

## VI. INCREASED COST OF COMPLIANCE (ICC)

### A. PRINCIPAL FEATURES OF ICC COVERAGE

The limit of liability for Increased Cost of Compliance (ICC) coverage was raised to \$30,000 on May 1, 2003. Any flood loss incurred prior to May 2003 will be adjusted according to the previous limit of \$20,000.

When a building covered by a Standard Flood Insurance Policy (SFIP) sustains “repetitive losses” (see Subsection VI.C.3.b., following) or “substantial damage” (see Subsection VI.C.4.) caused by a flood, the NFIP will pay up to \$20,000 for losses sustained prior to May 1, 2003, and up to \$30,000 for losses sustained on or after May 1, 2003, for the cost to elevate, floodproof (for nonresidential buildings only), demolish, or relocate the building, or any combination thereof, when any of these actions is undertaken to comply with the enforcement of state or local floodplain management laws or ordinances. ICC coverage is available on residential and nonresidential buildings (this category includes public and government buildings, such as schools, libraries, and municipal buildings) insured under the SFIP.

The National Flood Insurance Reform Act of 1994 authorizes ICC coverage only for flood-damaged buildings. Therefore, ICC coverage does not pay for the increased cost of repairing or altering buildings damaged by wind, fire, earthquake, or other perils.

ICC coverage was included as Coverage D in every SFIP written or renewed on and after June 1, 1997. The premium charged for ICC coverage varies depending on the type of building, whether the building is Pre-FIRM or Post-FIRM, the flood zone, and other factors.

The maximum amount collectible under the SFIP for both the ICC payment and the direct loss payment for flood cannot be greater than the maximum limits of coverage for that class of buildings authorized under the National Flood Insurance Act of 1968, as amended. The statutory limits of flood insurance building coverage are \$250,000 for most residential buildings and \$500,000 for nonresidential buildings. For a residential condominium building, the statutory limit of flood insurance building coverage is \$250,000 times the number of insured units.

### B. COVERAGE QUESTIONS AND ANSWERS

#### 1. *Does ICC coverage extend beyond the building itself?*

No. ICC coverage is provided only on the building covered by an SFIP. Under the SFIP, a “building” is defined as a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site. Land, land values, lawns, trees, shrubs, plants, and growing crops are not covered. In addition, items such as portions of walks, walkways, decks, driveways, patios, and other surfaces located outside the perimeter exterior walls of the insured building or units are not covered.

#### 2. *Is ICC coverage available for appurtenant (accessory) buildings?*

Yes. ICC coverage is available for an appurtenant (accessory) building but only when a separate flood insurance policy is written on the appurtenant building. An appurtenant

structure is one on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. The SFIP does not provide coverage for direct physical loss from flood for an appurtenant structure except in the Dwelling Form. The Dwelling Form extends coverage for direct physical loss from flood to a detached garage located on the premises of a one- to four-family dwelling. However, ICC coverage does not apply to these or any other appurtenant buildings indicated in the “Exclusions” section of the ICC coverage. Therefore, a separate flood insurance policy must be written on any appurtenant structure to obtain ICC coverage.

### **3. *What buildings have ICC coverage?***

All buildings in Regular Program communities have ICC coverage except the following:

- a. Buildings insured under the Group Flood Insurance Policy, which covers recipients awarded an Individual and Family Grant for flood damage under §411 of the Stafford Act (42 U.S.C. § 5178) as a result of a Presidential major disaster declaration.
- b. Units insured under a condominium unit owner policy.

Buildings located in communities participating in the Emergency Program do not have ICC coverage.

## **C. ELIGIBILITY QUESTIONS AND ANSWERS**

### **1. *When is an insured building eligible for an ICC claim payment?***

An insured building is eligible for an ICC claim payment when a new SFIP is issued or upon the renewal of an SFIP on or after June 1, 1997. Canceling a policy to obtain ICC coverage is prohibited.

### **2. *Will an ICC claim be paid on a building that is less than 50 percent damaged but must comply with a state or community floodplain management law or ordinance that has a substantial damage threshold below 50 percent of the market value of the building?***

No. Buildings must be damaged by flood to at least 50 percent of market value in order to be eligible for an ICC claim payment. The National Flood Insurance Reform Act of 1994 established the threshold at “50 percent of the value of the structure at the time of the flood event.” Because the term “substantial damage” is already defined in the NFIP Floodplain Management Regulations (at 44 CFR 59.1) and is consistent with the 1994 Act, this definition is used to determine eligibility for a claim payment under ICC coverage.

### **3. *What conditions must be met for a repetitively damaged building to be eligible for an ICC claim payment?***

A building is eligible for an ICC claim payment for repetitive damage if it is in an SFHA (A and V zones), is a repetitive loss structure, and is subject to state or community floodplain management laws or ordinances.

There are two additional conditions that must be met in order for an ICC claim to be paid under the SFIP for a repetitive loss structure.

- a. The state or community must have adopted and be currently enforcing a repetitive loss provision or a cumulative substantial damage provision requiring action by the property owner to comply with the state or community floodplain management laws or ordinances.

States and communities are not required to adopt a repetitive loss provision. Adoption of a cumulative substantial damage provision or a repetitive loss provision is voluntary. In the event that a state or community adopts a repetitive loss provision or a cumulative substantial damage provision, this provision must be enforced on all buildings in the community irrespective of whether the buildings are covered by flood insurance.

- b. The building must have a history of NFIP claim payments that satisfies the National Flood Insurance Reform Act of 1994 definition of a “repetitive loss structure”:

“a building covered by a contract for flood insurance that has incurred flood-related damages 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 repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the building at the time of each such flood event.”

The date on which the first loss occurred, even if the loss occurred before June 1, 1997, is immaterial as to eligibility for an ICC claim payment, so long as the state or community enforced a repetitive loss or cumulative substantial damage requirement and the loss occurred within the 10-year period and the insured building satisfies the definition of “repetitive loss structure” under the National Flood Insurance Reform Act of 1994.

#### **4. *What conditions must be met for a substantially damaged building to be eligible for an ICC claim payment?***

A building is eligible for an ICC claim payment for substantial damage if the community determines that it has been damaged by flood and the cost of restoring the building to its before-damaged condition would equal or exceed 50 percent of the market value of the building before damage occurred. The NFIP requirement to bring substantially damaged buildings into compliance, though necessary to reduce flood damages, can create financial hardships for property owners at a time that they can least afford it. ICC coverage provides an important source of financial assistance that helps property owners pay for most and in some cases all of the costs of complying with state or community floodplain management laws or ordinances pertaining to substantially damaged buildings.

All states and communities participating in the NFIP must have a substantial damage provision in their floodplain management laws or ordinances in accordance with the minimum NFIP criteria at 44 CFR 59.1 and 60.3. As defined in the NFIP Floodplain Management Regulations at 44 CFR 59.1, substantial damage is deemed to have occurred when:

“damage of any origin is sustained by a building whereby the cost of restoring the building to its before damaged condition would equal or exceed 50 percent of the market value of the building before the damage occurred.”

The NFIP substantial damage definition applies to building damage from any origin, such as fire, wind, earthquake, etc. In cases where the damage is due to a combination of hazards, such as wind and flood, an ICC claim is paid only when the flood component of the damage equals or exceeds 50 percent of the market value of the building. In order for a payment to be made under ICC, the claim representative must verify that the damage was caused solely by flood or that the cost to repair the flood component of the damage to the building equals or exceeds 50 percent of the market value of the building.

**5. *Can the date when the property was declared substantially damaged serve as the date of loss for an ICC claim?***

The 2-year limit for completing an ICC claim begins on the date of the declaration by the local community official that the insured structure has been substantially damaged by flood. This means that the 2-year period referenced in SFIP paragraph 5.e.(2) begins on the date of loss.

## **D. CLAIMS ADJUSTMENT QUESTIONS AND ANSWERS**

**1. *What is the process for adjusting a claim under ICC coverage?***

When a flood event has occurred, an adjuster is assigned to adjust the direct physical damages. The adjuster advises the policyholder of ICC coverage in the SFIP if it appears that damages may exceed 50 percent of the value of the structure and the building is in an SFHA.

Because ICC claims are paid only when the property owner is required to rebuild in compliance with a community's substantial damage or repetitive loss provision, a determination must be made by the community whether the flood damages to the building result in substantial damage or repetitive loss that requires compliance with state or community floodplain management laws or ordinances. The adjuster must obtain the substantial damage or repetitive loss determination in writing before adjusting the ICC claim. The policyholder and the community should discuss the floodplain management requirements and the mitigation options (elevation, floodproofing, demolition, or relocation of the building, or any combination of these) once a determination by the community has been made.

Once a determination has been made by the community that the building has been substantially or repetitively damaged by flooding, the policyholder notifies the insurer of the determination. The adjuster advises the property owner that a signed construction contract, an itemized cost breakdown of the work, and a start and completion date for the work will be needed.

Once the policyholder has notified the adjuster of the substantial damage or repetitive loss determination, the insurer creates a claim file. The adjuster must obtain information from the community regarding the community's substantial damage or repetitive loss determination. The adjuster uses this information to confirm that the flood-related damage for the current building claim (and prior claim, if it is a repetitive loss structure) supports the community's substantial damage or repetitive loss determination. In addition, the adjuster will verify whether the claim meets all other eligibility requirements for payment under ICC coverage.

The adjuster confirms that the damage met requirements for making an ICC claim payment and that the policyholder has provided a signed contract and three itemized cost estimates for the mitigation measure. The adjuster provides the policyholder with the ICC Proof of Loss form. The adjuster also explains to the policyholder how payments will be made and advises the policyholder that, if the mitigation measure is not completed, any payments under the ICC claim must be returned to the insurer. In addition, the adjuster advises the policyholder that a permit issued by the community to undertake the work will be needed prior to making the initial ICC claim payment. For buildings that are to be elevated or floodproofed in SFHAs, the permit must indicate the level of protection to which the building is to be elevated or floodproofed.

After the ICC Proof of Loss form and a permit from the community have been returned to the adjuster, the adjuster advises the property owner that the initial payment toward the ICC claim will be issued by the company.

When the mitigation measure is completed, the adjuster obtains a copy of the certificate of occupancy, letter, or written official notice from the community that the mitigation measure has been satisfactorily completed and that no variance was granted. The claim representative pays the final ICC claim payment after all documentation of satisfactory completion has been submitted.

## **2. *Can partial payment be issued on an ICC claim?***

Paragraph 5.e. of SFIP Coverage D – Increased Cost of Compliance provides that an ICC claim cannot be paid (1) until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises, and (2) unless the building is elevated, flood proofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed 2 years. The question has arisen as to whether this provision precludes the issuance of partial payments for ICC claims.

The two conditions in SFIP paragraph 5.e. refer to the total payment of an ICC claim, which means partial payments are permitted. Partial payments may be issued in advance of completion of the mitigation activity but cannot exceed 50 percent of the total estimated reimbursable cost of the mitigation activity.

## **3. *What does “assignment of Coverage D” mean? What is the process involved?***

If a community plans to pursue a FEMA-approved mitigation project, such as a project under the Hazard Mitigation Grant Program, the policyholder can assign the eligible portion of the Coverage D (ICC) claim to the community. The insured must complete the Assignment of Coverage D form and return it to the community official. The community official will submit a copy of the form and a written Declaration of Substantial Damage to the NFIP Bureau and Statistical Agent. The Bureau and Statistical Agent will enter the data into a tracking system and send both documents to the insurer, with instructions.

Specific steps for assignment of the ICC claim benefit to the community are itemized below.

- a. Policyholder consents to assignment of the ICC claim payment.
- b. Community official provides the policyholder with an Assignment of Coverage D form.

- c. Policyholder completes the form and returns it to the community official.
- d. Community official sends a copy of the form, along with the community's signed Declaration of Substantial Damage, to the NFIP Bureau and Statistical Agent at the following address:

NFIP Bureau and Statistical Agent  
PO Box 310  
Lanham MD 20706

- e. Bureau and Statistical Agent enters the ICC information submitted by the community into a database. The Bureau then sends the documents to the appropriate WYO company, with instructions. The company assigns an adjuster.
- f. Assigned adjuster contacts the policyholder to confirm receipt of the claim, then contacts the community official to help coordinate the claim.
- g. Adjuster reviews the contract for demolition, elevation, relocation, or floodproofing to determine the cost.
- h. Adjuster has the community official sign the ICC Proof of Loss form once the claim value has been determined.
- i. Adjuster sends the NFIP Final Report form and the Proof of Loss to the insurance company for payment.
- j. Insurance company issues the check to the community and advises the NFIP Bureau and Statistical Agent of the amount of the claim payment.

## **E. OTHER FREQUENTLY ASKED QUESTIONS AND ANSWERS**

### **1. *When an estimate for demolition of a dwelling includes the cost to demolish the garage, is coverage for the garage provided under ICC?***

The cost to demolish the home is covered. If the garage is detached, then coverage will not apply. The garage should have its own policy.

### **2. *Is ICC coverage provided for the slab, walkway, and driveway?***

Coverage is afforded for the slab. However, there is no coverage for the walkway and driveway.

### **3. *Fill dirt is required to stabilize the lot. Is this covered under ICC?***

If the cost is to grade the lot, then coverage will apply. The *Interim Guidance for ICC – Part 4, Demolition*, paragraph 2, states “Once the building is removed from the site, steps should be taken to clear the site of any remaining materials such as the foundation, remove any utility systems, and grade and stabilize the site in accordance with any State or local regulations.”

4. ***If the lot is littered with trash such as tires, cans, etc., will this be considered ICC-covered debris?***

No coverage applies.

5. ***The SFIP excludes coverage for septic systems. If the building is demolished under ICC, will the cost to remove the septic system be covered?***

Yes. First, all applicable permits to demolish the building must be obtained. Once the building is removed from the site, steps should be taken to clear the site of any remaining materials such as the foundation, remove any utility systems, and grade and stabilize the site in accordance with any State or local regulations.

6. ***Are well water plugs covered under ICC?***

If the well water plug is part of the abandonment of on-site utilities, the coverage will be afforded.

7. ***What conditions must be met for a substantially damaged building to be eligible for an ICC claim payment, and how is the date of loss determined?***

A building is eligible for an ICC claim payment if it is in a Special Flood Hazard Area, and the community determines that the building has been damaged by flood to such an extent that the cost of restoring the building to its pre-damage condition would equal or exceed 50 percent of its pre-damage market value. Therefore, the date of loss for an ICC claim is the date on which the community declares or submits a notification that the building has been substantially damaged by flood.

8. ***A flood claim was processed in accordance with the policy provisions. In the interim, the policy expired and was not renewed. The community then declared the building substantially damaged by flood. Will an ICC claim be honored even though the policy expired?***

No. The substantial damage declaration or notification triggers the date of loss for the ICC claim.