



FEMA

W-11021

April 1, 2011

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the
National Flood Insurance Program (NFIP) Servicing Agent

FROM: NFIP Clearinghouse

SUBJECT: Policy Issuance No. 01-2011

Attached is a new NFIP Policy Issuance, issued and effective today, which rescinds the 2004 Policy Issuance referenced above.

Please promptly distribute this information within your organization as appropriate.

Cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Claims, Training, Underwriting

ARCHIVED APRIL 2018



FEMA

NATIONAL FLOOD INSURANCE PROGRAM
Policy Issuance No. 01-2011

SUBJECT: Authorizing the use of that portion of the definition of substantial damage amended by the provisions of 42 U.S.C. §4011(b) and The Flood Insurance Reform Act of 2004 (FIRA 2004) at Title I, Sec 105.

Background: The Flood Insurance Reform Act of 2004 (FIRA 2004) set out certain requirements revising the National Flood Insurance Program (NFIP). The Program is benefitting now from these requirements, such as, the supplementary forms including, at Title II Sec. 202, – the Summary of Coverages Form, Sec. 203 – the Acknowledgement Form, Sec. 204 – *The NFIP Flood Insurance Claims Handbook*, and at Sec 205 – The NFIP Claims Appeals Process. In addition, Section 206 – A program to provide Minimum Training for insurance agents who sell NFIP flood insurance has been adopted by virtually all States.

FIRA 2004 at Title I, Sec. 105 (Sec. 105) provides guidance to FEMA and the 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 measures. The January 29, 2010, Bulletin W-10007b announced and covered Policy Issuance No. 1-2010, a Severe Repetitive Loss Property Increased Cost of Compliance Pilot Program. This SRL/ICC Pilot is being conducted entirely within the Special Direct Facility managed by the NFIP Direct Servicing Agent.

In Sec. 105(b)(4)(15) the definition of substantial damage is amended. This amended definition includes an NFIP insured structure “that has incurred damage for which the cost of repair exceeds an amount specified in any regulation” - currently 50% of the Market Value of the structure at the time of loss. This section adds “**or by a community ordinance, whichever is lower.**”

Authority: S2238, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Title I, Sec. 105. National Flood Insurance Act of 1968 (42 U.S.C. §4011(b)) as amended.

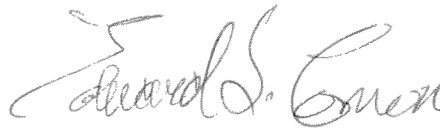
Purpose: To further move FEMA and the NFIP toward compliance with Sec. 105, by adopting its amended definition of substantial damage.

At Issue: FEMA has received anecdotal information that ICC claims may have been denied when the community has an ordinance with a lower substantial damage threshold than the SFIP, our regulation, now allows.

Policy Decision: Based on the facts and the authority stated above the issue raised above is resolved in favor of adopting the amended definition of “substantial damage” in Sec. 105 allowing a threshold specified, adopted, and enforced uniformly in the community floodplain management ordinance or law that may be lower than the current regulation allows, “50% of the market value of the structure at the time of the flood.”

To that end, WYO Companies and the NFIP Direct Servicing Agent (Insurers) are authorized to adjust ICC claims using a threshold contained in the State’s or community’s Floodplain Management Ordinance that has been adopted and is uniformly enforced prior to the loss by the State or community that may be lower than 50% of the market value of the building or structure at the time of loss.

In addition to the usually required ICC documentation, the Insurer’s claim file should include a copy of the minutes of the community council’s or other political body authorized to adopt and uniformly enforce Floodplain Management ordinances and a copy of the Floodplain Management ordinance or law that was adopted and uniformly enforced prior to the loss. This **Policy Issuance No. 01-2011** is effective on the date of its publication by the Clearinghouse.



Edward L. Connor
Acting Federal Insurance Administrator
Mitigation Division

Date: March 3, 2011