May 31, 2024

Submitted via www.regulations.gov

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Product and Policy Development Division Director
Federal Insurance Directorate, Resilience
Federal Emergency Management Agency
Department of Homeland Security
Washington, DC

Re: National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form, Docket ID FEMA–2024–0004

Dear Ms. Bronowicz:

On behalf of the National Association of Professional Insurance Agents (PIA),[1] thank you for the opportunity to express our concerns with the recently published Notice of Proposed Rulemaking (NPRM)[2] directed at the National Flood Insurance Program (NFIP)'s Standard Flood Insurance Policy (SFIP), Homeowner Flood Form, hereinafter referred to, in full, as the NPRM.

In the spirit of collaboration, PIA respectfully submits the following comments, concerns, and recommendations for FEMA's consideration. Our comments are categorized into the following sections:

I. Introduction
II. New and Revised Definitions
III. Proposed New Policy Endorsements
IV. Other Proposed or Implied Changes
V. Recommendations
VI. Conclusion

We look forward to working with FEMA throughout the rulemaking process and, to the extent possible, in implementing the provisions of the NPRM that will affect independent flood insurance agents.

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[1] PIA is a national trade association whose members are independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia. Its insurance professionals offer insurance products and services across America.
[2] Available at https://www.govinfo.gov/content/pkg/FR-2024-02-06/pdf/2024-02204.pdf (last accessed on May 30, 2024).

I. Introduction.

The NPRM purports to bring the NFIP into closer alignment with industry standards associated with property and casualty homeowners' policies. It includes specific changes meant to offer consumers a wider range of coverage options than those that are currently available. To some degree, the NPRM, if adopted as proposed, will succeed at making the NFIP more user-friendly, and the new endorsements provide policyholders with the ability to customize their flood insurance products more completely than they have been able to in the past, and allows them to purchase coverage that, ideally, more closely matches their specific property's flood risk.

FEMA is proposing to create a new SFIP form, the "Homeowner Flood Form" (hereafter referred to as the "HFF"), which, if adopted as proposed, would supersede the existing Dwelling Form in providing coverage for homeowners of one-to-four-family residences. The NPRM also introduces five new endorsements, which are designed to be used only with the new HFF. According to the NPRM, the new HFF and its endorsements are meant to modernize the program, bring the NFIP into closer alignment with standard property casualty homeowners' insurance policy forms, and provide consumers with a greater range of coverage options in, ideally, a more user-friendly format.

Indeed, in the NPRM, FEMA expresses its hope that the new HFF "will make it easier for agents to sell flood insurance and close the insurance gap."[3] However, responsibility for closing the insurance gap cannot and must not fall exclusively on the already overburdened shoulders of the current stable of NFIP agents. FEMA aims for the new HFF to save time for both agents and policyholders. At the same time, the new endorsements are also meant to provide policyholders with greater flexibility, ideally allowing agents and consumers to collaboratively customize coverage to fit the individual risks facing each property.

PIA conceptually supports the modernization of the forms and several other elements of the NPRM. Unfortunately, we have several concerns about various aspects of the NPRM. Where possible, we have paired our critiques with recommendations to improve the proposals contained in the NPRM. In reviewing our comments, we urge FEMA to consider how it may wish to mitigate the challenges posed by the implementation of many of the NPRM's proposals.

Because PIA represents independent insurance agents, our recommendations primarily focus on the effect of the NPRM on the independent agent community and, where applicable, the NFIP's policyholders and prospective policyholders.

II. New and Revised Definitions. The NPRM proposes changes to the definitions of "Flood," "Building," and "Basement,"[4] and it provides a brand-new definition for "Enclosure."

Taken together, these proposed new definitions are simultaneously broader and narrower than the existing ones, in that they both expand and restrict coverage in

[3] NPRM p. 8287.
[4] NPRM p. 8284.

comparison to the definitions currently in use—for example, the revised definition of "flood" expands NFIP coverage, but the narrower definition of "building" restricts it.

Even just within the revisions to the definition of "flood," if adopted as proposed, what constitutes a flood will become both broader (by eliminating the requirement that a second property be involved) and narrower (by clarifying that gradual erosion is not a covered loss).

Additional considerations of the revised "flood" definition are further enumerated below.

A. **Need for Uniform, Program-Wide Definitions.** The extensive and well-documented complexity of the NFIP will be exacerbated if the revisions to these definitions are adopted as proposed. These changes would establish fundamentally different meanings for necessary and widely used terms, and, for some terms, meanings will vary depending on the part of the NFIP to which it is applied. In the interest of furthering the goals of minimizing confusion and maximizing clarity, we strongly urge FEMA to establish program-wide definitions for adoption across the NFIP.

   Revising the existing definitions of some fundamental concepts and then applying those revisions selectively to certain policy forms will confuse policyholders and require agents to explain to consumers the definitions applicable to each form and the nuanced differences among the definitions. It would also potentially place agents in the difficult position of having to provide a rationale to their clients about why the differences in definitions exist.

B. **Revised definition of "flood."** The new definition eliminates the specification of "two or more acres of normally dry land area or of two or more properties (one of which is your property)."[5]

   1. **Two properties v. one property.** In general, PIA supports the new definition because it eliminates the often-complex requirement that a policyholder demonstrate a flood's effect on a second property.[6] FEMA

[5] NPRM p. 8291.
[6] While an extensive discussion of the cascading impact of this definition change is beyond the scope of these comments, the proposed revision to the "flood" definition could substantially complicate coverage and increase the potential for an errors and omissions (E&O) suit against an agent involved with properties covered by private flood policies and with federally backed mortgages.
In general, private flood policies are accepted in lieu of NFIP policies for properties with federally backed mortgages if the private policy is equivalent to the coverage available through the NFIP, whether the policyholder is required to purchase flood insurance at the discretion of an individual lender or because the property is subject to the mandatory purchase requirement. However, if an NFIP-covered event is broadened through the adoption of this revised definition, an argument could be made that private-market policies would no longer be equivalent to those available through the NFIP and thus would no longer satisfy the mandatory purchase requirement. In such cases, carriers would need time to resolve these issues. Such remedies could involve issuing updated policy forms, cancelling and rewriting policies, or finding adequate substitute policies.

expects the revised definition to save time for policyholders and agents, according to the NPRM, by reducing the need to access adjacent properties and/or engage in land surveying activities. The revision will also simplify the work of flood insurance adjusters responsible for determining whether a covered event occurred.

2. **Unintended possible consequences.** We recommend that FEMA reexamine the wording of at least one part of its proposed revised "flood" definition: "partial or complete inundation of normally dry land from (1) overflow of inland or tidal waters; (2) unusual and rapid accumulation or runoff of surface waters from any source; (3) mudflow, defined as a river of liquid and flowing mud on the surface of normally dry land, as when earth is carried by a current of water; or (4) sudden erosion or undermining of land along the shore of a lake or similar body of water caused by waves or currents of water exceeding anticipated cyclical levels that causes collapse or subsidence of land resulting in a flood."[7]

   This definition could create an NFIP claim for a loss caused by, for example, a swimming pool overflowing because of a rainstorm, a loss typically not meant to be covered by the NFIP as it presently exists. By contrast, adding "sudden" to the description of erosion clarifies that a flood caused by gradually occurring erosion is not covered. However, the very same building to which the new HFF applies could also be subject to other NFIP policy forms that still use the previous "flood" definition, which could, theoretically, permit coverage for a loss caused by gradual erosion.

   These coexisting but conflicting definitions could potentially both be applicable to a single property subjected to a single loss event that could be both covered and not covered by the NFIP. If the new definition of "flood" is adopted as proposed, it is likely to cause widespread confusion for agents and policyholders. This confusion will prompt a flurry of legal activity over which definition should prevail. Plus, until cases are litigated, and final judgments rendered, the absence of case law governing this issue could create a new source of uncertainty across the program.

   That these and similar scenarios were not thoroughly considered in the development of the revised "flood" definition seems evident; the NPRM states, in the context of the revised "flood" definition, "FEMA does not

During that time, lenders would likely begin alerting agents to the existence of this problem, and agents would be tasked with solving it. If agents are unable to do so in the time allotted by the lender, affected agents and policyholders could be at risk of having the properties force-placed. The NPRM is silent as to whether its proposed endorsements would be available for forced-placed policies. Regardless, lender confusion on this issue is likely to pose an additional challenge for agents. Finally, forced placement would impose an unnecessary burden on the policyholder and could irreparably damage the relationship between the policyholder and their agent—raising yet another potential source of agent E&O liability.

[7] NPRM p. 8291.

intend to broaden or narrow coverage here."[8] At the same time, though, the NPRM would change the definition of "flood" to eliminate one of the requirements of a covered event. Eliminating one of the elements required of a covered flood event necessarily broadens that coverage.

C. **Revised definition of "building."** Taken in the context of the revised flood definition discussed above, the revised definition of "building" is useful but insufficient. Because the new definition of "building" requires construction to be "completed," we recommend that FEMA either modify the definition of "building" to eliminate this element to avoid the need to define "completed," or that FEMA also define the term "completed." Either option would achieve greater uniformity across policy claims and reduce a potential source of ambiguity and litigation.

D. **Revised definition of "machinery and equipment."** PIA members support the proposed revision to the definition of "machinery and equipment" (M&E) because it represents a simplification from the current definition, which is not a readable definition but rather a lengthy list of items.

We also appreciate the proposed elimination of the current list because this new definition relieves policyholders of the burden of reviewing a long list of M&E items, eliminates the time it takes policyholders to review the list, encourages them to store M&E items above their basements, makes coverage of backup power generators more likely, and, in the long run, could reduce NFIP costs by incentivizing policyholders to store costly items away from riskier locations in their homes.

III. **Proposed New Policy Endorsements.** The NPRM proposes the creation of five new optional policy endorsements to allow homeowners to expand or exclude coverage based on various risks. The proposed new endorsements are:

A. Optional increased cost of compliance (ICC) coverage. Currently, ICC coverage is used by owners of buildings after a local government deems the properties "substantially damaged" by flood; this classification triggers a requirement that the building owner rebuild to current applicable standards. ICC coverage is presently included as part of the standard NFIP policy; it provides up to $30,000 to the owner to fund the needed changes. The ICC premium is typically included in policyholders' overall premium and is not charged as a separate endorsement.

As proposed in the NPRM, ICC coverage would be considered an endorsement but would be automatically added as a "standalone mandatory endorsement" to all NFIP policies covering one-to-four-family residences. The ICC endorsement is the only one of the five characterized as "optional" but treated, operationally, as mandatory. Characterizing this compulsory coverage as an "endorsement" is

[8] NPRM p. 8291.

likely to generate confusion. In nearly every case, policyholders will be automatically provided with the ICC endorsement.

Without further explanation, the NPRM recommends making ICC coverage available through an endorsement to "allow for more flexibility in future flood policy form revisions."[9] FEMA may be trying to account for the possibility that a future Congress may increase the total cap on ICC coverage. However, the current Congress has not indicated any interest in making such a change, and we recommend FEMA minimize potential sources of consumer confusion by maintaining the regulatory status quo regarding ICC coverage until Congressional action necessitates additional regulatory changes.

B. Actual Cost Value (ACV) Loss Settlement. The NPRM would provide policyholders with choosing, at the time of purchase, the option of insuring primary residences to either ACV or replacement cost value (RCV). In most instances, the policy would default to RCV if the policyholder does not explicitly choose either option. (Exceptions are addressed below.) Policyholders opting for the ACV endorsement would have their premium reduced in exchange for their choice.

One of this proposed endorsement's anticipated benefits, identified in the NPRM's corresponding Regulatory Impact Analysis (RIA), is that determining in advance how to value properties in claims settlements could simplify the claims process.[10] PIA members were apprehensive about this proposed "endorsement," which is unique in that it is the only one of the five proposed that, if selected, would reduce, rather than increase, policy premium. Additionally, it is among the endorsements that place the highest additional burden on agents selling NFIP policies.

Here are some of our specific concerns:

1. **Additional Burden on Agents.** Making an ACV endorsement available to policyholders will place the responsibility of educating clients on the concepts of ACV and RCV on agents. Clients will need this information to choose intelligently between ACV and RCV at the time of purchase. In the RIA, FEMA even suggests that assigning this task to agents will necessarily result in consumers choosing RCV over ACV. Specifically, the RIA theorizes that the addition of this endorsement, and the need for consumers to choose between RCV and ACV at the time of purchase, will give agents "an explicit opportunity to explain the difference in valuation methods … and show that …" RCV is a wiser choice.[11]

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[9] NPRM p. 8308.
[10] Regulatory Impact Analysis (RIA) p. 72, available at https://downloads.regulations.gov/FEMA-2024-0004-0002/content.pdf (last accessed on May 28, 2024).
[11] RIA p. 73.

2. **Increased E&O Liability.** Agents can explain the concepts of ACV and RCV well, but policyholders may still not fully understand these concepts and may thus be unpleasantly surprised when their post-loss claims are adjusted. Such experiences can increase E&O liability for NFIP agents, even if the agent involved met or exceeded their legal obligations. Additionally, in at least five states, insurance agents are held to a fiduciary standard of care, further complicating the E&O risks for agents in those states, particularly in relation to this proposed endorsement.

   To protect agents' reputations and businesses, we recommend that the final rule include a sample waiver that agents can use as a template and have policyholders sign to indicate that the agent has provided them with a thorough explanation of ACV and RCV and that they, the policyholders, have made an informed decision based on that explanation. Including such a sample in the final rule would have the added benefit of encouraging uniformity in forms among NFIP agents and increasing the likelihood that consumers will understand the meaning and significance of the waiver.

3. **Endorsement Design Shortcomings.**

   a. **Potential for underinsurance.** If, at the time of loss, a policyholder property is insured for less than 80 percent of the full replacement cost value of the property or less than the NFIP's maximum coverage limit, ACV would be used, irrespective of the policyholder's expressed preference. The $250,000 standard NFIP residential property policy limit could be substantially below 80 percent of the RCV for many properties.

      The endorsement's proposed design seems to allow for a scenario in which a policyholder chooses the ACV coverage endorsement, but their lender requires them to insure to RCV. In such cases, agents will be placed in the impossible position of mediating between the lender and the policyholder. We recommend that FEMA communicate its final changes to federal lending regulators well in advance of their publication and collaborate to ensure that policyholders and agents understand the endorsements that are available to them and the applicability of each in various circumstances.

   b. **Need for more explicit calculations of ACV and RCV.** The NPRM is not specific about how either ACV or RCV will be calculated. The NPRM's proposed definition of ACV would replace the phrase "less the value of its physical depreciation" with the phrase "less depreciation based on its age and condition."[12] However, the proposed revised definition does not fully explain

[12] NPRM p. 8292.

how depreciation will be calculated. We recommend that the final regulation include additional details and an explanation as to how ACV and RCV will be calculated. These details will be necessary for agents to accurately explain the differences between the options.

d. **General effect on mortgage lending.** The NPRM leaves ambiguous whether mortgage lenders will be expected to allow policyholders to choose ACV coverage on properties with federally backed mortgages. Additionally, it is unclear whether mortgage lenders will be viewed as in compliance with relevant federal statutory and regulatory requirements if their properties were insured to ACV rather than RCV coverage.

   The RIA surmises that, given a choice at the point of policy purchase, most policyholders would opt for RCV.[13] However, many NFIP policyholders have experienced relatively abrupt premium increases in recent years, thanks to the increased frequency and severity of losses and the implementation of Risk Rating 2.0. They may be eager to take opportunities to reduce their premiums, even if they also understand they are purchasing less coverage.

e. **Effect on mandatory purchase requirement.** The NPRM does not state clearly whether the ACV endorsement would fulfill the mandatory purchase requirement. The RIA implies that parametric coverage, for example, would not; it may reasonably follow that ACV coverage similarly would not fulfill the mandatory purchase requirement.[14] However, the NPRM is ambiguous on this point, and we recommend it be clarified before the rule is finalized.

f. **ACV Endorsement Recommendations.** Recognizing that we have set forth numerous concerns about this endorsement, we offer the following recommendations to improve it, if this endorsement is to be included in the final rule:

   i. The final rule should include a sample waiver that agents can have policyholders sign, indicating that the agent has provided them with an explanation of the differences between ACV and RCV and that the policyholders have made an informed decision based on that explanation.

   ii. FEMA should work with federal lending regulators to communicate with policyholders and agents about which

[13] RIA p. 72.
[14] RIA p. 125.

endorsements are available based on an insured property's mandatory purchase classification, mortgage status, and the value of its mortgage.

iii. FEMA should provide greater detail around the calculations of ACV and RCV and the way depreciation is expected to be determined.

iv. FEMA should provide examples in which ACV and RCV coverage are applied to specific types of properties.

v. The NFIP policyholder declarations page should include the policyholder's decision regarding coverage to ACV or RCV.

g. **Alternatives to Proposed ACV Endorsement.** The proposed ACV endorsement raises concerns for our agents; they thus offer several suggestions about how FEMA could more effectively use an ACV coverage option at the time of policy purchase:

i. FEMA could limit the availability of an optional ACV endorsement to policies purchased for non-primary residences.

ii. **FEMA could offer additional RCV endorsements for additional premium.**

a) RCV endorsements could be made available to policyholders purchasing coverage for second homes, non-primary residences, or rental properties.

b) RCV endorsements could be offered to policyholders purchasing coverage solely to satisfy a mandatory purchase requirement in situations where the property's mandatory purchase coverage requirement is below the NFIP's $250,000 policy limit.

C. **Optional basement coverage.** The NPRM provides an extensive explanation of its proposed addition of an optional limited basement endorsement, noting that it had historically excluded basement coverage because, in part, it was thought that consumers would view such coverage as prohibitively expensive. However, FEMA subsequently realized that the omission of basement coverage from the NFIP has left policyholders confused about whether their standard policies cover basements.[15]

[15] NPRM p. 8284.

In the NPRM, FEMA proposes a revised definition of "basement."[16] The proposed revised definition would be "any area of a building having its floor level below ground level on all sides, regardless of design or use."[17] The proposed definition would clarify that an area of a building is "below ground level" when the "land touching the exterior of the building is above its floor level" and goes on to say, "An area of a building is presumed to be below ground level when it is necessary to walk up steps or a slope to reach the land surrounding the building."[18]

Should this endorsement be included in the final rule, the NFIP could have the opportunity to reclaim some basement coverage from the private market.

1. **FEMA's three options.** In the NPRM, FEMA identifies and discusses three options it considered to remedy policyholders' confusion about basement coverage. The NPRM recommends the adoption of the second of these, and PIA supports that choice.

    a. **Increased agent training.** According to the NPRM, FEMA considered increasing agent training on the existing definition of a basement and how best to communicate to policyholders that standard NFIP policies do not cover basements. The NPRM acknowledges, though, that "homeowners only have one standard flood insurance policy for selection," meaning that they often do not examine the details of their SFIPs, because they have only two options: to purchase it or not. The NPRM also acknowledges that increased agent training can only do so much to improve homeowners' understanding of the absence of basement coverage.

    b. **Optional basement coverage.** This is the option recommended in the NPRM. FEMA hopes that offering optional basement coverage will pressure agents to ensure their clients are educated about this coverage's availability. The expectation is that agents, incentivized to avoid exposure to E&O liability, will take pains to offer clients with eligible properties the basement coverage endorsement.

    c. **Selective offer of optional basement coverage.** This option would make the optional basement coverage endorsement available to only some properties with basements (split-level homes, sunken rooms, or the "necessary occupancy" of a basement).

[16] NPRM p. 8291-8292.
[17] NPRM p. 8291.
[18] NPRM p. 8292.

2. **Concerns.**

   a. **Potential for adverse selection problem.** Of the three basement-coverage options, PIA members were most supportive of the second one. However, an optional basement coverage endorsement could create an adverse selection problem; only policyholders whose properties have basements will purchase the endorsement. Within the category of policyholders with basements, ostensibly, those most likely to purchase the endorsement are those with the costliest basements to repair or rebuild.

      It is possible that the existing Dwelling Form discourages policyholders from finishing their basements because basements are fully excluded. Adding an optional basement coverage endorsement makes it more likely that policyholders will finish their basements, increasing the potential insured losses associated with those properties.

      Plus, policyholders with unfinished basements could purchase the endorsement, finish their basements afterward, and never update the endorsement.

   b. **Ambiguities.**

      i. **Rating/Pricing.** The NPRM does not explain how the optional basement coverage endorsement would be rated or priced, making it difficult to fully assess its potential value to consumers.

      ii. **Sublimit within $250,000.** It is unclear how an optional basement coverage endorsement would be calculated, and it does not appear as though the NPRM creates a separate policy limit for this endorsement. The proposal states, "For an additional premium received, FEMA would insure, up to the selected Coverage A sublimit, against direct physical loss by or from flood to the basement."[19] However, the "selected Coverage A sublimit" seems to be the entire $250,000 policy limit.

2. **Recommendations.** Despite generally favoring the addition of an optional basement coverage endorsement, PIA members had some suggestions about the parameters of such an offering.

   a. **Contents coverage.** In general, PIA members favor the inclusion of a basement coverage endorsement without contents coverage.

[19] NPRM p. 8309.

The more basement coverage is made available, the bigger the potential adverse selection problem could become.

b. **Sublimit.** PIA members recommend that FEMA impose a sublimit on the optional endorsement coverage for basements. Establishing a separate sublimit for this endorsement would be more cost-effective than simply adding it to the overall policy limits.

3. **Adding coverage without increasing the SFIP limit.** The addition of an optional basement coverage endorsement would represent the introduction of a new coverage—and thus an additional prospective insured loss—without a concurrent increase in the NFIP's overall policy limits, which remain capped at $250,000 by Congress.

   We find it concerning that FEMA plans to collect additional premium from policyholders opting for basement coverage and cannot commensurately increase the SFIP coverage limit.[20] FEMA acknowledges that the increased coverage will necessarily "include an increase in claims payments,"[21] but the NPRM does not address how policyholders' increased premium payments will result in their receipt of increased claims payments if their insured losses—be they ACV or RCV—exceed the statutory $250,000 policy limit.

   In practical terms, purchases of "basement coverage" may not translate into claims payments at the time of loss for some policyholders. For example, if a covered property is valued at considerably over $250,000, and the property is a total loss, or if a flooding event affecting only a covered basement would drive a claim to exceed the NFIP's coverage limit, those policyholders will have paid premium dollars for an endorsement but will not have their loss claim fully covered. Such policyholders should be discouraged from purchasing, not encouraged to purchase, the optional basement coverage endorsement. In those examples, policyholders would pay a higher premium for basement coverage but would receive no additional benefit after a loss for having done so.

   The other two proposed endorsements—the temporary housing expense and the builder's risk endorsements—pose this same problem. These three proposed endorsements all appear to compete for the same $250,000 in coverage.

D. **Temporary housing expense.** The temporary housing expense endorsement would allow policyholders the option of buying, for an additional premium,

[20] That said, we recognize that FEMA lacks the authority to increase the overall residential property policy limit, because the NFIP's policy limits are set by Congress and can only be changed by statute.
[21] RIA p. 52.

coverage that would compensate them for temporary housing expenses incurred due to a covered loss that displaces them from their insured property. This endorsement would compensate policyholders for a period of up to 24 months from the date of the covered loss.[22] While PIA agents are not opposed to the addition of a temporary housing expense endorsement, they had several questions about this proposal:

1. **Adding coverage without increasing the SFIP limit.** The NPRM does not clearly state whether claims made on this endorsement would come from the same $250,000 as the optional basement coverage and builder's risk endorsements. If so, though, it represents another instance in which FEMA would be adding a new coverage without an increase to the applicable SFIP limit. This will make it even more likely that policyholders will pay an additional premium for coverage they may be unable to access. While the NPRM refers to a "sublimit" for this endorsement, it also states explicitly that coverage for this endorsement will not increase the limits on Coverages A, B, or C.[23]

2. **Ambiguity as to "habitability."** The NPRM states that this coverage would be available for policyholders "when the dwelling at the described location is uninhabitable due to direct physical loss by or from flood." However, the NPRM does not define the term "uninhabitable," and we recommend that it add a definition for this term before finalizing the rule.

3. **Potential sources of litigation.** These ambiguities could create new sources of litigation as policyholders and industry stakeholders attempt to clarify the details of this new endorsement option.

E. **Optional builder's risk endorsement.** The optional builder's risk endorsement would permit policyholders to name their builder as an additional insured party.[24] In general, when FEMA covers a building under construction, it issues the policy in the builder's name. When the building is completed, the builder assigns the policy to the property owner. However, if the builder completes construction but neglects to assign the policy to the property owner before the loss, the property becomes effectively uninsured, because neither the owner nor the builder have an insurable interest in the property. The owner would not be eligible to file a claim because they were not listed as a policyholder, and the builder would not be eligible to file a claim because, once the building was complete, they would no longer have an insurable interest in the property. This endorsement is designed to remedy those situations.

PIA members support the addition of this endorsement. However, we encourage FEMA to consider defining a "completed building" for the purpose of this

[22] NPRM p. 8308.
[23] NPRM p. 8325.
[24] NPRM p. 8311.

endorsement to minimize ambiguity and the potential for litigation around the issue of “completion.”

F. **Additional endorsement recommendation.** FEMA could offer an additional endorsement for something like “flood cash.” This endorsement would be like a flexible spending plan and/or a parametric insurance model. Such an endorsement would provide purchasers with a flat sum to be used for any flood expenses incurred that would not otherwise be covered.

IV. Other Proposed or Implied Changes.

A. Agent-client communications. Substantial advance notice will be required for independent insurance agents to make the changes that will be necessary if even a fraction of the proposals contained in the NPRM are finalized as presented. Agents will also need sufficient time to inform their clients and prospects about the forthcoming changes before they are implemented.

B. Renewal challenges. Renewals typically default to the terms of the renewing policy, but NFIP agents will be exposed to E&O liability if they fail to offer the new options to each client as their renewals arise, at the latest, once the new options become available. The NPRM states that “The policy defaults will provide similar coverage to what they currently receive if the homeowner policyholder chooses to do nothing.”[25] This language increases the potential E&O liability for agents, who will be expected to know in advance which NFIP clients are eligible for which endorsements and will be expected to offer every potential endorsement to every eligible client, lest an agent inadvertently omit an endorsement for which a client is eligible or offer an endorsement for which a client is ineligible.

C. Increased burden on agents. The NPRM suggests that the new forms will “make flood insurance … more accessible to agents, who may then seek to sell more flood insurance as they better see the value of coverage for their clients.”[26] As representatives of independent insurance agents, PIA shares FEMA’s hope that future changes to the NFIP encourage current NFIP agents to sell more policies and encourage new agents to enter the NFIP market.

However, we know from our agents that selling NFIP policies is a challenge; the program has a steep learning curve for new agents, and it changes often. Agents require additional education and training to remain abreast of the program’s evolution. The more complex the program becomes, and the steeper the learning curve gets, the more likely the program is to drive existing agents out, and the less likely it is to encourage new agents to begin selling NFIP policies.

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[25] NPRM p. 8313.
[26] NPRM p. 8284.

D. **Treatment of current policies.** The NPRM does not include many of the details necessary for independent agents to implement these changes, creating additional uncertainty among agents. For example, the NPRM is silent as to whether agents will be expected to offer current policyholders with existing policies these new endorsements upon renewal or immediately upon regulatory implementation.

E. **Selective applicability of endorsements.** The endorsements proposed in the NPRM would only be available to the one-to-four-family residence subset of properties eligible to be covered by the NFIP's Dwelling Form. The adoption of this proposed regime is likely to cause confusion among agents and consumers.

The NPRM relies heavily on the NFIP agent population to communicate these changes. Even with extensive agent training and education, the fact that the new HFF is not intended to be used by all current Dwelling Form policyholders could cause widespread agent and policyholder confusion. Ensuring agents have a comprehensive understanding of the available endorsements, and when and to which policyholders each endorsement should be offered, will require a great deal of training and education.

F. "Choice Architecture" flowchart. The "Choice Architecture" flowchart included in the NPRM is ostensibly meant to help guide agents and homeowners through the NFIP policy purchasing process.[27] While the flowchart is well designed, PIA agents have several concerns about it.

The four main proposed endorsements can broadly be split into two categories. The basement coverage and builder's risk endorsements are functionally binary, at least in terms of whether property owners are eligible for them, though, of course, the decision to purchase either or both will require careful consideration. By contrast, the other two endorsements, for ACV/RCV and temporary housing expenses, are fully optional; every policyholder with a one-to-four-family residence property is eligible for them.

That said, even given the perceived differences between the first two and the last two, PIA members felt the recommended pause in the middle of the Choice Architecture flowchart was unnecessary. They also wondered whether the rating engine itself would be programmed to require them to pause at the point of issuing the "preliminary quote," whether they wished to or not.

Additionally, PIA members wondered whether Write-Your-Own (WYO) carriers would restructure their programmatic options to incorporate the recommendations set forth in the flowchart. Regardless, seasoned NFIP agents are unlikely to refer to a newly created flowchart in lieu of their own extensive experience.

PIA members strongly recommend that FEMA reject the Choice Architecture flowchart in favor of a simpler Endorsement Checklist. Agents

[27] NPRM p. 8289.

will be much more likely to use a checklist that sets forth each of the new endorsements, a statement that the agent adequately explained each available option, a statement confirming the policyholder's choice regarding each option, and a signature line. The signatures of both policyholder and agent will serve as written documentation that the agent provided the relevant information and that the policyholder made informed decisions about each available endorsement based on the information provided by the agent, their financial circumstances, and their appetite for risk. Such a checklist would be far easier for agents to reference and use and would thus be more practical than the Choice Architecture flowchart.

G. **Display of "full-risk rate" on declarations page.** Since the implementation of Risk Rating 2.0, each policyholder's "full-risk rate" has been displayed on their policy declarations page. The NPRM did not clearly state whether that full-risk rate would be changed to reflect the endorsements selected by each policyholder once the new HFF is in use. If so, policyholders' full-risk rates could be subject to endless adjustments, potentially as often as at each renewal, as policyholders opt in and out of the new endorsement options.

H. **Disruption of existing law and regulation.** Congress created the NFIP by passing the National Flood Insurance Act of 1968. Since then, the NFIP has been modified through numerous subsequent acts of Congress,[28] regulatory activity by FEMA and its predecessor agencies, and the common law that has grown out of the litigation that has arisen since the NFIP's creation. That entire body of law would be enormously disrupted by the finalization of the NPRM as proposed. We recommend that FEMA carefully examine the effects of the NPRM on existing statutory, regulatory, and common law before its proposals are finalized.

V. Recommendations.

A. **Need for robust agent training.** The NPRM incorrectly states that NFIP agents are "required to attend" an "annual training" provided by FEMA.[29] The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 established agent training requirements that were further explained in FEMA's 2005 agent training notice; those materials provide a list of topics on which NFIP agents must be educated before they begin to sell NFIP products.[30] FEMA has continued its pandemic-era practice of offering via webinar its two-part "Key Fundamentals"

[28] Since the 1968 passage of the National Flood Insurance Act, Congress has continued to modify the NFIP via statute. Such modifications include but are not limited to the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, the Biggert-Waters Flood Insurance Reform Act of 2012, and the Homeowner Flood Insurance Affordability Act of 2014.
[29] See NPRM p. 8313.
[30] "Flood Insurance Training and Education Requirements for Insurance Agents," available at https://www.govinfo.gov/content/pkg/FR-2005-09-01/pdf/05-17444.pdf (last accessed on May 25, 2024).

series,[31] which fulfills the existing one-time training requirement. However, NFIP agents are not required to complete that or any other training annually.

After stating incorrectly that NFIP agents currently attend mandatory annual trainings, the NPRM then concludes that WYOs would not seek to change the number of training hours they currently provide to agents, and, therefore, that overall training costs for agents would remain constant. Several of FEMA's conclusions about the anticipated costs associated with implementing the NPRM might have been different had the NPRM acknowledged that agents must only complete a one-time training before they are permitted to sell NFIP policies. Unless their state insurance department and/or WYO partner(s) say otherwise, agents selling NFIP policies are not required to undergo any training thereafter.

Agents will need to first learn, then implement in their own businesses, and finally educate their clients and prospects on the changes to the program. They will need substantial education and training on how and when to use the new HFF, as well as details of the applicability of each new endorsement to various types of properties. Agents will need comprehensive training and education to allow them to properly train their teams and, ultimately, enable them to guide their clients through their consideration of each of the new available options.

B. **Regulatory preparation time.** With all the potential changes associated with this rule, it is essential that FEMA allocate sufficient time for all NFIP stakeholders to prepare in advance. To that end, we recommend that FEMA provide at least twelve (12) months from the publication of a final rule until its implementation date. This lead time will permit agents to train their teams, communicate with clients and prospects, set appropriate expectations, and, optimally, avoid unnecessary obstacles during implementation.

C. **Renewal "cushion."** We recommend that FEMA offer an expanded period during which agents can offer their existing NFIP policyholders the new product endorsements and then transition those policyholders to new policies. This will ensure that existing NFIP policyholders are offered and can purchase the new endorsements on a timeframe that matches their usual renewal dates.

D. **Form replacement.** The proposed new HFF would replace the existing Dwelling Form for owners of one-to-four-family residences, requiring FEMA to remove one-to-four-family residences from the Dwelling Form. If the NPRM is to be finalized as written, we request that FEMA provide a notice and comment period for these Dwelling Form revisions. Following that period, and subject to the feedback received, the current Dwelling Form would be amended to remove all wording allowing its use for one-to-four-family residences, in preparation for the deployment of the new HFF. We recommend that FEMA simultaneously finalize and make effective the changes to both the existing Dwelling Form and the HFF.

[31] "Insurance Agent Training Courses," available at https://agents.floodsmart.gov/agent-training (last accessed on May 25, 2024).

E. **Inconsistent treatment by residence type.** The endorsements proposed in the NPRM are only available to the one-to-four-family residence subset of policies that currently use the NFIP Dwelling Form. Stakeholders that fall outside of this subset, like landlords, renters, manufactured/mobile homeowners, travel trailer owners, and condominium unit owners will not be offered these coverage options. To simplify the use of these forms, FEMA should offer these coverages, where applicable, to all policyholders who currently use the NFIP Dwelling Form.

VI. Conclusion.

NFIP agents are the sales force of the NFIP, and the NPRM would rely tremendously on agents to communicate these changes to policyholders and prospects. PIA fully supports the laudable goals of increasing the number of policyholders protected against the risk of flood and offering those policyholders more comprehensive, customizable coverage. However, it is equally important that the NFIP be understood by the agents responsible for sharing their expertise with purchasers at the time of policy sale and that consumers fully understand what they are buying.

The NPRM acknowledges that policyholders will likely demand more and longer meetings with agents to understand these changes: “At the time of renewal, existing homeowner policyholders would have the choice to engage their agent or not engage their agent.”[32] The NPRM suggests that these changes will give policyholders the option of engaging their agent at renewal and that the changes will give agents the “opportunity” to quote the new endorsements at each policyholder’s renewal, implying that agents will be expected to continue to offer each endorsement anew at every renewal. While FEMA notes that “agent training” is a planned aspect of the transition, the details of said training will be critically important. FEMA will need to make supporting agents a priority by providing them with comprehensive education, disclosures, and documentation.

PIA appreciates the opportunity to express its members’ feedback on the NPRM. We hope FEMA will consider making the changes recommended before the rule is finalized, and we welcome the opportunity to collaborate with FEMA toward that end.

Please contact me at Lpachman@pianational.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents

[32] NPRM p. 8313.