



FEMA

W-10007b

January 29, 2010

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the
NFIP Servicing Agent for Dissemination to all
Underwriting, Marketing, and Claims Managers

FROM: NFIP Clearinghouse

SUBJECT: Severe Repetitive Loss
Increased Cost of Compliance (ICC) Pilot Program
Policy Issuance 1-2010

The Flood Insurance Reform Act of 2004 (FIRA 2004) at Title I, Section 105 provides guidance to FEMA and the National Flood Insurance Program (NFIP) to move the Increased Cost of Compliance (ICC) coverage of the Standard Flood Insurance Policy (SFIP) from a compliance-based insurance benefit to one that implements measures consistent with land use and control.

In order to move toward compliance with FIRA 2004 Section 105 requirements the attached Policy Issuance authorizes the establishment of a pilot program that may be adapted to the larger FIRA compliance initiative. In addition to the above purpose, reaching the traditional ICC market – SRL buildings in Special Flood Hazard Areas (SFHA), the pilot will potentially reach an underserved ICC market – SRL buildings in B, C, or X flood Zones (X Zones).

Since only SRL buildings will be affected this pilot program will be conducted within the NFIP Servicing Agent's Special Direct Facility.

We ask for your full support. If there are any questions, please contact Duane Paulson at Duane.Paulson@dhs.gov.

Attachment

cc: Vendors, IBHS, FIPNC, and Government Technical Representative

Required Routing: Underwriting, Claims and Marketing

National Flood Insurance Program

Policy Issuance 1-2010

SUBJECT: Establishing the Pilot Program for the Mitigation of Severe Repetitive Loss Buildings in all Flood Zones Utilizing the Standard Flood Insurance Policy Increased Cost of Compliance Benefits as the Policyholders' Non-Federal Match

Background: The National Flood Insurance Program (NFIP) rules require Increased Cost of Compliance (ICC) benefits to be paid when an insured building is substantially damaged by flood. In flood insurance parlance the term “substantial damage” means flood damage sustained by a building whereby the cost of repairing the flood damage would equal or exceed 50 percent of the market value of the building at the time of loss. These benefits are paid to assist policyholders in complying with State or local floodplain management laws or ordinances. Subject to the current limit of \$30,000.00 payment will be made for four approved mitigation activities; floodproofing, relocation, elevation, or demolition. Since 2001, the NFIP has allowed the assignment of the ICC benefits to the community in which the property is located only when the assignment is in conjunction with a FEMA Hazard Mitigation Assistance Grant

The Flood Insurance Reform Act of 2004 (FIRA 2004) at Title I, Section 105 provides guidance to FEMA and the National Flood Insurance Program (NFIP) to move the Increased Cost of Compliance (ICC) coverage of the Standard Flood Insurance Policy (SFIP) from a compliance-based insurance benefit to one that implements measures consistent with land use and control.

Purpose: In order to move toward compliance with FIRA 2004 Section 105 requirements a pilot program will be initiated to establish procedures that may be adapted to the larger FIRA compliance initiative. In addition to the above purpose, reaching the traditional ICC market – SRL buildings in Special Flood Hazard Areas (SFHA), the pilot will potentially reach an underserved ICC market – SRL buildings in B, C, or X flood Zones (X Zones).

This pilot program derives from the 1968 Flood Insurance Act, Section 1304(b)(3) (see Authority below) which includes “properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interest of the National Flood Insurance Fund to require compliance with the land use and control measures.”

Limitations of the Pilot Program - This pilot program will be limited to the following:

- Only SRL buildings in all Flood Zones. However, as many as 2,000 of the 8,000 Severe Repetitive Loss (SRL) buildings are rated in X Zones. The 2000 include

buildings actually located in A and V flood zones or Special Flood Hazard Areas (SFHA) that have grandfathered X Zone rates, and

- To NFIP policies for SRL buildings that have been moved from a WYO Company or the NFIP Servicing Agent to the Special Direct Facility (SDF) managed by the NFIP Servicing Agent, a FEMA Contractor. The selection of only policies for buildings that have moved to the SDF will provide greater control of the pilot program, and
- SRL buildings that have been accepted for an FEMA Hazard Mitigation Assistance Grant (as detailed below), and
- SRL buildings owned by policyholders who have assigned the ICC benefits to the community in which the building is located, and
- An amount up to the covered ICC benefits to fulfill that portion of the minimum non-federal match for which the policyholder is responsible, and
- The ICC benefits, as limited above, must be assigned by the eligible policyholder, as described below, to the community in which the property is located.

Eligibility - The eligibility criteria for payment of ICC benefits applied to the pilot program and incorporated therein are as follows:

- During the term of the eligible NFIP policy, be a structure for which a FEMA Hazard Mitigation Assistance Grant offer has been made that meets the following conditions:
 - (a) The offer of mitigation assistance is from one of the following FEMA Hazard Mitigation Assistance Grant program:
 - (i) Severe Repetitive Loss Properties Program (1968 Flood Insurance Act, Section 1361A), and
 - (b) The building is covered by a contract of flood insurance issued under the NFIP. In addition, the following additional conditions must be met:
 - (i) For eligibility under (a)(i) above, the structure must have been continuously insured for 180 days prior to the opening of the period of availability for the grant program, through the day the policyholder accepts the mitigation offer.
[Satisfying this requirement to be eligible for payment of ICC benefits under the policy does not relieve the policyholder of any additional obligations required by the grant program].

At Issue: This Pilot will expand Section 1304(b) (3) of ICC benefits eligibility as an interim measure to test some of the possible provisions of a fully compliant FIRA 2004 ICC program that is currently in the rule making process. This pilot will provide this test, while maintaining the insurance principles, including the greater good to the NFIP. The terms and conditions of the SFIP, especially those that affect Coverage D, Increased Cost of Compliance, will be expanded to allow the pilot program to operate. It is noted that FEMA's Office of Chief Counsel has reviewed the FIRA requirements and provided verbal and a written directive that ICC Benefits may be extended to X Flood Zones when a study or a map amendment supports elevation enforcement.

Authority: 42 U.S.C. § 4011, § 1304(b) (3), and the SFIP at General Conditions, D Amendments Waivers, Assignments.

Policy Decision: Based upon the facts and authority stated above the issues raised above are resolved in favor of the pilot program, and that it is in the best interest of the NFIP to mitigate SRL buildings in all zones, the eligibility requirements of SFIP Coverage D - Increased Cost of Compliance be expanded, as detailed and limited above, for the purpose of conducting the described pilot program.

January 29, 2010

(Date)



Edward L. Connor
Acting Federal Insurance Administrator
National Flood Insurance Program
Mitigation Directorate