

(Authority: 38 U.S.C. 101(2), 1801–1806)  
 [FR Doc. 97–11257 Filed 4–30–97; 8:45 am]  
 BILLING CODE 8320–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 62

RIN 3067–AC62

#### National Flood Insurance Program; Assistance to Private Sector Property Insurers

**AGENCY:** Federal Insurance  
Administration, (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the National Flood Insurance Program (NFIP) regulations establishing the Financial Assistance/Subsidy Arrangement. This Arrangement may be entered into by and between the Administrator and private sector insurers under the Write Your Own (WYO) program. The proposed amendments would: (1) Reduce the range between the minimum and maximum amount of premium income a company may retain as a servicing fee as a result of its marketing performance; (2) restructure the Arrangement so that under no circumstance would a company have to return any portion of the expense allowance; (3) reformat the Arrangement to make it easier to read; (4) standardize references throughout the document, and (5) add details to clarify responsibilities of private sector insurers under the Arrangement with regard to reporting requirements, litigation, and "errors and omissions."

**DATES:** All comments received on or before June 16, 1997 will be considered before final action is taken on the proposed rule.

**ADDRESSES:** Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

**FOR FURTHER INFORMATION CONTACT:** Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443.

**SUPPLEMENTARY INFORMATION:** The Write Your Own (WYO) program has operated for fourteen years as a cooperative venture between the Federal Government and private insurance companies in order to make it easier for the public to obtain flood insurance coverage. The duties and responsibilities of the Federal

Government and the private insurers participating in the WYO program are spelled out each year in the Financial Assistance/Subsidy Arrangement (the "Arrangement").

Prior to the 1994–95 Arrangement Year, the amount of premium which the Company retained as a servicing fee or expense allowance was adjusted based on the average of expense ratios for "Other Acq.," "General Exp.," and "Taxes" as published in the latest available "Best's" Aggregates and Averages: Property Casualty Insurance Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril combined. The average for the 1993–94 Arrangement Year was 32.6 percent, and the expense allowance has not been adjusted for the last three years. This rule proposes an expense allowance range between 31.6 percent and 32.9 percent depending on a company's reaching certain policy growth goals, with 31.9 percent, the current industry average, corresponding to a four percent growth, the current annual growth of flood insurance under the Write Your Own program. FIA also plans, after the implementation of the Arrangement for 1997–98, to continue discussions with the WYO companies on the best way to maintain in future years financial incentives for companies to market flood insurance while minimizing financial uncertainties from one year to the next for participating companies.

This rule proposes in "B. Time Standards" of Article II, "Undertaking of the Company" adding specific provisions regarding "continual failure" of a participating company to meet the time standards of the Arrangement.

Additionally, this rule proposes adding under "Article III-Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds": 1. Specific reporting requirements regarding litigation, 2. specific criteria for reporting litigation, and 3. Authority to withhold reimbursement for companies failing to meet the Arrangement's reporting requirements for litigation. Also added in Article III and Article IX, "Errors and Omissions," is proposed language that clarifies the responsibilities of participating companies in connection with "errors and omissions."

Finally, this rule proposes other changes that would reformat the Arrangement by modifying the outline format and rearranging text in order to make the document clearer and easier to read. These proposed changes would be consistent with the changes made to the Arrangement last year for the express purpose of making the Arrangement

more serviceable for FIA and its insurance industry partners.

#### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental assessment has been prepared.

#### Executive Order 12898, Environmental Justice

The socioeconomic conditions to this proposed rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations would result from this final rule.

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

This proposed rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this final rule adheres to the regulatory principles set forth in E.O. 12866.

#### Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

#### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

#### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

#### List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, 44 CFR part 62 is proposed to be amended as follows:

#### PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

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

2. Appendix A of part 62 would be revised to read as follows:

## Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

*Purpose:* To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

*Accounting Data:* Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

*Effective Date:* October 1, 1996.

*Issued By:* Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

### Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, overtime, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

### Article II—Undertaking of the Company

A. Eligibility Requirements for Participation in the NFIP:

1. Policy Administration. All fund receipt, recording, control, timely deposit requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan. The Company shall be responsible for:

a. Compliance with the Community Eligibility/Rating Criteria

b. Making Policyholder Eligibility Determinations

c. Policy Issuance

d. Policy Endorsements

e. Policy Cancellations

f. Policy Correspondence

g. Payment of Agents' Commissions

2. Claims Processing. All claims processing must be processed in accordance with the processing of all the companies' insurance policies and with the Financial Control Plan. Companies will also be required to comply with FIA Policy Issuance's and other guidance authorized by FIA or the Federal Emergency Management Agency ("FEMA").

3. Reports a. Monthly Financial Reporting and Statistical Transaction reporting requirements. All monthly financial reporting and statistical transaction reporting shall be in accordance with the requirements of the NFIP Transaction Record Reporting and processing plan for the Company Program and the Financial Control Plan for business written under the WYO (Write Your Own) Program. 44 C.F.R. Part 62, App. (B). These data shall be validated/edited/audited in detail and shall be compared and balanced against Company reports.

b. Monthly financial reporting procedure shall be in accordance with the WYO Accounting Procedures.

B. Time Standards. These time standards are for guidance. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these requirements may result in limitations on the company's authority to write new business or the removal of the Company from the program. Applicable time standards are:

1. Application Processing—15 days (note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added moneys shall be mailed within 10 days);

2. Renewal Processing—7 days

3. Endorsement Processing—15 days

4. Cancellation Processing—15 days

5. Claims Draft Processing—7 days from completion of file examination

6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Single Adjuster Program. To ensure the maximum responsiveness to the NFIP policy holders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company

shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program using procedures issued by the Administrator. The Single Adjuster procedure shall be followed in the following cases:

1. Where the flood and wind coverage is provided by the Company;

2. Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and

3. Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance. 1. The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act.

3. All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator.

4. All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business.

5. The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

### Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production

expenses, including any State premium taxes, dividends, agent's commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as surcharges on flood insurance premium and guaranty fund assessments.

B. The Company shall be entitled to withhold, as operating and administrative expenses, including agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Section C. of this Article, which amount shall be a minimum of 31.6% of the Company's written premium on the policies covered by this Arrangement.

The amount of expense allowance retained by the company may be increased to a maximum of 32.9%, depending on the extent to which the company meets the marketing goals for the 1997-1998 Arrangement year contained in marketing guidelines established pursuant to Article II. G. The amount of any increase shall be paid to the company after the end of the 1997-1998 Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a "Fee Schedule" coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D. Loss Payments. 1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments as a result of litigation which arises under the scope of this Arrangement, and the Authorities set forth above. All such loss payments must meet the documentation requirements of the

Financial Control Plan and of this Arrangement. The Company will be reimbursed for errors and omissions only as set forth at Article IX of this Arrangement.

3. Notification of claims in litigation against the company. To ensure reimbursement of costs expended to defend a claim in litigation against the Company, the Company must promptly notify FIA and the FEMA Office of General Counsel (OGC) of all pending and active litigation upon receipt of notice of that litigation and/or claim.

Prompt notice of any such claim for damages within the scope of this section (D) shall be sent to the Administrator along with a copy of any material pertinent to the claim for damages. At the same time as notice is sent to the Administrator, the Company must submit written notice of all such claims to the Associate General Counsel for Litigation, FEMA OGC, 500 C St. SW, Washington, DC 20472. Following the initial notice of claims in litigation, the company must submit all pertinent material and billing documentation as it becomes available. Within 60 days of the receipt of a claim in litigation by the Company, the company must submit an initial case analysis and legal fee estimate. Failure to meet these notice requirements may result in the Administrator's decision not to reimburse expenses for which FIA and the FEMA OGC have not been notified in a timely manner.

4. Limitation on Litigation Costs. Following receipt of notice of such claim, the Office of General Counsel (OGC), FEMA, shall review the information submitted. If it is determined that the claim is grounded in actions by the Company that are outside the scope of this Arrangement, the National Flood Insurance Act, and 44 C.F.R. Part 59, *et seq.*, and/or involve issues of insurer/agent negligence as discussed in Article IX of this Arrangement, the OGC shall make a recommendation to the Administrator as to whether the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement. In the event the Administrator determines that the claim is grounded in actions by the Company that are significantly outside the scope of this Arrangement, the Company will be notified, in writing, within thirty (30) days of the Administrator's decision, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for

reconsideration the determination that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from Federal flood insurance funds referred to in Article II, Section E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

#### **Article IV—Undertakings of the Government**

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit Shall not Ordinarily be drawn more frequently than daily nor in amounts less than \$5,000, and in no case more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected Or when

cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

#### **Article V—Commencement and Termination**

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be canceled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be canceled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

#### **Article VI—Information and Annual Statements**

The Company shall furnish to FEMA such summaries and analyses of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

#### **Article VII—Cash Management and Accounting**

FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

#### **Article VIII—Arbitration**

If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

#### Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by inadvertent delay, error, or omission made in connection with any transaction under this Arrangement. In the event of such actions, the responsible party must attempt to rectify that error as soon as possible after discovery of the error and act to mitigate any costs incurred due to that error. In the event that steps are not taken to rectify the situation and such action leads to claims against the company, the NFIP, or other related entities, the responsible party shall bear all liability attached to that delay, error or omission to the extent permissible by law.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or Trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

#### Article X—Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

#### Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the

entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

#### Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

#### Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

#### Article XIV—Access to Books and Records

The FIA and the Comptroller; General of The United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

#### Article XV—Compliance with Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

#### Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds

are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 24, 1997.

**Roland E. Holland,**

*Acting Executive Administrator, Federal Insurance Administration.*

[FR Doc. 97-11318 Filed 4-30-97; 8:45 am]

BILLING CODE 6718-03-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 32 and 52

#### Federal Acquisition Regulation; Progress Payments

**AGENCY:** Department of Defense.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Comments are solicited from both government and industry personnel on how Federal Acquisition Regulation (FAR) Subpart 32.5, Progress Payments Based on Costs, the clause at FAR 52.232-16, Progress Payments, and Standard Form 1443, Contractor's Request For Progress Payment, can be revised to result in a simplified and streamlined process of applying for and administering progress payments. The Director of Defense Procurement is sponsoring an initiative to review existing forms, procedures, and provisions related to progress payments. Regulatory requirements pertaining to progress payments that are not required by statute, required to ensure adequately standardized government business practices, or required to protect the public interest will be considered for revision or elimination. Innovative means of simplifying the process of contractor requests for progress payments and the subsequent government administration of progress payments will be considered for incorporation into the regulation.

Comments may be submitted in two formats: (1) By letter to the address below, or (2) by electronic response on the Director of Defense Procurement Office of Cost, Pricing, and Finance Internet Home Page: <http://www.acq.osd.mil/dp/cpf>. Comments should include (1) An identification of the existing regulation, form, or procedure, (2) a proposed revision thereto, and (3) a supporting rationale for the proposed revision.

**DATES:** Comments are due on or before May 30, 1997.