of the water, 57% did not have flood coverage for contents.
 - By contrast, 16% of those close to the water did not have flood coverage on their dwelling.
 - Of those who had obtained flood coverage, 66% said they did because the bank required it.
 - Over 1/2 (50%) of those whose bank required dwelling coverage did not have contents coverage.
- 53% sustained damage greater than 50% of the assessed value of the house and had not lived in the house since the hurricane.
- 97% of those who answered responded that the amount offered by their flood insurer to settle their flood claims was inadequate to compensate them for the damages they had sustained.

- 43% of all respondents made claims for damage to their homeowners carrier for items like wind, roof, water and contents.
 - 35% of those who made claims had all claims denied. 65% had some or all of their claim paid.
- 31% of all respondents made claims for damage to their automobile.
 - 92% had their claims paid.
- Of those responding to the questions of whether the respondent received: “sufficient information from your agent and/ or insurer about the types of damage your homeowner’s policy covers, whether you needed flood insurance, the type of damage this is covered under a flood insurance policy, and how much coverage you needed”
 - 85% answered “no.”
- 72% of those who responded to the question of whether coordination was good or not good among federal, state and county officials said it was not good.
- 75% who offered an opinion on whether their agent was helpful indicated the agent was not helpful in making a flood claim or obtaining information about coverage.

D. Introduction to the National Flood Insurance Program

Congress enacted the National Flood Insurance Act of 1968 (NFIA or the “1968 Act”) in response to the rising cost of taxpayer funded disaster relief for flood victims and the increasing amount of damage caused by floods. As a result of the 1968 Act, the National Flood Insurance Program (NFIP) was born. Aside from making flood insurance available to those in need, the 1968 Act aimed to minimize exposure to flood losses. Thus, communities nationwide may only participate in the NFIP by adopting and enforcing floodplain management ordinances that conform to standards established by the Federal Emergency Management Agency (FEMA). In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and business owners in these communities either directly from the NFIP or through the “Write Your Own” (WYO) program. This program is discussed in more detail below.

Participation in the program was further bolstered by the adoption of the National Flood Insurance Reform Act of 1994 (the “1994 Act”). Property and business owners in FEMA-designated Special Flood Hazard Areas (SFHAs) are required to purchase flood insurance in order to obtain secured financing to buy, build, or improve structures. Lending institutions that are federally regulated or federally insured must determine if the structure is located in a SFHA and must provide written notice requiring flood insurance. Moreover, the 1994 Act requires lenders to purchase flood insurance on behalf of a borrower and charge the borrower the amount of the premium if, after receiving notice of the flood insurance requirement, the borrower fails to obtain coverage.

E. The Standard Flood Insurance Policy (SFIP)

The Standard Flood Insurance Policy (the “Policy”) is issued to all participants in the NFIP, including insureds under the WYO program. The flood policies, like many insurance policies are long, and include statements of affirmative coverage and lists of excluded items. The Policy is adopted pursuant to federal regulations. 44 CFR Ch.1 Pt. 61 App. A(1). The policy is divided into several parts, Part A, describing Property Coverage, also referred to as Dwelling Coverage, Part B, describing Personal Property, also referred to as “Contents” Coverage, Part C, other coverages (such as debris removal, loss avoidance measures, etc.), Part D, describing Increased Cost of Compliance Coverage, and then several pages of “Exclusions” and “Property Not Covered”. A more detailed discussion of the pertinent policy provisions is set out in Part II in connection with the Findings, Conclusions, and Recommendations. The Flood Policy is attached as Exhibit A.

Flood policies are rated based on a number of factors relating to the location of the dwelling and the type of dwelling. Characteristics that all impact the premium for a policy include:

- Whether the building has:
 - No basement
 - Unfinished basement
 - Finished basement
- Whether the building is elevated
- The Flood Risk Zone
- When the building was built.

FEMA also has developed Flood Hazard Boundary Maps or Flood Insurance Rate Maps that show the location of Special Flood Hazard Areas. According to NFIP documents, there are many different types of flood zone designations, including “A” zone designations for flood prone areas, and “V” zones subject to wave action. Lower flood risks are rated as “B” or “C” zones. It is a requirement of the flood program that if a claim is made by a homeowner and it is determined the agent improperly placed the dwelling in the incorrect zone, the dwelling must be re-rated and the premium paid before the claim can be processed. We observed several instances in which the processing of claims by Baltimore County residents was delayed because after the claim was made it was discovered their homes had not been properly rated.

F. The Write Your Own (WYO) Program

According to NFIP publications, the NFIP was serviced by private insurers for its first 10 years of operation. In 1978, policy and claims operations were turned over to a private contractor and supervised by the Federal Insurance Administrator (FIA). The FIA was placed under FEMA in 1979. In 1981, the FIA administrator

began an effort to involve the private insurance industry, leading to the WYO program.

WYO Program Financial Arrangements

WYO companies enter into a “Financial Assistance/Subsidy Arrangement” (the “Arrangement”). Under the Arrangement, private companies agree to issue flood policies in their own name and take responsibility for general policy administration, processing claims, and marketing and sales. The federal law authorizes WYO companies to issue the standard flood policy in the name of the company issuing the policy, and to substitute the company's name where the terms "FEMA" or "FIA" appear in the standard policy.

The WYO program is a non-risk program for the private companies. The companies collect the flood premiums and retain approximately 30% as an administrative fee. From this premium retention the company must pay general administrative expenses associated with issuing the policy (such as agent commissions) and state premium taxes. The actual premium retention is established in a formula contained in the Arrangement.

The WYO company is also reimbursed for loss adjustment expenses (the direct and indirect expenses associated with settling claims). These reimbursements are in addition to the premium retention. The company retains an amount equal to 3.3% of losses paid, and is also reimbursed by NFIP for the services provided by claims adjusters according to a fee schedule. These fees are discussed below.

WYO Program Standards and Oversight

WYO companies are subject to certain standards and some oversight under the Arrangement. For example, all claims must be processed in accordance with the “Financial Control Plan,” all FIA policy issuances, and other guidance from FEMA, as well as applicable regulations adopted under the NFIP. The Arrangement contains some basic compliance standards, including the requirement that claims be processed on average, within 45 days from the receipt of a “Notice of Loss.”

In general, WYO companies pay claims from the premiums they have collected, (less the amounts described above) and may draw against Letters of Credit made available by FEMA with banks in the Federal Reserve System to the extent the retained premiums are not sufficient to cover the claims.

The WYO companies are subject to oversight under a “Financial Control Plan.” Although the flood program is formed in part through the payment of premiums by homeowners, the stated purpose of the Financial Control Plan is “to account for and ensure appropriate spending of any taxpayer funds.” A Standards Committee oversees compliance with the Control Plan. The Committee has 12

members, 6 from private WYO companies and 6 from FEMA and the Federal Insurance Administration. Thus, the oversight committee for the WYO companies draws half of its representation from the companies being overseen.

WYO Program Claims Audits

A WYO company is subject to an operation review every three years. A WYO company is also subject to a "Biennial Claims Audit." The Claims Audit is intended to verify the following:

- Ascertain whether building and contents allocations are correct.
- Review adjuster reports to determine whether they contain adequate evidence to substantiate the payment or denial of claims, including the amount of losses claimed.
- *Verify that the unit prices used were within the established NFIP guidelines for the event.*

Importantly, separate "Audits for Cause" can be triggered between Biennial Claims audits. Such audits can be triggered by:

- Losses being paid when not covered.
- Consistent overpayment of claims.
- Average claim payments that exceed the NFIP-wide average.
- Lack of adequate documentation for paid claims.
- Unusually low count of claims closed without payment.

The criteria for Audits for Cause appear weighed toward a concern for the overpayment of claims or the payment of claims that are not justified. One criteria, however, is weighed toward underpayment, but it relates to a high level of claims "closed without payment". The concern expressed in the control plan is that because WYO companies are paid a flat fee for cases closed without payment where little or no work is done, there is a risk of fraudulent "CWP" case. Time did not permit us to obtain or review copies of Biennial or other claims audits.

The Control Plan also provides for a "Claim Reinspection Program". This program is a review of WYO claims settlement practices by NFIP or its Statistical Agent based on a random sample of open files. The ability for the NFIP to override decisions of the WYO carrier as a result of the reinspection process is unclear. The Control Plan provides that in the case of what are called "judgmental matters" in connection with a claim settlement reinspection, such as whether the claim payment by the WYO carrier is inadequate or excessive, "The Company shall investigate, adjust, settle and defend all claims or losses arising from the policies issued under the Arrangement...*Payment of Flood Insurance Claims by the Company is binding on the FIA.*"

While the Control Plan establishes procedures for the oversight of WYO companies, it is not clear what the consequences are for a WYO company that, for example, performed poorly in its claims audit.

Oversight of WYO Program by State Regulators

The Control Plan appears to contemplate some supervision or review over the flood insurance operations of WYO companies by state insurance departments. For example, under the heading “State Insurance Department Audits,” the Control Plan states:

“It is expected that audits of WYO companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity.”

It is not clear if this language is intended to refer to financial audits only (as opposed to compliance audits). We note, however, that later in the Control Plan, in the section addressing operational reviews of WYO companies by the FIA, the FIA examiner is to conduct a “Review of Appeals and/or Complaints (those to the Insurance Department and those filed directly with the WYO Company)” and that review should include an analysis of “the average time to resolve these cases.” This would appear to suggest that the WYO company would be under an obligation to resolve state insurance department complaints, and its response to these state departments is in turn subject to review in a claims audit by the FIA. This is discussed further in FINDING #8.

Purpose of WYO Program

As a general matter, the purpose of the WYO program is articulated in these WYO “Program Goals”:

- Increase the NFIP policy base by using insurance industry marketing access not directly available to FIA, as well as to increase the geographic distribution of flood insurance policies.
- Improve service to policyholders and insurance agents through the infusion of existing insurance industry communications and services.
- Increase the Program’s ability to respond to flood disaster events and settle claims promptly.
- Provide insurance companies with operating experience under the NFIP.

According to NFIP information, the WYO program has been very successful in expanding the number of homeowners in flood zone areas that have flood insurance. Currently, 90% of all flood policies are written by WYO companies.

Some NFIP Functions Relating to WYO are Outsourced

The NFIP employs what is referred to as a “Statistical Agent” to oversee aspects of the WYO program instead of using NFIP staff. The NFIP Statistical Agent is Computer Sciences Corporation (CSC). While time did not permit an examination of the scope of duties of or financial arrangements with the Statistical Agent, it would appear that many functions of the NFIP are contracted to CSC. We note, for example, that the Claims Manager for the WYO program, and the individuals who frequently serve as a source of information and complaints by homeowners, was a CSC employee rather than a NFIP employee.

WYO Insurance Adjusters

Adjusters are individuals who assist the insurance company in determining the proper amount of payment to make to an insured when a loss occurs that is covered under a policy. As one NFIP publication states:

“Insurance companies employ adjusters to help people who have suffered losses in establishing the benefits due them under insurance policies. Work with the adjuster; his or her job is to assist you and review your claim.”

The NFIP requirements and views regarding the qualifications of adjusters appear to contain significant contradictions. On the one hand, the adjuster manual states:

“FIMA [Federal Insurance Mitigation Administration] recognizes that specialized knowledge is required in order for the adjuster to adjust NFIP losses properly. Adjusters must know the difference between the Standard Flood Insurance Policy (SFIP) and industry property forms Accordingly, FIMA has made it a contractual requirement for the NFIP Bureau and Statistical Agent to maintain a list of adjusters who are authorized to handle NFIP losses.”

This language evidences a clear recognition of the importance in utilizing skilled adjusters in settling flood claims. The Adjuster Database is intended to reflect that the adjuster has attended workshops on NFIP procedures.

Strangely, the manual later states that, notwithstanding the above-stated desire for qualified appraisers to handle flood claims:

“FIMA [Federal Insurance Mitigation Administration] does not require that adjusters handling WYO claims be certified by the NFIP Bureau and Statistical Agent. *The WYO companies are free to choose whatever adjusters they wish, staff or independent, . . . and are likewise free to establish any related qualifications or requirements for adjusters . . .*”

In an interview, the Claims Manager for the WYO companies, the Statistical Agent for NFIP, described the requirements on the WYO companies regarding adjuster qualifications in a manner slightly different than the broad discretion granted in the above quoted passage. The Claims Manager stated that any independent adjuster hired by the WYO company had to be on the approved list, and only staff adjusters, those employed directly by the insurer, need not be on the approved list. We could not reconcile this discrepancy.

According to the Manual, the NFIP expects every adjuster handling flood losses to be thoroughly familiar with the provisions of the standard flood policy, and to adjust claims in accordance with the policy and guidance issued by the NFIP and FIMA. As to standards of conduct, the NFIP expects every adjuster will conduct himself or herself in accordance with the highest standards of integrity and ethics, and that his or her conduct will be courteous and professional in dealing with policyholders.

Payment of Adjusters

Payment of the adjuster’s fee is made according to a fee schedule. The scheduled fee for handling a loss is based on the NFIP-approved adjustment. The fee includes all travel, photographs, reporting, telephone, and office investigation expenses to conclude the claim.

Gross Losses

For gross losses sustained on or after May 1, 1997, adjusters use the following NFIP Fee Schedule:

Claim Range	Fee
Erroneous Assignment	\$ 40.00
Closed Without Payment (CWOP)	125.00
.01-600.00	150.00
600.01 – 1000.00	175.00
1000.01 – 2000.00	225.00
2000.01 – 3500.00	275.00
3500.01- 5000.00	350.00
5000.01 – 7000.00	425.00
7000.01 – 10,000.00	500.00
10,000.01 – 15,000.00	600.00

15,000.01 – 25,000.00	750.00
25,000.01 – 35,000.00	900.00
35,000.01 – 50,000.00	1,200.00
50,000.01 – 100,000.00	3.0%
100,000.01 – 250,000.00	2% but not less than \$3,000
250,000.00 and up	2% but not less than \$5,750.00

G. Small Business Administration Disaster Relief

Individuals that reside in a declared disaster area that are the victim of a disaster, are eligible for financial assistance from the U.S. Small Business Administration. As an individual, there is one basic property damage loan available. The loan can be used to repair or replace personal or real property:

Personal Property Loan: This loan can provide a homeowner or renter with up to \$40,000 to help repair or replace personal property, such as clothing, furniture, automobiles, etc., lost in the disaster. As a rule of thumb, personal property is anything that is not considered real estate or a part of the actual structure.

Real Property Loan: A homeowner may apply for a loan of up to \$200,000 to repair or restore their primary home to its pre-disaster condition. The loan may not be used to upgrade the home or make additions to it. If, however, city or county building codes require structural improvements, the loan may be used to meet these requirements.

The amount of assistance a resident may receive is calculated by subtracting the amount received from a claim under any insurance policy from the total damage to the property. Residents that have not made a settlement or are having trouble reaching an agreement with their insurance company may apply for a loan in the full amount of your damages and assign any insurance proceeds received to the SBA.

The interest rates on SBA disaster relief loans is determined based on ability of the resident to obtain funds elsewhere. This “credit-elsewhere test” applies to applicants for both personal property and real property loans. In the case of applicants who can obtain credit elsewhere, the interest rate to be charged is based on the cost of money to the U.S. government, but will not be more than 8 percent annually. In the case of applicants determined unable to obtain credit elsewhere, the interest rate to be charged will be half of the interest rate charged to applicants determined to be able to obtain credit elsewhere, but will not be more than 4 percent per year. The maximum maturity, or repayment term of an SBA loan, is set at 30 years. However, the SBA will determine repayment terms on a case-by-case basis according to your ability to repay.

PART II. FINDINGS AND RECOMMENDATIONS

FINDING # 1: EVEN IF FULL AND FAIR PAYMENTS WERE MADE UNDER NFIP FLOOD INSURANCE POLICIES, MOST HOMEOWNERS WITH SUCH POLICIES WOULD NOT BE FULLY REIMBURSED FOR FLOOD LOSSES.

Discussion

Exclusions for Building Property

There are many exclusions of coverage in the standard flood policies, resulting in items which homeowners may expect to be covered but which are not. For example, under the coverage for “building property”, decks, driveways, patios, if located outside the exterior, perimeter walls of the dwelling are all excluded from coverage, even if roofed. *Sheds, fences, retaining walls, piers, bulkheads, and docks are all excluded from the standard flood policy.* All swimming pools and septic tanks and systems are excluded. All open structures, including those to house boats, are all excluded. Trees and shrubs are excluded. Most respondents sustained damage to one or more of these items for which they did not have coverage. Cost to repair or replace these uncovered items can be tens of thousands of dollars.

Exclusions for Personal Property

There are also many specific exclusions for personal property, if that coverage has been purchased. First, for items below the lowest elevated floor of an elevated building, only major items such as food freezers, washers and dryers and air conditioners are covered. If such a room is used as a family room, for example, then contents such as TVs, other electronics, furniture, etc, will not be covered. Many families suffered such losses for which coverage is not provided.

In addition, any items of personal property not in enclosed structures that can float away are all not covered. This includes lawnmowers, outside furniture, and the like. These exclusions also impacted many homeowners. Many lost personal items that were washed away for which no recovery is available.

Detached garages are generally covered, but are not covered if they are also used for dwellings, or for business purposes. There was at least one instance of coverage for a detached garage being denied because it contained a bathroom, and the adjuster invoked the coverage exception noted above for garages used as dwellings. Another was reportedly denied because the garage door had been replaced with a residential door, suggesting that the property was used as something other than a garage.

Loss Settlement Provisions

In addition to many items being specifically excluded from the flood policy, many items that are covered under the policy will be settled on the basis of actual cash value. This means that the insurer or NFIP is only obligated to pay the cost of the item less any depreciation, resulting in a payment that will not cover the full replacement or repair cost.

Importantly, *all personal property that is covered is settled on an actual cash value basis. This rule impacted every homeowner that had flood insurance for contents.* The impact of this loss settlement rule can be seen in the following excerpt from an actual proof of loss form for contents:

Partial Item Description for Actual Claim	Replacement cost	Actual Cash Value
Dining room Table	\$750	\$375
Towels, Sheets, Bedding	\$400	\$280
Full Size Sofa	\$800	\$400
China Hutch	\$575	\$287

Total All Contents (less deductible):	\$25,955	\$16,957
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In this example, the claim settlement would only reimburse the homeowner \$16,957, or roughly 65% of the replacement cost, leaving almost \$10,000 in uncovered losses.

In addition, all appliances, and carpet are all settled on an actual cash value basis. All dwellings that are not single family dwellings are settled on an actual cash value basis.

Other costs are incurred by homeowners that also do not appear to be covered. For example, many homeowners indicated that in order to pursue their damage claim, they needed to hire their own structural engineer to assess the foundation because the company adjusters, in their view, were not appropriately recognizing the structure damage to their house.

Conclusion

Reevaluating the scope of coverage, and whether flood policies should be more expansive in their coverage is beyond the scope of this report. Presumably determinations regarding the level of coverage provided in the policy were made as a result of the balancing the desire to provide coverage with cost considerations. *Clearly, however, the current coverage under the flood policies in no way restores*

flood victims to their pre-flood condition. However, flood victims labor under the impression that between their homeowners and flood policies, they are fully “protected”, only to find after the fact that the premiums they have been paying for years will not reimburse them for all of their losses.

Recommendations 1A. Congress or the NFIP should consider revisiting the scope of coverage for flood policies, and the financial impact fuller coverage would have on premiums and the costs to NFIP. At a minimum, as set out in more detail in Recommendations 3A, 4A, and 5A the public and insurance professionals must be better educated on the significant limitations of the flood policies.

FINDING #2: THE MAJORITY OF HOMEOWNERS AFFECTED BY ISABEL HAD FLOOD INSURANCE COVERING THEIR PRIMARY DWELLING, BUT A SUBSTANTIAL MINORITY LACKED COVERAGE FOR CONTENTS IN THE DWELLING AND FOR OTHER PROPERTY, RESULTING IN SIGNIFICANT UNINSURED LOSSES.

According to survey results and personal interviews, a high percentage of homeowners did not carry flood insurance for contents. Of the 89 surveys received, 57% of the homeowners who lived within 300 feet of the water did not carry flood insurance for contents, even though the majority had dwelling coverage. The reasons for this varied, although not all explained why they did not have the coverage. *Many asserted that they thought contents were covered under the policy they purchased or were not aware of the coverage. (33%)* Some candidly admitted they did not think they would need it (and presumably carried only property coverage because their lender required it). Several responded that they could not have afforded the premiums for contents coverage.

Sample Comments:

- “Couldn’t afford the extra for [contents]. Between Homeowners and Flood Insurance is very expensive! Water rose higher than all time ever expected to!”(9)
- “Not aware [contents] was available”(11)
- “Couldn’t afford any more money for insurance”(13)
- “Content insurance was not explained i.e. having homeowners as well as flood one can only assume your contents are covered. This appears to be a case of defrauding the consumer” (14)
- “No flood ever came this high as Isabel’s rains” (16)
- “Insurance Company said we didn’t need it” (17)
- “[Contents] wasn’t offered to me at the time, nor did I know anything about contents coverage, I figured that the contents were covered with flood insurance” (27)
- “Was not aware of [contents] till the Hurricane” (67)

Clearly the lack of contents coverage resulted in significant uninsured losses for these homeowners. The vast majority of those residents surveyed who do not have contents coverage also experienced such severe damage to their homes that the house was declared “substantially damaged” by the county, meaning that “the damage sustained and cost of repairs is in excess of fifty percent of the assessed value of the home compared to the assessed value on the property tax records for the county.” Estimates for uncovered losses for dwelling contents can range up to \$20,000 to \$30,000 *per household*, although these numbers obviously vary significantly depending on the cost and amount of contents.

Conclusions

We were surprised at the large number of residents who lived close to the water (less than 300 feet), who did not have contents coverage, even though their lender required coverage for the dwelling. While cost is an issue for some, there were enough responses suggesting an unfamiliarity with contents coverage to give credence to this response as well. The lack of contents coverage clearly creates huge hardships for homeowners who suffered flooding, because uninsured contents can run into the tens of thousands of dollars.

Recommendation 2A. The NFIP should give consideration to requiring the purchase of contents coverage when dwelling coverage is purchased, or in the alternative, requiring a signed, yearly waiver if it is not purchased. Under current federal law, lenders are supposed to ensure that mortgages covering property in flood zones have flood policies. This requirement applies to dwelling coverage only. This requirement has had the desired effect of increasing the number of flood-prone homes that have coverage. However, the financial institutions have no imperative to ensure contents are covered. While it may be important to ensure the interests of the lenders are covered, it is equally important that homeowners have the ability to make an informed choice about contents coverage. To the extent that more homeowners who purchase dwelling coverage also purchase contents coverage, the expense of contents coverage may come down to a more affordable level for some as costs are spread. Recommendations 3A, 4A, and 5A also address this finding.

FINDING #3: INSURANCE AGENTS AND THE WYO COMPANIES THAT SOLD THE FLOOD POLICIES WERE NOT GENERALLY VIEWED AS BEING HELPFUL TO FLOOD VICTIMS OR KNOWLEDGEABLE ABOUT THE FLOOD INSURANCE POLICIES.

Most respondents believed that their agents and carriers were not helpful or knowledgeable about the terms of the policy and the claims process. (75% of those who responded). Clearly many insureds believe they were entitled to rely on and should seek the advice of the agent or company in determining what type and amount of coverage to carry, and what was covered. Many felt they received bad advice and information regarding the scope of coverage. *In this regard we*

observed that insurance agents were specifically held out by the NFIP to insured's as a source of help and information. For example, The NFIP has on their website "Tips on Handling Your Flood Insurance Claim." In that document, the policyholder is advised that if a "major problem" develops with a claim, "...you have other sources of assistance. You can consult your insurance agent or local company representative." The Tip Sheet also states that after the flood, "Your agent will move quickly to help you get back on your feet". This was not perceived to be the case for most homeowners. After the flood hit, many agents merely provided to their insureds an "800" number to call and told the insured to wait for an adjuster to call. In many cases the adjuster was from out of state, and left after a short stay in Maryland. Many homeowners complained that they incurred significant long distance bills just trying to contact their adjuster. As noted in FINDING #2, many faulted their agent or company for not informing them about contents coverage in the first place. In addition, the following comments were received.

Sample Comments:

- "Agent was not helpful at all and was not the least bit familiar with the flood policy that was sold to us"(1)
- "Agent played a shell game with me"(2)
- "Have a rental property on same property damaged by flood. The Agent stated that all of our houses were covered under the same policy; we were paying for a 3-4 family unit policy. The NFIP adjuster said only our dwelling was covered and not the rental house and we would be responsible for losses" (22)
- "Our agent told us not to touch anything or start cleaning up until the adjuster showed up. After mold started growing we called her back and she changed her story saying to clean up because FEMA adjusters want to see that you are trying to fix it up. Meanwhile all our furniture was ruined...She also didn't know what appliances were covered."(30)
- "Was never brought to our attention regarding what was and what was not covered"(34)
- "Nobody seems to know what is covered"(35)
- "I did not have enough coverage on my contents and too much on my building. That should have been something an insurance agent should have picked up and properly advised me on. My agent didn't know what ICC was or how I apply for it"(56)

Conclusion:

There was wide frustration with the lack of familiarity insurance professionals had with the flood program. It is admittedly the case that with infrequent floods in the region, there has been little prior experience on which to draw. Agents and their insurers may view the possibility of severe and widespread flooding so remote as to not justify the time needed to become familiar with the

policy and its coverage. We should note that some respondents praised their agents for their advocacy and assistance, but this was a small minority.

The NFIP has recognized the importance of ensuring agents are familiar with the program. In 2002, the Administrator of FIMA sent a letter to insurance commissioners nationwide requesting them to consider “adopting mandatory training and/or flood insurance questions on agent licensing exams”. According to the letter, “State mandated flood insurance training requirements would go a long way towards ensuring that agents have the flood insurance knowledge they need.”

It is not clear that every agent in Maryland needs a working familiarity with flood insurance, but certainly those agents, and companies, that sell the product must become more knowledgeable than they currently seem to be.

Recommendation 3A. The NFIP should develop more rigorous requirements that specify the level of training for agent and company personnel in the WYO program. These standards should be enforced through the Control Plan and its oversight by NFIP. WYO carriers should not be allowed to participate in the program and benefit financially unless they are willing to educate the agents who sell the policies and earn commissions, and company personnel, regarding the details of the program. Audits should be performed by the NFIP to measure the success WYO carriers have in educating their agents who sell flood insurance.

Recommendation 3B. The Maryland Insurance Administration should adopt educational standards that apply to agents that sell flood insurance. Only those agents that satisfy the standards should be permitted to sell and service flood insurance policies.

FINDING #4: HOMEOWNERS WERE NOT FAMILIAR WITH AND/OR DID NOT UNDERSTAND THE EXCLUSIONS, LIMITS AND TERMS OF THEIR FLOOD INSURANCE COVERAGE PRIOR TO, OR EVEN AFTER, THE FLOOD. REASONS FOR THIS INCLUDE: MANY DID NOT RECEIVE COPIES OF THE POLICY BEFORE OR AFTER THE FLOOD; THEY RELIED ON OTHERS SUCH AS AGENTS TO ADVISE THEM ON THEIR COVERAGE; THE POLICY IS CONFUSING AND DIFFICULT TO READ AND UNDERSTAND; THEY DIDN'T READ THE POLICY.

Discussion

Homeowners Do Not Appear to Have Received Adequate, Understandable Information About Their Coverage.

In addition to those who thought they had contents coverage but did not as described in FINDING #2 above, there was a clear and consistent pattern of all homeowners not being familiar with or not understanding the scope of coverage and exclusions under their policy. It was universally the case that they were first

learning of the specific exclusions and loss settlement rules described above in FINDING #1 *after* the damage to their home and property had occurred. This has led to a high degree of frustration and sense of having been taken advantage of by the WYO companies. *According to the survey, 85% said they had not received adequate information about their flood insurance policy..*

In addition to the many limits and exclusions described in FINDINGS #1 and #2 above that came as a surprise to most homeowners, there are several other specific sources of confusion.

Confusion Regarding Entitlement to Policy Limits of Coverage

One source of confusion is whether homeowners are entitled to their full policy limits if their house is damaged. Flood policies, like other homeowners coverage, provide for a policy limit for property coverage. This is the full amount of insurance that would be available to the insured in the worse case scenario. The amount of coverage is a policy limit, and the loss adjustment process determines whether or not the damage is equal to, or less than, the policy limits. Many homeowners assumed that paying the premiums on the policy would entitle them to the full amount of coverage if their house required demolition and rebuilding, or if the house were substantially damaged and could not be inhabited until repaired, whether or not the cost to repair or replace were less than the policy limits. In other words, many believed they were automatically entitled to policy limits if the house were damaged beyond repair and had to be rebuilt.

Confusion Regarding Entitlement to Replacement Cost Coverage

Another significant and universal point of confusion and frustration is over the basic procedure for settling the property claims. Flood policies are written on a replacement cost basis. Under Section V.2.a., the Policy states in apparently unambiguous terms that that it “will pay to repair or replace the damaged dwelling after the application of the deductible and without deduction for depreciation” (emphasis added). The amount to repair or replace is limited to either the replacement cost of that part of the dwelling damaged with material of like kind and quality, or the amount actually spent to repair or replace the dwelling.

However, the policy later places a condition on the promise to repair or replace without deduction for depreciation by later providing that if the cost to repair or replace is more than \$1000 or 5% of the policy limits “we will not be liable for any loss under V.2.a....unless and until actual repair or replacement is completed”. (emphasis added) In other words, the flood policy is not liable for any loss when the damage is significant until and unless repair or replacement is made. The policy goes on to state that “You may disregard the replacement cost conditions above [i.e. to actual make repairs first before payment is made] and make claim....on an actual cash value basis... and [y]ou may then make claim for any additional liability according to V.2.a....after you notify us of your intent to do

so within 180 days after the date of the loss. (emphasis added)” By definition actual cash value makes a deduction for depreciation. Read together, these provisions mean that there is a two step process to get a settlement for the full replacement cost, the first being the actual cash value settlement, the second being the second claim for full replacement cost after repairs are made.

The policy language on this important provision can be quite confusing to anyone not accustomed to reading legal documents or insurance contracts because it makes blanket statements promising replacement cost coverage that are later qualified in important ways. The policies are presented and sold to insureds as replacement cost policies. As a practical matter, few homeowners would receive a replacement cost settlement in the first instance. We do note that this settlement process is similar to that in a typical homeowners policy.

Most policyholders first learned of the fact that the policy does not pay full replacement cost in the first instance when they received the adjusters proof of loss. After reviewing their proof of loss, many homeowners believed that they had been sold a replacement cost policy but that the company was only paying them actual cash value. Reference to a sample proof of loss illustrate this point. :

Excerpt from Proof of Loss

1. **Full Amount of Insurance** applicable to the property
for which claim is present was..... \$107,800.00
2. **Full Replacement Cost** of the said property at the time of the loss was.... \$114,400.00
3. **The Full Cost of Repair or Replacement** is..... \$57,750.77
4. Applicable Depreciation is..... \$8,913.23
5. Actual Cash Value loss is..... \$48,837.54
6. Less deductibles and / or participation by the insured..... \$1,000.00
7. **Actual Cash Value Claim** is..... \$47,837.54
(Line 5 minus Line 6)
8. **Supplemental Claim**, to be filed in accordance with the terms and conditions of
the Replacement Cost Coverage within 180 days from the date of loss shown
above, will not exceed..... \$8,408.00

(This figure will be that portion of the amounts shown on Lines 4 and 6 which is
recoverable)

Many homeowners we spoke with did not understand that under the terms of the Policy, the depreciation that the adjuster applied to the settlement for property in Line 4 could be recovered through a supplemental or additional claim (Line 8) once the repair was completed, and many survey results reflect the same confusion. Homeowners felt that it was unfair to sell a replacement cost policy but make payments on an actual cash value basis. It is evident that either the adjusters did not explain clearly the process for settling the full claim, including the ability to recover additional funds for full replacement costs or homeowners did not recall the explanation. *As is discussed below, no policyholder with whom we spoke was aware of how to make such a claim, even though the ability to obtain full replacement costs is right, although confusingly described, under the policy.*

Homeowners Were Not Aware of Appeal/ Appraisal Rights Under the Flood Policy

An example of Policy provisions of which insureds seemed unaware are those dealing with disputes over the amount offered by insurers to settle claims. While the details of this problem are dealt with more extensively in FINDING #5, it is a widespread problem. In fact, the terms of the flood policy specifically address such disputes.

The Policy provides several options for an insured who disagrees with the proposed payment by the insurer. One option for an insured whose proof of loss has been denied is that the insured “May accept our denial of your claim.” Another option is to “exercise your rights under this policy”. Those rights, set out in Section P of the Policy, state that if the homeowner and the insurer fail to agree on the loss settlement, either may request an appraisal. This triggers a process where the homeowner and the insurer each choose an appraiser, who then jointly selects a third party. If they cannot agree on a third, either party may petition a state court judge to select a third. Once the third appraiser is selected, and once two of the three agree on a loss settlement, the company must pay the claim. The homeowner must share in the costs of the third appraiser. A homeowner may also initiate suit in federal district court after the appraisal process.

While the relative merits of such a process are discussed below under FINDING #8, the point is that *not a single homeowner we spoke with or interviewed seemed aware of this option set out in the Policy.* It was never mentioned, and no one indicated they had availed themselves of it. Furthermore, no document that we are aware of, other than Page 16 of the Policy refers to the process. It is not mentioned in the NFIP Claims Tip Sheet. Material disseminated by the Maryland Insurance Administration, “Facts About the National Flood Insurance Program”, provided to victims of Isabel, does not refer to this as an option in the section entitled “How Can I Appeal A Decision Of The Insurance Adjuster.” That handout recommends requesting a “general adjuster” from the NFIP, then an appeal to the Federal Insurance Mitigation Administration (FIMA), part of FEMA, then an appeal to a Congressman or Senator.

To the extent homeowners relied on Agents, not all agents appear to have been familiar with the details of flood policies

Many insureds relied on their agents and companies to advise them regarding the policies. Yet, as noted in FINDING #3, many agents may not have been fully conversant in the details of policy exclusions and coverage.

Many policyholders do not appear to have received copies of their policies

Whether or not all policyholders would understand the terms of their policy, *it appears that some policyholders never actually received a copy of the flood policy prior to, or even after the flood.* Some downloaded copies over the internet after the flood. At a minimum insurers provide a declarations page which is essentially a confirmation of the purchase of the policy, and it contains pertinent information such as the name and address of the policyholder and amounts of coverage. The declaration page does not contain the terms of coverage.

Sample Comments(see also comments for FINDINGS #1 and #2)

- “Did not receive info regarding contents coverage on our flood policy. Also not given info regarding structure below 1st level (garage area at ground level below living level)”(11)
- “I really didn’t have it [the policy] explained to me. No exclusions were talked about”(13)
- “I feel I have been defrauded and misled....The insurance industry must be retooled and plain and simple what is covered what is not and why.”(14)
- “They [the insurer] never explained or offered contents insurance to us” (50)
- “Insurance coverage should be listed line by line w/o legal mumbo jumbo so you know what is or not covered” (47)
- “I did not understand the depreciation aspect the adjuster was using.”(46)
- “We never received the full copy of our policy” (45)
- “Many have suffered because their policies had these loopholes. They should also be written in laymen’s language”(59)
- “Flood insurance policy language confusing. I am just confused with it all” (83)
- "I don’t understand depreciation. House only appreciates"(62)
- “The adjuster said the amount would be based on replacement value, but instead they depreciated everything”(44)

Conclusions

NFIP and WYO carriers must make education of its insureds a top priority. This point cannot be overemphasized. Historically NFIP appears to have been focused on maximizing the number of at-risk homeowners that have coverage. That is also an important goal, and NFIP has been successful. However,

FINDINGS #1, #2, #3 and #4 all demonstrate that, the scope of coverage is little known to both policyholders and in many cases the insurance professional who sell the program.

We also believe that the Policy form, rating rules and coverage limitations are unnecessarily complex. The Byzantine rules for rating policies, the numerous flood zone designations, variations in covered building structures and policy exclusions are a recipe for confusion and frustration. We have been told that some agents avoid flood policies because of the complex rating and coverage rules. While complaints regarding the complexity of insurance contracts is common to insurance policies generally, the problem seems particularly acute for the flood policy. In the longer term, consideration must be given to creating a program that is easier to administer and simpler to understand.

Recommendation 4A. NFIP, with the assistance of professionals inside and outside the insurance industry, must develop: 1) a policy form that is more readable than the current form; 2) an extensive education and disclosure program for insureds, including signed acknowledgement forms, so insureds do not learn the limits of their coverage only after it is too late.

Recommendation 4B. Accountability standards should be imposed on WYO carriers that measure the level of success WYO carriers have in educating their insureds about the flood policy, its coverage and limitations. Financial incentives or disincentives should be built into the program based on the success of the WYO companies have in educating their insureds .

FINDING #5: REPRESENTATIVES OF WYO COMPANIES AND FEDERAL AGENCIES HAVE PROVIDED HOMEOWNERS WITH INCORRECT OR INCOMPLETE INFORMATION ABOUT THEIR FLOOD CLAIMS, ALLOWED AMOUNTS, COVERAGES, AND RIGHTS. THE PROCESS FOR FILING AND SETTLING FLOOD INSURANCE CLAIMS CAN BE COERCIVE. THIS HAS CAUSED HOMEOWNERS INCONVENIENCE, ADDITIONAL EXPENSE, ANXIETY, RESENTMENT, AND FRUSTRATION, AND IN SOME CASES MAY HAVE PREJUDICED THEIR RIGHTS TO FULL AND FAIR COMPENSATION.

There are numerous instances where homeowners were given conflicting, inconsistent or incomplete information. There is ongoing confusion regarding claims coverage and claims procedures.

Over Three Months After the Storm, Many Homeowners Still Did Not Know What Was Covered Under Certain Policy Provisions and How Coverage and Allowance Determinations by Adjusters Were Made.

We continually received questions regarding the scope of certain coverages. Questions regarding the scope of ICC coverage were common. We also received

basic questions regarding the manner in which depreciation for their house was calculated. The source of unit pricing in the proof of loss was a question frequently raised. As noted elsewhere, questions regarding the settlement of partially damaged items is a significant concern. Homeowners questioned the rationale and fairness of repairing only up to the high water mark of the flood. Many insurers have offered to repair only 4 feet of drywall, plaster, siding, or cabinetry. (See also FINDING #7.) Many homeowners questioned basic decisions such as being told by the adjuster that the house could be repaired, but having contractors telling them it could not be rebuilt or would be more cost effective to tear down given the extent of flood, wind, and water damage. Some reported that contractors would not quote a repair price because of the extent of damage and contamination by mold, fuel oil and other pollutants and contaminants left or resulting from flood waters.

Confusion Over Coverage for Living Expenses

Flood policies do not cover living expenses incurred by policyholder who are forced to leave their homes. Flood victims are generally eligible for some assistance from FEMA. However, we received reports that the types of assistance and procedures for obtaining assistance were either unclear, poorly communicated, or difficult to satisfy. One homeowner found out that she was eligible for rental assistance only after refusing a FEMA trailer. She claimed that only when she declined to move her family into a trailer was she informed of the rental assistance option. As noted below, many complained of the process for getting longer term assistance. Since the majority of homeowners we spoke with were displaced from their homes, this was an important issue.

We also noted that the Maryland Insurance Administration distributed a document entitled “Facts about the National Flood Insurance Program”. That document advises homeowners that although flood policies do not provide additional living expenses, “Most homeowners policies have some additional living expenses”. While it is true that homeowners policies cover additional living expenses, such coverage is usually limited to a loss of use from “an insured property loss”. In other words, if the loss of use is caused by some event, such as a downed tree from wind that is covered under the policy, then the homeowners policy will cover living expenses. However, since flooding is not a covered event homeowners policies generally do not cover living expenses incurred due to flooding. The MIA later clarified in writing to us that living expenses for a flood situation would not be covered in a homeowners policy.

Post-Flood Responsibilities

One of the first questions homeowners faced was what steps they should take in the aftermath of the storm. Even this rather basic first step in storm recovery was the source of confusion for many residents, The Policy provides that a policyholder should, as soon as reasonably possible, “separate the damaged and undamaged property, putting it in the best possible order so that we may examine

it". With respect to the structure itself, the Policy itself does not provide any express guidance on mitigating steps. However, the Policy appears to create an *implied* duty to take mitigating steps in connection with mold. According to the flood policy, mildew or mold damage is excluded if the mold is the result of "any condition in the house within the homeowner's control, including the failure to inspect and maintain the property." Thus, while not expressly directed to remediate mold, policyholders face a situation of noncoverage if mold is not remediated. In fact, the adjusters manual states that mold claims would be honored *only* if the insured took mitigation steps such as water extraction, dehumidifying, fan rental, mildicide and anti-microbial application.

In this regard, we reviewed on the NFIP website a document entitled "Claim Guidelines in Case of a Flood". This simple one page document does not address the mold issue described above, even though a failure by the homeowner to take quick steps to mitigate mold may, according to the adjusters manual and the Policy, result in noncoverage.

The NFIP Claim Guidelines also do not address the issue of temporary repairs. A Tip Sheet from the Maryland Insurance Administration does address this issue, and instructs homeowners to make "only those repairs necessary to prevent further damage to your house." The Maryland Insurance Administration Tip Sheet advises against "making any permanent repairs without consulting your agent or company". The MIA also advises against removing any damaged property from the premises until an adjuster or agent has seen the damage and can work up an estimate.

Contrary to the implied duty contained in the flood policy to mitigate against mold, some claimants told us they were told by their agents and others not to touch anything or clean up until the adjuster arrived. This was based on the belief that the insurance adjuster needed to see the actual damage in order for anything to be eligible for payment. Understandably, homeowners did not want to risk losing coverage. However, because many homeowners had to wait up to two weeks for adjusters to arrive, problems arose with this "do not disturb" approach. For example, As one homeowner reported, because they were told by their agent not to touch anything, mold developed in the house. They called their agent again, who then instructed them that they should clean up the mess. *Mold continues to be a substantial problem for homeowners in many houses where little or no work had been done due to delays in settling the claim, and because of confusion over responsibility and payment for mold remediation.*

In less urgent circumstances it may be reasonable to advise homeowners to wait until the adjuster shows up to begin clean-up. But in large scale disasters such as Isabel, where hundreds of homes are significantly damaged and homeowners are displaced, adjusters may not be available immediately. Homeowners must be given broader latitude to take their own steps to mitigate without risk or fear of losing coverage.

The one-page NFIP Claims Guidelines address this issue, but not with clarity. According to the Guidelines:

“To help the claims adjuster, try to take photographs of the outside of the premises showing the damage and photographs of the inside of the premises showing the height of the water and the damaged property.”

It is not clear whether, if such photographs were taken, the homeowner could recover for damages that the adjuster could not personally inspect. Given what appear to be a general pattern of conservative payments for claims as outlined in FINDING #7, it is reasonable to believe the homeowners concerns were well founded.

There are other examples that illustrate the problems homeowners can face in the post-flood clean-up period, although one involves a homeowner's carrier, not a flood carrier. One homeowner indicated that his homeowner's insurance company continued to resist paying a claim on a waterfront garage whose roof had blown off into the street because the insurer speculated that the garage had been moved by the flood rather than the wind. The homeowner was asked if he had video tape of the roof blowing off even though the roof damage occurred at 11:00 P.M. at the height of the Isabel winds. The insurer continued to resist payment, and later argued that the insured had "moved" the roof before an inspector had arrived to determine whether wind or flooding had caused the damage. In fact, the County, in clearing the street of debris, had pushed the roof out of the middle of the street.

Substantial Confusion Over Finality of Claim Settlement/Appeal Rights

One of the most typical questions we encountered related to the process for contesting the amount of the adjuster's settlement. As noted below (FINDING #7) the vast majority of homeowners did not believe that the amount the adjuster/company was offering to settle the claim was adequate to make the necessary repairs to the house, or to replace the house if it was destroyed. However, they were unclear about how to proceed under those circumstances. So long as there was time within the filing deadline, many continued to argue with the adjuster or seek assistance from NFIP personnel. We do recognize that some homeowners had success in convincing the adjuster to increase the recommended settlement. However, many homeowners felt that the 60-day deadline for filing a claim under the Policy forced them into accepting less than what they thought was fair. This is a valid concern because the Policy states clearly, and policyholders were told, that in order to get paid, a signed proof of loss must be submitted to the company within 60 days (as extended in this case to January 14, 2004).

Because the Policy establishes deadlines for the filing of claims for payment, it is important that policyholders understand their rights and

responsibilities for filing claims under the Policy. *The process described to policyholders by the adjusters diverged from the actual terms of the language in the policy regarding the filing of the proof of loss.* The Policy requires the insured to file a proof of loss within the time frame. In fact the Policy states that “in completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.” (emphasis added). The Policy goes on to state that the adjuster the company hires “is a courtesy only” and the insured must submit a proof of loss even if the adjuster fails to do so. In fact, the NFIP Claims Guidelines advises homeowner to “Take Charge of Your Claim.”

The claim filing process described in the policy, and the tone of self-empowerment suggested in the NFIP Claims Guidelines seem to contemplate a degree of autonomy over the filing of the proof of loss that does not reflect the reality in the case of claims connected with Isabel. *All the homeowners we spoke with were told that they must sign the company’s adjuster’s proof of loss within the filing period in order to get paid. They were told that if they did not sign the proof of loss prepared by the company adjuster within the filing period, they would not get paid.* This is not what the Policy requires, and an NFIP official confirmed with us that in order to satisfy the filing deadline, an insured need only file his own proof of loss.

This part of the process is complicated by the confusing language in the Policy regarding the relationship between the insured’s and the adjuster’s proof of loss. While the Policy clearly creates the obligation for the insured to file his proof of loss, and to use “your own judgment” regarding the loss, the Policy later states that if the company accepts the adjusters proof of loss over the insured’s “you must sign the proof of loss.” This is clearly the source of the advice given by the adjusters to the insureds, but it is being used to discourage insureds from even filing their own proof of loss under the policy terms. In essence the process set out in the Policy has been collapsed so that insureds are being forced to sign adjuster proofs of loss in the first instance, even where they disagree, or face what they believe is a claim that won’t be paid.

In all, the process utilized to settle claims of Isabel victims has resulted in many homeowners feeling that that they were being forced and even coerced into settling claims under duress and against their best judgment. This is exacerbated by the fact that many are still displaced from their houses. Obviously it is a priority for the homeowners to receive settlement proceeds to begin the work to repair or replace their house. Living in a trailer creates a sense of urgency on the part of the homeowner to settle a claim. Most would not be able to begin such work until they received the insurance proceeds. But, as noted below, most homeowners were not able to get bids from contractors that could restore the house to its pre-flood condition for the amount the adjuster was offering. Yet, if the homeowner continued to fight or argue, it served to further delay payment without any promise that the delay would pay off. Looming over them was the filing deadline, but most were not aware they could satisfy this by filing their own proof of loss.

We were also advised by the claims manager for the NFIP Statistical Agent that once the proof of loss is signed and the company agrees to pay that amount, there is no opportunity to further dispute the amount of the claim unless in the course of demolition or repair, hidden losses or expenses not identified in the proof of loss are identified. In other words, while newly discovered damage could be claimed, and supplemental claims to recovery for depreciation could be submitted once repairs were completed, there appears to be no process for continuing to dispute a settlement once the proof of loss is settled and signed. In support of this view is the fact that settlement checks are marked “Final Payment” and “Without Recourse.” *This directly contradicts some advice homeowners received that they could continue to press for more money once the proof of loss was signed and approved by the Company.* This incorrect advice may have been given by adjusters in order to encourage the policyholder to sign the proof of loss.

Continuing Uncertainty over ICC and Supplemental Claims for Depreciation

When a dwelling covered under flood policy is substantially damaged (more than 50% of the assessed value), it is eligible for Increased Cost of Compliance Coverage (ICC). Under the flood policy, up to \$30,000 is available to elevate, relocate, or demolish the building when any of these action is undertaken to comply with state or local flood plain management ordinances. We have received many basic questions regarding the scope of ICC coverage, such as whether it covers a new foundation, or whether it covers demolition. Many residents believe that they have not yet received clear explanations.

More troubling is the difficult, almost coercive manner in which ICC claims must be filed. According to NFIP documents, to process the ICC claim the insured first must submit a signed contract with a contractor and three written estimates for the work. This creates several substantial hardships for the insured. First, they have been told by adjusters that they must settle their dwelling coverage claim before the ICC claim is processed. This has the effect of forcing settlement on the dwelling portion of the claim so that the homeowner can process the ICC claim. As noted below in FINDING #7 these claims are frequently in dispute. In addition and equally as problematic, the decision to repair or rebuild, or to elevate or to not elevate, depends on the totality of circumstances involving an assessment of total insurance proceeds available, and cost estimates that have been provided by contractors. Under the ICC process the homeowner must sign a contract with a contractor and make decisions regarding their repair or replacement plans without knowing the full amount of coverage available, having been pressured into settling a portion of the claim to get access to other insurance proceeds. To further complicate matters, once approved, the full ICC claim is not paid at once - only 50% is provided, with the second 50% paid upon completion. This schedule may force the homeowner to front construction costs if the contractor requires more than 50% prior to the completion of the job.

We do note that on December 8, 2003 the NFIP's Director of Claims sought to streamline the filing of ICC claims by only requiring one estimate for an ICC claim, and advising WYO claims managers that "when and where possible, a signed contract for the work to be performed should be obtained". This Bulletin is a welcome recognition of the pressures Isabel victims are facing. But the somewhat ambiguous directive indicating that "where and when possible" a signed contract should be obtained may do little to provide clear guidance to adjusters and homeowners.

Inconsistency in Treatment of Overhead and Advance Payments

There are examples of policyholders being treated differently by different WYO companies and adjusters. For example, some insureds report that they were provided monetary advances on their final claims by insurers. However, the vast majority did not even though the adjuster manual states that "The adjuster must advise the insured of the availability of a partial (advance) payment". Some homeowners were not aware of their ability to receive such payments, and had to demand such payments when they heard that neighbors had obtained them.

Some homeowners received conflicting information regarding the availability of overhead and profit, expense loads that are added to the adjusters proof of loss. These allowances are added in because the manner in which claims are adjusted requires the adjuster to itemize, room by room, the items to repaired and/or replaced. The adjuster then adds in an overall allowance to the total amount of damages to reflect a level of general profit and overhead expense that a contractor would charge (or incur) for performing the work and supplying the materials on the proof of loss. NFIP adjuster guidelines indicate that a 10% profit load and 10% expense load should be added, unless the homeowner does the repair himself, in which case the profit overhead should not be included. As with many other details of the claims settlement process, the extent and accuracy of information given to policyholders is a "hit or miss" proposition.

Sample comments:

- "My adjuster told me I have to sign the Proof of Loss by November 19th or claim is void. He told me this and I called NFIP. They told me it had been extended 60 days. Adjuster didn't tell me that" (8)
- "We were told various stories such as originally we were told that they would add 25% contractor overhead in [the settlement], later they said 12%, then last 8%" (10)
- "If I got this pathetic service from my homeowners or car - I would cancel coverage + go with another carrier! Seems something isn't right with my hands tied + forced to pay for crappy coverage + service." (18)
- "I think they need to get their act together. We had constant conflicting stories about coverage" (30)

- “Insurance money needs to be distributed quicker. That also needs to be consistent with their policies. I believe they are making up the rules as they go along” (48)
- “The adjuster did not describe my coverage or tell me what was covered or not covered when visited during clean-up”(58)
- “Called [company claims office] and inquired 'how do I get my depreciation money?' and was told three times by different claims adjusters "I don't know'. I discussed this with [NFIP official] and he wasn't sure how to get depreciation money" (60)
- “I have been called two times to hurry up and sign and return [the proof of loss]. I told them I want other items considered and he said go ahead and sign it. We're not like other insurance co... We will just adjust it for you later . I don't believe him but I can't continue with mitigation # or SBA loan until my claim is settled.”(63)
- “One adjuster tells you one thing, and then another tells us something different”(35)

Conclusions

FINDING #5 dovetails with and is an extension of the findings in FINDING #4, above. Just as the basic coverages and policy terms were unfamiliar to policyholders, the more detailed but important aspects of obtaining coverage, making claims and rules for the adjustment of those claims were largely unknown to homeowners. In essence the insurance adjuster and NFIP representative are working under a set of rules that in many cases are unknown to the policyholders. The issue of how depreciation is calculated, how unit prices are determined, why damaged goods may be only partially covered and how a house is determined to be repairable are all key issues in a claim. Policyholders cannot exercise their right to full and fair reimbursement under these circumstances. They are hobbled by a lack of knowledge of standards for adjusting claims, and a clear and prompt appeal process to an impartial third party to ensure the rules are applied fairly and correctly.

Recommendation 5A. NFIP must develop a "claims handbook" for all victims of flooding who have flood insurance. This handbook, written in plain English must set out, step by step, the process, rules and forms for making claims. *This handbook must contain more than policy language, but must disclose standards that adjusters use in adjusting claims. The current claims settlement process for homeowners is opaque, and it must be made transparent to flood victims.* Only if the victims have access to the same rules for settling claims that the adjusters use can claimants “Take Charge” of their claim, as the NFIP suggests they do in its “Tips on Handling Your Flood Insurance Claim.” As discussed in FINDING #6, the handbook must be an integrated document clearly explaining eligibly rules for other programs, such as FEMA assistance and SBA loans.

Recommendation 5B. NFIP should revise the process for settling claims so that all elements of a claim, dwelling, contents and ICC coverage, are settled at one time. In addition, homeowners should not be compelled to sign legally binding contracts for repairs without first receiving a settlement from their insurer.

FINDING #6: THE COORDINATION BETWEEN AND AMONG FEDERAL AGENCIES, AND THE PROGRAMS THEY ADMINISTER, IN RESPONDING TO THE FLOOD AFTERMATH WAS WIDELY VIEWED AS POOR.

Survey responses indicated that homeowners largely viewed the coordination among federal agencies as poor. By a margin of 3 to 1, homeowners indicated that the level of coordination was not good rather than good. The basic problem is that while the agencies involved, FEMA, NFIP, and the SBA have sought to develop a comprehensive package of insurance, grants and loans to victims, the package has yet to achieve the status of an integrated response package. Homeowners must still navigate the three agencies, and their separate requirements for paperwork and eligibility. Many were told that SBA loans were available, later to be disappointed to learn that they had “too much” insurance, or their debt ratio was too high because of existing mortgages. Some eligibility requirements seem onerous. For example, while FEMA grants an initial 2 months of rent as housing assistance, it requires a signed lease and a plan for bringing the damaged house back to habitability before additional assistance is provided. These requirements seem reasonable on their face, since FEMA should not pay for homeowners who, for example, are living at no cost and voluntarily, with family. But some homeowners were told that they must have a signed contract with a contractor as part of their plan to return the house to habitability. Most homeowners had not come close to settling their claims, and therefore had not entered into a contract because they did not know what insurance proceeds were available. Many complained that the paper work for the ICC was lengthy and confusing, and required letters and approval from other state and federal agencies over which they had no control. We have also noted elsewhere the many difficulties and “Catch 22” qualities of the ICC claims. *We also observed instances where the damage assessment from the SBA, made for the purpose of determining loan eligibility, differed, in some cases by thousands of dollars, from the adjusters estimate of damage for insurance purposes. This understandably led to a sense that the “right hand didn’t know what the left hand was doing.”*

In general, the process of disseminating information to claimants regarding the rules and processes for the federal agencies involved were inconsistent and intermittent. Three months after Hurricane Isabel, few homeowners knew what their total assistance would be from insurance proceeds and the federal government.

Sample comments:

- “One hand doesn’t know what the other is doing” (12)

- “No one really explained the accuracy of how SBA works, how FEMA works, and because we do not have an agent no one was able to explain how insurance works”(19)
- “I believe the matter was an uncoordinated circus. Everything is and was a day-by-day, week- by-week circus. Not knowing what is going on, or the circumstances related to each procedure.”(43)
- “For a water oriented community state/all agencies seemed surprised at what to do and coordination seemed to be made on the fly. Many times there was contradictory information from the same agency.”(40)
- “Each agency did their own thing and sometimes this conflicted with something someone else already said.” (56)
- “Every person we talked to gave us a different/wrong answer”(70)
- “I think the lack of coordination and communications between NFIP + insurance companies are appalling”(78)
- "FEMA says we need a contractor to get more rent money... We don't have one yet - can't afford the price"(83)

Recommendation 6A. One of the most important steps that can be taken in the future to address the problems identified here is to create an integrated flooding response program. While the pieces of the program exist, homeowners are in some cases cast adrift in the bureaucratic seas, left to navigate confusing and conflicting requirements in times of extreme emotional, and in some cases, physical, stress. There should be a “single point of entry” for all flood victims. Eligibility for various federal assistance must be presented in the first instance in an accurate and complete manner. Conflicting and unreasonably onerous requirements must be repealed, and assistance packages, consisting of insurance proceeds, loans, and the like should be coordinated so that homeowners can make informed and intelligent and timely decisions with all available information. Such an integrated response and set of programs would be spelled out clearly in the “Claim Handbook” recommended in FINDING #5. The use of integrated Case Managers should be considered to lead homeowners through the process of dealing with multiple agencies and insurers, and being responsible for providing accurate and consistent answer to questions.

FINDING #7: WHILE FINDINGS #1 AND #2 CAN LEAD TO SIGNIFICANT UNCOMPENSATED LOSSES FOR HOMEOWNERS, THE EVIDENCE ALSO SHOWS THAT THE CURRENT PROCESS FOR SETTLING DAMAGE CLAIMS MAY RESULT IN SIGNIFICANT LOSSES TO PROPERTY THAT SHOULD BE, BUT WILL NOT BE, COVERED UNDER THE APPLICABLE FLOOD POLICIES. THERE IS A PATTERN OF CLAIM SETTLEMENT OFFERS BY INSURERS THAT SOME EVIDENCE SUGGESTS ARE NOT ADEQUATE TO REPAIR OR REPLACE DAMAGED HOMES.

This is another of the most significant findings of our study. The pattern of perceived inadequate payment is almost universal among homeowners. *Of those responding to the survey, 97% indicated that the proposed or actual settlement of*

their claim would not be adequate to reimburse them for their losses. In interviews, this was the most common concern that was expressed.

Inadequate Offers to Rebuild or Repair the Dwelling

In most cases involving homeowners who believed their compensation would be inadequate, their belief stemmed in large part from the fact that they had received one or more estimates for repair or replacement to their house, or portions of it, that were in excess of, and in some cases far in excess of the proof of loss that the insurer’s adjuster had proposed that they sign.

As noted in Part I, there are general standards that adjusters are supposed to follow in settling claims. These are set out in the adjusters manual. However, the adjusters manual we reviewed is not very specific and is more procedural in nature. In general, an adjuster’s responsibility requires that he/she determine what is and is not covered, determine whether the item is covered as replacement cost or actual cash value, and assign a unit price to each item to be repaired or replaced. For example, the square footage of a wall in a damaged room is calculated and then the unit price for drywall (sq.ft.) is applied. Unit prices for paint, standard grade carpeting, plywood, and other materials form the basis for the calculation for reimbursement, along with what is supposed to be a 10% load for contractor profit and 10% load for contractor overhead. The following is an excerpt from an actual proof of loss:

Quantity	Description	Unit Cost	RCV	DEP	ACV
126.3 SF	R/R Standard Residential Wall Sheetrock (100.0% / 4.0’) Unfinished	\$1.47	\$185.66	\$27.85	\$157.81
1.0 EA	R/R Prehung H/C Door	\$170.24	\$170.24	\$25.54	\$144.70
1.0 EA	Paint / Finish Prehung H/C Door	\$42.61	\$42.61	\$6.39	\$36.22
1.0 EA	R/R Single Prehung S/C Exterior Door with lites	\$283.49	\$283.49	\$42.52	\$240.97
1.0 EA	Paint / Finish Single Prehung S/C Exterior Door with lites	\$47.45	\$47.45	\$7.12	\$40.33
1.0 EA	R/R Combination Storm Door Damaged by floating debris	\$225.30	\$225.30	\$33.80	\$191.50
7.0 EA	R/R 110V Outlet Only	\$18.50	\$129.50	\$19.42	\$110.08

A nonsystematic review of sample proofs of loss identified variations in the unit prices used to adjust claims in the same area. We interviewed officials from the NFIP and the NFIP statistical agent regarding the source of the unit prices the adjusters used. One indicated that computer software programs are utilized by adjusters that contain unit prices, and that the NFIP does not require that a particular software program be used. He stated that the prices in these programs are adjusted regionally. Both officials acknowledged that the NFIP published price “Guidelines” applicable for Maryland claims arising from Isabel, although the

NFIP official said these “Guidelines” were not required to be used, but were for guidance only. This statement does appear completely consistent with the Control Plan requirements discussed earlier in this paper, which states that Biennial Claims Audits of the WYO companies shall include a review to “Verify that the unit prices used [by the WYO company adjusters] were within the established NFIP guidelines for the event”. *On January 6, 2004 we requested from the NFIP Claims Manager a faxed copy of the price guidelines for Maryland, but we did not receive them prior to the completion of this report.*

The general finding that the proposed payments appeared to be inadequate is based on the common pattern that was observed in which one or more estimates exceeded the adjuster’s proposed settlement by a substantial amount. We recognize that many factors may impact the perceived disparity. For example, the large scope of damage in the region creates a very high demand for the work of contractors. The simple rules of supply and demand may dictate that a shortage of contractors can result in prices for services above the normal or typical rates. The standard prices used by adjusters may reflect an economic situation that does not exist in the aftermath of a natural disaster. While the NFIP has a legitimate financial interest in ensuring that unrealistic or unreasonably excessive contractor estimates do not rule the day, it is also a legitimate issue whether, in order to ensure the timely rebuilding of houses destroyed in a concentrated area, NFIP allowances should reflect the economic realities of the situation in which process will, in fact rise in the normal operation of the market for contractor services. *Time did not permit a detailed comparison of unit charges allowed by company adjusters with those of the contractors supplying estimates to homeowners, or with published prices available in the marketplace prior to, and after, Isabel.*

The following examples illustrate the experiences of many homeowners, and further examples are reflected in the Sample Comments below. These are presented because actual copies of the estimates were provided to us. In many cases described in the Sample Comments, we could not review any supporting documentation for the complaints that the estimates for repair far exceeded the amounts being offered by the adjusters.

► Example # 1(74):

- House substantially damaged (more than 50% of assessed value)
- Homeowner obtained two estimates from separate contractors:
 - \$87,800
 - \$86,650
- Insurance adjuster proposed \$47,837, with \$8,408 available as supplemental claim after repairs are made to recover depreciation.

TOTAL SHORTFALL, ASSUMING DEPRECIATION IS RECOVERED:
\$31,555

► Example #2 (21):

- House substantially damaged (more than 50% of assessed value)
 - Homeowner obtained estimate for \$78,145, exclusive of HVAC work
 - Homeowner obtained HVAC estimate of \$8,950
- Insurance adjuster proposed \$59,233, with \$6,887 available as supplemental claim after repairs are made to recover depreciation.

TOTAL SHORTFALL, ASSUMING DEPRECIATION IS RECOVERED:
\$20,875

Payment Only for Materials "Touched" by Flood Waters

A common refrain of frustration from homeowners was the adjusters would only pay for items that were physically touched by flood waters. One homeowner reported that “The amount of mold is still present and growing. Those items will not be replaced because the water did not touch it” (76). In many cases flood waters entered up to 4 feet or more in first floor rooms in houses along the shore. In many proofs of loss we observed allowances such as “Remove and Replace Lower Kitchen Cabinets ...Remove and Reset Upper Kitchen cabinets”. In this case the lower, but not the upper cabinets would be replaced.

Similar examples are found for drywall replacement, or even plaster repair, where only the first 4 feet touched by the flood would be repaired. Homeowners expressed concern that the repairs and cabinets would not match. One homeowner reported that only the first 4 feet of her aluminum siding would be replaced, even though aged aluminum siding is difficult if not impossible to match because aluminum siding oxidizes over time and changes color. Others stated that they were only being offered repair for the first 4 feet in their living areas, even though water had seeped up through the insulation and had damaged building material above the 4-foot line.

The problems associated with partial repair or replacement of material or contents that must be matched is not unique to flood insurance. Homeowners insurers face this issue all the time. Maryland, as have other states, issued a bulletin on this subject years ago in response to complaints after a hail storm after which some insurers were partially replacing aluminum siding. Partial replacement often resulted in mismatched siding because of the fading to the old siding. The bulletin required full replacement if items or products could not be matched. The current flood policy addresses the issue only in connection with “matched sets,” and provides that the insurer is obligated to pay for only those items that are actually damaged, less depreciation whether or not items can be matched. This is a more restrictive approach than Maryland law would appear to permit.

Items Missed by Adjuster in Proof of Loss

Many homeowners complained that adjusters had missed basic items in the proof of loss, resulting in a lower offer of payment. Many homeowners continued to present omissions to the adjusters, and in many cases initial proofs of loss were adjusted upwards.

Tendency by Adjusters to Resist Claims for Damage to Dwelling Foundation

One area of particular concern to the NFIP are claims for damaged foundations. The NFIP adjusters manual states the following in regard to foundations damage:

“Many times an insured will claim normal settlement cracks in slabs and foundations as flood related. The insured will indicate that he or she never noticed the foundation and slab damage until after the flood.”

* * *

“ Most slab and foundation damage occurs because of lack of moisture in the ground. The soil shrinks away from the foundation, allowing the grade beams to settle downward under the supported weight. This results in a bowing and crack effect. Damage of this kind is...not covered under the [flood policy]. ...Claims for foundation damage without any visible indication of scouring or land subsidence bear close scrutiny....*The insured has the responsibility to prove the damage was caused by flood.*”

This language places adjusters on notice for unfounded foundation claims. This may explain why many homeowners have complained that their adjuster was resistant to finding their damage was flood related, notwithstanding the presence of continued wave action on many houses and 4 to 5-foot water in the first level above the foundation. In many cases homeowners were forced to retain structural engineers at their own expense to prove what they believed were obvious cases of clear structure damage. Without an inspection it is beyond the scope of this report to determine whether the proper decisions were made on the foundation claims. However, the adjusters manual may place a heavy burden of proof on homeowners. These cases especially point out the need for an objective, unbiased appeal process for homeowners to use in cases of disputed claims. (see FINDING #8)

Sample Comments:

- “Estimate from insurance company \$70,000 less than estimates received from contractors”(1)
- “The side of my house is leaning and NFIP says the damage was prior to flood but does agree wall is leaning! And windows are crooked and

- sticking out. Solution per NFIP is to recall windows. NFIP has discounted what my hired engineer has said. Solution to wall - just leave it!"(18)
- "To bring our house up to code the house must be lifted. Structurally our house cannot be lifted, therefore it must be rebuilt. Insurance only covers repair."(19)
 - "We have a policy for \$110,000, they offer \$24,000. If the county said more than 50% damage to our home, why doesn't the insurance offer 50% of coverage?"(27)
 - "Estimates from local contractors exceed proposed rates being offered by adjuster using computer rates in Texas." (53)
 - "I have substantial foundation damage that is only being adjusted to the amount of \$2000. We have estimates to repair for \$20,000.
 - "They were only going to replace half of your home, 4-5 feet up. The rest of the house would not match the bottom half"(80)
 - "They wanted to pay me \$54,000. My house has to be torn down. Elevated the cost is over and above \$110,000. My mortgage is \$80,000"(62)
 - "They have offered no significant amount for mold remediation - just a few hundred dollars. Mold cleanup guidelines requires trained personnel with HEPA filters but insurance company says they will not pay for this." (74)
 - We were declared over 50% damaged and insurance is going to give us \$58,000 when contractor estimates are \$85,000 to \$100,000(61)
 - ICC will only give you up to \$30,000 – that's for raising and foundation. The lowest estimate I have received is \$35,000 so I already have to put \$5000 out of pocket. Also, you do not receive the ICC money until you have settled with your insurance company"(50)

Conclusion

While it cannot be said with certainty that NFIP claims settlement processes are, in all cases, resulting in inadequate payment to homeowners, there is substantial credible evidence that many homeowners are not receiving full and fair costs to repair or replace their homes. The consistent and widespread complaints, many verifiable, that settlements are far short of any estimates for repairs obtained by homeowners in our view constitutes credible evidence that many proposed settlements will not be adequate to return insured's to their pre-flood condition, and do not comply with the terms of the flood policy.

We have already concluded, FINDINGS #1 and #2 that many homeowners will not be adequately compensated for their losses. The serious potential for inadequate compensation presented by FINDING #7 exacerbates this problem.

Recommendation 7A.

A relief fund should be established in Maryland to assist homeowners in dealing with their uncompensated losses resulting from Isabel. Because so many

homeowners are still displaced, without hope of returning soon to their homes, the relief fund should be established as an emergency measure.

We are aware that legislation entitled the “Hurricane Isabel Disaster Relief Act” (House Bill 3) has been introduced in the Maryland General Assembly. This bill appears to be an important first step in addressing the pressing needs of Isabel victims. Its success will depend largely on the Department of Housing and Community Development’s ability to quickly establish the program and make loans. If the loan process becomes another long bureaucratic struggle for victims, the program will only exacerbate, rather than improve, the current situation by artificially raising expectations.

We also note that House Bill 3 does not address many of the uncompensated losses we have documented. For example, there is no relief for:

- Victims with damaged shed, piers, bulkheads and the like that were not covered under the flood policies
- Victims without contents coverage
- Victims with uncompensated losses due to the settlement of claims for actual cash value rather than replacement costs
- Victims that, because of errors by their agent or lender, were without flood insurance.

We believe the relief available in House Bill 3 should be expanded so that these other victims of Isabel with uncompensated losses can obtain relief.

Recommendation 7B. Congress, through the GAO or other agency, or the states, as suggested in FINDING #8, should undertake a review of the appropriateness of the methods NFIP adjusters use to settle claims based on the findings above. While it is important to preserve and protect federal funds and ensure money is not used to pay excessive claims with taxpayer dollars, it is also appropriate to ensure that policyholders who pay premiums receive their contractual right to full replacement cost coverage. It is unlikely such a review could be completed so as to assist the current victims of Isabel.

Recommendation 7C. As described in Part I of this report, there seems to be a significant gap in NFIP requirements regarding the qualifications and training of insurance adjusters. WYO companies appear to have broad latitude in selecting their adjusters and establishing their qualifications. Rigorous and uniform qualification standards must apply to all adjusters, including those hired by WYO companies. The current guidelines, which appear to grant WYO insurers latitude in determining adjuster qualification, should be repealed.

Recommendation 7D. We believe that the appraisal process set out in the flood policy should be revised. While it is important to pursue a self-enforcing mechanism to resolve claim disputes, the current process is onerous on

policyholders. For example, it forces claimants to file suit in state court if no agreement is reached on a third arbitrator. This is expensive, impractical and time consuming. Provision should be made for appointment of the third arbitrator by a neutral, third party. The flood policy should also require that the amount of the claim that is not in dispute, or the amount the carrier is willing to pay based on its own adjusters evaluation, should be paid to the insured even if an appraisal is requested. If the appraisal process results in an award for the policyholder, the WYO company would issue a second check for the shortfall. If the WYO company is found to have not reimbursed the homeowner fully, consideration should be given for the expenses the homeowner incurs in pursuing appraisal be reimbursed under the policy.

FINDING #8: THE ISSUE OF WHETHER WYO COMPANIES ISSUING NFIP FLOOD POLICIES ARE SUBJECT TO STATE INSURANCE LAWS AND THE JURISDICTION OF STATE INSURANCE REGULATORS MUST BE CLARIFIED. THERE ARE STRONG ARGUMENTS THAT THE STATE DOES HAVE JURISDICTION OVER WYO COMPANIES. IF IT IS DETERMINED CONCLUSIVELY THAT STATE LAW DOES NOT APPLY, CONGRESS SHOULD EITHER ESTABLISH STANDARDS FOR SETTLING NFIP INSURANCE CLAIM COMPARABLE TO STATE LAW, AND CREATE SOME INDEPENDENT OVERSIGHT FOR COMPLIANCE WITH THOSE STANDARDS, OR EXPRESSLY AUTHORIZE STATES TO ENFORCE STATE LAW.

The Maryland Insurance Administration has taken the view that it has no jurisdiction over the actions of private insurers participating in the WYO program. The MIA advised consumers of this orally and at meetings with Isabel victims, and in correspondence to consumers who complained to the MIA, the agency wrote that:

“[T]he Maryland Insurance administration has no regulatory jurisdiction over the program or the insurers when participating as WYO Companies”

Although some flood victims have filed complaints with the MIA notwithstanding this view, others stated they did not because they were advised they could not be helped.

We asked the MIA to provide us with the basis for its conclusions, and if written advice was obtained, for a copy of the written advice. The MIA responded that it had received written advice from the Assistant Attorneys General assigned to the agency, but declined to release the advice on the grounds it was privileged and confidential. However, the MIA summarized its view of the law in a letter dated January 22, 2004, as follows:

“Response: Whether in response to complaints filed in 1999 after Hurricane Floyd or complaints filed in 2003 after Hurricane Isabel, the

Administration has consistently taken the position that it does not have jurisdiction over claims submitted by insureds under policies issued under the NFIP's WYO program. First, federal statutory law and regulation, as well as federal decisional law, expressly provide that federal law governs federal flood insurance policies. Hence, all actions on such policies must be brought in federal courts which apply federal law to the construction of policy terms and conditions. Second, it is well recognized that federal law preempts the application of any state law or action against a WYO carrier in connection with the handling or payment of a federal flood claim. Indeed, FEMA revised its regulations effective December 31, 2000 in order to clarify that any matters "relating to and arising out of claims handling" are "governed exclusively by federal law." 44 C.F.R. Pt. 61, App. A(1).

An exception to the general preemption rule exists with regard to misrepresentation. The Administration does have jurisdiction to investigate and to address complaints that arise from any misrepresentations made by an insurance producer."

Whether the state has jurisdiction over the WYO companies, and whether or which state law can be applied to WYO companies is a question of whether state law is preempted by the federal laws governing the federal flood insurance program. As a general matter, the preemption doctrine derives from the Supremacy Clause of the Constitution which states that the "Constitution and the laws of the United States . . . shall be the supreme law of the land . . . anything in the constitutions or laws of any State to the contrary notwithstanding." Preemption can be either express or implied. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). When Congress chooses to expressly preempt state law, the questions for courts is whether the challenged state law is one that the federal law is intended to preempt.

While Congress can expressly preempt state law, the Supreme Court has recognized two types of *implied* preemption. Field preemption exists where Congress has "occupied the field" in which the state is attempting to regulate leaving "no room" for state regulation, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Conflict preemption exists where compliance with both federal and state law is impossible. *Florida Lime and Avacado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963).

We have examined the NFIA and the only language that approximates an express preemption of state law that we could find is contained in the section referenced by the MIA, 44 C.F.R. Ch. 1, Pt. 61, App. A.(1). That appendix is actually the codification of the flood insurance policy in the federal regulations, and provides the following:

“IX. WHAT LAW GOVERNS

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

Effective December 31, 2000, this policy language was amended to include the existing reference to disputes regarding the “handling of claims.” Consistent with this provision, the policy also provides that:

“R. Suit Against Us

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

The majority of federal courts that have addressed the issue of whether the NFIP *expressly* preempts state law have concluded that it does not. *Pearl v. North Carolina Farm Bureau Insurance Company*, 212 F. Supp. 2d (E.D.N.C. 2002). See also *Beeker v. Standard Fire Insurance Company*, 130 F. Supp. 2d, 726 (E.D.N.C. 2000); *Stanton v. State Farm Fire and Casualty Company, Inc.*, 164 F. Supp. 2d. 1109 (D.S.D.. 2001). Furthermore, the “overwhelming majority of courts [have concluded] that the field of flood insurance is not preempted by federal law” *Pearl*, *supra*.

Thus, the prevailing view among federal courts is that under either an express preemption analysis or “field” preemption analysis, state law is not preempted as to WYO companies. These views are in part formed in recognition of the fact that insurance law is an area traditionally regulated by the states, and as such, a party asserting that state law is preempted “bear[s] the considerable burden of overcoming ‘the starting presumption that Congress does not intend to supplant state law’”. *DeBuono v. NYS-ILA Medical & Clinical Services Fund*, 520 U.S. 806, 814, 117 S. Ct. 1747 (1997).

In light of this case law, it appears that the issue of whether the traditional jurisdiction of the State of Maryland over private insurers has been preempted would depend on whether there is “conflict” preemption. In other words, state law may be preempted if “it is impossible to comply with both state or federal law or if

state law “stands as an obstacle to the accomplishment of the full purposes and objectives of federal law”. *Pearl*, supra. We believe there are strong arguments that the jurisdiction of the Maryland Insurance Administration is not preempted under a conflict analysis.

The jurisdiction of the MIA would be exercised through enforcement of the Unfair Claim Settlement Practice Act, among other possible provisions of the Maryland Insurance Code. That law, as described more fully below, sets out standards of care and fair dealing that private insurers must comply with. We have found no counterpart to these standards in federal law. On this point we find the language in one recent case most instructive.

In *Bleeker v. Standard Fire Insurance Company*, 130 F. Supp. 2d 726 (E.D. North Carolina (2000)), the court found that the NFIA did not preempt state law claims. In rejecting the argument that state law claims against a flood insurer under North Carolina’s Unfair Trade Practices Act were preempted under either an express or field preemption analysis, the court further dismissed the notion that there was conflict preemption, stating that “[c]ompliance with both the federal and NFIA regulations and basic standards of care is neither impossible nor impractical.” The court emphasized the valid interests of state in regulating private insurers:

“FEMA explicitly states that private insurance companies are not the agents of the federal government and that WYO companies are ‘solely responsible’ for ‘obligations to [their] insured under any flood policy.’ 44 C.F.R. §62.23(g).

* * *

“Stripping insurance claimants of protections offered by state law from the tortuous conduct of insurers would leave a gapping hole in the flood insurance field which Congress did not intend.”

* * *

“Finally, the state has its own interest in regulating the activities of insurers within its borders. Insurance agents are typically licensed and regulated by state insurance agencies. States have a substantial interest in ensuring that the relationship between the insurer and the insured is conducted in a proper manner.”

We recognize that the view on this subject is not uniform. For example, in *Stapleton v. State Farm Mut. Ins. Co.*, an effort by a homeowner to sue their flood insurer under Florida’s Deceptive and Unfair Trade Practices Act, §§ 501.201-501.213 of the Florida statutes, was rejected because “neither the plain language

nor the object of policies of the NFA provides for subject matter jurisdiction for state law causes of action arising out of flood insurance policies.” 11 F. Supp. 2d 1344, 1347 (M.D.Fla. 1998). See also *Dukin v. State Farm Mut. Ins. Co.*, 3 F. Supp. 2d 724 (E.D.La. 1997) (rejecting a claim by an insured against his flood insurer for punitive damages because such damages were not permitted under the “federal scheme”). However, we believe the above cited case holding against preemption make the stronger arguments in favor of the state asserting jurisdiction over WYO insurers, and as noted, this seems to be the prevailing view among the federal courts.

Maryland insurance law establishes standards of conduct with which private insurers must comply when settling claims. These standards do not create a private cause of action for insureds, and in this respect the Maryland law differs from those of some other states. There is no danger that the application of state law will result in “extra-contractual” damages that an insurer may have to pay, a fact which has concerned some courts that have held that state causes of action against WYO were preempted. The Unfair Claims Settlement Practices Act is enforced by the Insurance Commissioner. Remedies can include monetary fines assessed against the insurer, or an order by the Commissioner against the insurer to comply with the law.

The Act provides:

§ 27-303. Unfair claim settlement practices – In general.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

- (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
- (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;
- (3) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;
- (4) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which payment is being made;
- (5) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;
- (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim;
- (7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service; or
- (8) fail to comply with the provisions of Title 15, Subtitle 10A of this article.

§ 27-304. Same – General business practice.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan, when committed with the frequency to indicate a general business practice to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) fail to acknowledge and act with reasonable promptness on communications about claims that arise under policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims that arise under policies;

(4) refuse to pay a claim without conducting a reasonable investigation based on all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) fail to make prompt, fair, and equitable good faith attempt, to settle claims for which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under policies by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable person would expect to be entitled after studying a written or printed advertising material accompanying, or made part of, an application;

(9) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;

(10) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which the payment is being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in order to compel insureds or claimants to accept settlement or compromise less than the amount awarded in arbitration;

(12) delay an investigation or payment of a claim by requiring a claimant or a claimant's licensed health care provider to submit a preliminary claim report and subsequently to submit formal proof of loss forms that contain substantially the same information;

(13) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;

(14) fail to provide promptly a reasonable explanation of the basis for denial of a claim or the offer of a compromise settlement;

(15) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

(16) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service; or

(17) fail to comply with the provisions of Title 15, Subtitle 10A of this article.

Adherence to these standards should not be an added burden to WYO carriers in Maryland . They must currently comply with these standards in the settlement of other claims such as homeowners claims. *Indeed a WYO carrier, in carrying out its functions under the NFIA, is required under federal regulations to “use its customary standards, staff and independent contractor resources as it would in the ordinary and necessary conduct of its own business affairs.” 44 C.F.R. Ch. 1, 62.23 (e).* We also believe it is significant that there appear to be no comparable standards of conduct in the federal law with which these state standards may conflict. For this reason, there appears little danger that the desire for uniformity in the flood program would be frustrated by the application of state regulatory standards.

The Maryland Court of Appeals recently decided the issue of whether state insurance laws, including the Unfair Claims Settlement Practice Act, were preempted by another federal law, the ERISA statute. While there are some differences between ERISA and the NFIA, the conflict preemption analysis is similar. In both instances proponents of preemption have argued the state law interferes with the operation of a national uniform system of insurance coverage. In *Connecticut General v. Insurance Commissioner*, the Court of Appeals rejected this claim, finding that an external appeal process established under a state law that is available to insureds whose health insurer has denied their claim does not conflict with the federal ERISA law. 371 Md. 455 (2002).

It is also the case that currently insureds have no objective, disinterested party to turn to for assistance. The NFIP is ultimately a payor, and while that agency performs certain quasi-regulatory functions, and apparently serves as an informal arbiter in some claim disputes involving WYO companies, it can not be said that it acts in the same manner that a state regulator would act in addressing policyholder complaints. The regulatory objectives of the NFIP seem almost exclusively geared toward protecting the federal treasury against the excessive or unauthorized payment of flood claims. An important goal to be sure, but this type of oversight leaves a significant gap in the accountability of WYO companies vis a vis their policyholders.

We also are aware of complaints that, if proven to be true, would seem to clearly constitute violations of the above cited state law. For example, several homeowners that were disputing the proposed settlement for their dwelling coverage were told that they had to agree to the adjuster’s proof of loss on the dwelling coverage if they wanted to receive payment for the contents coverage, which was not in dispute. This practice is a violation of §27-303(5) and 27-304(13). Several other practices complained of could constitute violations of the Act, including unreasonable delays in responding to insured and inadequate settlements. *See* §27-304 (2), (5), (6) and (7).

One of the most compelling arguments that the role of state regulators in overseeing the conduct of WYO companies is not preempted comes from the NFIP

itself. As detailed in PART I, the Control Plan expressly contemplates that state insurance departments will conduct audits of WYO plans, including operations relating to the flood program, and also requires that NFIP claim audits examine complaints filed with state regulators to determine the WYO timeframe for resolving those complaints. *Perhaps more directly on point, a document on the NFIP website, “Tips on Handling Your Flood Insurance Claim” expressly refers NFIP flood claimants to state insurance regulators for assistance.* That document advises claimants of the following if they have a problem with their claim:

“Every state government has a department of insurance, regulated by the state insurance commissioner's office. These offices have a policyholder service section, designed to assist insurance policy holders”

Clearly this evidences a view by the NFIP that through their regulatory authority state regulators may provide assistance to insureds over the WYO program. We believe that this view of the agency that administers the federal flood insurance program should be entitled to significant weight in any preemption analysis.

Recommendation 8A. Clarification must be obtained regarding the jurisdiction of the state over private companies that write flood policies. If the state assumes jurisdiction, then the state should undertake a review of those complaints to determine compliance with state laws. If the state does not have jurisdiction, the Congress or the NFIP should either establish standards of conduct similar to state standards, and an independent oversight authority with the ability to order the payment of claims, or expressly grant authority to the states to enforce existing state law.

FINDING #9: MANY HOMEOWNERS HAVE EXPERIENCED SIGNIFICANT DELAYS IN SETTLING THEIR CLAIMS. IN SOME CASES THIS HAS LEAD TO ADDITIONAL DAMAGE IN THE FORM OF MOLD DAMAGE.

There are many reports from homeowners that these standards are not being complied with. While it is certainly the case some delays are due to ongoing negotiations with homeowners, other are not.

Sample Comments:

- “We are still out of our home living in a trailer. We have been out of our home for almost 4 months. We have not received insurance money to start work on our house.”(48)
- “Flood adjuster assessed damage 1 week after Isabel. It took until December 12th to receive a proposal for loss on dwelling. Today is the 107th day since Isabel – we don’t have our house- work hasn’t even started because we don’t know how much money we’re going to have to work with.” (53)

- “The adjuster and insurance company would not return our calls and get back to us. It took approximately 2 months to get some action and money to live on”
- “Due to mold and delays in damage repair, I have since moved out of my house...I have had 4 different adjusters who have all caused me much frustration and cannot settle my claim (81).”

Set out below are the basic requirements for adjusters according to the NFIP Adjusters Manual:

Specific Standards and Requirements

a. Adjuster Preliminary Damage Assessment. The adjuster must complete the Adjuster Preliminary Damage Assessment form (shown on page A-5 in the Appendix) on all building claims that meet the criteria for substantial damage. After the adjuster conducts the inspection of the risk, the form must be completed and faxed to the NFIP Bureau and Statistical Agent’s Claims Department at 1-800-457-4232.

b. Building RC, Special Loss Settlement, and ACV. The adjuster must prepare accurate calculations of the insured building’s replacement cost and actual cash value and properly conclude the claim on an RC or ACV basis as applicable.

c. Contents Claim Adjustment. The NFIP requires the adjuster to assist the insured as necessary with the preparation of the contents claim, to verify that all contents included in the adjustment are covered under the SFIP, and to determine or verify accurate local replacement costs and reasonable actual cash value. Applicable depreciation must be shown separately for each item.

d. Coverage Limitations. The special limitation on some contents (jewelry, furs, etc.) must be properly applied. Documentation supporting the claimed value must accompany the worksheets as appropriate. Claims for removal of insured property due to the imminent danger of flooding must be documented and verified in order to be covered under the SFIP.

e. Final Report. The NFIP Final Report (page A-27) is required on all NFIP Direct and WYO losses. The adjuster must not close his or her file until all items on the Final Report are completed.

h. Inspection. *The adjuster is required to inspect the property within 48 hours of receiving the loss assignment for those losses of a critical nature and to inspect other losses as soon as possible*

within 1 week of receiving the loss assignment. This is also the time to complete the Adjuster Preliminary Damage Assessment form (page A-5) and fax it to the NFIP Bureau and Statistical Agent's Claims Department at 1-800-457-4232. The initial inspection will include preparation of a preliminary scope of damages. The adjuster assigned to the loss must inspect it personally and should not take a contractor along to inspect or scope the loss. If it is not possible for the adjuster to inspect the loss within this time frame, the adjuster must explain why in the NFIP Preliminary Report (page A- 23) and advise when the loss will be inspected. Visits to the insured without an appointment should be avoided.

j. Manufactured (Mobile) Home/Travel Trailer Worksheet.
The adjuster must complete

l. Origin of Loss Verified. The adjuster must verify whether the reported loss resulted from flood as defined in the SFIP.

m. Partial (Advance) Payments. *The adjuster must advise the insured of the availability of a partial (advance) payment. If the insured requests a partial payment, the adjuster must prepare documentation necessary to support the amount of payment requested, including an NFIP Proof of Loss form (page A-31). The partial payment should not be for more than 50 percent of the anticipated total claim and preferably should be made against the contents claim.*

p. Progress Notes in File. The adjuster's file must contain adequate notes regarding the progress of the claim and the scope of damages, calculations of replacement cost and actual cash value, and a diagram of the insured building with measurements. The adjuster must make this file available upon the request of the NFIP General Adjuster for the purpose of reinspection, whether the file is open or closed.

q. Prompt Contact. *The adjuster must initiate contact with the insured or agent by the end of the business day after receiving the loss assignment. This initial contact preferably will be by telephone, but, if contact by telephone is not possible, the adjuster should send the insured or agent a postcard or letter acknowledging the assignment and include a telephone number where the adjuster can be reached. Also, when the insured, agent, or company staff person leaves a telephone message for the adjuster, the adjuster must return the call by the end of the business day after the message was left.*

r. Proof of Loss. *An NFIP Proof of Loss form (page A-31) signed by the insured is required on every claim on which any payment is recommended. On claims up to \$7,500, the NFIP Final Report form (page A-27) will suffice for this purpose. On claims over \$7,500, a separate Proof of Loss form must be submitted. If the insured qualifies for replacement cost coverage, the adjuster must submit the Statement as to Full Cost of Repair or Replacement (page A-33) for the additional amount recoverable under the replacement cost provisions. If the insured qualifies for Increased Cost of Compliance (ICC) coverage, the Increased Cost of Compliance Proof of Loss form (page A-15) must be submitted. The insured has 60 days from the date of loss to proffer the proof. A Proof of Loss must be submitted also for the amount of any partial payment that is requested. It is required that each Proof of Loss be filled out completely before the insured signs it. Proof of Loss forms must be dated and witnessed; notarization is not required. The forms must be submitted to the NFIP Servicing Agent or WYO company within 72 hours after securing the insured's signature. The insured has 10 days from the date of loss to proffer the proof. Only the Federal Insurance and Mitigation Administration can waive this requirement.*

s. Proper Building Depreciation. Depreciation must be applied reasonably and accurately. This refers both to the determination of the building's actual cash value and the repair estimate. Depreciation must be shown separately, as applicable, for each item in the adjustment, including overhead and profit. "Lump sum" depreciation is not acceptable. Replacement cost, depreciation, and actual cash value for each item must be shown in this manner on all claims, regardless of whether the claim is concluded on an RC or ACV basis.

t. Proper Building Scope and Estimate. *The NFIP expects the adjuster to accurately identify the covered damages caused by flood and to allow in the adjustment only those repairs and replacements reasonably required to restore the structure. The repair estimate should be prepared on a room-by-room, unit-cost basis, clearly indicating room dimensions and unit costs, except when the building has been completely destroyed. For buildings that have been destroyed, value determination by a standard insurance industry method, such as Marshall-Swift, Boeckh, etc., is acceptable. The adjuster must personally prepare the repair estimates. If circumstances require the involvement of a contractor or other expert, the adjuster must obtain the authorization of the NFIP Servicing Agent or WYO company.*

x. Timely Reporting. *The adjuster's NFIP Preliminary Report (page A-23) must be submitted within 15 days after receipt of the loss assignment. The NFIP Final Report (page A-27) is due 30 days later. If the claim has not been concluded within 45 days, subsequent reports are due every 30 days after the Preliminary Report, or otherwise as specifically directed by the claims examiner, until the claim is concluded.*

There are some standards that appear to apply to the settlement of claims. In summary, the adjusters are required to:

- Inspect the property within 48 hours of receiving the loss assignment.
- Contact the insured within 24 hours of receiving the assignment.
- Return a call from the insured by the end of the business day after the message was left.
- Submit a Preliminary Report within 15 days of the receipt of the assignment.
- Submit Final Report 30 days after Preliminary Report.

Recommendation 9A. The NFIP should immediately conduct an inventory of unsettled claims for homeowners in Baltimore County and report on any reasons for delays. It should further insist, in those cases in which the homeowner has not requested or caused the delay, that the WYO adjusters comply with the requirements in the adjuster's manual.

FINDING # 10. SOME HOMEOWNERS' INSURERS HAVE OFFERED BLANKET DENIALS FOR ALL DAMAGE THEIR INSURED MAY HAVE SUSTAINED, CLAIMING IT WAS ALL FLOOD RELATED. MANY HOMEOWNERS EXPERIENCED WIND DAMAGE AND DAMAGE FROM DRIVEN RAIN, AND SEWER/WATER BACKUPS. SUCH CLAIMS ARE SUBJECT TO COVERAGE UNDER HOMEOWNERS' POLICIES.

While the survey shows that some homeowners had success in getting their homeowners insurer to pay for damage not related to flood waters, others had claims denied. According to the survey, 43% made claims with the homeowners, and of those that made claims 35% were denied and 65% had some or all of a claim paid. There are examples of inconsistent treatment among the homeowners insurers about how to treat certain claims.

Claims for Sewer and Drain Water Damage

NFIP flood policies exclude damage caused by water that backs up through sewers or drain pipes unless the flood is the proximate cause of the sewer back up. Homeowners policies in turn exclude sewer and water backup, but Maryland state

law requires that insurers offer an endorsement to cover such damage. A typical endorsement can be worded as follows:

"We cover loss.... caused by water which backs up through sewers and drains, or the discharge and overflow of water or stream from a sump-pump well or any other system designed to drain subsurface water away from the foundation area."

In some cases, damage from the flood was preceded by a sewer back-up. In most cases, homeowners (whether they had flood insurance or not) who made a claim against their homeowners coverage for sewer back-up were denied. We did identify one homeowner who did not have flood insurance and whose insurer honored the sewer back-up claim. We could not examine the endorsements to determine if differences in the policy language accounted for differential treatment.

Two questions are raised. First, to the extent that damage from sewer back-up damage preceded flood waters, there is an issue whether the homeowners policy should respond in part to the total damage to the house. The fact that one insurer provided coverage suggests there may be an obligation. To bolster this view, we learned that in the course of massive flooding in the mid-west in 1997, at least one Mid-West Insurance Commissioner stated that they were successful in convincing many insurers to pay out on the sewer and water back-up endorsement.

In the case of Isabel, we did not collect uniform data on the number of policyholders who had such coverage. It is possible insured with this coverage may have been discouraged from filing a claim with their insurer, or a complaint with the Insurance Administration if the claim was denied, thinking that it was a flood related claim and not within their homeowners coverage or the purview of the MIA.

Damage From Wind or Rain

Many homeowners experienced damage from wind and driven rain. Insurers appear to be inconsistent in their handling of these claims. Some homeowners have been paid some have not. One homeowner had roof damage from winds. They were told by the insurer that the roof was not at the proper pitch and denied coverage. Another received a letter denying coverage that stated:

"My inspection revealed the home was damaged from the flood from Hurricane Isabel and the roof damage was due to normal wear and tear, Since the cause of your damage is specifically excluded, there is no coverage for this unfortunate occurrence....Although the cause of loss outlined in this letter is not covered under this policy, these problems, if left unrepaired, treated or remediated in a timely manner could cause further damage to your dwelling and property.[Y]ou are now aware of these problems. *It is therefore your duty as a homeowner to address these problems in a prompt way to mitigate further damage to your dwelling....*"

In this case although the roof damage was viewed as normal wear and tear, it was apparently severe enough to merit immediate repair.

Sample Comments:

- “I had a large tree laying in the middle of the garage, but the adjuster said there was no wind damage - even though the winds were clocked at 100 miles per hour” (15)

Recommendation 10A. While many homeowners report that their non-flood claims were paid, many others report the opposite. Homeowners should be advised that claims not involving flood damage, such as wind and driven rain, are subject to state laws and the jurisdiction of the Maryland Insurance Administration.

FINDING #11: MOST, BUT NOT ALL, VICTIMS OF HURRICANE ISABEL WHO MADE CLAIMS FOR DAMAGE TO THEIR AUTOMOBILES TO THEIR AUTO CARRIERS REPORT THE CLAIMS WERE PAID PROMPTLY.

While there is a pattern of dissatisfaction by Isabel victims with their flood insurers and homeowners insurers, survey results show that most received some payments from their auto insurers for flood damage, and many reported prompt payment.

FINDING#12 - IN SOME CASES FINANCIAL INSTITUTIONS HAVE CONTRIBUTED TO THE DIFFICULTIES HOMEOWNERS HAVE EXPERIENCED. THERE WERE SEVERAL INSTANCES WHERE BANKS HAD FAILED TO KEEP UP FLOOD INSURANCE PAYMENTS FROM ESCROW AND INSUREDS WERE LEFT WITHOUT COVERAGE.

We interviewed or became aware of at least three victims whose bank, usually in the process of refinancing, had failed to maintain flood insurance payments from the escrow account, and the victims had learned of this either immediately prior to the hurricane or after the event. Another policyholder reported that his had lapsed several years ago when he had refinanced, but had discovered the mistake. These homeowners believe that they will be forced to spend money and time suing their bank for its mistake.

In other instances, the fact that a lender held a mortgage on the property damages has complicated recovery efforts. As one homeowner described the situation:

Since I have a lien on my house, the insurance company had to issue the check in both my name and the mortgage company name. The mortgage company sends an inspector to see that the work is being completed. As the work gets completed they issue our money out in 1/3 increments. We have

received \$39,000 of the \$52,000, and they will not release the remainder of our money till we complete repairs. However, we cannot complete repairs since the contractor estimates are anywhere from \$85,000 to \$100,000 and insurance is only giving us \$52,000.(67)

Dealing with the lender has created one more hurdle for homeowners to move forward on their reconstruction. While lenders obviously have an interest in maintaining the security for their mortgage, it does not always appear that the lenders are facilitating the process.

Recommendation 12A. State law should be clarified so that lenders doing business in the state are responsible for damages incurred by flood victims if, through the lender's failure to pay flood premiums from escrow accounts, insureds are left without coverage. Insureds should not be required to incur the expense of protracted litigation if the lender had responsibility to pay premiums out of the escrow account.

EXHIBIT A

STANDARD FLOOD INSURANCE POLICY



NATIONAL
FLOOD
INSURANCE
PROGRAM

DWELLING FORM

STANDARD FLOOD INSURANCE POLICY

*The National Flood Insurance Program is administered
by the Federal Insurance Administration,
part of the Federal Emergency Management Agency (FEMA)*

DWELLING FORM

Summary of Significant Changes, December 31, 2000

1. Section III. Property Covered, A. Coverage A - Building Property, 2.

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

2. Section III. Property Covered, A. Coverage A - Building Property, 3.

Coverage for detached carports has been eliminated.

3. Section III. Property Covered, B. Coverage B - Personal Property 4.

Coverage has been extended to include coverage for cooking stoves, ranges, or refrigerators belonging to the renter, as well as 10 percent of contents coverage for improvements made by the renter to the building.

4. Section III. Property Covered, B. Coverage B - Personal Property, 5.

Coverage for condominium unit owners has been extended to apply up to 10 percent of the contents coverage for losses to interior walls, floors, and ceilings not covered by the condominium association's master policy.

5. Section III. Property Covered, B. Coverage B - Personal Property, 6. Special Limits

Coverage for fine arts, collectibles, jewelry, and furs, etc. has been increased to \$2500. Also, personal property used in a business has been added under this extension of coverage.

6. Section III. Property Covered, C. Coverage C - Other Coverages, 2.a. & b.

Coverage for the two loss avoidance measures (sandbagging and relocation of property to protect it from flood or the imminent danger of flood) has been increased to \$1,000 for each.

7. Section IV. Property Not Covered, 5.a. & b.

Coverage has been changed to pay for losses to self-propelled vehicles used to service the described location or designed to assist handicapped persons provided that the vehicles are in a building at the described location.

8. Section IV. Property Not Covered, 7.

Coverage is now specifically excluded for scrip and stored value cards.

9. Section IV. Property Not Covered, 14.

Coverage for swimming pools, hot tubs and spas (that are not bathroom hot tubs or spas), and their equipment is now excluded.

10. Section V. Exclusions, B.1. & 2.

The explanation of when coverage begins as it relates to a loss in progress has been simplified.

11. Section V. Exclusions, C.

Coverage has been clarified to pay for losses from land subsidence under certain circumstances. Subsidence of land along a lake shore or similar body of water which results from the erosion or undermining of the shoreline caused by waves or currents of water exceeding cyclical levels that result in a flood continues to be covered. All other land subsidence is now excluded.

12. Section V. Exclusions, D.4.b.(3)

Coverage is now excluded for water, moisture, mildew, or mold damage caused by the policyholder's failure to inspect and maintain the insured property after the flood waters recede.

13. Section V. Exclusions, D.6.

Coverage is now added for damage from the pressure of water against the insured structure with the requirement that there be a flood in the area and the flood is the proximate cause of damage from the pressure of water against the insured structure.

14. Section V. Exclusions, F.

An exclusion for the cost of testing for or monitoring of pollutants unless it is required by law or ordinance has been added.

15. Section VII. General Conditions, G. Reduction and Reformation of Coverage, 2.a.(2)

If it is discovered before a claim occurs that there is incomplete rating information, the policyholder has 60 days to submit the missing rating information. Otherwise, the coverage is limited to the amount of coverage that can be purchased for the premium originally received and can only be increased by an endorsement that is subject to the appropriate waiting period (currently 30 days).

16. Section VII. General Conditions, V. Loss Settlement, 3. Special Loss Settlement, b.(1)

Coverage for a manufactured or mobile home or a travel trailer eligible for replacement cost coverage is limited to 1.5 times its actual cash value.

FEDERAL EMERGENCY MANAGEMENT AGENCY
FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

DWELLING FORM

PLEASE READ THE POLICY CAREFULLY. THE FLOOD INSURANCE PROVIDED IS SUBJECT TO LIMITATIONS, RESTRICTIONS, AND EXCLUSIONS.

THIS POLICY COVERS ONLY:

1. A NON-CONDOMINIUM RESIDENTIAL BUILDING DESIGNED FOR PRINCIPAL USE AS A DWELLING PLACE FOR ONE TO FOUR FAMILIES, OR
2. A SINGLE-FAMILY DWELLING UNIT IN A CONDOMINIUM BUILDING.

I. AGREEMENT

The Company provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations (CFR).

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

1. Have paid the correct premium ;

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

3. Have furnished accurate information and statements.

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

II. DEFINITIONS

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

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

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

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is your property) from:
 - a. Overflow of inland or tidal waters;
 - b. Unusual and rapid accumulation or runoff of surface waters from any source;
 - c. **Mudflow**.

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

B. The following are the other key definitions that we use in this **policy**:

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

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

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

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

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

6. **Building.**

- a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
- b. A manufactured home (a "manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

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

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

8. **Condominium.** That form of ownership of real property in which each **unit** owner has an undivided interest in common elements.

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

- a. Common elements owned in undivided shares by **unit** owners; and
- b. Other real property in which the **unit** owners have use rights;

where membership in the entity is a required condition of **unit** ownership.

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

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

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

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

in a **building** under a **condominium** form of ownership.

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

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

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

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

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

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

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

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

- a. This printed form;
- b. The **application** and **Declarations Page**;
- c. Any endorsement(s) that may be issued; and
- d. Any renewal certificate indicating that coverage has been instituted for a new **policy** and new **policy** term.

Only one **dwelling**, which you specifically described in the **application**, may be insured under this **policy**.

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

- 23. Post-FIRM Building.** A **building** for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.
- 24. Probation Premium.** A flat charge you must pay on each new or renewal **policy** issued covering property in a community that the NFIP has placed on probation under the provisions of 44 CFR 59.24.
- 25. Regular Program.** The final phase of a community's participation in the **National Flood Insurance Program**. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the **Act**.

- 26. Special Flood Hazard Area.** An area having special **flood**, or **mudflow**, and/or **flood**-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.
- 27. Unit.** A single-family **unit** you own in a **condominium building**.
- 28. Valued Policy.** A **policy** in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a **valued policy**.

III. PROPERTY COVERED

A. COVERAGE A - BUILDING PROPERTY

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

1. The **dwelling** at the **described location**, or for a period of 45 days at another location as set forth in **III.C.2.b.**, Property Removed to Safety.
2. Additions and extensions attached to and in contact with the **dwelling** by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the **building** by means of a common interior wall that is not a solid load-bearing wall are always considered part of the **dwelling** and cannot be separately insured.
3. A detached garage at the **described location**. Coverage is limited to no more than 10 percent of the limit of liability on the **dwelling**. Use of this insurance is at your option but reduces the **building** limit of liability. We do not cover any detached garage used or held for use for residential (i.e., **dwelling**), business, or farming purposes.
4. Materials and supplies to be used for construction, alteration, or repair of the **dwelling** or a detached garage while the materials and supplies are stored in a fully enclosed **building** at the **described location** or on an adjacent property.
5. A **building** under construction, alteration, or repair at the **described location**.
 - a. If the structure is not yet walled or roofed as described in the definition for **building** (see **II.B.6.a.**) then coverage applies:

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

- b. However, coverage does not apply until the **building** is walled and roofed if the lowest floor, including the **basement** floor, of a non-**elevated building** or the lowest elevated floor of an **elevated building** is:
 - (1) Below the **base flood** elevation in Zones AH, AE, A1-A30, AR, AR/AE, AR/AH, AR/A1-A30, AR/A, AR/AO; or
 - (2) Below the **base flood** elevation adjusted to include the effect of wave action in Zones VE or V1-V30.

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

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

If the manufactured home or travel trailer is in a **special flood hazard area**, it must be anchored in the following manner at the time of the loss:

- a. By over-the-top or frame ties to ground anchors; or
- b. In accordance with the manufacturer's specifications; or
- c. In compliance with the community's floodplain management requirements;

unless it has been continuously insured by the **NFIP** at the same **described location** since September 30, 1982.

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

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

8. Items of property in a **building** enclosure below the lowest elevated floor of an **elevated post-FIRM building** located in Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a **basement**, regardless of the zone. Coverage is limited to the following:

- a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
 - (1) Central air conditioners;
 - (2) Cisterns and the water in them;
 - (3) Drywall for walls and ceilings in a **basement** and the cost of labor to nail it, unfinished and unflashed and not taped, to the framing;
 - (4) Electrical junction and circuit breaker boxes;
 - (5) Electrical outlets and switches;
 - (6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the **base flood** elevation after September 30, 1987;
 - (7) Fuel tanks and the fuel in them;
 - (8) Furnaces and hot water heaters;
 - (9) Heat pumps;
 - (10) Nonflammable insulation in a **basement**;
 - (11) Pumps and tanks used in solar energy systems;
 - (12) Stairways and staircases attached to the **building**, not separated from it by elevated walkways;
 - (13) Sump pumps;

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

(15) Well water tanks and pumps;

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

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

b. Clean-up.

B. COVERAGE B - PERSONAL PROPERTY

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

- a. The property is owned by you or your household family members; and
- b. At your option, the property is owned by guests or servants.

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

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

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

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

3. Coverage for items of property in a **building** enclosure below the lowest elevated floor of an **elevated post-FIRM building** located in Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a **basement**, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

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

4. If you are a tenant and have insured personal property under Coverage **B** in this **policy**, we will cover such property, including your cooking stove or range and refrigerator. The **policy** will also cover **improvements** made or acquired solely at your expense in the **dwelling** or apartment in which you reside, but for not more than 10 percent of the limit of liability shown for personal property on the **Declarations Page**. Use of this insurance is at your option but reduces the personal property limit of liability.
5. If you are the owner of a **unit** and have insured personal property under Coverage **B** in this **policy**, we will also cover your interior walls, floor, and ceiling (not otherwise covered under a flood insurance **policy** purchased by your **condominium association**) for not more than 10 percent of the limit of liability shown for personal property on the **Declarations Page**. Use of this insurance is at your option but reduces the personal property limit of liability.
6. **Special Limits.** We will pay no more than \$2,500 for any one loss to one or more of the following kinds of personal property:
 - a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
 - b. Rare books or autographed items;
 - c. Jewelry, watches, precious and semiprecious stones, or articles of gold, silver, or platinum;
 - d. Furs or any article containing fur which represents its principal value; or
 - e. Personal property used in any business.
7. We will pay only for the functional value of antiques.

C. COVERAGE C - OTHER COVERAGES

1. Debris Removal

- a. We will pay the expense to remove non-owned debris on or in insured property and owned debris anywhere.
- b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.
- c. This coverage does not increase the Coverage **A** or Coverage **B** limit of liability.

2. Loss Avoidance Measures

a. Sandbags, Supplies, and Labor

- (1) We will pay up to \$1,000 for costs you incur to protect the insured **building** from a **flood** or imminent danger of **flood**, for the following:
 - (a) Your reasonable expenses to buy:
 - (i) Sandbags, including sand to fill them;
 - (ii) Fill for temporary levees;
 - (iii) Pumps; and
 - (iv) Plastic sheeting and lumber used in connection with these items.
 - (b) The value of work, at the Federal minimum wage, that you or a member of your household perform.
- (2) This coverage for Sandbags, Supplies, and Labor applies only if damage to insured property by or from **flood** is imminent, and the threat of **flood** damage is apparent enough to lead a person of common prudence to anticipate **flood** damage. One of the following must also occur:
 - (a) A general and temporary condition of flooding in the area near the **described location** must occur, even if the **flood** does not reach the insured **building**; or
 - (b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured **building** is located calling for measures to preserve life and property from the peril of **flood**.

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

b. Property Removed to Safety

- (1) We will pay up to \$1,000 for the reasonable expenses you incur to move insured property to a place other than the **described location** that contains the property in order to protect it from **flood** or the imminent danger of **flood**.

Reasonable expenses include the value of work, at the Federal minimum wage, that you or a member of your household perform.

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

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

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

3. Condominium Loss Assessments

- a. If this **policy** insures a **unit**, we will pay, up to the Coverage **A** limit of liability, your share of loss assessments charged against you by the **condominium association** in accordance with the **condominium association's** articles of association, declarations and your deed.

The assessment must be made as a result of **direct physical loss by or from flood** during the **policy** term, to the **building's** common elements.

- b. We will not pay any loss assessment charged against you:
 - (1) And the **condominium association** by any governmental body;
 - (2) That results from a deductible under the insurance purchased by the **condominium association** insuring common elements ;
 - (3) That results from a loss to personal property, including contents of a **condominium building**;
 - (4) That results from a loss sustained by the **condominium association** that was not reimbursed under a flood insurance **policy** written in the name of the association under the **Act** because the **building** was not, at the time of loss, insured for an amount equal to the lesser of:

- (a) 80 percent or more of its full replacement cost; or
- (b) The maximum amount of insurance permitted under the **Act**;

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

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

Loss assessment coverage does not increase the Coverage **A** limit of liability.

D. COVERAGE D - INCREASED COST OF COMPLIANCE

1. General

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

- a. Nonresidential structures.
- b. Residential structures with **basements** that satisfy the Federal Emergency Management Agency's (FEMA's) standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. Limit of Liability

We will pay you up to \$20,000 under this Coverage **D** - Increased Cost of Compliance, which only applies to **policies** with **building** coverage (Coverage **A**). Our payment of claims under Coverage **D** is in addition to the amount of coverage which you selected on the **application** and which appears on the **Declarations Page**. But the maximum you can collect under this **policy** for both Coverage **A** - Building Property and Coverage **D** - Increased Cost of Compliance cannot exceed the maximum permitted under the **Act**. We do not charge a separate deductible for a claim under Coverage **D**.

3. Eligibility

a. A structure covered under Coverage **A** - Building Property sustaining a loss caused by a **flood** as defined by this **policy** must:

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

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

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

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

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

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

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

(1) **3.a.(1)** above.

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

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

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

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

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

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

4. Conditions

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

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

5. Exclusions

Under this Coverage **D** - Increased Cost of Compliance, we will not pay for:

- a. The cost to comply with any floodplain management law or ordinance in communities participating in the **Emergency Program**.
- b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**.
- c. The loss in value to any insured **building** or other structure due to the requirements of any ordinance or law.
- d. The loss in residual value of the undamaged portion of a **building** demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.
- e. Any Increased Cost of Compliance under this Coverage **D**:
 - (1) Until the **building** is elevated, floodproofed, demolished, or relocated on the same or to another premises; and
 - (2) Unless the **building** is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed 2 years (see **3.b.**).
- f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

- g. Any compliance activities needed to bring additions or **improvements** made after the loss occurred into compliance with State or local floodplain management laws or ordinances.
- h. Loss due to any ordinance or law that you were required to comply with before the current loss.
- i. Any rebuilding activity to standards that do not meet the **NFIP's** minimum requirements. This includes any situation where you have received from the State or community a variance in connection with the current **flood** loss to rebuild the property to an elevation below the **base flood** elevation.
- j. Increased Cost of Compliance for a garage or carport.
- k. Any structure insured under an **NFIP** Group Flood Insurance Policy.
- l. Assessments made by a **condominium association** on individual **condominium unit** owners to pay increased costs of repairing commonly owned **buildings** after a **flood** in compliance with State or local floodplain management ordinances or laws.

6. Other Provisions

- a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80 percent insurance-to-value requirement for replacement cost coverage as set forth in **VII. General Conditions, V. Loss Settlement**.
- b. All other conditions and provisions of this **policy** apply.

IV. PROPERTY NOT COVERED

We do not cover any of the following property:

- 1. Personal property not inside the fully enclosed **building**;
- 2. A **building**, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;
- 3. Open structures, including a **building** used as a boathouse or any structure or **building** into which boats are floated, and personal property located in, on, or over water;
- 4. Recreational vehicles other than travel trailers described in **II.B.6.c.**, whether affixed to a permanent foundation or on wheels;

- 5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:
 - a. Used mainly to service the **described location**, or
 - b. Designed and used to assist handicapped persons,while the vehicles or machines are inside a **building** at the **described location**;
- 6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;
- 7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;
9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured **building** or the **building** in which the insured **unit** is located;
10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;
11. **Buildings** or **units** and all their contents if more than 49 percent of the **actual cash value** of the **building** or **unit** is below ground, unless the lowest level is at or above the **base flood** elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;
12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks ;
13. Aircraft or watercraft, or their furnishings and equipment;
14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;
15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these acts;
16. Personal property you own in common with other **unit** owners comprising the membership of a **condominium association**.

V. EXCLUSIONS

- A. We only provide coverage for **direct physical loss by or from flood**, which means that we do not pay you for:
 1. Loss of revenue or profits;
 2. Loss of access to the insured property or **described location**;
 3. Loss of use of the insured property or **described location**;
 4. Loss from interruption of business or production;
 5. Any additional living expenses incurred while the insured **building** is being repaired or is unable to be occupied for any reason;
 6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage **D** - Increased Cost of Compliance; or
 7. Any other economic loss.
- B. We do not insure a loss directly or indirectly caused by a **flood** that is already in progress at the time and date:
 1. The **policy** term begins; or
 2. Coverage is added at your request.
- C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by **flood**. Some examples of earth movement that we do not cover are:
 1. Earthquake;
 2. Landslide;
 3. Land subsidence;
 4. Sinkholes;
 5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or
 6. Gradual erosion.

We do, however, pay for losses from **mudflow** and land subsidence as a result of erosion that are specifically covered under our definition of **flood** (see **II.A.1.c.** and **II.A.2.**).
- D. We do not insure for direct physical loss caused directly or indirectly by any of the following:
 1. The pressure or weight of ice;
 2. Freezing or thawing;
 3. Rain, snow, sleet, hail, or water spray;
 4. Water, moisture, mildew, or mold damage that results primarily from any condition:
 - a. Substantially confined to the **dwelling**; or
 - b. That is within your control, including but not limited to:
 - (1) Design, structural, or mechanical defects;

- (2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or
 - (3) Failure to inspect and maintain the property after a **flood** recedes;
5. Water or waterborne material that:
- a. Backs up through sewers or drains ;
 - b. Discharges or overflows from a sump, sump pump, or related equipment; or
 - c. Seeps or leaks on or through the covered property;
- unless there is a **flood** in the area and the **flood** is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or seepage of water;
6. The pressure or weight of water unless there is a **flood** in the area and the **flood** is the proximate cause of the damage from the pressure or weight of water;
7. Power, heating, or cooling failure unless the failure results from **direct physical loss by or from flood** to power, heating, or cooling equipment on the **described location**;
8. Theft, fire, explosion, wind, or windstorm;
9. Anything you or any member of your household do or conspire to do to cause loss by **flood** deliberately; or
10. Alteration of the insured property that significantly increases the risk of flooding.
- E. We do not insure for loss to any **building** or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.
- F. We do not pay for the testing for or monitoring of **pollutants** unless required by law or ordinance.

VI. DEDUCTIBLES

- A. When a loss is covered under this **policy**, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the **Declarations Page**.
- However, when a **building** under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed **building**.
- B. In each loss from **flood**, separate deductibles apply to the **building** and personal property insured by this **policy**.
- C. The deductible does not apply to:
- 1. **III.C.2.** Loss Avoidance Measures;
 - 2. **III.C.3.** Condominium Loss Assessments; or
 - 3. **III.D.** Increased Cost of Compliance.

VII. GENERAL CONDITIONS

- A. Pairs and Sets**
- In case of loss to an article that is part of a pair or set, we will have the option of paying you:
- 1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation; or
 - 2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.
- B. Concealment or Fraud and Policy Voidance**
- 1. With respect to all insureds under this **policy**, this **policy**:
 - a. Is void;
 - b. Has no legal force or effect;
 - c. Cannot be renewed; and
 - d. Cannot be replaced by a new **NFIP policy**;

if, before or after a loss, you or any other insured or your agent have at any time:

- (1) Intentionally concealed or misrepresented any material fact or circumstance;
- (2) Engaged in fraudulent conduct; or
- (3) Made false statements;

relating to this **policy** or any other **NFIP** insurance.

2. This **policy** will be void as of the date the wrongful acts described in **B.1.** above were committed.
3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.
4. This **policy** is also void for reasons other than fraud, misrepresentation, or wrongful act. This **policy** is void from its inception and has no legal force under the following conditions:
 - a. If the property is located in a community that was not participating in the **NFIP** on the **policy's** inception date and did not join or reenter the program during the **policy** term and before the loss occurred; or
 - b. If the property listed on the **application** is otherwise not eligible for coverage under the **NFIP**.

C. Other Insurance

1. If a loss covered by this **policy** is also covered by other insurance that includes **flood** coverage not issued under the **Act**, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this **policy** subject to the following:
 - a. We will pay only the proportion of the loss that the amount of insurance that applies under this **policy** bears to the total amount of insurance covering the loss, unless **C.1.b.** or **c.** immediately below applies.
 - b. If the other policy has a provision stating that it is excess insurance, this **policy** will be primary.
 - c. This **policy** will be primary (but subject to its own deductible) up to the deductible in the other **flood** policy (except another policy as described in **C.1.b.** above). When the other deductible amount is reached, this **policy** will participate in the same proportion that the amount of insurance under this **policy** bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance in the name of your **condominium association** covering the same property covered by this **policy**, then this **policy** will be in excess over the other insurance.

D. Amendments, Waivers, Assignment

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

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

E. Cancellation of Policy by You

1. You may cancel this **policy** in accordance with the applicable rules and regulations of the **NFIP**.
2. If you cancel this **policy**, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the **NFIP**.

F. Nonrenewal of the Policy by Us

Your **policy** will not be renewed:

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

G. Reduction and Reformation of Coverage

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.
2. The **policy** can be reformed to increase the amount of coverage resulting from the reduction described in **G.1.** above to the amount you requested as follows:
 - a. Discovery of insufficient premium or incomplete rating information before a loss.
 - (1) If we discover before you have a **flood** loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current **policy** term (or that portion of the current **policy** term following any endorsement changing

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

- (2) If we determine before you have a **flood** loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current **policy** term, we will follow the procedure in **G.2.a.(1)** above.
 - (3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.
- b. Discovery of insufficient premium or incomplete rating information after a loss.
- (1) If we discover after you have a **flood** loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior **policy** terms. If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the **policy** to increase the amount of coverage to the originally requested amount effective to the beginning of the prior **policy** term.
 - (2) If we discover after you have a **flood** loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior **policy** terms, we will follow the procedure in **G.2.b.(1)** above.
 - (3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition **B. Concealment or Fraud and Policy Voidance** apply.

H. Policy Renewal

1. This **policy** will expire at 12:01 a.m. on the last day of the **policy** term.
2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.
3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:
 - a. If you or your agent notified us, not later than 1 year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.
 - b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the **policy**. In that case, the **policy** will remain an expired **policy** as of the expiration date shown on the **Declarations Page**.
4. In connection with the renewal of this **policy**, we may ask you during the **policy** term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent **application** for or renewal of insurance.

I. Conditions Suspending or Restricting Insurance

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

J. Requirements in Case of Loss

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

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

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the **policy** signed and sworn to by you, and which furnishes us with the following information:
 - a. The date and time of loss;
 - b. A brief explanation of how the loss happened;
 - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
 - d. Details of any other insurance that may cover the loss;
 - e. Changes in title or occupancy of the covered property during the term of the **policy**;
 - f. Specifications of damaged **buildings** and detailed repair estimates;
 - g. Names of mortgagees or anyone else having a lien, charge, or claim against the covered property;
 - h. Details about who occupied any insured **building** at the time of loss and for what purpose; and
 - i. The inventory of damaged personal property described in **J.3.** above.
 5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
 6. You must cooperate with the adjuster or representative in the investigation of the claim.
 7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.
 8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
 9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.
1. At such reasonable times and places that we may designate, you must:
 - a. Show us or our representative the damaged property;
 - b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
 - c. Permit us to examine and make extracts and copies of:
 - (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
 - (2) **Condominium association** documents including the Declarations of the **condominium**, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a **unit owner in a condominium building**; and
 - (3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.
 2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:
 - a. Quantities and costs;
 - b. **Actual cash values** or replacement cost (whichever is appropriate);
 - c. Amounts of loss claimed;
 - d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
 - e. Evidence that prior **flood** damage has been repaired.
 3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
 - a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
 - b. Take all or any part of the damaged property at the value we agree upon or its appraised value.

K. Our Options After a Loss

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

L. No Benefit to Bailee

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

M. Loss Payment

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the **policy** or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:
 - a. We reach an agreement with you;
 - b. There is an entry of a final judgment; or
 - c. There is a filing of an appraisal award with us, as provided in **VII.P.**
2. If we reject your proof of loss in whole or in part you may:
 - a. Accept our denial of your claim ;
 - b. Exercise your rights under this **policy**; or
 - c. File an amended proof of loss, as long as it is filed within 60 days of the date of the loss.

N. Abandonment

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

O. Salvage

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

P. Appraisal

If you and we fail to agree on the **actual cash value** or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the State where the covered property is located. The appraisers will separately state the **actual cash value**, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of **actual cash value** and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. Mortgage Clause

The word "mortgagee" includes trustee.

Any loss payable under Coverage **A** - Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

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

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

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

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

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

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. Suit Against Us

You may not sue us to recover money under this **policy** unless you have complied with all the requirements of the **policy**. If you do sue, you must start the suit within 1 year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this **policy** and to any dispute that you may have arising out of the handling of any claim under the **policy**.

S. Subrogation

Whenever we make a payment for a loss under this **policy**, we are subrogated to your right to recover for that loss from any other person. That means that your right to

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

T. Continuous Lake Flooding

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

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

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

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

- a. Lake **flood** waters must damage or imminently threaten to damage your **building**.
- b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for **flood** damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the **NFIP** and are insured under the **NFIP**, they will not be eligible for the benefits of this paragraph **T.2.** If a U.S. Army Corps of Engineers certified **flood** control project or otherwise certified **flood** control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

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

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

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

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

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

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

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

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

g. You must have **NFIP** flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph **T.2.** If a subsequent owner buys **NFIP** insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph **T.2.**, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

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

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

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

U. Duplicate Policies Not Allowed

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

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

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

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

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the **Act** or your insurable interest, whichever is less.

We will make a refund to you, according to applicable **NFIP** rules, of the premium for the **policy** not being kept in effect.

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

V. Loss Settlement

1. Introduction

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

a. Replacement Cost loss settlement, described in **V.2.** below, applies to a single-family **dwelling** provided:

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

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

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

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

b. Special loss settlement, described in **V.3.** below, applies to a single-family **dwelling** that is a manufactured or mobile home or a travel trailer.

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

2. Replacement Cost Loss Settlement

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

- a. We will pay to repair or replace the damaged **dwelling** after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (1) The **building** limit of liability shown on your **Declarations Page**;
 - (2) The replacement cost of that part of the **dwelling** damaged, with materials of like kind and quality, and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged part of the **dwelling** for like use.
- b. If the **dwelling** is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the **dwelling** had been rebuilt at its former location.
- c. When the full cost of repair or replacement is more than \$1,000 or more than 5 percent of the whole amount of insurance that applies to the **dwelling**, we will not be liable for any loss under **V.2.a.** above or **V.4.a.(2)** below unless and until actual repair or replacement is completed.
- d. You may disregard the replacement cost conditions above and make claim under this **policy** for loss to **dwellings** on an **actual cash value** basis. You may then make claim for any additional liability according to **V.2.a., b.,** and **c.** above, provided you notify us of your intent to do so within 180 days after the date of loss.
- e. If the community in which your **dwelling** is located has been converted from the **Emergency Program** to the **Regular Program** during the current **policy** term, then we will consider the maximum amount of available **NFIP** insurance to be the amount that was available at the beginning of the current **policy** term.

3. Special Loss Settlement

- a. The following loss settlement conditions apply to a single-family **dwelling** that:
 - (1) Is a manufactured or mobile home or a travel trailer, as defined in **II.B.6.b.** and **II.B.6.c.**;
 - (2) Is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled; and

- (3) Is your principal residence, as specified in **V.1.a.(1)** above.

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

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

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

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

4. Actual Cash Value Loss Settlement

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

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

- (1) The **actual cash value**, as defined in **II.B.2.**, of the damaged part of the **dwelling**; or

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

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

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

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

- d. Detached garages.
- e. Personal property.
- f. Appliances, carpets, and carpet pads.
- g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.
- h. Any property covered under this **policy** that is abandoned after a loss and remains as debris anywhere on the **described location**.
- i. A **dwelling** that is not your principal residence.

- a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the **dwelling**;
- b. Those supports listed in **V.5.a.** above that are below the surface of the ground inside the foundation walls if there is no basement; and
- c. Excavations and underground flues, pipes, wiring, and drains.

The Coverage **D** - Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

5. Amount of Insurance Required

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

VIII. LIBERALIZATION CLAUSE

If we make a change that broadens your coverage under this edition of our **policy**, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the

change, provided that this implementation date falls within 60 days before, or during, the **policy** term stated on the **Declarations Page**.

IX. WHAT LAW GOVERNS

This **policy** and all disputes arising from the handling of any claim under the **policy** are governed exclusively by the flood insurance regulations issued by FEMA, the

National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law.

IN WITNESS WHEREOF, we have signed this **policy** below and hereby enter into this Insurance Agreement.

Company Official Signature

CLAIM GUIDELINES IN CASE OF A FLOOD

For the protection of you and your family, the following claim guidelines are provided by the National Flood Insurance Program (NFIP). If you are ever in doubt as to what action is needed, consult your insurance representative.

Know your insurance representative's name and telephone number. List them here for fast reference:

Insurance Representative _____

Representative's Phone Number _____

- Notify your insurance representative, in writing, as soon as possible after the flood.
- When you report to your insurance representative, remind him or her to assign the claim to an NFIP-approved claims adjuster.
- Determine the independent claims adjuster assigned to your claim and contact him or her if you have not been contacted within 24 hours after you reported the claim to your insurance representative.
- As soon as possible, separate damaged property from undamaged property so that damage can be inspected and evaluated.
- Discuss with the claims adjuster any need you may have for an advance or partial payment for your loss.
- To help the claims adjuster, try to take photographs of the outside of the premises showing the flooding and the damage and photographs of the inside of the premises showing the height of the water and the damaged property.
- Place all account books, financial records, receipts, and other loss verification material in a safe place for examination and evaluation by the claims adjuster.
- Work cooperatively and promptly with the claims adjuster to determine and document all claim items. Be prepared to advise the claims adjuster of the cause and responsible party(ies), if the flooding resulted from other than natural cause.
- Make sure that the claims adjuster fully explains, and that you fully understand, all allowances and procedures for processing claim payments on the basis of your proof of loss. This policy requires you to send us detailed proof of loss within 60 days after the loss.
- Any and all coverage problems and claim allowance restrictions must be communicated directly from the Company. Claims adjusters are not authorized to approve or deny claims; their job is to report to the Company on the elements of flood cause and damage.

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

Questionnaire for Hurricane Isabel Victims

Instructions: This Questionnaire is intended to gather information relating to the property damage that residents sustained after Hurricane Isabel, and the response to the damage from insurance companies, and the local, state and federal governments. It will be used to determine the range of problems that residents experienced, and to serve as the basis for recommendations to avoid such problems in the future. The information will also be used to determine if all available assistance has been provided to residents, and determine what additional relief can be provided. The data collected will be part of a report to the Baltimore County Executive and will not identify any individual without that person's consent. All the information will be kept confidential, unless you agree in writing to its release in advance. It is suggested you read through the entire questionnaire first before beginning to answer the questions.

▶ NAME: _____

▶ ADDRESS: _____

▶ TELEPHONE: _____

▶ EMAIL: _____

▶ NAME OF INSURANCE COMPANY THAT ISSUED YOUR HOMEOWNERS
INSURANCE POLICY:

POLICY NUMBER _____

▶ IF YOU HAVE FLOOD INSURANCE, AND THE COVERAGE WAS ISSUED BY AN
INSURANCE COMPANY, LIST THE NAME OF THE COMPANY:

POLICY NUMBER _____

▶ IF YOUR AUTOMOBILE WAS DAMAGED AS A RESULT OF ISABEL, AND YOU
MADE A CLAIM WITH YOUR AUTO INSURANCE COMPANY, LIST THE COMPANY:

POLICY NUMBER _____

▶ IF YOUR BOAT WAS DAMAGED AS A RESULT OF ISABEL, AND YOU MADE A CLAIM WITH YOUR INSURANCE COMPANY, LIST THE COMPANY:

POLICY NUMBER _____

▶ BACKGROUND INFORMATION:

1. Was your home (excluding pier or dock) damaged as a result of Isabel? If yes, check all that apply.

Wind damage _____ Flood damage from tidal surge in bay, river, or creek _____

Other flood damage _____ Rain damage _____

Other: _____

2. Did you have flood insurance covering your **property**?

Yes _____ No _____

If not, explain why. _____

If yes, check the line that explains why you had flood insurance for property.

Bank/Lender required it _____ Insurance agent recommended it _____

Other: _____

3. Did you have flood insurance covering your **contents**?

Yes _____ No _____

If not, explain why. _____

If yes, check the line that explains why you had flood insurance for contents.

Bank/Lender required it _____ Insurance agent recommended it _____

Other: _____

4. Estimate the distance from your home to the nearest body of water (i.e. bay, river, creek)

300 feet or less _____ Between 300 feet and 1/4 mile _____

Over 1/4 mile _____

► CLAIM/DAMAGE INFORMATION

5. If your home was damaged as a result of Isabel, please check all options that describe the damage to your property.

▪ Basement (full or partially below ground level):

Water damage requiring clean-up only _____

Water damage requiring repair (i.e. new drywall, flooring) _____

Water damage requiring structural repair (i.e. foundation, bearing walls) _____

Contents damaged or destroyed valued under \$1000 _____

Contents damaged or destroyed valued \$1000 to \$5000 _____

Contents damaged or destroyed valued over \$ 5000 _____ (estimate)

▪ First floor

Water damage requiring clean-up only _____

Water damage requiring repair (i.e. new drywall, flooring) _____

Water damage requiring structural repair (i.e. foundation, bearing walls) _____

Contents damaged or destroyed valued under \$1000 _____

Contents damaged or destroyed valued \$1000 to \$5000 _____

Contents damaged or destroyed valued over \$ 5000 _____ (estimate)

▪ Second Floor

Water damage requiring clean-up only _____

Water damage requiring repair (i.e. new drywall, flooring) _____

Water damage requiring structural repair (i.e. foundation, bearing walls) _____

Contents damaged or destroyed valued under \$1000 _____

Contents damaged or destroyed valued \$1000 to \$5000 _____

Contents damaged or destroyed valued over \$ 5000 _____ (estimate)

▪ Other structures (garage, shed)

Water damage requiring clean-up only _____

Water damage requiring repair (i.e. new drywall, flooring) _____

Water damage requiring structural repair (i.e. foundation, bearing walls) _____

Contents damaged or destroyed valued under \$1000 _____

Contents damaged or destroyed valued \$1000 to \$5000 _____

Contents damaged or destroyed valued over \$ 5000 _____ (estimate)

- Pier/dock

Estimated loss or cost to repair _____

6. Was your residence determined to be substantially damaged by Baltimore County (i.e. estimated cost of repair if in excess of 50% of assessed value of home)

Yes _____ No _____

Were you forced to leave your residence because of damage, and if so, have you since returned to live in your residence? How long were unable to live in your home?

ANSWER THE FOLLOWING QUESTIONS #7 - # 13 IF YOU HAD FLOOD INSURANCE:

7. What was the full amount of flood insurance applicable to your property (i.e. your coverage limit)

The following questions relate to property coverage:

8. If an adjuster working for the NFIP or your insurer has estimated the full replacement cost of your property, the full cost to repair or replace, depreciation, and actual cash value list those amounts (or attach copies of adjuster reports)

Full replacement cost _____

Full cost of repair or replacement _____

Depreciation _____

Deductible _____

Actual Cash Value _____

9. Has your insurer or the NFIP offered to reimburse you (i.e. pay your claim), or paid your claim based on the amounts listed above (or in the adjuster report)? If so explain briefly what has been offered to you for your property claim at this time.

10. In your view, has the amount offered to you, or the amount recommended by the adjuster, adequate to compensate you for the losses to your property? If not, explain why.

The following questions relate to contents coverage:

11. If an adjuster working for the NFIP or your insurer has estimated the full replacement cost of your contents, the full cost to repair or replace, depreciation, and actual cash value list those amounts (or attach copies of adjuster reports)

Full replacement cost	_____
Full cost of repair or replacement	_____
Depreciation	_____
Deductible	_____
Actual Cash Value	_____

12. Has your insurer or the NFIP offered to reimburse you (i.e. pay your claim), or paid your claim for contents based on the amounts listed above (or in the adjuster report)? If so explain briefly what has been offered to you for your contents claim at this time.

13. In your view, is the insurance settlement offered to you, or the amount recommended by the adjuster, adequate to compensate you for the losses to your contents? If not, explain why.

The following questions relate to claims other than flood insurance:

14. Did you make a claim with your insurance company for damage under your homeowners insurance policy (i.e. not your flood insurance policy) for any damage resulting from Isabel? If so, describe what the claim was for, and the status of that claim (i.e. been paid, denied, being processed)

15. Did you make a claim with your automobile insurance company for damage under your auto insurance policy (i.e. not your flood insurance policy) for any damage to vehicle resulting from Isabel? If so, describe what the claim was for, and the status of that claim (i.e. been paid, denied, being processed)

16. Other than the description provided above, did you experience damage or loss from Isabel that is not covered by insurance, or for which payments from insurance will not be enough to reimburse you in full for your losses. If so, please explain:

► QUESTIONS RELATING TO YOUR DEALINGS WITH LOCAL, STATE, AND FEDERAL OFFICIALS:

The following questions relate to state government officials:

17. Did you file a complaint with the Maryland Insurance Administration regarding any of your insurance claims, including flood insurance claims. If so, please describe *why and when* you filed a complaint?

18. If you filed a complaint with the Maryland Insurance Administration, *describe the status* of that complaint – i.e. investigation is pending, complaint denied, complaint against company upheld. Attach any correspondence received from the Maryland Insurance Administration.

19. Has the Maryland Insurance Administration been helpful to you in addressing any insurance problems arising from Isabel? If so, describe how the agency was helpful. If not, explain what you believe they should have, or could have, done to better assist you.

21. Did you seek or receive assistance from any other state officials other than those listed above? If so, describe whether they were able to assist you, and if not, what you believe they could have or should have done to assist you.

The following question relates to federal government officials:

21. Did you have any contact with or seek assistance from representatives of the federal government, such as FEMA, the National Flood Insurance Program, or the Small Business Administration? If so, was that agency helpful to you? If so, describe how it was helpful. If it was not helpful, describe what you believe the agency should have, or could have done, to better assist you.

The following question relates to county government officials:

22. Did you have any contact with or seek assistance from representatives of the county government? If so, was that agency helpful to you? If so, describe how it was helpful. If it was not helpful, describe what you believe the agency should have, or could have done, to better assist you.

23. How would you describe the level of coordination between the state, federal and county governments in the aftermath of Hurricane Isabel. If you believe it was not good, or could have been better, what could be improved?

▶ **QUESTIONS RELATING TO YOUR INSURANCE COMPANY AND AGENT:**

24. Did you contact you insurance *agent* after Isabel to make a claim or obtain information about your insurance coverage? If so, was your agent helpful or knowledgeable about your coverage? Were your satisfied with your agent’s response to your questions or complaints?
