



Community Compliance Program Guidance

National Flood Insurance Program

FEMA P-1022 / July 2016



FEMA

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ACRONYMS AND ABBREVIATIONS

BFE	Base flood elevation
CAC	Community Assistance Contact
CAC/CAV guidance	<i>Guidance for Conducting Community Assistance Contacts and Community Assistance Visits</i> (FEMA F-776)
CAP	Community Assistance Program
CAV	Community Assistance Visit
C.F.R.	Code of Federal Regulations
CIS	Community Information System
CLOMR	Conditional Letter of Map Revision
CRS	Community Rating System
ETJ	Extraterritorial jurisdiction
FEMA	Federal Emergency Management Agency
FEMA HQ	FEMA Headquarters
FIMA	Federal Insurance and Mitigation Administration
FIRM	Flood Insurance Rate Map
FPM	Floodplain Management Division
GPS	Global Positioning System
LOMR	Letter of Map Revision
NFIP	National Flood Insurance Program
OCC	(FEMA) Office of Chief Counsel
Section 1316	Section 1316 of the National Flood Insurance Act of 1968, as amended (44 C.F.R. Part 73)
SFHA	Special Flood Hazard Area
U.S.C.	U.S. Code

DEFINITION OF TERMS

Some of the terms used in this manual are defined in the National Flood Insurance Program (NFIP) regulations (44 C.F.R. § 59.1). Other terms describe provisions and procedures in the regulations and elements of the Federal Emergency Management Agency's (FEMA's) administration of the NFIP.

Community Assistance Contact (CAC). Telephone call or brief visit to a community for the purpose of establishing or re-establishing contact to determine if any program-related problems exist and to offer assistance.

Community Assistance Program (CAP). Product-oriented financial assistance program related to the flood loss reduction objectives of the NFIP. NFIP-participating States are eligible for CAP funds to provide general technical assistance and to identify, prevent, and resolve floodplain management issues in participating communities.

Community Assistance Visit (CAV). Scheduled visit to a predetermined community for the purpose of conducting a comprehensive assessment of the community's floodplain management program and help the community understand effective flood loss reduction measures and how to implement them. The CAV consists of a tour of the community's flood hazard areas and a meeting with the local officials. For more information, see FEMA F-776, *Guidance for Conducting Community Assistance Contacts and Community Assistance Visits*.

Community Compliance Program. The complete system developed to identify and correct program deficiencies and violations with the objective of obtaining community compliance with NFIP floodplain management criteria. The emphasis of the system is on correcting program deficiencies and remedying violations through community assistance and consultation before enforcement actions are initiated by FEMA.

Community Information System (CIS). Database that is the official record of NFIP information. The CIS provides information about communities that participate in the NFIP, including local floodplain management programs, mapping, insurance, demographics, engineering, and community specific information. FEMA Regional Office staff and NFIP State Coordinating Agency staff use the CIS to document the general technical assistance that is provided, compliance problems that are identified in individual communities, and the assistance that is provided to resolve program deficiencies and remedy identified violations.

Community Rating System (CRS). System used to rate communities based on floodplain management activities. The CRS was developed in 1990 to recognize and encourage community floodplain management activities that exceed the minimum NFIP criteria. The National Flood Insurance Reform Act of 1994 codified the CRS. Under the CRS, flood insurance premium discounts are awarded to reflect the reduced flood risk that results from community activities that reduce and avoid flood damage to insurable property, strengthen and support the insurance aspects of the NFIP, and foster comprehensive floodplain management.

Correct a program deficiency. Action taken to bring a program deficiency into compliance with NFIP criteria. Examples of actions to correct program deficiencies are listed in Section 3.3.

Enforcement action. Measure initiated by FEMA to obtain a community's compliance with NFIP floodplain management criteria by ensuring that the community corrects program deficiencies, remedies violations, and enforces its floodplain management regulations for future development. An enforcement action commences when a FEMA Regional Administrator notifies the community that it will be placed on probation following the conclusion of a 90-day notice period. The action can continue through suspension and/or until the community's full program status is restored.

Flood loss reduction. Combination of preventive and corrective measures taken by individuals or communities to mitigate the adverse consequences of flooding.

Floodplain management regulations. Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain management ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such State or local regulations, in any combination, which provide standards for the purpose of flood damage prevention and reduction.

Maximum extent possible (flood loss reduction). Most effective level of flood loss reduction attainable, given practical and legal constraints.

Multiple program deficiencies and violations. More than one program deficiency and/or more than one violation.

Probation. A period of time, following formal notification to a community that its floodplain management program is regarded by FEMA as noncompliant with NFIP criteria, during which the community is expected to resolve the identified noncompliance. Probation is imposed by the FEMA Regional Administrator. Probation is terminated upon completion of required remedial measures or extended for an additional period in 1-year increments to ensure future compliance. Probation has no effect on the continued availability of flood insurance, but a \$50 surcharge is added to premiums for new and renewed policies for each year the community is on probation. Probation is described in more detail in Section 4.4.

Program deficiency. Defect in a community's floodplain management regulations or administrative procedures that impairs the effective implementation of the floodplain management regulations or the minimum NFIP requirements in 44 C.F.R. §§ 60.3, 60.4, 60.5, and 60.6. Also see "Substantive program deficiency or substantive violation." Examples of substantive program deficiencies are listed in Section 3.2.

Reinstatement. Restoration of a suspended community to status as an NFIP-participating community. Communities may be reinstated to the NFIP after being suspended if the conditions that led to suspension have been resolved. Communities may be reinstated to full participating status or to probationary status. Reinstatement is described in more detail in Section 4.5.3.

Remedy a violation. Bring a structure or other development that violates the minimum requirements into compliance with State or local floodplain management regulations or, if full compliance is not possible, reduce the impacts of the noncompliance. Impacts can be reduced by protecting the structure or other affected development from flood damage, implementing the enforcement provisions of the regulations or otherwise deterring future similar violations, or reducing Federal liabilities with regard to the structure or development. Examples of ways to remedy violations are listed in Section 3.5.

Substantive program deficiency or substantive violation. Program deficiency or violation that has resulted or could result in increased potential flood damage or flood heights during events up to and including the base flood.

Suspension. Removal of an NFIP-participating community from the NFIP. Communities may be suspended for failure to adopt compliant floodplain management regulations (44 C.F.R. § 59.24(a)), for failure to enforce floodplain management regulations (44 C.F.R. § 59.24(c)), or for repealing or amending previously compliant floodplain management regulations (44 C.F.R. § 59.24(d)). When communities are suspended, new NFIP policies are not available and policies cannot be renewed.

Violation. Failure of a structure or other development to be fully compliant with a community's floodplain management regulations. A structure or other development without an elevation certificate, other certificate, or other evidence of compliance required in 44 C.F.R. § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as the required documentation is provided. Examples of violations are listed in Section 3.4.

NONCONFORMING IS NOT THE SAME AS NONCOMPLIANT

Structures and development that pre-date a community's adoption of floodplain management regulations are "nonconforming."

Structures and development that were—or should have been—approved by issuance of permits after a community began enforcing floodplain management regulations are in violation (i.e., noncompliant) if the structures and development do not fully comply with the adopted regulations.

SECTION 1

General Information

The National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.) prohibits the Federal Emergency Management Agency (FEMA) from providing flood insurance under the National Flood Insurance Program (NFIP) to a community unless the community adopts and enforces floodplain management regulations that meet minimum NFIP floodplain management criteria. As part of monitoring and providing assistance to communities, FEMA may identify deficiencies in a community's floodplain management program. Similarly, FEMA may identify structures or other development that are in violation of the community's floodplain management regulations. FEMA is committed to providing technical assistance to help communities correct program deficiencies and remedy violations.

If a community with identified program deficiencies, violations, or both does not take action to restore compliance with NFIP criteria, FEMA's Community Compliance Program provides the mechanism for action. The Community Compliance Program builds on the procedures in Title 44 Code of Federal Regulations (C.F.R.) § 59.24(b) and (c). It provides an orderly sequence of enforcement options of varying severity. Under the program, if all attempts to correct program deficiencies are unsuccessful, communities are subject to probation and/or suspension from the NFIP. Similarly, if attempts to get communities to remedy violations to the maximum extent possible are unsuccessful, communities may be subject to probation and/or suspension, or in certain circumstances, individual properties that remain in violation may be sanctioned by being denied NFIP flood insurance.

The availability of two sets of enforcement options—one for communities and one for development and structures on individual properties—helps FEMA ensure that NFIP enforcement actions are targeted to the responsible party.

Additional procedures and guidelines to help FEMA Regional Offices implement the Community Compliance Program are developed as needed.

1.1 Purpose of the Manual

This manual provides guidance on implementing the Community Compliance Program to FEMA staff and NFIP State Coordinating Agency staff. The implementation steps consist of follow-up actions by FEMA Headquarters (FEMA HQ) and FEMA Regional Offices that are triggered when FEMA Regional Office staff or NFIP State Coordinating Agencies (also referred to as NFIP State Coordinators) have identified deficiencies in local floodplain management programs or violations of local floodplain management regulations, and after technical assistance has not satisfactorily resolved the problems.

1.2 Applicability of the Manual

This manual is applicable to FEMA staff in FEMA HQ and FEMA Regional Offices, and State agencies that may conduct Community Assistance Visits (CAVs) under the Community Assistance Program (CAP).

1.3 Authorities

- The National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.)
- The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.)
- The National Flood Insurance Reform Act of 1994, as amended (42 U.S.C. § 4001 et seq.)
- Title 44 C.F.R. Part 59 (specifically § 59.24, Suspension of Community Eligibility, see Appendix A), Part 60, and Part 73 (see Appendix B)

1.4 Objectives of the Community Compliance Program

Eight objectives of the Community Compliance Program, listed below, are related to use of the NFIP structure, resolving deficiencies and violations, Federal liability, future compliance, and fairness.

- 1. Maximize the use of the existing NFIP structure** (the floodplain management and insurance components). The floodplain management and insurance components of the NFIP are mutually supportive. Effective implementation of local floodplain management regulations helps minimize future flood damage that, in turn, helps keep insurance rates affordable. Floodplain management regulations also control development, such as floodway encroachments, that can aggravate flood damage to buildings and structures. Insurance rates, limitations on insurance coverage, denial of insurance, and limitations on the availability of federally insured mortgage funding can act as mechanisms for transferring the economic cost of an unwise floodplain development decision to the property owner and, in so doing, discourage improper development and encourage proper mitigation measures. An effective local floodplain management program builds on this relationship.
- 2. Emphasize resolving problems through technical assistance rather than through enforcement action.** Most program deficiencies and many violations are due to lack of awareness and full understanding of NFIP criteria, lack of technical skills on the part of the community, failure to understand the rationales behind program requirements, or lack of an appreciation of the insurance implications and other consequences of community decisions. Most problems identified by FEMA Regional Offices and States can and should be resolved through technical assistance. These efforts, described in FEMA F-776, *Guidance for Conducting Community Assistance Contacts and Community Assistance Visits* (CAC/CAV guidance),¹ should be undertaken before enforcement actions are initiated.

¹ FEMA, 2011. FEMA F-776, *Guidance for Conducting Community Assistance Contacts and Community Assistance Visits*. Available at: <https://www.fema.gov/media-library/assets/documents/23575>.

- 3. Provide an array of options for correcting program deficiencies and remedying violations.** Program deficiencies take many forms, and options for correcting them are similarly varied. Violations that occur on individual properties also take many forms, and options for remedying the violations to the maximum extent possible are similarly varied. FEMA Regional Offices and States should seek workable solutions for the identified deficiencies and violations, including the options described in this manual.
- 4. Correct all program deficiencies and remedy all violations.** As a result of an enforcement action, all identified deficiencies in the community's floodplain management regulations and administrative procedures should be corrected. Each identified individual property violation should be remedied to the maximum extent possible.
- 5. Do not increase Federal liabilities.** Enforcement actions related to violations on individual properties should not increase liability to the Federal Government or the NFIP. If full compliance is not achieved, violations must be remedied to the maximum extent possible, and flood insurance policies must be rated based on risk. Individual property violations that, for a variety of reasons, cannot be remediated should be cited for denial of insurance pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- 6. Ensure future community compliance with NFIP criteria.** The primary purpose of conducting an enforcement action is to obtain future community compliance with NFIP criteria to reduce the potential for future flood damage, thereby reducing future Federal subsidies and future economic loss to the Nation, the community, and individuals. Obtaining future compliance is accomplished in part by assessing past and current levels of compliance. At the conclusion of an enforcement action, local officials should be fully aware of their responsibilities under the NFIP and of the consequences of failure to adequately administer their floodplain management programs.
- 7. Provide for similar treatment of all like-situated communities.** The basis for deciding whether to undertake enforcement actions should uniformly apply to all communities with similar capabilities and situations. Community-by-community decision-making regarding the need to resolve program deficiencies and violations should be avoided as much as possible. Consistency is not intended to limit the flexibility necessary to deal effectively with the wide variety of communities and enforcement problems that will be encountered.
- 8. Do not undermine compliance efforts in other communities.** Each enforcement action with individual communities should be viewed as part of an ongoing process with the goal of achieving compliance with NFIP criteria by all communities. Enforcement actions taken for one community should not set a precedent that undermines attempts to achieve compliance with program requirements in other communities.

SECTION 2

Federal and State Responsibilities

This section describes FEMA’s responsibilities and the responsibilities and role of NFIP State Coordinating Agencies in the Community Compliance Program.

2.1 Federal Responsibilities

Ensuring that NFIP-participating communities comply with NFIP criteria through enforcement actions is a Federal responsibility that cannot be delegated to the States. However, FEMA supports and encourages States to assist communities and to consult with communities on ways to correct program deficiencies and remedy violations.

The FEMA Administrator is responsible for the establishment, development, and execution of policies and programs under the National Flood Insurance Act of 1968, as amended.

The FEMA Associate Administrator of the Federal Insurance and Mitigation Administration (FIMA) is responsible for the following:

- Administering the development of criteria and standards for the flood insurance, risk assessment, and loss reduction activities of the NFIP
- Providing guidance to FEMA Regional Offices to assist in their implementation of NFIP-related duties
- Suspending and reinstating community eligibility to participate in the NFIP in accordance with the provisions of 44 C.F.R. § 59.24

The FIMA Floodplain Management Division, Mitigation Directorate, is responsible for the following:

- Administering the CAP, including the CAP-State Support Services Element partnering agreements with States, and the Community Compliance Program
- Developing floodplain management policy and regulations to improve implementation of the NFIP
- Developing floodplain management guidance and training materials to improve implementation at the community level
- Implementing community NFIP eligibility and enrollment
- Providing overall program management and coordination with the States and FEMA Regional Offices
- Providing overall program and coordination related to the Community Rating System (CRS), including imposing or removing CRS retrogrades, as necessary
- Processing Section 1316 denials of flood insurance coverage

- Managing the Community Information System (CIS)

The FEMA Regional Administrators and FEMA Regional Offices are responsible for the following:

- Providing assistance to NFIP communities in their efforts to administer and enforce local floodplain management regulations that meet or exceed the minimum NFIP criteria
- Monitoring the floodplain management activities of NFIP communities to ensure compliance with NFIP requirements
- Recommending imposition or removal of retrogrades of CRS communities, as necessary, based on community response to identified program deficiencies and violations; see Section 4.1 for information on CRS retrograde
- Imposing or removing NFIP probation based on community response to identified program deficiencies and violations
- Providing subsequent recommendations to FIMA to suspend or reinstate community eligibility to participate in the NFIP
- Recommending imposition or removal of Section 1316 sanctions on individual properties

2.2 State Responsibilities

Each governor designates an agency or office to function as the NFIP State Coordinating Agency. The NFIP State Coordinator's office is charged with linking FEMA and communities and advising communities on how to comply with NFIP criteria and any applicable State laws and regulations.

NFIP State Coordinating Agencies have a significant role in the NFIP (44 C.F.R. § 60.25). Common functions and activities include:

- When necessary, enacting legislation to enable communities to regulate development in floodprone areas
- Encouraging and assisting communities with qualifying for participation in the NFIP
- Guiding and assisting communities to develop, implement, and maintain floodplain management regulations
- Providing technical assistance to State agencies, communities, and the public
- Ensuring that State floodplain management regulations or executive orders affecting State-owned properties meet minimum NFIP criteria
- Assisting with dissemination of information on flood hazards and regulatory requirements
- Participating in training opportunities
- Helping FEMA and communities identify floodprone areas
- Identifying deficiencies in local floodplain management programs, working with communities to resolve the deficiencies, and notifying FEMA Regional Offices if program deficiencies cannot be resolved through technical assistance by the State

- Identifying violations on individual properties, providing assistance to communities to remediate violations, and notifying FEMA Regional Offices if violations cannot be remediated by communities

State Floodplain Management Authorities. Some States have the authority to adopt and enforce floodplain management regulations, and some States require communities to enforce State standards. States are expected to initiate enforcement actions based on their own statutory or regulatory authorities. Based on the precedence clause in 44 C.F.R. § 60.1(d), FEMA’s position is to support State-initiated enforcement actions even when State regulations are more restrictive than NFIP floodplain management criteria. The precedence clause states, in part: “any floodplain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this Part are encouraged and shall take precedence.” If a State chooses not to enforce its own regulations, FEMA must limit its enforcement actions to compliance with NFIP criteria. States and FEMA Regional Offices should coordinate enforcement actions, when appropriate.

**FEMA’S
ENFORCEMENT AUTHORITY**

If a State chooses not to enforce its own regulations, FEMA will limit its enforcement actions to the community’s compliance with NFIP criteria.

2.3 Federal and State Joint Responsibilities

2.3.1 Federal and State Monitoring of Communities

The CAC/CAV guidance provides guidance for conducting CACs and CAVs, which are important in monitoring compliance by NFIP-participating communities. CAVs and CACs are conducted by FEMA Regional Office staff and NFIP State Coordinator staff.

The CAC/CAV guidance also provides guidance for monitoring and oversight of communities with identified compliance problems, including the development of corrective action plans (also known as remediation plans). Regardless of whether CAVs are conducted by a FEMA Regional Office or a State, documenting identified program deficiencies and identified violations is critical, as is documenting subsequent contacts and technical assistance provided to resolve the problems.

No single monitoring method can be applied in all communities with equal effectiveness. There is a variety of information sources and monitoring techniques available that can be used to identify specific violations or identify communities in which violations and program deficiencies are likely to be found. FEMA Regional Offices and their respective States should develop monitoring programs to use all available sources and techniques but should emphasize the most effective ones, given the types of communities in the Region and each

**CAVs REQUIRED BEFORE
ENFORCEMENT ACTION
IS TAKEN**

CAVs or other community visits are required before FEMA Regional Offices initiate enforcement actions.

Documentation of CAVs by States and State follow-up contacts to provide technical assistance to resolve identified problems is valuable and supports efficient action by FEMA Regional Offices.

State agency’s capabilities. In all cases, prior to initiating an enforcement action the FEMA Regional Office must conduct a CAV or other community visit.

Information sources and techniques to monitor community compliance or identify potential problem areas include, but are not limited to:

- Regularly scheduled CAVs or CACs
- Other community visits, such as visits during the map revision process and after disasters
- Submit-to-rate flood insurance policy applications
- U.S. Census data
- Flood insurance claims data and other insurance information
- Complaints from other Federal agencies, States, adjoining communities, citizens’ groups, and private citizens
- Requests for technical assistance
- Number and type of requests for Letters of Map Change, especially requests to remove land from the Special Flood Hazard Area (SFHA) designation based on fill
- CRS recertification or cycle visits

FEMA Regional Office staff and State staff who conduct CAVs and CACs are required to record the results in CIS. The expected content of CAV and CAC reports is detailed in the CAC/CAV guidance, as is guidance for providing technical assistance and follow-up for program deficiencies and violations that are identified. CIS is also used to record when general technical assistance is provided. It is critical to use CIS to maintain accurate and timely compliance information, not only to ensure that monitoring of a community is consistent, but also to thoroughly document compliance history in the event FEMA determines it is appropriate to take enforcement action.

Figure 2-1 illustrates the enforcement and compliance-related actions captured in CIS:

- Probation status (date probation letter sent, effective date)
- Suspension status (date suspension letter sent, effective date)
- Compliance indicators:
 - Open CAC/CAV
 - Section 1316 Declarations
 - Minus-Rated Insurance Policies
 - Submit to Rate Policies
 - Substantial Damage Claims Since 1978
 - LOMR – Flooding Violations
 - LOMR – F Issued
 - CLOMR – F Issued

DOCUMENTATION IS IMPORTANT

The importance of documentation cannot be stressed enough. Documentation should begin as soon as program deficiencies and violations are identified. All subsequent communication with the community, including phone calls, should be documented.

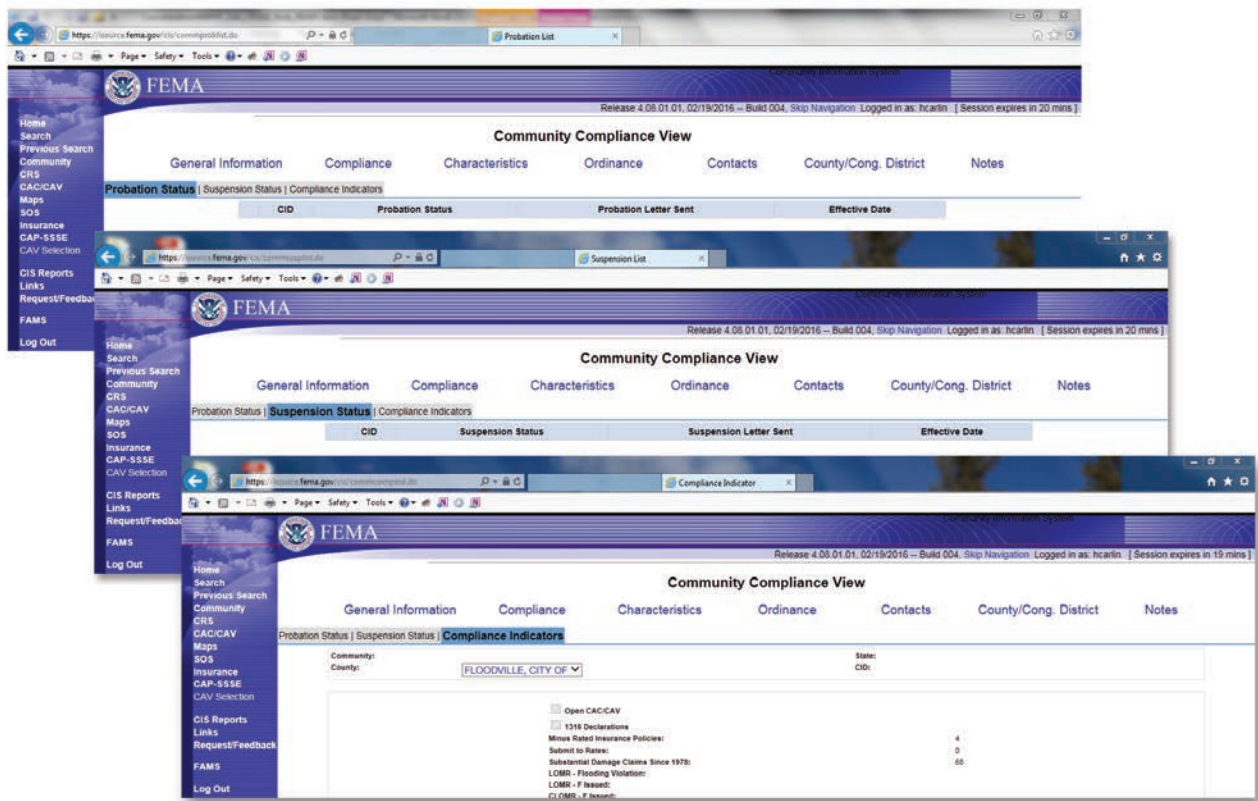


Figure 2-1: Enforcement and Compliance-Related Actions Captured in CIS

2.3.2 Federal and State Coordination during Enforcement Actions

The CAC/CAV guidance emphasizes the importance of coordination between the FEMA Regional Offices and NFIP State Coordinators that conduct CAVs, especially when communities are identified as having program deficiencies and violations. States should contact the FEMA Regional Office when communities have not taken the required corrective action(s) within the established and agreed-upon timeframes and after all attempts to assist the community have failed. Contacting the FEMA Regional Office should occur at the earliest possible point when the identified issues may require an enforcement action or other follow-up assistance by FEMA. After consultation with the State, the FEMA Regional Office will determine the appropriate follow-up action.

When a FEMA Regional Office identifies communities that have program deficiencies or violations, the State should be consulted prior to initiation of enforcement action. This is especially important in States that have their own floodplain management statutory or regulatory authorities and programs (see Section 2.2).

When a FEMA Regional Office determines that it is appropriate to initiate an enforcement action, coordination between the FEMA Regional Offices and the State should continue. The State should be copied on all correspondence related to FEMA's enforcement actions.

2.3.3 State and Local “Higher Standards” and the Federal Precedence Clause

Section 2.2 notes that States are expected to initiate enforcement actions based on their own statutory or regulatory authorities and that FEMA’s position is to support State-initiated enforcement actions, even when State regulations are more restrictive than NFIP floodplain management criteria.

FEMA and States encourage communities to adopt more restrictive (“higher”) standards, and communities are expected to enforce the rules they adopt. Based on the precedence clause in 44 C.F.R. § 60.1(d), FEMA’s position is to support enforcement of locally adopted higher standards. When a community with higher standards is found not to be enforcing the higher standards, FEMA and States should explore the community’s intention with regard to enforcement. Higher standards should be repealed if the community does not intend to uniformly require compliance. If a community chooses not to enforce its higher standards, FEMA will limit its enforcement actions to compliance with the NFIP criteria.

If a CRS community does not enforce its adopted higher standards, FEMA may retrograde the community (see Section 4.1).

SECTION 3

Overview of Compliance Problems

Compliance problems may be program deficiencies or violations that occur on individual properties. Program deficiencies and violations are considered to be substantive if they could result in increased flood damage or flood heights during base flood conditions.

This section begins with a description of mitigating and aggravating factors, which are factors that should be considered when evaluating compliance problems. The remainder of the section consists of information about substantive program deficiencies and substantive violations, including common examples and common ways of correcting or remedying them.

3.1 Mitigating Factors and Aggravating Factors

Participating communities that fail to adequately enforce their locally adopted, NFIP-compliant floodplain management regulations, and communities that allow violations of their regulations to occur, are subject to probation and suspension from the NFIP. Not all communities have the same level of staff capability to administer programs, and the seriousness of deficiencies and violations varies from community to community.

FEMA Regional Offices should take various mitigating factors and aggravating factors into consideration when determining whether or when to initiate an enforcement action, which remedial measures should be required, whether a community should be placed on probation, and whether a community should be suspended. Mitigating factors and aggravating factors are factors or situations that should be taken into consideration when determining the severity of the problems and how best to resolve them:

Mitigating factors mitigate (soften) the impact of the problems. Examples of common mitigating factors are listed in Table 3-1.

Aggravating factors aggravate (exacerbate) the impacts of the problems. Examples of common aggravating factors are listed in Table 3-2.

Table 3-1: Examples of Mitigating Factors

The community has demonstrated willingness to take positive actions to restore past problems.
Because of a lack of adequate local resources, including lack of professional staff, the community has had to rely on the availability of technical assistance from the State, FEMA, or other sources.
There is no history of prior program deficiencies or prior violations identified by FEMA or the State, or it's been many years since problems were last identified.
Newly elected officials, or recently hired staff, have demonstrated a new attitude toward fulfilling the community's responsibilities under the NFIP.
Deficiencies in the community's program have not resulted in increased exposure to flood damage.
There are isolated instances of violations, rather than a pattern of widespread or repeated violations.
There is a single program deficiency.
A remedial measure to resolve a particular violation would undermine the credibility of local officials or their demonstrated efforts to achieve compliance.
The present owner of a property that is in violation was not the owner at the time the structure became noncompliant (this factor is relevant only when determining appropriate remedial measures for the specific property).

Table 3-2: Examples of Aggravating Factors

The community has a history of program deficiencies (or violations) that were previously identified and brought to the community's attention by the State or FEMA.
The community has not demonstrated willingness to take corrective actions to resolve past problems.
The community has adequate resources, including professional staff or other sources of technical assistance, but has not used the resources to administer and enforce its floodplain management regulations.
Deficiencies in the community's program have resulted in increased exposure to flood damage.
Violations have occurred recently.
FEMA and the State have provided technical assistance to resolve similar program deficiencies or previous violations.
Violations have occurred in an area where violations were previously identified and addressed.
There is a pattern of multiple program deficiencies (or multiple violations), as opposed to an isolated instance of noncompliance.
The present owner of a property that is in violation was the owner at the time the structure became noncompliant (this factor is relevant only when determining appropriate remedial measures for the specific property).

3.2 Substantive Program Deficiencies

Program deficiencies are defects or inadequacies in a community's floodplain management regulations or administrative procedures that impair the effective implementation of the regulations or the minimum NFIP requirements. A substantive program deficiency is a deficiency that has resulted or could result in increased potential flood damage or flood heights during events up to and including the base flood.

Program deficiencies are directly related to the NFIP regulations that establish the minimum requirements for participating communities at 44 C.F.R. §§ 60.2, 60.3, and 60.6. Examples of substantive program deficiencies are listed in Table 3-3.

Table 3-3: Examples of Substantive Program Deficiencies

Failure to require permits for proposed construction or other development, including manufactured homes, in SFHAs.
Failure to review permit applications and subdivision proposals to determine that all construction and development are adequately designed, located, constructed, and anchored to minimize flood damage.
Failure to obtain and reasonably use any available flood data as criteria for setting local elevation and floodproofing requirements.
Adoption of regulations that do not meet the minimum required NFIP floodplain management criteria based on the SFHAs and zones on the community's Flood Insurance Rate Map (FIRM).
Adoption of regulations that do not contain adequate enforcement provisions or that cannot be enforced through other mechanisms.
Use of administrative procedures or practices that are not workable or cannot reasonably ensure compliance with the local regulations (e.g., no procedure to determine whether development is in an SFHA; no procedure to evaluate whether building improvements constitute Substantial Improvement; failure to keep records of permits, certifications, and variance actions).
Use of procedures to process variances that are not consistent with NFIP variance criteria.*
Failure to operate and maintain a flood protection project that is credited by FEMA as providing 1-percent-annual-chance flood protection if the community is responsible for the project.

* 44 C.F.R. § 60.6(a) and FEMA P-993, *Variances and the National Flood Insurance Program* (2014).

3.3 Correcting Substantive Program Deficiencies

Correcting substantive program deficiencies can take a variety of forms depending on the nature of the deficiencies and the ability and willingness of the community to take corrective action. Communities should be provided with a reasonable degree of latitude in determining how to correct identified program deficiencies. The FEMA Regional Office or State may provide a range of options and encourage the community to develop a “corrective action plan” with time frames for completion of the actions (see the CAC/CAV guidance). Corrective or remedial actions taken by communities must be within the bounds of their legal authorities and consistent with the minimum criteria of the NFIP. States should consult with FEMA Regional Offices, and FEMA Regional Offices should consult with the FIMA Floodplain Management Division if there are questions regarding the adequacy of remedial measures proposed or taken by the community.

The mitigating factors and aggravating factors described in Section 3.1 should be taken into consideration when determining which corrective actions should be required. Examples of actions that may be taken to correct program deficiencies are listed in Table 3-4.

Table 3-4: Examples of Actions to Correct Program Deficiencies

Amend floodplain management regulations to be fully compliant and correct other program deficiencies that contribute to the occurrence of violations.
Establish administrative procedures for determining and documenting when applications are submitted for Substantial Improvements and repair of Substantial Damage.
Amend floodplain management regulations to include more effective enforcement provisions or add penalty provisions (e.g., specify issuance of notices of violation and stop work orders, specify that certificates of occupancy are withheld until required documentation is submitted).
Prepare or obtain Elevation Certificates or other documents and certifications that are missing from the community's file.
Change administrative procedures to improve permitting and inspection processes (e.g., modify application, certification, or inspection forms; change the number of inspections; change instructions for inspectors).
Require permittees to document foundation and anchoring on forms provided by the community.
Establish or revise variance procedures to meet the NFIP minimum criteria for variances.
Reaffirm intent to fulfill responsibilities for participation in the NFIP by adopting a new resolution, similar to what was adopted when the community joined the NFIP.
Implement programs to address property owners who illegally convert enclosures below elevated buildings to uses other than allowed uses (parking of vehicles, storage, and building access).
Revise or reformat development permit application forms to ensure that applicants provide adequate information for plan review.
Conduct hydrologic and hydraulic engineering analyses to demonstrate that floodway development does not cause an increase in flood levels during occurrence of the base flood.
Change or increase staff or resources used to enforce the local regulations.
Require community staff to attend floodplain management training sponsored by FEMA or the State.

3.4 Substantive Violations (Individual Property)

A violation is the failure of a structure or other development that is subject to the community's floodplain management regulations to be fully compliant with the regulations. Structures or other development without Elevation Certificates, other required certifications, or other evidence of compliance required in 44 C.F.R. § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5), are presumed to be in violation until

the required documentation is provided. Structures and development that pre-date the community’s participation in the NFIP are “non-conforming” and are not violations.

Violations are related to the NFIP regulations that establish the minimum requirements for development in participating communities, which depend on the nature of the flood hazard data and zones on the community’s FIRM. Examples of substantive violations are listed in Table 3-5.

Table 3-5: Examples of Substantive Violations

Examples in Zone A	Examples in Zone V
<p>Encroachments and obstruction of floodways or stream channels that increase flood stages.</p> <p>For new construction and Substantial Improvements:</p> <ul style="list-style-type: none"> • Structures that are not adequately anchored to resist flotation, collapse, or lateral movement. • Residential structures that have lowest floors, including basements, below the BFE. • Nonresidential structures that have lowest floors, including basements, below the BFE or are not dry floodproofed. • Residential structures that do not have Elevation Certificates/elevation data. • Nonresidential structures that do not have Elevation Certificates/elevation data or floodproofing certificates. • Structures that have enclosures below the lowest floor that are used for purposes other than parking of vehicles, storage, or building access. • Structures that have enclosures below the lowest floor that do not have flood openings or have insufficient flood openings. 	<p>Manmade alteration of sand dunes or mangrove stands that would increase potential flood damage.</p> <p>For new construction and Substantial Improvements:</p> <ul style="list-style-type: none"> • Structures that are not adequately anchored to resist flotation, collapse, or lateral movement. • Structures that are elevated on foundations other than pilings and columns. • Structures that do not have the bottom of the lowest structural member of the lowest floor at or above BFE. • Structures that do not have certifications of the structural design, specifications, and plans. • Structures that have enclosures below the lowest floor that are used for purposes other than parking of vehicles, storage, or building access. • Structures that have enclosures below the lowest floor that do not have breakaway walls or do not have certification of breakaway wall design. <p>New construction that is seaward of the reach of mean high tide (not applicable to Substantial Improvement).</p>

3.5 Remediating Substantive Violations (Individual Property)

As defined in the NFIP regulations at 44 C.F.R. § 59.1, “remedy a violation” includes bringing a structure or other development into compliance with the applicable State or local floodplain management regulations, or, if that is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damage, implementing the enforcement provisions of the community’s floodplain management regulations or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

The NFIP definition for “violation” explicitly includes structures or other development that do not have the required evidence of compliance (e.g., elevation and design certificates, floodway encroachment analyses). If achieving full compliance is not possible, remedies may include reducing the impacts of the noncompliance.

Remediating violations that have occurred on individual properties can take a variety of forms depending on the type, seriousness, number of, and circumstances of the violations, and the ability and willingness of the community to take certain actions. Resolution of violations is also dependent on the ability and willingness of the property owner to respond to the community’s actions. Communities should be provided with a reasonable degree of latitude in determining how to correct violations. The FEMA Regional Office or State may provide a range of options and encourage the community to develop a “corrective action plan” with time frames for completion of the actions (see the CAC/CAV guidance).

The mitigating factors and aggravating factors described in Section 3.1 should be taken into consideration when determining which corrective actions should be required.

The preferred outcome of these actions, whether taken individually or in combination, is structures and development that fully comply with the community’s floodplain management regulations. When full compliance is not achievable, the NFIP regulations allow remedies that reduce the impacts of the noncompliance. Examples of actions that can be taken to remedy violations are listed in Table 3-6.

3.6 Special Jurisdictional Situations

NFIP-participating communities that annex new area or that are newly incorporated, dissolved, or consolidated present special, more complex situations when it comes to identifying and resolving violations. Communities that have authority over extraterritorial areas can also present some challenges.

When two communities consolidate and one has never joined the NFIP, or if a participating community withdrew from the NFIP and subsequently applied for reinstatement, there may be reluctance on the part of the community to initiate enforcement action on development for which it had no previous jurisdictional authority.

When a participating community annexes land from a community that never joined the NFIP, and there is noncompliant development in the annexed area, FEMA would not require the annexing community to remedy noncompliant development because the land was never subject to floodplain management regulations. Communities must enforce their floodplain management regulations in SFHAs in newly annexed areas. Prior to finalizing annexation, FEMA encourages communities to contact owners of property in SFHAs in proposed annexation areas to advise that floodplain management regulations are in effect and provide owners of existing buildings in SFHAs detailed information on Substantial Improvement and Substantial Damage requirements.

Some States grant extraterritorial jurisdiction (ETJ) to some cities and towns, giving them authority to enforce regulations, including floodplain management regulations, outside of their corporate boundaries. Areas subject to ETJ are generally in the unincorporated areas of the county adjacent to a municipality and not within the corporate limits of another city or town. States define or limit the area of ETJ, such

Table 3-6: Examples of Actions Communities Can Take to Remedy Violations

Demonstrate that a structure is not in violation by providing missing documentation such as certification of elevations, foundation design (Zone V), breakaway wall design (Zone V), or floodproofing.
Rescind permits for structures not yet built or in the early stages of construction and require resubmission of plans that demonstrate compliance prior to allowing construction to proceed.
Submit engineering data showing that floodway encroachments result in “no-rise/no-increase” in BFEs.
Rescind improperly granted variances.
Modify or retrofit noncompliant structures to be compliant or remove noncompliant structures. If a structure cannot be made fully compliant, a lesser degree of protection should be required. All or some of the following may be applicable: <ul style="list-style-type: none">• Require structures and manufactured homes to be elevated on appropriate foundations based on flood zone.• Require elevation or protection of utility equipment.• Require modification or retrofitting of noncompliant enclosures (including crawlspace foundation walls) to bring them into compliance based on flood zone (e.g., restore to permitted uses, install flood openings, replace walls with breakaway walls).• Require removal of non-flood damage-resistant materials below the BFE and replacement with flood damage-resistant materials.• Fill in below-grade areas (basements) and below-grade crawlspaces.• Require anchoring of manufactured homes and other structures.• Require the removal of recreational vehicles that do not meet the minimum NFIP requirements or require recreational vehicles to be installed in compliance with the requirements for manufactured homes.
Remove or modify noncompliant floodway obstructions.
Seek civil/criminal penalties as provided in the local floodplain management regulations or community codes. In the case of a judgment in court against the community in such an action, the community is expected to appeal the decision if there are sufficient grounds for an appeal.
Initiate licensing actions against architects, engineers, builders, or developers responsible for violations.
Obtain and submit surveyed elevation data and other documentation required to verify rating of existing NFIP flood insurance policies.
Issue citations of violations and submit the declarations (requests) for Section 1316 (denial of NFIP flood insurance) (see Section 5).
Submit evidence that a structure cannot be cited as a violation or that further action cannot be taken (e.g., legal constraints in State or local legislation, deficiencies in the regulations).
Submit sufficient data so FEMA can verify the information submitted by future property owners who apply for NFIP flood insurance and properly rate the structures.
Purchase NFIP flood insurance for buildings that cannot be brought into full compliance when community actions resulted in the noncompliance.
Record violations on property deeds to provide notice to future purchasers that buildings are in violation of the community’s floodplain management regulations, that buildings may be subject to increased flood risk, and that NFIP flood insurance premiums may be significantly increased.
Develop and implement a master drainage plan or construct flood control works to protect noncompliant structures and submit documentation for revision of the FIRM.

as a certain distance from a municipality's corporate limits. For the purpose of the NFIP, the ETJ area is considered part of the municipality that has ETJ authority, and NFIP flood insurance is available just as it is within the corporate boundaries of the municipality. Accordingly, the municipality is responsible for compliance actions and enforcement of its floodplain management regulations within the ETJ.

The following are common terms, although not defined in the NFIP regulations:

Annexation. The process of incorporating an area of land (typically from an unincorporated area) into an existing municipality, with a resulting change in corporate boundaries.

Consolidation. The process of combining local government entities, which can result in either elimination of the original local government entities and the formation of a new local government entity or one surviving entity with the other absorbed into it.

Dissolution. The termination of a local government entity by legislative action. Area within a dissolved municipality becomes part of the unincorporated county.

Extraterritorial Jurisdiction. The legal ability of a government (typically a municipality) to exercise authority beyond its normal boundaries (typically into unincorporated county area).

Incorporation. The creation of a new municipality from unincorporated area.

SECTION 4

Community Enforcement Actions

This section describes enforcement options available to FEMA when communities have been identified as having the compliance problems described in Section 3 and are not acting to resolve the problems. All options except probation and suspension can be undertaken independent of an enforcement action.

The importance of documentation is also emphasized in this section. FEMA has a responsibility to help communities understand the commitments that are made when joining the NFIP and the ongoing commitment to enforce adopted floodplain management regulations and resolve violations of the regulations. Detailed documentation of the assistance provided and monitoring of community actions to correct program deficiencies and remedy violations is required to support FEMA enforcement actions.

MONITORING AND OVERSIGHT

The CAC/CAV guidance describes monitoring and oversight of communities, including the content and process for developing corrective action plans when program deficiencies and individual property violations are identified.

Actions that FEMA may apply to individual property owners who have unresolved violations are described in Section 5 (including Section 1316 denial of insurance coverage).

4.1 Actions That Can Be Applied at the Community Level

This section describes a number of actions that FEMA may apply at the community level to resolve community compliance problems or to encourage communities to resolve such problems. The actions are CRS retrograde, probation, suspension, subrogation action against the community, community-wide verification of insurance rates, and recertification of each flood insurance policy at renewal. Each action is described below.

CRS retrograde. To participate in the CRS, a community must have a CAV to verify that it is fully compliant with the minimum NFIP regulations. Once participating in the CRS, the community must remain compliant to continue receiving CRS premium discounts. Therefore, when a subsequent CAV is conducted in a CRS-participating community, if program deficiencies and violations on individual properties are identified and attempts to resolve the issues through community assistance and consultation are unsuccessful, the FEMA Regional Administrator may recommend to FEMA HQ that the community be retrograded to a CRS Class 10. Class 10 communities have no premium discounts. Retrograde procedures are described in the CAC/CAV guidance.

Retrograde should be the first step in an enforcement action against a CRS community. Historically, the suggestion of retrograde has been effective in encouraging communities to

rapidly resolve their deficiencies and violations. Similarly, if retrograde is imposed, communities usually resolve remaining compliance problems to reinstate their CRS discounts.

Probation. FEMA can place a community on probation in accordance with 44 C.F.R. § 59.24(b) if attempts to resolve issues through community assistance and consultation fail. Probation lasts at least until all program deficiencies are corrected and violations are remedied to the maximum extent possible. Probation can be extended for 1 or more years. See Section 4.4 for a description of the steps leading to probation.

Suspension. FEMA can suspend a community from the NFIP in accordance with 44 C.F.R. § 59.24(c) if attempts to resolve issues through community assistance and consultation fail. Generally, communities are not suspended unless there are multiple substantive violations and multiple substantive program deficiencies that have been identified and verified by the FEMA Regional Office staff or the NFIP State Coordinator. Communities may remain suspended until all program deficiencies are corrected and all violations are remedied to the maximum extent possible. See Section 4.5 for a description of the steps leading to suspension.

Subrogation action against the community. Subrogation actions brought by FEMA's Office of Chief Counsel (OCC) against communities can be effective enforcement tools and a deterrent to allowing future violations. Subrogation actions can be brought only if flood damage has occurred, NFIP claims have been paid, and all or part of the flood damage can be attributed to acts or omissions by a community.

Opportunities for subrogation may be identified during NFIP claims adjustment. Community monitoring by FEMA Regional Offices may also identify potential subrogation actions. FEMA Regional Offices should document circumstances that may warrant subrogation action to the extent possible and submit the documentation to FIMA for transmittal to OCC. OCC will determine whether there is sufficient legal basis for bringing a subrogation action and whether such an action would be consistent with established litigation priorities. FEMA Regional Offices should advise communities that have allowed or are considering actions that are inconsistent with sound floodplain management practices that FEMA could initiate a subrogation action if flood damage results and NFIP claims are paid.

SUBROGATION

Whenever FEMA makes a payment for a loss under an NFIP policy, FEMA is subrogated to the policyholder to recover for that loss from any other source. The policyholder's right to recover for a loss that was partly or totally caused by someone else (including a community) is automatically transferred to FEMA, to the extent that FEMA has paid for the loss.

Community-wide verification of insurance rates. The prospect of higher flood insurance rates is often an effective deterrent against violations and the granting of improper variances. The presence of a large number of violations or variances in a community could indicate a serious misrating problem throughout the community. FEMA Regional Offices can recommend that FIMA conduct a field verification of insurance rates of some or all structures in a community. Field verification is intended to ensure that policies are properly rated and may result in re-rating of existing policies. Field verification may also identify additional probable violations that warrant investigation by the

FEMA Regional Office. Re-rating of large numbers of structures can be an effective mechanism for highlighting the consequences of unwise floodplain management decisions.

Conducting field verifications is costly and should be recommended only when there is evidence of misratings of many policies and when verification would be cost effective. A recommendation from the FEMA Regional Office should be submitted to FIMA, with documentation to support the need for a community-wide verification of insurance rates so that FIMA can determine whether the potential benefits warrant undertaking a field verification.

Recertification of each flood insurance policy at renewal. The impact of this action is similar to the impact of field verification. FIMA can recertify (re-rate) all policies in a community when the policies are renewed. This action is costly for FIMA and individual policyholders, and should only be recommended when misratings appear to be widespread and recertification would be cost effective. The FEMA Regional Office should submit its recommendation with supporting documentation to Floodplain Management Division for consideration.

4.2 Documentation

FEMA has a responsibility to provide assistance to communities that enforce their local floodplain management regulations. Maintaining documentation of contacts and assistance is important even in the early stages of working with a community to resolve problems and deficiencies. It is not always possible to know whether or when an enforcement action may be necessary and which contact should be considered to have initiated such action. FEMA must have detailed, accurate, and comprehensive information in order to initiate and defend compliance and enforcement actions. Therefore, it is important to document contacts with the community (CAVs, CACs, technical assistance, telephone calls, correspondence, and emails), issues addressed, decisions reached, deadlines established, and commitments made, along with the community's responses and follow-up activities and any State or FEMA HQ involvement. Contacts should be documented in CIS.

Documentation of enforcement activities parallels and follows up on the documentation required under the CAP (see the CAC/CAV guidance, which includes samples of letters and other documentation). If a community's program deficiencies or violations were initially identified by the State through a CAV, CAC, or other technical assistance visit, the record should include contacts made by the State. All actions taken to resolve program deficiencies and correct violations should also be documented in CIS.

Two instructions related to documentation are generally applicable:

1. Documentation should be kept in chronological order. This is important to show the progression of technical assistance provided and the community's efforts to resolve problems.
2. Because an enforcement action is often initiated as a result of something that was not done or something that was not done properly, documentation should be organized around the specific instances of program deficiencies and structures in violation. Not only will this organization facilitate decisions by FEMA HQ when such decisions are needed, it will also improve the FEMA Regional Office's ability to track a community's progress as violations are remedied and program deficiencies are corrected. The following documentation is necessary:

- The FEMA Regional Office only needs to establish that there is a reasonable basis for believing that a structure or other development is in violation of the local floodplain management regulations. The responsibility to provide documentation to demonstrate compliance rests with the community. A minus-rated insurance policy, a photograph, or an approximate elevation obtained by use of a hand level or hand-held GPS unit may be sufficient to establish a presumption that a structure is a violation. If the community cannot produce the required documentation (e.g., lowest floor elevations, Zone V anchoring and breakaway wall design certification, floodproofing certificates), a structure is presumed to be in violation until the documentation is provided. If the community cannot produce the “no-rise/no-impact” engineering analysis to demonstrate that a floodway encroachment does not cause an increase in flood elevations within the community during the occurrence of the base flood discharge, the encroachment is presumed to be in violation.
- For each structure or development that may be a violation, the FEMA Regional Office should record the address and legal description, the local floodplain management regulation being violated, the corresponding NFIP criteria, the actions required to bring the violation into compliance, all contacts with the community regarding the violation, and any related actions taken by the community.
- For each program deficiency identified, the FEMA Regional Office should describe the specific deficiency, why it hinders program administration, the pertinent NFIP regulations and provisions in local floodplain management regulations, the corrective measures that need to be taken, and the guidance that the FEMA Regional Office and/or State provided to resolve the program deficiency.

DOCUMENTATION IS IMPORTANT

The FEMA Regional Office must document clear and convincing evidence that compliance problems were identified and corrective actions were described. The record must also show that communities understood the problems and the need for corrective action to remain in compliance with the NFIP.

4.3 Overview: Sequence of Events in Compliance Monitoring and Enforcement

This section presents an overview of the sequence of monitoring and enforcement actions involved in placing a community on probation, suspending a community from the NFIP, and reinstating a community. The process is detailed in the NFIP regulations: probation is specified in 44 C.F.R. § 59.24(b) and suspension is specified in 44 C.F.R. § 59.24(c). The regulations identify the responsibilities of the FEMA Administrator; in practice, some responsibilities are delegated to the FEMA Regional Administrators. See FEMA 553, *Community Enrollment and Eligibility Handbook*,² for guidance when communities do not adopt or do not provide adequate floodplain management regulations (44 C.F.R. § 59.24(a)) or when communities repeal floodplain management regulations or modify them to no longer meet the minimum requirements (44 C.F.R. § 59.24(d)).

2 FEMA, 2011. FEMA 553, *Community Enrollment and Eligibility Handbook*.

Enforcement actions rarely follow a linear path to probation or suspension. The FEMA Regional Office should work with a community throughout the process to correct program deficiencies and remedy violations by providing assistance, whether by telephone, email, Internet or video conferencing, face-to-face meetings, correspondence, or other appropriate media. If at any time during the process a community provides evidence that all program deficiencies have been corrected and any violations have been remedied to the maximum extent possible, the FEMA Regional Office may terminate enforcement action, or if probation action has been initiated, may recommend the FEMA Administrator lift probation or reinstate the community in the NFIP.

STATE ROLE IN COMPLIANCE

At every step in the process, FEMA Regional Offices should keep States informed of assistance provided and actions taken with individual communities and encourage States to participate and work with communities to resolve compliance problems.

The steps in the compliance monitoring and enforcement process are illustrated in Figure 4-1. The detailed procedures for probation are described in Section 4.4, and the procedures for suspension and reinstatement are described in Section 4.5. Also refer to the CAC/CAV guidance.

4.4 Probation

When assistance and consultation fail to resolve a community’s program deficiencies and/or substantive violations, the FEMA Regional Administrator may place the community on probation, also called “taking probation action.” The FEMA Regional Office should inform the FIMA Floodplain Management Division before initiating the formal probation procedure. For CRS communities, actions taken before the decision to proceed to probation should include retrograding communities to Class 10 (see Section 4.1).

While a community is on probation, NFIP flood insurance remains available, new policies can be written, and existing policies can be renewed. However, each flood insurance policy will be assessed a surcharge of \$50 (also called “probation surcharge”) for each year the community is on probation.

STATE ROLE IN PROBATION

Communities may be placed on probation based on clear and convincing documentation developed by States, whether through CAV reports and community assistance or a State’s enforcement actions.

Being placed on probation represents formal notification to the community that FEMA regards the community’s floodplain management program as not compliant with NFIP criteria. Probation emphasizes to the community that fulfilling its administrative and enforcement responsibilities is serious and that neglecting those responsibilities jeopardizes its participation in the NFIP. Probation has two purposes:

- For communities with program deficiencies or violations that may not be serious enough to warrant suspension, probation is a tool for obtaining compliance.
- For communities with substantive and multiple program deficiencies or violations that will likely warrant eventual suspension, probation is the formal precursor to suspension.

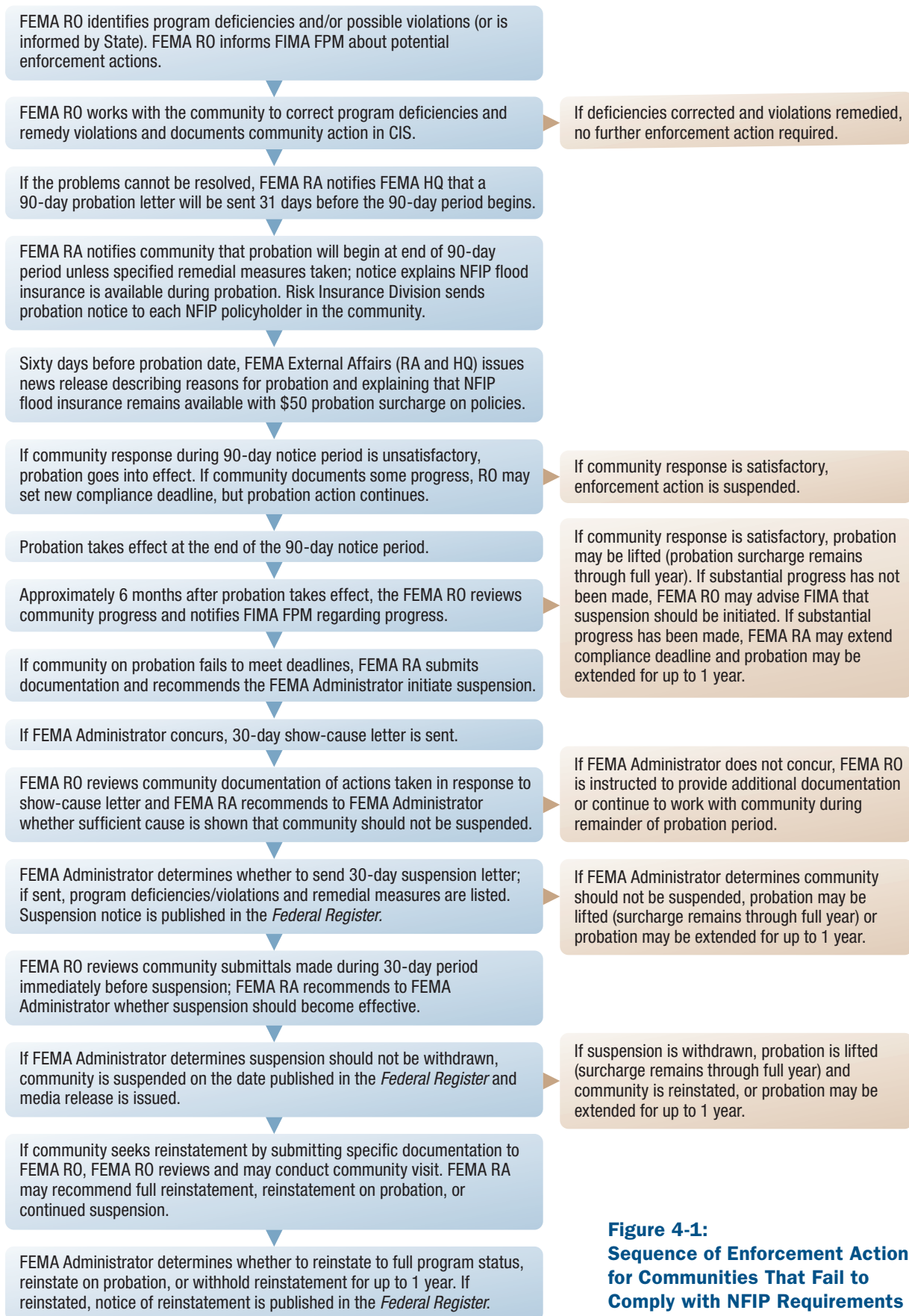


Figure 4-1:
Sequence of Enforcement Actions
for Communities That Fail to
Comply with NFIP Requirements

Probation may be imposed when:

- The FEMA Regional Office or State has conducted a CAV
- The FEMA Regional Office or the State has identified one or more program deficiencies or substantive violations
- Attempts to resolve a community's program deficiencies and violations through community assistance have not been successful and the assistance and consultations are well documented
- Formal written notification of impending probation (the 90-day probation letter) has been sent to the community; this letter reiterates the program deficiencies, identifies the properties that are in violation, specifies the necessary corrective actions and remedial measures, and establishes a compliance deadline
- The Risk Insurance Division has sent a probation notice to each NFIP policyholder in the community
- FEMA issues a news release 60 days before the probation date describing the reasons for probation and explaining that NFIP flood insurance policies remain available with a \$50 surcharge
- Subsequent to the end of the 90-day period after formal notification, the community has not taken the necessary corrective actions and remedial measures or has failed to make adequate progress.

In the 90-day probation letter that notifies a community of pending probation, the FEMA Regional Administrator should reiterate the program deficiencies and violations, specify the corrective actions and remedial measures that need to be taken by the community to avoid probation, and explain that NFIP flood insurance remains available during the probationary period. A timetable for corrective actions should be included. A sample 90-day probation letter is provided in Appendix C. Section 3 has an overview of substantive program deficiencies and substantive violations and examples of ways both can be corrected.

At the same time the FEMA Administrator sends the 90-day probation letter to the community, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community. The notice informs policyholders that probation is the result of the community's failure to adequately administer and enforce its floodplain management program. A sample probation notice is provided in Appendix D.

INSURANCE OUTREACH

The FEMA Regional Office Flood Insurance Specialist should consider coordinating with the State Insurance Commissioner's Office to provide information to insurance agents in communities where policyholders will receive a probation notice.

After issuance of the 90-day probation letter:

- If the community completes the necessary remediation and corrective actions before the end of the 90-day period, the FEMA Regional Office may withdraw the pending probation action.
- If the community demonstrates that it has made significant progress before the end of the 90-day period, the FEMA Regional Office may choose to extend the period before probation is imposed. FEMA HQ encourages FEMA Regional Offices not to provide extensions of more than 60 days. The community's progress should be re-evaluated at the end of the extension. At the end of the

extension, the FEMA Regional Office may determine that the community has made sufficient progress toward resolving the identified program deficiencies and violations and that the pending probation action may be withdrawn.

- If the community has not completed the necessary remediation and correction actions by the end of the probation period (the initial 90-day period or the extension), probation will go into effect.

Probation lasts a minimum of 1 year even if program deficiencies are corrected and violations are remediated to the maximum extent possible before the end of the 1-year period. If program deficiencies and violations have not have been resolved to the maximum extent possible at the end of 1 year, or if program deficiencies were serious and violations were multiple and substantive (see Section 4.5.1) and future compliance remain questionable, the FEMA Regional Office may extend the probationary period in 1-year increments.

Probation could be extended by the FEMA Regional Office if a community has received a 60-day show-cause letter or a 30-day suspension letter, but then avoided suspension by complying with the required conditions. If the probationary period is extended, a CAV or other community visit should be conducted at the end of the probation period and the probation lifted if the community's program has remained compliant.

4.4.1 Probation Procedure

Throughout the process that results in placing a community on probation, and throughout the probationary period, the FEMA Regional Office must keep the FIMA Floodplain Management Division informed of its actions and the community's progress or lack of progress. In addition to inputting contacts with the community in CIS and maintaining chronological documentation, the FEMA Regional Office should copy the FIMA Floodplain Management Division on all follow-up correspondence.

The FEMA Regional Office should establish the anticipated date the 90-day probation letter will be sent because the dates on which other steps are taken depend on that date. Checklist 4-1 lays out the steps in the probation procedure. It can be used by the FEMA Regional Office to document when each step is taken and monitor the specific timeframes established in regulations. See Appendix E, Checklists to Monitor Procedures, where Checklist 4-1 is available for printing.

The detailed steps of the procedure for placing communities on probation are as follows:

PROBATION PROCESS CAN BE ENDED BY COMMUNITY COMPLIANCE

The probation process can be ended at any time if the community submits documentation that it has completed the corrective actions to resolve identified program deficiencies and remediate violations, and the FEMA Regional Office has reviewed and determined that the documentation is acceptable.

CHECKLISTS TO MONITOR PROCEDURES

Checklist 4-1 may be used to keep track of the steps in the probation procedure. This checklist and other checklists intended to be used to track other procedures are included in Appendix E for easy printing.

- Step 1.** At least 31 days before the 90-day probation letter is scheduled to be issued, the FEMA Regional Office notifies the FIMA Floodplain Management Division by email or telephone. The FEMA Regional Office (Office of External Affairs) notifies FEMA HQ Office of External Affairs of the potential for probation.
- Step 2.** The FIMA Risk Insurance Division arranges to send the 90-day probation notice to each NFIP policyholder in the community. FIMA needs at least 30 days to arrange the mailing.
- Step 3.** At least 31 days before the formal 90-day probation period begins, the FEMA Regional Administrator sends the 90-day probation letter by certified mail, with return receipt requested, stating that the community will be placed on probation effective at the end of a 90-day period unless it takes steps to correct specified program deficiencies and remediate substantive violations. The letter should be sent in advance of the start of the formal 90-day period to ensure the community receives the full 90 days of notice.
- Step 4.** At the same time the 90-day probation letter is sent, all members of the community's congressional delegation are notified of the impending probation. The FEMA Regional Office (Office of External Affairs), in coordination with FEMA HQ Office of External Affairs, may provide the notification by telephone call, email, or letter, as deemed appropriate. A sample congressional notification letter is included in Appendix F.
- Step 5.** At the same time the 90-day probation letter is sent to the community, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.
- Step 6.** At least 60 days before probation is scheduled to become effective, the FEMA Regional Administrator's Office (FEMA Regional Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release to local media explaining probation and including a description of the probation surcharge. A sample news release is included in Appendix G.
- Step 7.** If the community submits documentation that some progress has been made during the 90-day notice period, the FEMA Regional Office may send the community a letter to reflect that progress by setting a new compliance deadline to correct remaining program deficiencies and remedy the remaining violations to the maximum extent possible. Partial progress and a new compliance deadline do not stop the probation action.
- Step 8.** Probation is automatically effective at the end of the 90-day notice period unless the FEMA Regional Office suspends probation as a result of completion of all corrective actions.
- Step 9.** Shortly after probation goes into effect, the FEMA Regional Office notifies the community in writing to affirm that probation has gone into effect. The letter should acknowledge any documented progress made by the community and, if applicable, specify new time frames for any unresolved program deficiencies and violations. The letter should also remind the community that failure to take the required actions within the specified time frames could lead to suspension from the NFIP.

Step 10. Approximately 6 months after probation goes into effect, the FEMA Regional Office should notify the FIMA Floodplain Management Division to advise whether there has or has not been significant progress toward correcting the program deficiencies and remediating the violations within the compliance deadline. If substantial progress has not been made, the FEMA Regional Office may advise the FIMA Floodplain Management Division whether actions to suspend the community from the NFIP should be initiated (see Section 4.5). If substantial progress has been made, but all program deficiencies have not been corrected or all violations have not been remediated, the FEMA Regional Administrator may extend the compliance deadline and extend probation for another full year, which postpones consideration of suspending the community.

Checklist 4-1: Documenting Steps of the Probation Procedure

Anticipated date the 90-day probation letter will be sent.	Date:
STEP 1. At least 31 days before the 90-day probation letter is scheduled to be issued, the FEMA Regional Office notifies the FIMA Floodplain Management Division.	Date:
STEP 2. FIMA Risk Insurance Division arranges to send the probation notice to each NFIP policyholder.	Date:
STEP 3. At least 31 days before the formal 90-day probation period begins, the FEMA Regional Administrator sends the 90-day probation letter.	Date:
STEP 4. At the same time the 90-day probation letter is sent, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs notifies members of the community’s congressional delegation.	Date:
STEP 5. At the same time the 90-day probation letter is sent, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.	Date:
STEP 6. At least 60 days before probation is scheduled to become effective, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release.	Date:
STEP 7. If the community documents partial progress during the 90-day notice period, the FEMA Regional Office may set a new compliance deadline. The probation action continues.	Date:
STEP 8. Probation is effective at the end of the 90-day notice period.	Date:
STEP 9. Shortly after probation is effective, the FEMA Regional Office notifies the community to affirm probation has gone into effect and establish new time frames, if applicable.	Date:
STEP 10. Approximately 6 months after probation is effective, the FEMA Regional Office should notify FIMA if suspension is anticipated. If the community demonstrates substantial progress, the FEMA Regional Office may extend probation for a full year.	Date:

4.4.2 Lifting Probation

If a community that has been placed on probation corrects the identified program deficiencies and remediates identified violations to the maximum extent possible, probation may be lifted at any time at the discretion of the FEMA Regional Administrator. If the decision is to lift probation before expiration of the 1-year period, the FEMA Regional Administrator will advise the community by certified letter, return receipt requested, of the date the probation will be lifted. The letter should inform the community that the probation surcharge will remain in effect for new and renewed NFIP policies until 1 year after the date the probation period began.

A news release from the FEMA Regional Office (Office of External Affairs), coordinated with FEMA HQ Office of External Affairs, announcing that the community's local floodplain management program is now compliant with the minimum requirements of the NFIP may be appropriate, but is not required.

If a news release is prepared, the FEMA Regional Office may reference the circumstances leading to probation that were resolved by the community. The news release should emphasize that the \$50 probation surcharge on all new or renewed NFIP flood insurance policies in the community will remain in effect for no less than 1 year from the initial date of probation.

4.4.3 Extending Probation

If not lifted prior to the end of the 1-year probation period, probation automatically expires after 1 year.

If the FEMA Regional Office determines that the community has not resolved program deficiencies and/or violations, probation may be extended by the FEMA Regional Administrator in 1-year increments. If the community continues to be unable to resolve program deficiencies and/or violations, instead of multiple 1-year probation periods, the Regional Office should consider initiating suspension.

4.5 Suspension

When all attempts to resolve enforcement problems through community assistance, consultation, and a probationary period have failed to produce compliance, the FEMA Administrator may suspend a community from the NFIP (44 C.F.R. § 59.24(c)). Through the probation action, communities will have received formal notice of noncompliance and been given ample opportunity to correct program deficiencies and remedy violations to the maximum extent possible.

Suspension associated with enforcement problems may be imposed if all of the following have occurred:

- FEMA or the State identified program deficiencies and/or violations that are both multiple and substantive

SUSPENSION FOR FAILURE TO ADOPT OR REPEAL

A community may be suspended if it fails to submit adequate floodplain management regulations in the 6-month period before the effective date of a new or revised Flood Insurance Study and FIRMs (44 C.F.R. § 59.24(a)). A community may be suspended if it repeals its floodplain management regulations or amends them to no longer meet the minimum requirements and does not take action to adopt new regulations (44 C.F.R. § 59.24(d)). The process for handling these situations is described in FEMA 553.

- The community was placed on probation
- The community failed to correct program deficiencies and remedy violations to the maximum extent possible within the compliance deadlines set by the FEMA Regional Office during the probationary period
- More than 6 months of the probation period has elapsed without significant progress toward resolution of the identified compliance problems

SUSPENSION FOR SINGLE ISSUE

There are many factors to consider when evaluating whether a single violation, or single program deficiency, is egregious enough to initiate suspension, including the community official's willingness to pursue resolution, level of cooperation, and record of previous compliance problems.

4.5.1 Multiple and Substantive Standard

Generally, communities are not considered for suspension unless program deficiencies and violations are both multiple and substantive. Exceptions to the multiple and substantive standard include, but are not limited to, the following:

- Communities can be suspended for failure to remediate a single violation if the violation significantly increases overall potential flood damage. Examples of single violations that might rise to that level include (1) a floodway obstruction that increases flood levels in areas that are already developed with buildings and structures; (2) a major structure permitted substantially below BFE without a properly issued variance; and (3) a major structure permitted seaward of the reach of mean high tide in Zone V.
- Communities can be suspended for failure to correct a single program deficiency that essentially renders a community's floodplain management program unenforceable.
- Communities can be suspended if they take no action to resolve compliance problems, if they refuse to meet with FEMA Regional Office staff, do not respond to correspondence, or do not provide requested data.
- Communities likely would not be suspended for multiple or substantive violations if such violations are a result of circumstances beyond the community's control and provided the community acted in good faith. An example is the construction of structures below the BFE as a result of reliance on an inaccurate elevation reference mark.

STATE ROLE IN SUSPENSION

FEMA Regional Administrators cannot recommend suspension based solely on a State's documentation. Even when a State conducts a CAV that identifies compliance problems, FEMA Regional staff must have visited the community, met with local officials, verified violations and/or program deficiencies, and determined that additional community assistance provided by FEMA would not resolve problems.

4.5.2 Suspension Procedure

When a community on probation fails to meet the deadlines established for compliance and the conditions specified in Section 4.5 for suspension are met, the FEMA Regional Administrator may

recommend to the FEMA Administrator that the community be suspended from the NFIP.

Checklist 4-2 lays out the steps in a suspension action and can be used by the FEMA Regional Office to document when each step is taken. See Appendix E where Checklist 4-2 is available for printing. The details of each step are described below:

- Step 1.** Approximately 6 months after probation goes into effect, the FEMA Regional Administrator recommends to the FEMA Administrator that the community be suspended from the NFIP. The suspension recommendation includes a complete list of the program deficiencies and violations, the remedial measures requested, the compliance deadlines established for the community, a complete chronology of all contacts with the community, and copies of all relevant correspondence.
- Step 2.** The FEMA Administrator reviews the recommendation and may request additional information or ask the FEMA Regional Office to continue to work with the community to achieve compliance during the probation period. If the decision is to proceed with suspension, the FEMA Administrator sends the community a 30-day show-cause letter (certified mail, return receipt requested) requiring the community to show cause why it should not be suspended from the NFIP. The letter summarizes the chronology of past community contact, specifies the uncorrected program deficiencies and unresolved violations, and states the remedial measures required to avoid suspension. The 30-day show-cause letter instructs the community to send any response and supporting documentation to the FEMA Regional Office for review.
- Step 3.** The FEMA Regional Office reviews any submission by the community in response to the 30-day show-cause letter. The FEMA Regional Administrator recommends to the FEMA Administrator whether the community has or has not shown cause why it should not be suspended from the NFIP.
- Step 4.** The FEMA Administrator reviews the FEMA Regional Administrator's recommendation and determines whether to suspend the community.
- Step 5.** If the decision is to suspend, the FEMA Administrator sends the community a 30-day suspension letter (certified mail, return receipt requested), and the FEMA Regional Office (Office of External Affairs), in coordination with FEMA HQ Office of External Affairs, notifies the appropriate congressional delegation of the pending suspension. Notice of suspension is published in the *Federal Register*. The 30-day suspension letter again summarizes the chronology of past community contact, specifies the uncorrected program deficiencies and unresolved violations, and states the remedial measures required to avoid suspension. The community is again instructed to send any response and supporting documentation to the FEMA Regional Office for review.

**SUSPENSION PROCESS CAN
BE ENDED BY COMMUNITY
COMPLIANCE**

The suspension process can be ended at any time if the community submits documentation that it has completed the corrective actions to resolve identified program deficiencies and remediate violations and the FEMA Regional Office has reviewed and determined that the documentation is acceptable.

- Step 6.** The FEMA Regional Office reviews any further submissions by the community in response to the 30-day suspension letter and recommends to the FEMA Administrator whether the suspension should become effective or should be withdrawn.
- Step 7.** If the FEMA Administrator determines the suspension should become effective, FEMA HQ Office of External Affairs, in coordination with FEMA Regional Office (Office of External Affairs), issues a news release and notifies the congressional delegation of the suspension.
- Step 8.** The suspension becomes effective on the date specified in the notice of suspension published in the *Federal Register*.
- Step 9.** The FEMA Administrator may notify the community by letter that it is suspended and reiterate the terms and conditions for reinstatement to the NFIP.

Checklist 4-2: Documenting Steps of the Suspension Procedure

STEP 1. FEMA Regional Administrator submits documentation to FEMA HQ and recommends suspension.	Date:
STEP 2. FEMA HQ reviews recommendation and sends 30-day show-cause letter.	Date:
STEP 3. FEMA Regional Office reviews community submissions in response to show-cause letter and the FEMA Regional Administrator makes recommendation to the FEMA Administrator.	Date:
STEP 4. FEMA HQ reviews the FEMA Regional Administrator’s recommendation to determine whether to suspend the community.	Date:
STEP 5. FEMA HQ sends 30-day suspension letter; congressional delegation is notified. Suspension notice is published in the <i>Federal Register</i> .	Date:
STEP 6. FEMA Regional Office reviews additional community submissions in response to show-cause letter and recommends whether suspension should become effective or be withdrawn.	Date:
STEP 7. If the FEMA Administrator determines suspension should become effective, news release is issued and congressional delegation is notified.	Date:
STEP 8. Suspension becomes effective on the date specified in the notice published in the <i>Federal Register</i> .	Date:
STEP 9. FEMA Administrator may notify the community that suspension is effective and reiterate the terms and conditions for reinstatement.	Date:

4.5.3 Reinstatement of Suspended Communities

A suspended community may apply for reinstatement to participating status by satisfying the terms and conditions for reinstatement that were specified in the FEMA Administrator’s 30-day show-cause letter notifying the community of suspension. Communities may be reinstated to full participation or

may be reinstated on probation (in which case the \$50 probation surcharge is added to new and renewed insurance policy premiums for at least 1 year).

To be considered for reinstatement, communities must submit reinstatement requests to the FEMA Regional Office. Requests must include all of the following:

- A local legislative or executive measure reaffirming the community's formal intent to enforce floodplain management regulations that comply with NFIP criteria
- Evidence of actions taken by the community to correct program deficiencies and remedy violations to the maximum extent possible
- Descriptions of any development that was allowed to occur in SFHAs subsequent to the date of suspension and whether the community required the development to comply with NFIP-compliant floodplain management regulations

Checklist 4-3 lays out the steps in a reinstatement action and can be used by the FEMA Regional Office to document when each step is taken. See Appendix E where Checklist 4-3 is available for printing. The details of each step are described below:

Step 1. FEMA Regional Office reviews the community's request for reinstatement and conducts the appropriate follow-up, which may include a visit to verify the information submitted. Based on the results, the FEMA Regional Administrator recommends to the FEMA Administrator whether the community should be fully reinstated, reinstated on probation, or remain suspended.

Step 2. The FEMA Administrator determines whether to do one of the following:

- Reinstatement of the community to full program status
- Reinstatement of the community on probation, with the probation surcharge, for 1 year after reinstatement in the NFIP
- Withhold reinstatement until the community satisfactorily demonstrates that all conditions for reinstatement have been met
- Withhold reinstatement until community compliance is verified by a CAV performed by FEMA Regional Office staff
- Withhold reinstatement for up to an additional year after a satisfactory submission from the community

Step 3. The FEMA Administrator notifies the community of the decision and, if necessary, specifies any additional required actions and conditions placed on the community upon reinstatement. Notice of reinstatement is published in the *Federal Register*. The steps for the probation procedures in 44 C.F.R. § 59.24(b) are followed if the community is reinstated on probation, including sending the 90-day probation letter, the news release, and policyholder notification, and notifying the congressional delegation. A sample 90-day probation letter is included in Appendix C and a sample congressional notification letter is included in Appendix F.

Step 4. If reinstated on probation, at the same time the 90-day probation letter is sent, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.

Step 5. If reinstated on probation, at least 60 days before probation is scheduled to become effective, the FEMA Regional Administrator’s Office (FEMA Regional Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release to local media explaining probation and including a description of the probation surcharge. A sample news release is included in Appendix G.

Step 6. At the end of the probation period, the FEMA Regional Office reviews the request for reinstatement (go to Step 1).

Checklist 4-3: Documenting Steps of the Reinstatement Procedure

STEP 1. FEMA Regional Office reviews community’s request for reinstatement. FEMA Regional Administrator recommends reinstatement.	Date:
STEP 2. FEMA Administrator reviews recommendation and determines whether to: <ul style="list-style-type: none"> – Reinstated to full program status – Reinstated on probation – Withhold reinstatement until all conditions have been met – Withhold reinstatement until compliance is verified by CAV – Withhold reinstatement for up to an additional year after all conditions have been met 	Date:
STEP 3. FEMA Administrator notifies community of reinstatement decision. If reinstated on probation, the 90-day probation letter is sent, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs notifies members of the community’s congressional delegation.	Date:
STEP 4. If reinstated on probation, at the same time the 90-day probation letter is sent, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.	Date:
STEP 5. If reinstated on probation, at least 60 days before probation is scheduled to become effective, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release.	Date:
STEP 6. At the end of probation, the FEMA Regional Office reviews the request for reinstatement (go to Step 1).	Date:

SECTION 5

Individual Property Violations and Section 1316 Denial of Insurance

FEMA has the authority to deny flood insurance coverage on individual structures, described in Section 5.3. However, the exercise of that authority is not intended to substitute for remedying individual property violations that are cited by communities and States. Whether the violations are identified by the community, by FEMA Regional Offices, or by NFIP State Coordinators, communities are expected to remedy individual property violations to the maximum extent possible. Table 3-5 lists examples of substantive violations that may be identified on individual properties, and Table 3-6 lists examples of options that may be used to remedy violations. Also see the CAC/CAV guidance.

When communities (or States with authority to regulate flood hazard areas) cannot remedy violations by requiring modification of structures to become compliant, or when building owners are unwilling to remedy violations, a community (or State with regulatory authority) may submit declarations to FEMA to request denial of flood insurance under Section 1316 of the National Flood Insurance Act of 1968 and the procedures in 44 C.F.R. Part 73 (see Appendix B). These requests may be deemed an effective remedial measure. Section 1316 denials should not be viewed as a mechanism to remove noncompliant buildings (or “bad risks”) from the NFIP policy base.

5.1 Individual Property Violations

The appropriate course of action for a community or State to take when it discovers a violation is to issue a stop work order (if the structure is still under construction and noncompliance may be correctable) or declare a violation through issuance of a citation or notice of violation to implement the enforcement provisions of its floodplain management regulations, local zoning ordinances, and/or building codes, as appropriate. When a FEMA Regional Office initiates enforcement actions (see the CAC/CAV guidance and Section 4 of this manual), it may require a community to provide copies of citations along with other documentation as evidence of community enforcement.

COMMUNITY AWARENESS OF SECTION 1316 (DENIAL OF INSURANCE)

FEMA Regional Office staff and State Coordinating Office staff should explain Section 1316 denial of insurance to community officials when developing corrective action plans. Communities may find owners more amenable to remediating violations if they fully appreciate the short- and long-term consequences of denial of flood insurance coverage. Section 5.3.1 describes those consequences.

CITATIONS AND NOTICES OF VIOLATION

Communities and States may use different terms to refer to the document that is issued to a property owner or permittee when noncompliance is identified. The building codes in the *International Code Series*® use “notice of violation,” while many communities refer to the document as a “citation.” This manual uses “citation.”

There may be some circumstances where structures cannot be cited as violations because of defects in a community's floodplain management regulations, limitations of State enabling legislation, or other legal constraints. Communities should be provided the opportunity to demonstrate why a citation cannot be issued for a particular violation or why the enforcement provisions of the community's floodplain management regulations cannot be implemented. FEMA Regional Offices may want to consider requiring communities to propose alternative remedial actions or measures that are within the bounds of their legal authorities to resolve violations to the maximum extent possible.

5.2 Insurance Options for Individual Structures

FEMA has the authority to deny flood insurance, described in Section 5.3. In addition to that authority, FEMA may take other actions related to individual structures regardless of whether the structures have been cited as violations. The Standard Flood Insurance Policy is a contract between property owners and the NFIP, and the conditions of the contract can be enforced by FEMA. Sections 5.2.1 through 5.2.3 describe the insurance-based options that FEMA may take (re-rating of policies on noncompliant structures, denial of insurance claims or collection of back premiums during claims adjustment, and subrogation against individuals).

5.2.1 Re-rating Flood Insurance Policies for Individual Structures Found to Be Noncompliant

As part of community assistance or compliance actions, FEMA Regional Office staff and NFIP State Coordinator staff may identify structures that are noncompliant with a community's floodplain management regulations and that are or may be misrated for NFIP flood insurance policies. Whether a community initiates enforcement action to resolve the noncompliance, the FEMA Regional Office may decide to gather information for each structure to forward to the FIMA Floodplain Management Division, along with the CAV report or memorandum of explanation. The FIMA Floodplain Management Division will forward the information to the FIMA Risk Insurance Division for verification and possible re-rating of insurance policies.

If Elevation Certificates are available for the structures in question, they should be submitted. If Elevation Certificates are not available, information sufficient to allow verification of rating or re-rating is necessary, including:

- NFIP policy number, address of property, and name of insured
- FIRM panel number and date
- Flood zone and BFE at the time of construction or Substantial Improvement, if applicable
- Photographs of the building, preferably showing all sides
- Elevation of lowest floor, including basement (Zone A) or elevation of the lowest horizontal structural member of the lowest floor (Zone V)
- Elevation of next higher floor
- Elevations of the lowest adjacent grade and the highest adjacent grade

- For elevated structures, the area in square feet of any enclosures beneath the elevated structure and in Zone A, the number of flood openings that are no more than 1 foot above adjacent grade, and the total net area of flood openings (or documentation that engineered flood openings are installed)

After flood events, sometimes insured structures that may be misrated are identified during the claims adjustment process, although claims adjusters may not identify all instances of misrating. After a disaster is declared, if FEMA Regional Offices become aware of insured structures that may be misrated, information on the structures should be provided to the Flood Insurance Claims Office. If a disaster has not been declared, the procedure described above should be followed.

5.2.2 Denial of Flood Insurance Claims or Collection of Back Premiums during Claims Adjustment

If a flood insurance policy is found to be misrated because of fraudulent or willful concealment or misrepresentation of facts by the policyholder or his/her agent, FIMA can (1) void the policy retroactive to the date the wrongful act was committed; (2) deny claims submitted under the policy after the date of voidance; and (3) recover administrative expenses including agent's commission fees before refunding the premium paid after the date of voidance. In addition, under the terms and conditions of the Standard Flood Insurance Policy, FIMA can deny new or renewal flood insurance coverage for structures whose owners have sworn falsely in connection with a related wrongful act. If fraud or misrepresentation did not contribute to the misrating, FIMA may collect the back premium associated with re-rating the policy that is due for the current and prior policy terms.

5.2.3 Subrogation Action Against an Individual

Subrogation action can be brought by the FEMA OCC against an individual if flood damage occurred, claims have been paid, and all or part of the damage can be attributed to acts or omissions by that individual. FEMA Regional Offices may determine that recommending subrogation action against an individual who has been cited with a violation of a community's floodplain management program will help the community remedy violations. When these opportunities are identified, the FEMA Regional Office should use the procedure for subrogation actions against communities described in Section 4.1.

5.3 Section 1316: Denial of Insurance

The requirement that communities adopt and enforce adequate floodplain management measures is in Section 1315 of the National Flood Insurance Act (42 U.S.C. § 4022(a)(1)), which states that "... no new flood insurance coverage shall be provided under this title in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Administrator finds are consistent with the comprehensive criteria for land management and use" under section 1361 (42 U.S.C. § 4102).

If a community's use of the enforcement provisions required by Section 1315 (or a State's enforcement of State regulations) fails to obtain compliance with applicable floodplain management regulations, the community or State may issue a citation or notice of violation (see Section 5.1). If subsequent efforts to remedy a violation to the maximum extent possible are not sufficient to prompt action by the owner, the

community or State may request that FEMA deny flood insurance coverage under Section 1316 of the National Flood Insurance Act (42 U.S.C. § 4023). Section 1316 states:

Properties in Violation of State and Local Law

No new flood insurance coverage shall be provided under this title for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

5.3.1 Consequences of Section 1316 Denials

The regulations for implementation of Section 1316 are in 44 C.F.R. Part 73 (see Appendix B). The basic intent of Section 1316 is to support community and State enforcement actions by providing an additional tool for obtaining compliance. Property owners may decide it is economically beneficial to avoid the consequences of denial of flood insurance and work with communities to remedy violations to the maximum extent possible. Besides the unavailability of NFIP flood insurance, the owner—and future owners—of a structure for which flood insurance has been denied under Section 1316 may experience additional consequences:

- NFIP flood insurance is not available for any other insurable structure on the same parcel.
- If the property secures a mortgage issued by a federally regulated lending institution that requires the purchase and maintenance of flood insurance, the institution may call the loan due or require the purchase of flood insurance on the private market.
- After a flood that is declared a major disaster, some forms of Federal disaster assistance for rebuilding are not available to the owner.
- Grants, loans, or guarantees made by Federal agencies, such as the Small Business Administration, Federal Housing Administration, and Veterans Administration, are not available for acquisition of, or construction on, the structure.

5.3.2 Citation or Notice of Violation Required for Section 1316 Denials

FEMA may exercise the authority under Section 1316 to deny flood insurance coverage if the requesting community or State demonstrates that it has attempted to remedy a violation to the maximum extent possible. The community or State must submit a request pursuant to Section 1316 and in accordance with the procedures in 44 C.F.R. Part 73. The request must include documentation that the violation was cited as being in violation of the applicable local or State floodplain management regulations (the documentation is described in Section 5.3.5).

If the FEMA Regional Office is pursuing enforcement actions with the community (see Section 4), requesting a Section 1316 denial may be considered part of what the community can do to avoid probation, have FEMA lift probation, or have FEMA reinstate the community to the NFIP if it was suspended.

5.3.3 Requests for Section 1316 Denial of Insurance That Are Not Appropriate

It is possible for a structure to have the lowest floor below the BFE, or not comply with the minimum NFIP criteria in other ways, but not be in violation. In these cases, communities and States either cannot or will not cite these structures as violations. In these situations, FEMA cannot require that individual structures be cited as violations, but FEMA may verify the insurance rating of such structures and re-rate policies if appropriate (see Section 5.2). If these situations stem from program deficiencies, FEMA can require the community to pursue correction of the deficiencies so that similar problems do not reoccur.

Examples of situations for which requests for Section 1316 denial of insurance are not appropriate are:

- Investigations determine a structure suspected of being noncompliant was constructed before the date of the community's first floodplain management regulations and it has not been Substantially Improved or repaired after Substantial Damage since it was built.
- A structure was granted a variance. These structures generally are not violations unless the conditions attached to the variance have not been met or the variance was obtained through misrepresentation, in which case FEMA's follow-up actions should be directed to the community rather than the structure owner.
- There is a defect in a community's floodplain management regulations or accompanying enforcement provisions that prevents the community from citing a structure or declaring it to be a violation (such defects are program deficiencies and must be corrected by the community; see Section 3.3).
- A structure was issued a permit by a community that relied on faulty information.
- There are constraints in enabling legislation, case law, or statutes of limitation preventing a community from citing a particular structure or declaring it to be a violation.

REQUESTS FOR SECTION 1316 DENIALS ARE CALLED "DECLARATIONS"

Title 44 C.F.R. § 73.3 uses "declaration" to describe the request that communities and States submit to FEMA to request Section 1316 denials of insurance. The submission is described in Section 5.3.5.

5.3.4 Community or State Authority to Cite Violations

The NFIP regulation at 44 C.F.R. § 73.3(a) specifically requires "a duly constituted State or local zoning authority or other authorized public body" to declare the property to be "in violation of State or local laws, regulations or ordinances which are intended to discourage or restrict development or occupancy of flood-prone areas."

Generally, the law, regulation, or ordinance will contain enforcement provisions authorizing an individual (such as a building inspector) or a body (such as a building department or development services department) to declare structures in violation and issue citations or notices of violation. In the absence of such a provision or other delegation of authority, a declaration the property is in violation (commonly called a citation or notice of violation) should be made by the local legislative body that adopted the law, regulation, or ordinance. States that have direct regulatory authority may also issue declarations (citations

or notices) that structures are in violation of State regulations. However, States generally do not have the authority to cite violations of local laws, regulations, or ordinances.

Laws and regulations adopted for purposes other than floodplain management, such as wetlands protection, may cite limiting floodplain development as one of several expressed purposes. In general, States and communities are discouraged from submitting citations of violations of laws and regulations that are not directly related to flood damage reduction.

5.3.5 Requirements for Declarations Submitted to Request Section 1316 Denial of Insurance

Communities and States determine whether to submit declarations to FEMA for Section 1316 denials. A sample letter of declaration of violation is included in Appendix H-1. Declarations must be in writing and include:

- A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended
- A reference to the specific enforcement provision of the law, regulation, or ordinance that authorizes the public body to issue citations or notices of violation
- The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location
- A clear and unequivocal declaration (statement) that the property is in violation of a cited State or local law, regulation, or ordinance and a clear description of the violation (citations that contain ambiguous language cannot be accepted for the purposes of Section 1316)
- Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance

If the community or State's citation or notice of violation includes all five components listed above, the citation can serve as a valid declaration. In general, the notification to property owners of the prospective denial of insurance is issued separate from the initial citation or notice of violation.

5.3.6 Requirements for Restoration of Flood Insurance Coverage

FEMA maintains a permanent record of Section 1316 denials of flood insurance coverage. The denials do not expire, but remain in effect until FEMA restores the availability of flood insurance coverage for individual properties (see 44 C.F.R. § 73.4 in Appendix B).

The FEMA Administrator may restore availability of flood insurance upon finding that the declaration (citation) of violation that led to denial of coverage has been rescinded by the authority that cited the violation. The community or State that rescinds a declaration (citation of violation) may submit a request to the FEMA Administrator through the FEMA Regional Office to restore flood insurance coverage. A sample letter of request is included in Appendix H-2. The process for handling these requests is described in Section 5.3.7. Requests must include:

- The name(s) of the property owner(s) and address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration
- A clear statement that the public body rescinding the declaration has the authority to do so and a reference to that authority
- A clear and unequivocal statement by the public body that the citation of violation is rescinded and giving the reasons for the rescission
- A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local floodplain management regulations

5.3.7 Processing Declarations (Requests) to Implement Section 1316

Checklist 5-1 lays out the steps to process declarations (requests) that are submitted to deny flood insurance coverage or restore coverage for properties for which declarations are rescinded (e.g., if violations are remediated). It can be used to document when each step is taken. See Appendix E where Checklist 5-1 is available for printing. The details of each step are described below:

- Step 1.** The community or State submits the declaration (request) and necessary documentation to the FEMA Regional Office with a cover letter identifying it as a Section 1316 submission (request for denial, or request for restoration, of flood insurance coverage).
- Step 2.** The FEMA Regional Office reviews the submission and makes the following preliminary determinations, obtaining additional information if necessary:
- The individual or public body that issued the citation of violation or rescinded the citation is authorized to do so
 - The law, regulation, or ordinance that was violated is intended to “discourage or otherwise restrict land development or occupancy in flood-prone areas”
 - The name(s) of the property owner(s) and address or legal description of the property are sufficient to identify the owner and the location of the property
- Step 3.** The FEMA Regional Office submits its recommendation along with the declaration and supporting documentation to the FIMA Floodplain Management Division, which evaluates the recommendation in light of the requirements for implementing Section 1316.
- Step 4.** The FEMA Administrator makes a finding as to whether the identified property has been duly declared to be in violation for denial of flood insurance or that a property previously declared to be in violation is now declared to be compliant and the citation of violation rescinded. The FIMA Floodplain Management Division prepares the letter advising the property owner of the declaration of denial of flood insurance (or rescission of a denial). Samples of these letters are included in Appendix H-3 and Appendix H-4.
- Step 5.** The property owner is informed by certified mail, return receipt requested. The FIMA Floodplain Management Division forwards the signed findings to FIMA Risk Insurance Division and forwards copies to the FEMA Regional Office, the State, and the community.

Alternatively, if the FEMA Administrator finds either the community's or State's submission is not in order, the community or State will be notified of the deficiencies.

Step 6. FIMA Risk Insurance Division forwards the findings for final processing to the NFIP servicing contractor.

Step 7. NFIP servicing contractor takes appropriate action:

- If the finding is to deny flood insurance coverage and the property is covered by a current policy, an edit is placed in the computer system to notify the policyholder at renewal that the policy cannot be renewed.
- If the finding is to deny flood insurance coverage and the property is not covered by a current policy but an application for a new policy has been submitted, or when an application is submitted in the future, the applicant is notified that a policy cannot be issued.
- If the finding is to restore flood insurance coverage, the NFIP servicing contractor removes the edit from the system so that policies may be issued.

Checklist 5-1: Documenting Steps for Implementing Section 1316

STEP 1. Community or State submits Section 1316 declaration (request) and documentation to FEMA Regional Office requesting denial or restoration of flood insurance coverage.	Date:
STEP 2. FEMA Regional Office reviews submission and makes preliminary determination that the submission satisfies the specific regulatory requirements.	Date:
STEP 3. FEMA Regional Office submits recommendation for implementing Section 1316 to the FIMA Floodplain Management Division for evaluation.	Date:
STEP 4. FEMA Administrator makes finding as to whether identified property is duly declared to be in violation or that previously declared property is declared to be compliant and citation of violation rescinded. FIMA Floodplain Management Division prepares the letter to property owner.	Date:
STEP 5. If declaration is in order, the letter is mailed to the property owner, and the FIMA Floodplain Management Division forwards signed findings to FIMA Risk Insurance Division and copies FEMA Regional Office, the State, and the community.	Date:
STEP 6. FIMA Risk Insurance Division forwards findings to NFIP servicing contractor.	Date:
STEP 7. If finding is to deny coverage, NFIP servicing contractor places edit in computer system and notifies policyholder that policy will not be renewed (if property covered by current policy) or notifies applicant for new policy that policy cannot be issued. If the finding is to restore coverage, NFIP servicing contractor removes edit from system so that policies may be issued.	Date:

APPENDIX A
44 C.F.R. § 59.24:
Suspension of Community Eligibility

Appendix A: 44 C.F.R. § 59.24: Suspension of Community Eligibility*

Title 44: Emergency Management and Assistance

PART 59—GENERAL PROVISIONS

Subpart B—Eligibility Requirement

§ 59.24 Suspension of community eligibility.

(a)) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d), (e) or (f) of §60.3 or paragraph (b) of §§60.4 or 60.5, within six months from the date the Federal Insurance Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Federal Insurance Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Federal Insurance Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under part 64 of this subchapter of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Federal Insurance Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. If the Federal Insurance Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Federal Insurance Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Federal Insurance Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Federal Insurance Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) shall,

* Accessed July 8, 2016:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=5ff822ecd98f342d72a9ed12f212984f&mc=true&node=pt44.1.59&rgn=div5>

at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Federal Insurance Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, but prior to October 1, 1992, an additional premium of \$25.00 shall be charged on each such policy newly issued or renewed during the one-year period beginning on the date the community is placed on probation and during any successive one-year periods that begin prior to October 1, 1992. Where a community's probation begins on or after October 1, 1992, the additional premium described in the preceding sentence shall be \$50.00, which shall also be charged during any successive one-year periods during which the community remains on probation for any part thereof. This \$50.00 additional premium shall further be charged during any successive one-year periods that begin on or after October 1, 1992, where the preceding one-year probation period began prior to October 1, 1992.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Federal Insurance Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Federal Insurance Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Federal Insurance Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Federal Insurance Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Federal Insurance Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community

eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Federal Insurance Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Federal Insurance Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish in the FEDERAL REGISTER under part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if it submits the application materials specified in §59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Federal Insurance Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Federal Insurance Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Federal Insurance Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Federal Insurance Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985; 57 FR 19540, May 7, 1992; 59 FR 53598, Oct. 25, 1994; 62 FR 55715, Oct. 27, 1997]

APPENDIX B
44 C.F.R. Part 73:
Implementation of Section 1316 of the
National Flood Insurance Act of 1968

Appendix B: 44 C.F.R. Part 73: Implementation of Section 1316 of the National Flood Insurance Act of 1968*

Title 44: Emergency Management and Assistance

PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

§ 73.1 Purpose of part.

This part implements section 1316 of the National Flood Insurance Act of 1968.

§ 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a *duly constituted State or local zoning authority or other authorized public body* means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas are measures such as those defined as Flood plain management regulations in §59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

§ 73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Federal Insurance Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

* Accessed July 8, 2016:

<http://www.ecfr.gov/cgi-bin/text-idx?SID=5ff822ecd98f342d72a9ed12f212984f&mc=true&node=pt44.1.73&rgn=div5>

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

§ 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Federal Insurance Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Federal Insurance Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

[51 FR 30318, Aug. 25, 1986, unless otherwise noted.]

APPENDIX C

Sample 90-Day Probation Letter

Appendix C: Sample 90-Day Probation Letter

Instruction Note: This is only a sample. The summary of issues and actions taken to date, and the lists of program deficiencies and violations are to be modified for each community.

[DATE]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[CHIEF ELECTED OFFICIAL]
[ADDRESS]
[ADDRESS]
[CITY, STATE ZIP]

Re: National Flood Insurance Program Participation

Dear [CHIEF ELECTED OFFICIAL]:

This is to inform you that [COMMUNITY] will be placed on probationary status with the National Flood Insurance Program (NFIP) on [EFFECTIVE DATE], unless measures are taken prior to that date to correct the identified deficiencies in your community's floodplain management program and to remedy all identified violations of your community's floodplain management regulations. This notice of potential probation status is the result of a Community Assistance Visit (CAV) [BRIEFLY EXPLAIN COMPLIANCE HISTORY].

Probation serves as a formal notice to your community that implementation of your local floodplain management program is regarded as noncompliant with the minimum criteria of the NFIP. Probation is the first step in the process to suspend community eligibility to participate in the NFIP, the result of which is the loss of federally backed flood insurance in the community. During the probationary period, flood insurance coverage will remain available within the [COMMUNITY]; however, a \$50 surcharge will be added to the premium of each new and renewal flood insurance policy sold within the community for a period of no less than one year from the effective date of probation.

The Federal Emergency Management Agency (FEMA) is concerned that the level of protection from flood risks provided to the citizens and property owners through the [COMMUNITY'S] floodplain management program is not commensurate with the flood risk. The [COMMUNITY] faces significant risk from flooding and is encouraged to improve its floodplain management program to address these risks. The [COMMUNITY] currently has [XX] policies in force with a total coverage of[\$].

Approximately 90 days before the probation effective date, written notice will be mailed to each policyholder to explain the impending probation and the additional surcharge that will be charged. At about the same time, the local media will be provided a press release that explains

the reasons for, and effects of, probation. Probation will remain in effect until all program deficiencies have been corrected and all violations are remedied to the maximum extent possible.

If significant progress is not made to correct program deficiencies and remedy the identified violations during the first 6 months of probation, the [COMMUNITY] will be subject to suspension from the NFIP. NFIP flood insurance coverage is no longer available in suspended communities. Furthermore, the Flood Disaster Protection Act of 1973 prohibits Federal agencies from making grants, loans, or guarantees for the acquisition or construction of structures located in the Special Flood Hazard Area (SFHA). Lending institutions insured or regulated by a federal agency may, however, continue to make conventional loans in these areas at their discretion. If a flood disaster occurs in a suspended community, most types of federal disaster assistance for the acquisition, construction, or repair of insurable structures within the SFHA, including federal assistance to individuals and households for housing and personal property, is not available.

We take this action with great reluctance. It is our hope that the [COMMUNITY] is able to implement timely and effective changes that will make this action unnecessary. FEMA and the [STATE NFIP COORDINATOR'S OFFICE] remain committed to assist you in establishing an effective floodplain management program to protect public health, safety and welfare of your community.

In recent years, FEMA and the [STATE NFIP COORDINATOR'S OFFICE] have made formal and informal contacts with the [COMMUNITY] to discuss NFIP participation, offer assistance, and provide guidance. Please see below for a chronology of formal and informal contacts.

(Example summary of issues and actions to date) The CAV on [DATE] indicated serious violations throughout the [COMMUNITY] that included lack of administrative procedures to issue, collect, and maintain permits and lack of elevation certificates required for compliance verification. Soon after the CAV, FEMA sent the [COMMUNITY] a letter, dated [DATE], notifying the [COMMUNITY] of potential violations and requested that a plan be implemented to remedy the violations. We requested a response within 60 days of the letter, but we did not receive any communication by phone or in writing. [PROVIDE STATUS OF COMPLIANCE ACTIONS BY COMMUNITY]

Program Deficiencies: *(examples)*

1. Failure to administer the floodplain management regulations adopted by the [COMMUNITY], including lack of knowledge of the regulations, not maintaining the regulations on file, and not maintaining the [COMMUNITY's] Flood Insurance Study and Flood Insurance Rate Maps on file.
2. Failure to require permits and maintain records of permits for construction of new structures and for other new development (such as filling and grading) activities in the SFHA.
3. Failure to require permits and maintain records of permits for improvements and/or repairs to existing structures located in the SFHA.

4. Failure to obtain and maintain certification of the elevation (elevation certificates), in relation to the datum on the Flood Insurance Rate Map, of the lowest floor of all new construction and substantially improved structures in the SFHA.

Violations: *(examples)*

1. Structures without required permits and/or without elevation certificates
 - 110 W. Main St *Received Elevation Certificate
 - 87 N. Main St.
 - 73 W. Main St. *Received Permit
 - 55 W. Main St.
 - 9 Elm St.
 - 33 Main St.
 - 49 Ellis St.
 - 67 Main St. *Received Permit
 - 53 Mill St.
 - Laundromat and Car Wash
 - Volunteer Fire Department

We appreciate the fact that some of the requested items listed above were delivered (the addresses above that have an * and are marked received). However, the files we received on these properties are incomplete, and therefore none of the structures have been removed from the violation list. We would like to remind you that we are requesting elevation certificates completed after the structure was finished; elevation certificates prepared during construction will not fulfill this request. Further, please be sure to include copies of all the pages of issued permits.

[STATE WHAT THE COMMUNITY MUST SUBMIT] If we do not receive the requested documentation by [DATE], this office will proceed with placing the [COMMUNITY] on probation.

You are encouraged to take the necessary measures to avoid the impending probation action and possible subsequent suspension from the NFIP. If you have any questions or at any time need technical assistance to address these issues, please contact [REGIONAL MITIGATION DIRECTOR OR FM&I BRANCH CHIEF].

Sincerely,
Regional Administrator
FEMA Region [#]

cc: State NFIP Coordinator
[COMMUNITY], Floodplain Administrator
[BRANCH CHIEF], Floodplain Management Division, FEMA HQ

APPENDIX D

**Sample Probation Notice
to Policyholders**

Appendix D: Sample Probation Notice to Policyholders

Instruction Note: This is a sample notice mailed by the FIMA Risk Insurance Division to each policy holder in the community.

Community Name:

NFIP Community ID Number:

Effective Date of Community

Probation:

You are receiving this notice because you have a flood insurance policy underwritten by the National Flood Insurance Program (NFIP). The purpose of this notice is to advise you that the Federal Emergency Management Agency (FEMA) has notified your community of an impending probation action regarding its participation in the NFIP. A community voluntarily joins the NFIP and agrees to adopt and enforce floodplain management regulations in exchange for the availability of federally underwritten flood insurance coverage throughout the community.

A community that fails to adequately administer or enforce its local floodplain management regulations is subject to being placed on probation unless remedial measures are taken prior to the effective date of the probation.

Placement on probation serves as a formal notice to your community that its implementation of the local floodplain management regulations is noncompliant with the minimum flood damage reduction standards of the NFIP. The failure of [COMMUNITY] to adequately administer and enforce its local floodplain management regulations results in additional exposure of people and property to flood risk. During the one-year probation period, flood insurance coverage through the NFIP will remain available in [COMMUNITY]; however, a \$50.00 surcharge will be added to the premium of each new or renewal flood insurance policy for a period of at least one year from the effective date of probation, scheduled to start on [DATE]. During the next year, when your flood insurance policy comes up for renewal, your premium will have the added \$50.00 surcharge.

In order to avoid this impending probation action, your community must demonstrate to FEMA that it is in compliance with the minimum criteria of the NFIP by correcting identified program deficiencies and remediating identified violations to the maximum extent possible. Once the probation goes into effect, if [COMMUNITY] chooses not to take these necessary corrective actions, it will be subject to suspension from the NFIP. In communities that are suspended, flood insurance through the NFIP is no longer available, and the Flood Disaster Protection Act of 1973 prohibits Federal agencies from making grants, loans, or guarantees for the acquisition or construction of structures located in identified Special Flood Hazard Areas.

The restriction on Federal funding applies to assistance from the Federal Housing Administration (FHA), Veterans Administration (VA), and the Small Business Administration (SBA), among others. Mortgage lending institutions that are insured or regulated by a Federal agency may make conventional mortgage loans in suspended communities at their own

discretion. If a disaster occurs in a community that is suspended from the NFIP, Federal disaster assistance is very limited.

[COMMUNITY] is encouraged to take the necessary steps to avoid the impending probation action and possible subsequent suspension from the NFIP. For further information, you may wish to contact [NAME OF CHIEF ELECTED OFFICIAL]

APPENDIX E

Checklists to Monitor Procedures

Documenting Steps of the Probation Procedure (Checklist 4-1)

Documenting Steps of the Suspension Procedure (Checklist 4-2)

Documenting Steps of the Reinstatement Procedure (Checklist 4-3)

Documenting Steps for Implementing Section 1316 (Checklist 5-1)

Documenting Steps of the Probation Procedure (Checklist 4-1)

Instruction Note: This documentation worksheet is designed to be used by FEMA Regional staff to keep track of the sequence of steps that must take place during an enforcement action against a community.

Community Name & CID: _____

See Section 4.4 of Community Compliance Manual for complete description of the probation procedure and steps shown below.	
Anticipated date the 90-day probation letter will be sent.	Date:
STEP 1. At least 31 days before the 90-day probation letter is scheduled to be issued, the FEMA Regional Office notifies the FIMA Floodplain Management Division.	Date:
STEP 2. FIMA Risk Insurance Division arranges to send the probation notice to each NFIP policyholder.	Date:
STEP 3. At least 31 days before the formal 90-day probation period begins, the FEMA Regional Administrator sends the 90-day probation letter.	Date:
STEP 4. At the same time the 90-day probation letter is sent, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs notifies members of the community's congressional delegation.	Date:
STEP 5. At the same time the 90-day probation letter is sent, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.	Date:
STEP 6. At least 60 days before probation is scheduled to become effective, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release.	Date:
STEP 7. If the community documents partial progress during the 90-day notice period, the FEMA Regional Office may set a new compliance deadline. The probation action continues.	Date:
STEP 8. Probation is effective at the end of the 90-day notice period.	Date:
STEP 9. Shortly after probation is effective, the FEMA Regional Office notifies the community to affirm probation has gone into effect and establish new time frames, if applicable.	Date:
STEP 10. Approximately 6 months after probation is effective, the FEMA Regional Office should notify FIMA if suspension is anticipated. If the community demonstrates substantial progress, the FEMA Regional Office may extend probation for a full year.	Date:

Documenting Steps of the Suspension Procedure (Checklist 4-2)

Instruction Note: This documentation worksheet is designed to be used by FEMA Regional and Headquarters staff to keep track of the sequence of steps that must take place during an enforcement action against a community.

Community Name & CID: _____

See Section 4.5 of Community Compliance Manual for complete description of the suspension procedure and steps shown below.	
STEP 1. FEMA Regional Administrator submits documentation to FEMA HQ and recommends suspension.	Date:
STEP 2. FEMA HQ reviews recommendation and sends 30-day show-cause letter.	Date:
STEP 3. FEMA Regional Office reviews community submissions in response to show-cause letter and the FEMA Regional Administrator makes recommendation to the FEMA Administrator.	Date:
STEP 4. FEMA HQ reviews the FEMA Regional Administrator's recommendation to determine whether to suspend the community.	Date:
STEP 5. FEMA HQ sends 30-day suspension letter; congressional delegation is notified. Suspension notice is published in the <i>Federal Register</i> .	Date:
STEP 6. FEMA Regional Office reviews additional community submissions in response to show-cause letter and recommends whether suspension should become effective or be withdrawn.	Date:
STEP 7. If the FEMA Administrator determines suspension should become effective, news release is issued and congressional delegation is notified.	Date:
STEP 8. Suspension becomes effective on the date specified in the notice published in the <i>Federal Register</i> .	Date:
STEP 9. FEMA Administrator may notify the community that suspension is effective and reiterate the terms and conditions for reinstatement.	Date:

Documenting Steps of the Reinstatement Procedure (Checklist 4-3)

Instruction Note: This documentation worksheet is designed to be used by FEMA Regional and Headquarters staff to keep track of the sequence of steps that must take place during reinstatement of a suspended community.

Community Name & CID: _____

See Section 4.5.3 of Community Compliance Manual for complete description of the reinstatement procedure and steps shown below.	
STEP 1. FEMA Regional Office reviews community's request for reinstatement. FEMA Regional Administrator recommends reinstatement.	Date:
STEP 2. FEMA Administrator reviews recommendation and determines whether to: <ul style="list-style-type: none"> – Reinstatement to full program status – Reinstatement on probation – Withhold reinstatement until all conditions have been met – Withhold reinstatement until compliance is verified by CAV – Withhold reinstatement for up to an additional year after all conditions have been met 	Date:
STEP 3. FEMA Administrator notifies community of reinstatement decision. If reinstated on probation, the 90-day probation letter is sent, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs notifies members of the community's congressional delegation.	Date:
STEP 4. If reinstated on probation, at the same time the 90-day probation letter is sent, the FEMA Risk Insurance Division sends a probation notice to all NFIP policyholders in the community.	Date:
STEP 5. If reinstated on probation, at least 60 days before probation is scheduled to become effective, the FEMA Regional Office (Office of External Affairs) in coordination with FEMA HQ Office of External Affairs issues a news release.	Date:
STEP 6. At the end of probation, the FEMA Regional Office reviews the request for reinstatement (go to Step 1).	Date:

Documenting Steps for Implementing Section 1316 (Checklist 5-1)

Instruction Note: This documentation worksheet is designed to be used by FEMA Regional and Headquarters staff to keep track of the sequence of steps that must take place during implementation of Section 1316.

Community Name & CID: _____

See Section 5 of Community Compliance Manual for complete description of implementing Section 1316 and steps shown below.	
STEP 1. Community or State submits Section 1316 declaration (request) and documentation to FEMA Regional Office requesting denial or restoration of flood insurance coverage.	Date:
STEP 2. FEMA Regional Office reviews submission and makes preliminary determination that the submission satisfies the specific regulatory requirements.	Date:
STEP 3. FEMA Regional Office submits recommendation for implementing Section 1316 to the FIMA Floodplain Management Division for evaluation.	Date:
STEP 4. FEMA Administrator makes finding as to whether identified property is duly declared to be in violation or that previously declared property is declared to be compliant and citation of violation rescinded. FIMA Floodplain Management Division prepares the letter to property owner.	Date:
STEP 5. If declaration is in order, the letter is mailed to the property owner, and the FIMA Floodplain Management Division forwards signed findings to FIMA Risk Insurance Division and copies FEMA Regional Office, the State, and the community.	Date:
STEP 6. FIMA Risk Insurance Division forwards findings to NFIP servicing contractor.	Date:
STEP 7. If finding is to deny coverage, NFIP servicing contractor places edit in computer system and notifies policyholder that policy will not be renewed (if property covered by current policy) or notifies applicant for new policy that policy cannot be issued. If the finding is to restore coverage, NFIP servicing contractor removes edit from system so that policies may be issued.	Date:

APPENDIX F

**Sample Letter for Congressional
Notification of Probation**

Appendix F: Sample Letter for Congressional Notification of Probation

Instruction Note: At the same time the 90-day probation letter is sent (sample in Appendix C), the Regional Administrator will notify the Congressional delegation of any impending probation action. The examples of program deficiencies and apparent violations are to be modified for each community. This notification is coordinated by the Regional Office of External Affairs with FEMA HQ External Affairs. The notice may be by letter, telephone call, or email, as deemed appropriate

The Honorable _____
United States Senate
Address of District
Office City, State Zip Code

Dear Senator _____:

Because Members of Congress have expressed interest in the National Flood Insurance Program (NFIP), the Federal Emergency Management Agency (FEMA) wishes to keep them informed of aspects of administration of the NFIP that affect communities in their States and districts.

An NFIP-participating community, [COMMUNITY, STATE], has been experiencing serious difficulties in the enforcement and administration of its local floodplain management regulations, which were voluntarily adopted to meet NFIP minimum floodplain management criteria. A Community Assistance Visit conducted by [FEMA/STATE] on [DATE] identified serious program deficiencies and apparent violations of the adopted floodplain management regulations.

The program deficiencies include: *(examples)*

1. Non-compliant floodplain management regulations
2. A pattern and practice of issuing variances to the floodplain management requirements based on the personal circumstances of the owner or developer
3. Failure to have a procedure to evaluate whether proposed improvements to existing buildings constitute substantial improvement

The apparent violations include: *(examples)*

1. Buildings constructed in the Special Flood Hazard Area (SFHA) with lowest floors below the Base Flood Elevation
2. Unpermitted encroachments into the regulatory floodway of [FLOODING SOURCE]
3. Buildings constructed in the SFHA on solid foundation walls without the required flood openings
4. Manufactured homes installed in the SFHA that are not properly anchored

Although the community was notified of these problems during a meeting on [DATE], and in correspondence on [DATE], [DATE], and at another meeting on [DATE], it has failed to take the appropriate remedial actions to correct these serious program deficiencies and violations.

Because of these program deficiencies and potential violations, the [COMMUNITY] will be placed on probationary status with the NFIP effective [DATE]. Placement on probation serves as formal notice to the community that its floodplain management program is regarded as non-compliant with the NFIP criteria, and is the first step in the process to suspend the community from the NFIP. The failure of the community to adequately administer and enforce its local floodplain management program in compliance with the minimum criteria of the NFIP results in exposure of people and property to flood risk, and increases the liability to the NFIP and to the Nation's taxpayers.

During the one-year probationary period, flood insurance coverage remains available through the NFIP. However, pursuant to 44 C.F.R. § 59.24(b), a surcharge of \$50.00 will be added to the premium of each new and renewed flood insurance policy sold within the community and will continue for any successive one-year periods during which probation remains in effect. Each flood insurance policyholder in [COMMUNITY] will receive a notice advising of the impending probation and the additional \$50.00 surcharge that will be added to the annual flood insurance premium because of the community's failure to address and correct these serious issues that increase their flood risk.

If the problems are not corrected during the probationary period, the community could be suspended from the NFIP. Suspension would mean that flood insurance through the NFIP would no longer be available to protect property in [COMMUNITY], and Federal loans and grants, including disaster assistance, would be very limited for development in the designated SFHAs of [COMMUNITY].

FEMA will continue to provide technical assistance and guidance to [COMMUNITY] to resolve these program deficiencies and correct the violations to the maximum extent possible, so that it may continue to participate in the NFIP and so that the citizens and property owners may continue to have flood insurance coverage available. If you need further information, please have a member of your staff contact [NAME], Director, Mitigation Division, by telephone at [TELEPHONE NUMBER], or by email at firstname.lastname@fema.dhs.gov.

Sincerely,
[NAME]
Regional Administrator
FEMA Region [NUMERAL]

APPENDIX G

Sample News Release of Probation

Appendix G: Sample News Release of Probation

***Instruction Note:** At least 60 days before probation is to begin, FEMA must issue a press release to local media explaining the reasons for and the effects of probation. The press release is prepared in coordination with the Regional Office of External Affairs and FEMA HQ External Affairs. The sample below may be modified for each community as necessary.*

DRAFT ONLY – NOT FOR RELEASE

Officials of [COMMUNITY] have been sent written notification by the Federal Emergency Management Agency (FEMA) that unless corrective measures are taken to address deficiencies in the local floodplain management program and violations of the criteria that are required for participation in the NFIP, the community will be placed on probationary status in the National Flood Insurance Program (NFIP) on [DATE].

The NFIP is a federally underwritten program administered by FEMA. The NFIP provides flood insurance coverage to property owners in communities that voluntarily agree to adopt and enforce floodplain management regulations that reduce the risk of flood damage in their communities. Currently more than 22,200 communities participate in the NFIP nationwide. The availability of flood insurance coverage in the private insurance market is very limited.

[NAME], Regional Administrator of FEMA Region [#], which includes [COMMUNITY], signed the probation notification. Regional Administrator [NAME] emphasized that probation does not affect the availability of NFIP flood insurance coverage and that property owners in [COMMUNITY] will still be able to purchase and renew NFIP flood insurance policies during the probation period. However, a \$50.00 surcharge will be added to the premium of each new or renewal policy sold within the community for a period of at least one year beginning on [DATE], which is the day the probationary period begins. If probation is not lifted by the end of the one-year period, the \$50.00 surcharge will continue to be charged annually for each policy sold or renewed during any successive years that the probation remains in effect.

NFIP flood insurance policyholders will be notified of the impending probation and of the additional \$50.00 that will be added to the annual premium for each year that [COMMUNITY] is on probation.

“Placing a community on probation is notification that its floodplain management program is not fully compliant with the NFIP criteria and the identified program deficiencies and violations are serious enough to lead to eventual suspension of the community from the NFIP. Suspension would mean that NFIP flood insurance coverage would no longer be available. This is significant because NFIP flood insurance coverage is required as a condition of certain federally backed mortgages and mortgages from federally regulated lenders and some forms of Federal disaster assistance,” [NAME] said.

Regional Administrator [NAME] explained that the FEMA Regional office will continue to provide technical assistance and consultation to [COMMUNITY] to help it remedy the violations and achieve program compliance with the NFIP floodplain management criteria.

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APPENDIX H

Section 1316 Sample Forms and Letters

H-1 Sample Community Declaration of Violation

H-2 Sample Community Request to Restore Flood Insurance

H-3 Sample Section 1316 Declaration Form and Letter to Property Owner

H-4 Sample Section 1316 Rescission Form and Letter to Property Owner

H-1: SAMPLE DECLARATION OF VIOLATION FOR IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

***Instruction Note:** The letter below is a sample Section 1316 declaration issued by the community to a property owner that a structure is in violation of the local floodplain management regulations. This sample declaration satisfies the criteria for a valid declaration according to 44 C.F.R. § 73.3 and may be used to support a community's or State's request that FEMA deny the availability of flood insurance coverage on the property. This sample may be modified by the community as necessary.*

[PROPERTY OWNER NAME]
[PROPERTY OWNER ADDRESS]

As authorized by Section [XXXX] of the [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATION], I, [NAME], as the [TITLE OF AUTHORIZED OFFICIAL OF COMMUNITY], hereby declare the structure listed below to be in violation of Sections [XXXX.XX and XXXX.XX] of the [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATIONS], which are intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

The [COMMUNITY] is required to submit this declaration of violation pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, the result of which is the denial of Federal flood insurance under 44 Code of Federal Regulations, Section 73.3.

OWNER/PROPERTY

ADDRESS: PARCEL ID#:

TYPE OF STRUCTURE:

STATEMENT OF VIOLATION: *[examples shown for illustration purposes only]*

- **The enclosure below the elevated building is not limited to allowed uses, and the walls of the enclosure do not have flood openings.** Section [XXXX.XX] of the [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATION] states that "fully enclosed areas below the lowest floor shall be usable solely for parking of vehicles, building access, or storage." Section [XXXX.XX] states that "a minimum of two openings having a total new area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided."
- **The lowest floor is below the base flood elevation.** Section [XXXX.XX] of the [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATION] states that all new construction of residential structures "shall have the lowest floor at or above the base flood elevation."
- **Permits were issued for Substantially Improvements without requiring the building to be brought into compliance.** Section [XXXX.XX] of the [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATION] states that permits are required for all development in Special Flood Hazard Areas, including new

construction and substantial improvement. Section [XXXX.XX] states that improvements that constitute “substantial improvement,” as defined in regulation, shall comply with the requirements for new construction.

The [TITLE OF AUTHORIZED OFFICIAL OF COMMUNITY] is authorized by Section [XXXX.XX] to enforce the provisions of the [COMMUNITY’S FLOODPLAIN MANAGEMENT REGULATION]. The violations were referred to the [COMMUNITY DEPARTMENT] on [DATE] and found in violation. The above-referenced property was inspected on [DATE]. The property owner was notified of the violations on [DATE].

In attempting to remedy the violation, this Department has [BRIEFLY DESCRIBE ACTIONS TAKEN TO BRING ABOUT COMPLIANCE].

Therefore, [COMMUNITY] has exhausted all possible enforcement remedies.

This declaration is being submitted to the Federal Emergency Management Agency pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

_____ Date: _____
[NAME], [TITLE]
[COMMUNITY DEPARTMENT]

cc: [NFIP STATE COORDINATING AGENCY]

H-2: SAMPLE COMMUNITY REQUEST TO RESTORE FLOOD INSURANCE

***Instruction Note:** The letter below is a sample of a request submitted by the community to the FEMA Regional Administrator to restore flood insurance eligibility for a property previously in violation of the local floodplain management regulations. This sample may be modified by the community as necessary.*

[FEMA REGIONAL ADMINISTRATOR]

[REGIONAL OFFICE ADDRESS]

Subject: Request for Rescission of Section 1316 Denial of Flood Insurance Coverage on
[PROPERTY ADDRESS]

Enclosed is a certificate of compliance for the property located at [PROPERTY ADDRESS]. Please take actions necessary to rescind the Section 1316 denial of flood insurance, thereby allowing the property owner to obtain flood insurance.

Please let me know if you need additional information to process this request.

[NAME], [TITLE]

[COMMUNITY DEPARTMENT]

Attachment

cc: [NFIP STATE COORDINATING AGENCY]

**[COMMUNITY] [DEPARTMENT]
SECTION 1316 CERTIFICATE OF COMPLIANCE**

I, [NAME], as the [TITLE OF AUTHORIZED OFFICIAL OF COMMUNITY], do hereby certify that the below-described property is in compliance with the minimum requirements of [COMMUNITY'S FLOODPLAIN MANAGEMENT REGULATION].

A copy of this certificate will be filed with the Federal Emergency Management Agency and serve as a request that the Section 1316 denial of flood insurance be rescinded and flood insurance be made available on the subject property.

Property Owner/Property Address:

Legal Description:

Type of Structure:

[NAME], [TITLE] [COMMUNITY
DEPARTMENT]

[Statement to be notarized]

H-3: SAMPLE SECTION 1316 DECLARATION FORM AND LETTER TO PROPERTY OWNER

Instruction Note: This form and the following letter are prepared by FEMA HQ and are revised from time to time. These samples are provided for illustration purposes only.

SECTION 1316 DECLARATION

National Flood Insurance Act of 1968

[COMMUNITY, STATE]

CID # [XXXXXX]

The following property has been declared by [OFFICIAL'S NAME], [TITLE], an authorized public body representative, to be in violation of provisions set forth in the [COMMUNITY NAME] Floodplain Management regulations. These provisions are intended to restrict floodplain development or occupancy. No new flood insurance coverage shall be provided for this property effective on the date listed below.

Owner Name and Mailing Address	Property Address and Legal Description	Violation

Date: _____

Deputy Associate Administrator for
Federal Insurance and Mitigation

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[PROPERTY OWNER'S NAME]
[MAILING ADDRESS]

Dear Mr./Mrs. [LAST NAME]:

The U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) finds your property located at [FULL PROPERTY ADDRESS] is no longer eligible for new or renewed flood insurance coverage under the National Flood Insurance Program (NFIP), pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4023.

FEMA is authorized to deny flood insurance for a property FEMA finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. 42 U.S.C. § 4023; 44 C.F.R. Part 73. According to a declaration submitted to FEMA by [OFFICIAL'S NAME], [TITLE] for the [COMMUNITY NAME], an authorized public body representative, your property is in violation of the local floodplain management ordinance and you have been notified of the violation and the prospective denial of insurance. As a result, FEMA finds your property ineligible for new or renewed flood insurance coverage through the NFIP as of the date of this letter.

If your property is currently covered by a flood insurance policy under the NFIP, the policy may remain in effect at the current limit of coverage until its expiration date. The existing policy limit of coverage for your property may not be increased on or after the date of this letter. If your property is currently covered by a flood insurance policy under the NFIP, your policy cannot be renewed. In the event you were issued a NFIP policy for your property and the effective date is on or after the date of this letter, your insurance carrier will cancel your policy and refund the premium payment to you. If your property is not currently covered by a flood insurance policy under the NFIP, no new flood insurance coverage will be available for your property under the NFIP.

The loss of flood insurance coverage under the NFIP for your property could also impact your ability to qualify for grants, loans, or guarantees made by Federal agencies for the acquisition of or construction on the property, such as the Small Business Administration (SBA), Federal Housing Administration (FHA), Veterans Administration (VA), and FEMA disaster assistance. The loss of flood insurance eligibility may also jeopardize the status of your mortgage, if you have a mortgage on your property, and could decrease the marketability of your property should you consider selling it in the future.

The availability of flood insurance for your property can be restored when FEMA finds the authorized public body representative for your community, [COMMUNITY AGENCY] for the [COMMUNITY NAME], rescinds the declaration placed on your property in accordance with FEMA's regulations at 44 C.F.R. § 73.4. The [COMMUNITY NAME] permitting officials have attempted to work with you in addressing this violation, and you should continue working with community officials to restore the eligibility of flood insurance for your property.

If you need additional information or assistance, please contact [NAME OF BRANCH CHIEF], Chief of the Floodplain Management and Insurance Branch, FEMA Region [XX], at (XXX) XXX-XXXX.

Sincerely,

Deputy Associate Administrator for
Federal Insurance and Mitigation

cc: [COMMUNITY OFFICIAL]
[STATE NFIP COORDINATOR'S OFFICE]

H-4: SAMPLE SECTION 1316 RESCISSION FORM AND LETTER TO PROPERTY OWNER

Instruction Note: This form and the following letter are prepared by FEMA HQ and are revised from time to time. These samples are provided for illustration purposes only.

SECTION 1316 RESCISSION

National Flood Insurance Act of 1968

[COMMUNITY, STATE]

CID # [XXXXXX]

The declaration for denial of flood insurance under Section 1316 of the National Flood Insurance Act of 1968, as amended, for the following property has been rescinded by [OFFICIAL'S NAME], [TITLE] for [COMMUNITY], an authorized public body representative, because the property is no longer in violation of the provisions set forth in [COMMUNITY] Floodplain Management regulations. The denial of flood insurance availability under Section 1316 of the National Flood Insurance Act of 1968, as amended, is hereby rescinded and flood insurance availability under the National Flood Insurance Program (NFIP) has been restored for the following property.

Owner Name and Mailing Address	Property Address and Legal Description	Violation Corrected

Date: _____

Deputy Associate Administrator for
Federal Insurance and Mitigation

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[PROPERTY OWNER'S NAME]
[MAILING ADDRESS]

Dear Mr./Mrs. [LAST NAME]:

The U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) finds the declaration for denial of flood insurance under Section 1316 of the National Flood Insurance Act of 1968, as amended, has been rescinded for your property located at [FULL PROPERTY ADDRESS]. As a result, flood insurance availability through the National Flood Insurance Program (NFIP) is restored to your property.

On [DATE OF DENIAL LETTER], FEMA found your property was no longer eligible for new or renewed flood insurance coverage under the National Flood Insurance Program (NFIP), pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4023. FEMA is authorized to deny flood insurance for a property FEMA finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. 42 U.S.C. § 4023; 44 C.F.R. Part 73. [OFFICIAL'S NAME], [TITLE] for [COMMUNITY], an authorized public body representative, declared your property in violation of the minimum requirements for the [COMMUNITY] floodplain ordinance. As a result, FEMA found your property ineligible for new or renewed flood insurance through the NFIP.

FEMA can restore insurance availability under the NFIP to a property upon a finding by FEMA that the declaration of violation has been rescinded by an authorized public body. 44 C.F.R. Part 73. According to information provided by [OFFICIAL'S NAME], [TITLE] for [COMMUNITY], an authorized public body representative, the declaration of violation for your property has been rescinded. As a result, FEMA finds flood insurance availability through the NFIP is restored to your property. As a participating community in the NFIP, [COMMUNITY, STATE], has agreed to establish and implement a floodplain management program. [COMMUNITY] will ensure any development in the floodplain is constructed in a manner that is safe from flooding and complies with the locally adopted floodplain management ordinance.

If you need additional information or assistance, please contact [NAME], [TITLE] of the [SECTION], FEMA Region [NUMERAL], at [NUMBER].

Sincerely,

Deputy Associate Administrator for
Federal Insurance and Mitigation

cc: [COMMUNITY OFFICIAL]
[STATE NFIP COORDINATOR'S OFFICE]



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FEMA P-1022
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