

Association of State FloodPlain Managers

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Resolution on Suggestions for Modifications to the Increased Cost of Compliance Provision

At the conference in Portland, OR, suggestions for modifying the current statute pertaining to Increased Cost of Compliance were circulated. Subsequently, the Executive Office circulated an email request for comments to the Board, committee chairs, and all NFIP State Coordinators. Twelve responses were received. Only one respondent suggested that FIA study why so few buildings that, based on claims paid, appear to have been substantially damaged were not submitted for ICC payment.

The most significant substantive comment was restated from the Board of Directors meeting in Portland - that insured buildings that are substantially damaged by other causes should be eligible for ICC payments to cover only those expenses associated with compliance. Recent major damage due to tornadoes has raised awareness of this concern.

BACKGROUND ON ISSUE:

The insurance coverage authorized in Sec. 1304(b), referred to as Increased Cost of Compliance (ICC), is intended to pay for mitigation of those insured properties that have sustained repetitive losses and severe losses that have been identified as drains on the NFIFund.

The following modifications are offered to make ICC be more effective in five ways:

1. Clarify that the additional insurance coverage is to cover the cost of implementing mitigation measures. FIA made the administrative interpretation that the phrase "cost of compliance" means that a local ordinance should trigger compliance, i.e., to qualify under Sec. 1304(b)(1), a community must adopt a cumulative repetitive loss ordinance. Very few communities have done so, and those that have, run into administrative problems, especially when a property changes hands between floods. More importantly, if it is in the best interest of the NFIP to pay for mitigation for repetitive losses that qualify under the statutory definition, then the program should not be constrained by the choice of a community to adopt a more restrictive ordinance.
2. Change the definition of "repetitive loss structure" to blunt FIA's administrative interpretation that BOTH qualifying repetitive loss claims have to be filed after the date ICC coverage was added to the policy. If the last 20+ years of NFIP claims records show that a home has sustained multiple losses, then it is NOT in the program's best interest to wait for TWO more claims in order to make the ICC payment. This is particularly problematic for homeowners who know they're paying \$75/year, sustain a 25% loss, but can not avail themselves of the coverage for which they're paying until they suffer another loss. [NOTE: FIA made this interpretation early on, when they anticipated large numbers of claims and they wanted to be able to cover outlays with the income from the \$75 surcharge. This situation has not come about, and the income is significant relative to the small number of claims that have been submitted and paid.]
3. The NFIP consistently encourages communities to adopt more stringent standards, and many have done so in part by defining substantial damage with a lower percent of value. To ensure that the

NFIP claim payment for ICC is consistent with the community's ordinance, payment should be triggered by substantial damage, whether defined by FEMA/NFIP or if the community has a tighter definition (e.g., NFIP is 50% of market value, some communities have adopted a 40% or 30% trigger).

4. Clarify that under 1304(b)(3), the Director can provide the maximum available claim amount under ICC (currently \$15,000) and require the owner to implement cost effective and feasible measures. This authority should not depend on whether the community's ordinance requires compliance - if it is cost-effective and in the best interest of the NFIP to pay for mitigation, then the NFIP should do so! This will allow FEMA to target the properties that have received 4-5 or more claims that cumulatively account for large outlays, but which do not qualify under the repetitive loss structure definition. Report language should direct FEMA to develop, by regulation, a reasonable consequence if an owner refuses funding under this section. Congress should recognize that such measures are likely to include annual premium increases and/or increased deductibles until the coverage is provided at actuarial rates. If a cost-effective and feasible physical modification is not available, insurance becomes the most cost-effective mitigation measure, and the owner should not be penalized.
5. The NFIP has long required that owners bring into compliance any building that is substantially damaged by any cause. Substantial damage means damage whereby the cost of restoration to the before-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred. For community officials, this is one of the most difficult provisions of the NFIP. It is difficult to administer, many communities are insufficient aware of the requirement, and after damage often is when community and political sentiment does not foster effective enforcement. One of the major anticipated benefits of ICC is that owners who have for many years been required to bring their buildings into compliance, would now have \$15,000 that they previously did not receive when they filed a flood insurance claim.

With respect to ICC, it is perplexing that owners pay a surcharge to cover the cost of compliance, yet, as currently written, it can be triggered only by flood damage. In recent years there have been instances when substantial or total damage has been caused by a non-flood event. In the interest of long-term reduction of flood losses, ICC could be structured to pay only those costs associated with repairs required to achieve compliance. For example, if a home destroyed by tornado is required to be rebuilt to floodplain standards, an ICC claim payment would cover only the costs of the foundation system that elevates the building to or above the flood elevation, as required by the community's ordinance. This effect can be achieved by the way the term "substantially damaged structure" is defined.

SUGGESTED AMENDMENTS

Sec. 1304 (b) ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES. -- The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of [*compliance*] implementing measures that result in consistency with land use and control measures established by the community under section 1361 for --

(1) structures; loss repetitive are that properties

(2) properties that [*have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event*] are substantially damaged structures ; and

(3) properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require [*compliance with land use and control measures*] implementation of such measures .

Add to definitions in Sec. 1370(a):

(7) the term "repetitive loss structure" means a structure covered by a contract for flood insurance [*under this title*] that has incurred flood-related damage on 2 occasions [*during a 10-year period ending on the date of the event for which a second claim is made*], in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event. For the purposes of Sec. 1304(b), the qualifying claim must be covered by a contract for flood insurance that includes the coverage authorized by Sec. 1304(b) ;

() the term "substantially damaged structure" means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in regulation or by the community, which ever is lower.

APPROVAL

July 6, 1999
(Date)

ATTEST

/s/ Miriam Anderson
Board Secretary

ADOPTED BY THE BOARD ON JULY 6, 1999.