
SECTION 4: **The Community's Role**

**SECTION 4
Overview**

Section 4 presents the roles and responsibilities of the local community in the Increased Cost of Compliance (ICC) process.

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Section 4: The Community's Role

The Community and Floodplain Management

This section describes how ICC relates to State and community administration of floodplain management laws or ordinances and other mitigation programs following a flood event. In addition, this section provides guidance on what factors States and communities should consider when payments of ICC claims are to be made in communities. A description of the allowable mitigation measures under ICC coverage is provided in Section 5. Specifically, this section will address the following topics:

- Determining which mitigation measure should be undertaken;
- How a community's substantial damage or repetitive loss determination triggers a claim under ICC coverage;
- What ordinance language should be adopted if a community chooses to enforce a repetitive loss provision; and
- What a community's responsibilities are under the National Flood Insurance Program (NFIP) in reviewing, approving, and permitting a proposed mitigation measure under ICC.

Note: One aspect of ICC coverage that States and communities should keep in mind is that ICC claim payments are made whether or not there has been a Presidential disaster declaration. Therefore, even for smaller floods, financial assistance is still provided to insured property owners in communities to help mitigate future flood losses.

Ensure NFIP Compliance

To participate in the NFIP, communities must, at a minimum, regulate all development in the designated Special Flood Hazard Area (SFHA) in accordance with the NFIP criteria and any applicable State and community floodplain management laws. The local floodplain management administrator is responsible for the enforcement of the local floodplain management ordinance.

To ensure NFIP compliance, communities must:

- Ensure that work is not initiated without proper permits and that completed work is compliant with local floodplain management requirements.
- Require a floodplain development permit before any development or construction proceeds in the designated SFHAs of the community, including buildings that will be elevated or floodproofed under a claim for ICC.
- Ensure that the minimum NFIP requirements in the community's ordinances are met for development in the SFHA before issuing permits.
- Review proposed development to ensure that all applicable Federal, State, or local permits are obtained before construction work begins on the selected mitigation measures to existing structures or on new constructions.

Ensure NFIP Compliance

Working With Property Owners

Once a substantial damage or repetitive loss determination has been made, the local floodplain administrator can ensure code compliance by educating property owners about safe building practices and community standards. The property owners often must choose among mitigation solutions that are compliant with codes and floodplain ordinances. These options may include:

- Elevating,
- Relocating, or
- Demolishing the structure.

If the damaged structure is non-residential, floodproofing may be another option.

The local floodplain administrator should work with the building owner to identify and select a mitigation measure that is compliant.

Collect Information

The local floodplain administrator should make available compliance information on the building that will be needed by the claims representative (CR). Among the required material is:

- The basis for the community's determination of substantial damage or repetitive loss, in writing.
- A copy of the applicable repetitive loss provision in the community's floodplain management ordinance.
- **If the building is in a B, C, X, or D Zone**, documentation as to why the building is required to undertake the mitigation action.
- **If the community requires a "freeboard,"** a copy of the applicable ordinance.
- **If the building is in Zone A**, the base flood elevation (BFE) used by the community.

In addition to the above information, the CR will need the following information for a Post-FIRM building:

- Evidence that the building was built in compliance at the time of construction; or
- A copy of any variance granted on the building; and/or
- Evidence that the BFE increased since the building was built.

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Exceeding the NFIP Requirements

Communities may choose to implement more stringent floodplain management ordinances than those required by the NFIP. Listed below are examples of common ways in which communities may implement a higher standard of NFIP requirements.

Higher Minimum Standards

While NFIP requirements are a minimum safety standard, many States and communities have more restrictive requirements than those established by the NFIP.

State and community officials use knowledge of local conditions to determine whether it is in the best interest of safety to exceed the levels. Some common examples of conditions that are beyond NFIP minimum standards are shown below.

Requirement	Explanation
Freeboard	Adoption of floodplain management requirements that exceed the NFIP minimum standards by requiring new or substantially improved buildings to be elevated or floodproofed to <u>1 or more feet above</u> the BFE. This more restrictive requirement is generally referred to as “freeboard” and provides an extra measure of flood protection above the design flood elevation to account for waves, debris impacts, hydraulic surge, or insufficient data.
Tracking Damage	<p>Tracking and counting improvements or repairs cumulatively over a specified period of time to determine if a building is being substantially improved or is substantially damaged.</p> <p>The cumulative tracking of either substantial damage or substantial improvement may trigger the need to comply with local flood protection standards. The structure is then determined to be a repetitive loss structure.</p> <div data-bbox="699 1283 1409 1654" style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>Under the National Flood Insurance Reform Act, a repetitive loss structure is:</p> <p>“ . . . a building covered by a contract for flood insurance that has incurred flood-related damages on two 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 percent of the market value of the building at the time of each such flood event.”</p> </div>
Land Use	Adoption of land use requirements that prohibit specified buildings or uses in certain areas, such as the floodplain, conservation zones, and/or the floodway.

**Community
Role in
Substantial
Damage**

The NFIP substantial damage requirement provides a mechanism to ensure that a significant increase in investment in flood hazard areas will receive needed protection from the flood risk. Compliance with the community's substantial damage requirement not only will reduce or eliminate the peril to lives and property of those subjected to the flood risk, it will also reduce future costs for flood-related response and recovery to the community and the State as a whole. If a substantially damaged building is rebuilt in violation of State or community floodplain management laws or ordinances and the building is not elevated or floodproofed (for non-residential buildings only) to or above the BFE, the Post-FIRM flood insurance rates and premiums will be significantly higher than Pre-FIRM rates and premiums. In addition, the property owner will not be eligible for an ICC claim payment.

**Determine
Substantial
Damage**

Making substantial damage determinations is one of the most important responsibilities of the local floodplain administrator in the immediate period following a flood disaster. The local floodplain administrator (e.g., building department official) must determine whether damage to a building equals or exceeds 50 percent of its pre-flood market value.

Local floodplain administrators must ensure that market value estimates are reasonably accurate and that the cost estimate reasonably reflects the actual costs to fully repair the damage and make any other improvements to the building.

The local floodplain administrator should ask the permit applicant or the owner of the building to assist in this effort by supplying construction cost estimates and appraisals and other documents that indicate building value.

Remember, a building is considered to be **"substantially damaged"** when:

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

The "Residential Substantial Damage Estimator" was developed to assist State and local officials in making substantial damage determinations in accordance with the local floodplain management requirements.



See the topic titled "Additional Information on Substantial Damage" on page 4-9 for a list of references on this subject.



Sample Worksheets for Determining Substantial Damage are included in Appendix C, Community Tool Kit.

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Cumulative Substantial Damage

Under the NFIP, a single repair or improvement to a building the cost of which equals or exceeds 50 percent of the market value meets the criterion for a substantially damaged building or a substantially improved building. A substantially damaged structure must meet the minimum requirements of the NFIP.

Communities can reduce flood-related damages by counting repairs or improvements cumulatively (by adding the cost of each successive repair or improvement) over a period of time. Under this requirement, the structure will be brought into compliance with flood protection criteria sooner. This type of requirement in a floodplain management ordinance is generally referred to as a “cumulative substantial damage” requirement or a “cumulative substantial improvement” requirement.

If the community has a cumulative substantial damage provision in the local ordinance, the local floodplain administrator should review the history of the damaged property.

If the combined damage meets the levels specified in the local ordinance, then the floodplain administrator will notify the owner in writing that he/she must comply with the community's codes and ordinances. The structure in question must have suffered substantial damage or repetitive loss as defined by the NFIP in order to be eligible for an ICC claim.

Remember, under the National Flood Insurance Reform Act, a “**repetitive loss structure**” is:

“ . . . a building covered by a contract for flood insurance that has incurred flood-related damages on two 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 percent of the market value of the building at the time of each such flood event.”

ICC and CRS

Communities participating in the NFIP's Community Rating System (CRS) may have adopted a cumulative substantial damage provision, a cumulative substantial improvement provision, or a repetitive loss structure provision with thresholds that are less than those defined by ICC. In addition, a State's or community's cumulative substantial damage criteria or repetitive loss structure criteria may comply with the State's or community's floodplain management laws or ordinances, yet the building may not qualify for an ICC claim payment. The criteria for ICC were specifically set out in the National Flood Insurance Reform Act of 1994 and cannot be changed by FEMA.

For example, a community may have a cumulative substantial damage provision requiring that repairs made over a period of years that add up to 50 percent of the market value be considered substantially damaged so that buildings can be brought into compliance with flood-protection criteria sooner. Thus, a building could have three losses of 15 percent, 15 percent, and 23 percent that would trigger compliance with the community's floodplain management ordinance, but the losses would not qualify the building for an ICC claim payment because two of the flood events do not have damages that average at least 25 percent of the market value.

The following is a definition within a community's CRS guidance on higher regulatory standards that count repairs and improvements cumulatively. Even though CRS credits would be given, the definition does not meet the requirements for ICC.

“Substantial improvement means any combination of repairs, reconstructions, rehabilitations, additions, or other improvements of a structure, taking place during the life of the structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed.”

The decision whether to amend an existing cumulative substantial damage requirement or a repetitive loss requirement that conforms with the definition required for ICC is at the discretion of the State or community.



Tip: For further assistance, communities should contact their NFIP State Coordinating Office or FEMA Regional Office. Contact information is provided in Appendix F.

Substantial Improvement

Buildings that are determined to be substantially damaged are by definition considered to be substantial improvements, regardless of the actual repair work performed, and must meet the same NFIP requirements as new construction. If the cost necessary to fully repair the building to its before damaged condition is equal to or greater than 50 percent of that building's market value before damages, then the building must be elevated (or can be floodproofed if it is non-residential) to or above the level of the BFE.

However, an ICC claim payment can only be used to help policyholders comply with State and community floodplain management laws or ordinances after a flood loss. Even though property owners would like to make improvements when rebuilding, the flood loss alone must constitute the “substantial damage.” When the combination of the cost of repair and the cost of the improvement exceeds the 50 percent market value threshold for a “substantial improvement” under the community's ordinance, the structure does not meet the criteria for an ICC claim, yet must still meet the floodplain management requirements of new construction.

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Inform Owner

A substantial damage determination letter or other written notification should have a consistent format advising the owner that the building is substantially damaged and must meet the requirements of the community's floodplain management ordinance. Along with the damage determination, the local floodplain administrator should remind the owner that ICC coverage could help offset compliance costs. If a structure is substantially damaged, the community should also offer a meeting to discuss mitigation options for rebuilding. The floodplain administrator's notification may also include a copy of the necessary permit application and permit fee schedule, as well as the appropriate community department to contact for questions. For structures that are not substantially damaged, floodplain development or building permits are still required for rebuilding activities in the floodplain.



Sample Notices of Determination for “substantial damage” and “no substantial damage” appear in Appendix C, Community Tool Kit.

**Additional
Information
on
Substantial
Damage**

FEMA has publications, software, and other materials to assist communities in determining substantial damage.

- *Answers to Questions About Substantially Damaged Buildings* (FEMA 213/May 1991) – Guidance document on NFIP regulations and policy governing substantial damage.
- *NFIP Residential Substantial Damage Estimator (RSDE) Version 2.0 and Workbook* – Software and workbook designed to assist State and local officials in determining substantial damage.
- *Guidance on Estimating Substantial Damage Using the NFIP Residential Substantial Damage Estimator* (FEMA 311/August 2001) – Manual that discusses the use and capability of the RSDE software.
- *FEMA's Residential Substantial Damage Estimator and Your Community* (FEMA, 2001) – A training video on using the RSDE software.

To order these training tools, see the NFIP Web site at www.fema.gov/nfip.

Communities may also contact their FEMA Regional Office or NFIP State Coordinating Office for assistance.

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Community Role in Repetitive Loss

A building is eligible for ICC if the community has a repetitive loss provision in its floodplain management ordinance. Most of the nearly 20,000 participating NFIP communities do not have a repetitive loss provision or a cumulative substantial damage provision in their floodplain management laws or ordinances.

Repetitive Loss Provision:

Making the Decision

The decision whether to amend an existing cumulative substantial damage requirement or a repetitive loss requirement that conforms with the definition in the National Flood Insurance Reform Act is made at the discretion of the State or community. The decision to adopt this loss provision is voluntary. Not all communities have a history of repetitive damages to existing buildings.

Each community needs to evaluate its history of repetitive flood losses to existing buildings and decide whether a repetitive loss provision would significantly mitigate the flood risk to existing buildings. Communities should also evaluate the added administrative responsibilities or need for additional staff to adopt and administer this type of provision to all buildings in the SFHA in the community (not just those insured with flood coverage).



Tip: States and communities may wish to contact their FEMA Regional Office to discuss the following questions:

- Could an ICC claim be triggered under a State's or community's existing cumulative substantial damage provision or repetitive loss provision?
- To what extent, if at all, does the State's or community's definition differ from the "repetitive loss structure" definition under the National Flood Insurance Reform Act?

Consider Adopting a Repetitive Loss Provision

A State or community may revise its ordinances and adopt a repetitive loss provision at any time. States or communities are not required to amend their floodplain management laws or ordinances to include a repetitive loss provision. Adoption of the repetitive loss provision is voluntary.

In the event that a State or community decides to adopt a repetitive loss provision or a cumulative substantial damage provision, this provision must then be enforced on all buildings in the community whether or not the buildings are covered by flood insurance. Also, this requirement would apply to a building whether or not there has been a change in ownership of the building.

- **If a community has a repetitive loss provision . . .**
. . . then ICC is available when a structure is substantially damaged or meets repetitive loss criteria.
- **If a community does not have a repetitive loss provision . . .**
. . . then ICC is only available when a structure has been substantially damaged.

Repetitive Loss Provision:

Linking Loss to Code Compliance

In addition to adopting a definition for “repetitive loss” and/or amending existing definitions, the community’s ordinance must be amended to ensure that “repetitive loss” is linked to new construction and substantial improvement requirements of the ordinance, in accordance with 44 CFR 60.3 of the NFIP Regulations. An example is requiring that a residential repetitive loss structure in an A Zone shall have the lowest floor, including basement, elevated to or above the BFE.



Tip: Communities may contact their NFIP State Coordinating Office or FEMA Regional Office for assistance. Contact information is provided in Appendix F.

Repetitive Loss Provision:

Records & Tracking

Communities that adopt a repetitive loss requirement should develop administrative procedures in order to track repetitive losses. These procedures include systems to:

- Maintain permit records (e.g., by address).
- Document and maintain the date of repairs for a particular building so that the repair history can be checked before the next permit is issued.
- Document and maintain the flood-related cost to repair the building and the market value of the building before the damage occurred for each flood event.

Note: This documentation will be necessary for a repetitively damaged building to qualify for an ICC claim payment.

Repetitive Loss Provision:

Sample Required Language

States and communities that wish to adopt a repetitive loss provision so that repetitively damaged buildings can qualify for an ICC claim payment should establish criteria in their floodplain management laws or ordinances that are consistent with the definition.

In order for buildings to qualify for a claim payment under ICC coverage as a “repetitive loss structure,” the National Flood Insurance Reform Act of 1994 requires that the building be:

“ . . . covered by a contract for flood insurance and incur flood-related damages on two occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event.”

Repetitive loss structures must be rebuilt to at least the minimum NFIP floodplain management requirements for substantial improvements in accordance with 44 CFR 60.3 of the NFIP Floodplain Management Regulations.

FEMA recognizes that State model floodplain management ordinances vary, and that community floodplain management laws or ordinances will vary as to which amendments or changes will be needed to include a repetitive loss provision.

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Repetitive Loss Provision:

Shown below are sample definitions for “repetitive loss structure” that can be incorporated into a State model floodplain management ordinance or included in a community’s floodplain management ordinance. These examples are consistent with the definition for “repetitive loss structure” under the NFIP.

Sample Definitions

A cumulative substantial damage provision must also meet the repetitive loss criteria. See the topic titled “Cumulative Substantial Damage” on page 4-6.

Sample Repetitive Loss Definitions

There are two ways to meet the NFIP floodplain management criteria for repetitive loss:

- Adopt a repetitive loss provision in the existing floodplain management ordinance, then modify the existing substantial improvement definition currently in the floodplain management ordinance.
- Modify the existing substantial damage definition.

Adopt the following definition:

“Repetitive loss” means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

THEN . . .

Modify the “substantial improvement” definition as defined in the NFIP Floodplain Management Regulations at 44 CFR 59.1 in a State or community floodplain management ordinance as follows:

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred repetitive loss or substantial damage, regardless of the actual repair work performed.

OR . . .

Modify the “substantial damage” definition as defined in the NFIP Floodplain Management Regulations at 44 CFR 59.1 in a State or community floodplain management ordinance as follows:

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. “Substantial damage” also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damaged occurred.

Note: Communities and/or States need to make sure that these definitions are tied to the floodplain management requirements for new construction and substantial improvements and to any other requirements of the ordinance, such as the permit requirements, in order to enforce this provision.

Note: An ICC claim payment is only made for flood-related damages. The “substantial damage” part of the definition must still include “damage of any origin” to be compliant with the minimum NFIP Floodplain Management Regulations.

Inform Owner

If the property has been identified as a repetitive loss structure, the local floodplain administrator should then notify the owner in writing that the building is subject to the community's codes and floodplain management ordinances. Along with the damage determination, the community should remind the owner that ICC coverage could help offset compliance costs.



If the community adopts a repetitive loss provision, the sample Notices of Determination in Appendix C, Community Tool Kit, can be modified to accommodate repetitive loss.

**Scenarios
Illustrating
Types of Loss**

The scenarios on the following page show how the amount of a policyholder's loss and the provisions adopted by a community affect the policyholder's compliance requirements and eligibility for ICC benefits.

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Scenarios Illustrating Substantial Damage, Repetitive Loss, and Cumulative Substantial Loss

Substantial Damage	Repetitive Loss	Cumulative Substantial Loss
<p>A home has a market value of \$150,000. In 2002, the home sustained \$80,000 of flood-related damage.</p> <p>The property owner:</p> <ul style="list-style-type: none"> ▪ Must now comply with the floodplain ordinance requirements for a substantially damaged structure. ▪ Is eligible for ICC benefits to help comply with minimum NFIP requirements. 	<p>The community has adopted a repetitive loss provision.</p> <p>A home has a market value of \$150,000. The home has sustained the following flood damage:</p> <ul style="list-style-type: none"> ▪ 1995: \$45,000 (30% of market value) ▪ 2002: \$35,000 (23.33% of market value) <p>The average loss equals \$40,000 (26.67% of market value) within a 10-year period.</p> <p>The property owner:</p> <ul style="list-style-type: none"> ▪ Must comply with the community floodplain ordinance requirements for a repetitive loss structure. ▪ Is eligible for ICC benefits to help comply with minimum NFIP requirements. <p>Note: If the community had not adopted and enforced a repetitive loss ordinance, then the property owner would not be eligible for ICC.</p> <p>The community’s adoption of a repetitive loss ordinance is voluntary.</p>	<p>The community has adopted a cumulative substantial loss provision.</p> <p>A home is valued at \$150,000. The home has sustained the following flood damage:</p> <ul style="list-style-type: none"> ▪ 1995: \$35,000 (23.33% of market value) ▪ 1998: \$15,000 (10% of market value) ▪ 2002: \$25,000 (16.67% of market value) <p>The total cumulative damage is \$75,000, or 50% of the market value. However, when you average together the losses for any two of the years, none of the averages equals 50% or more.</p> <p>The property owner:</p> <ul style="list-style-type: none"> ▪ May have to comply with the community’s cumulative substantial damage ordinance. ▪ Is <u>not</u> eligible for ICC benefits to help cover the cost of bringing the home into compliance because the damage did <u>not</u> meet the criteria for substantial damage (50% on one loss) or repetitive loss (two losses within 10 years that, on average, equaled or exceeded 25% of the market value). <p>The community’s adoption of a cumulative substantial loss provision is voluntary. This is not an NFIP requirement.</p>

Providing Permits

To participate in the NFIP, communities must, at a minimum, regulate all development in the designated SFHA in accordance with the NFIP criteria and any applicable State and community floodplain management laws. To do this, communities must require a floodplain development permit before any development or construction proceeds in the designated SFHAs of the community including buildings that will be elevated or floodproofed under a claim for ICC. Before the permit is issued, the community must ensure that the minimum NFIP requirements are met for development in the SFHA.

In addition, the community must review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal, State, or community laws or regulations. It is the community's responsibility to ensure that all applicable Federal, State, or local permits are obtained before construction work begins on the selected mitigation measure.

For buildings that are to be elevated or floodproofed in SFHAs, the permit or accompanying documentation must indicate the elevation to which the building is to be elevated or floodproofed (e.g., the BFE plus any applicable "freeboard" elevation required by the State or community's floodplain management laws or regulations). It is the community's responsibility to ensure that all other applicable Federal, State, or local permits are obtained before the mitigation measure is undertaken.

Permit	Requirements
Floodplain Development Permit	<p>This permit is required, before work begins, for any development or construction within the SFHA.</p> <p>Before a structure is <u>elevated</u> or <u>floodproofed</u>, a permit stating the elevation standard is required. (See Appendix C for sample elevation and floodproofing certificates.) The elevation standard is the BFE plus any applicable "freeboard" elevation required by the State's or community's floodplain management laws or regulations.</p> <p>A floodplain development permit is also required before a structure is <u>demolished</u> or <u>relocated</u> to a site outside the SFHA. The permit ensures that the existing site where the building is being demolished or from which it is being relocated is compliant with the State or community floodplain management ordinance.</p>
Elevation Certificate or Floodproofing Certificate	<p>Communities will generally require the submission of an elevation certificate or floodproofing certificate prior to the issuing of a Certificate of Occupancy or Compliance.</p>
Certificate of Occupancy or Compliance	<p>Most communities will issue a Certificate of Occupancy or Compliance for the building after all work has been completed and the building inspected to verify compliance with the floodplain management ordinance and other regulatory requirements.</p>



Tip: A floodproofing certificate, an elevation certificate, and a tutorial can be viewed on-line at the NFIP Web site: www.fema.gov/nfip

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Communities With Residential Basement Exceptions

Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, only non-residential buildings in A Zones can be floodproofed.

However, under the NFIP Floodplain Management Regulations at 44 CFR 60.6(b) or (c), communities that have been approved for residential basement exceptions by FEMA may adopt standards for floodproofed residential basements. These approved communities are the only ones in which ICC payments may be used to floodproof a residential basement.

The claims representative should determine whether the community is one in which this exception applies.

Inspecting Work

The community must ensure that all work has been completed according to the permit and approved plans and specifications for buildings, including buildings that are demolished or relocated outside the SFHA. The floodplain management permit official must ensure that the elevation or floodproofing of a building in an SFHA is completed according to the permit and approved plans and in compliance with the community's floodplain management laws and ordinances.

A Zones: The community permit official must obtain and verify the elevation of the lowest floor (including basement) of all new or substantially improved buildings that are elevated in A and V Zones. The NFIP requirements specify that:

- All new construction and substantial improvements of residential buildings must have the lowest floor (including basement) elevated to or above the BFE.
- All new construction and substantial improvements of non-residential buildings must either have the lowest floor (including basement) elevated to or above the BFE or dry-floodproofed to the BFE. Dry-floodproofing means that the building must be designed and constructed to be watertight, substantially impermeable to floodwaters.
- Buildings can be elevated to or above the BFE using fill, or they can be elevated on extended foundation walls or other enclosure walls, on piles, or on columns.
- Foundation and enclosure walls that are subject to the 100-year flood must be constructed with flood-resistant materials and contain openings that will permit the automatic entry and exit of floodwaters. Any enclosed area below the BFE can only be used for the parking of vehicles, building access, or storage.

Floodproofing Projects: For non-residential buildings that are floodproofed, the community permit official must obtain and verify the elevation to which the building is floodproofed. In addition, a registered professional engineer or architect must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the following requirements:

- The building is watertight, with walls substantially impermeable to the passage of water.
- The attendant utility and sanitary facilities are located above the BFE, enclosed within the building's watertight walls, or made watertight and capable of resisting damage during flood conditions.
- The structural components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The community permit official must obtain and maintain a copy of the floodproofing certification.

**Inspecting
Work**

V Zones: In V Zones, a registered professional engineer or architect must certify that the design and construction are in accordance with the V Zone requirements at 44 CFR 60.3(e). The NFIP requirements specify that:

- All new construction and substantial improvements of buildings must be elevated on piles and columns so that the bottom of the lowest horizontal structural member of the lowest floor is elevated to or above the BFE. No fill can be used for structural support.
- All new construction and substantial improvements of buildings must be properly anchored to resist flotation, collapse, and lateral movement.
- The area below the lowest floor of an elevated building a V Zone must either be free of obstruction, or any enclosure must be constructed with open wood lattice-panels or insect screening or with non-supporting/non-load-bearing breakaway walls that meet applicable NFIP criteria. Any enclosed area below the BFE can only be used for the parking of vehicles, building access, or storage.
- Man-made alteration of sand dunes and mangrove stands is prohibited within V Zones.
- Structures must be located landward of the reach of mean high tide.

**Issuing
Certificate of
Occupancy**

Some communities specify that a new or substantially improved building cannot be used or occupied without some type of use permit or Certificate of Occupancy. A letter or Certificate of Compliance may be substituted for a Certificate of Occupancy. The official should not issue a use or occupancy permit until the building passes a final inspection.

Section 4: The Community's Role

Frequently Asked Questions

This topic presents answers to frequently asked questions related to the community's role.

Substantially Damaged Buildings

Under the NFIP Floodplain Management Regulations, if a building is determined to be substantially damaged, what must happen to that building?

All repairs to buildings that are determined to be substantially damaged are by definition considered to be substantial improvements, regardless of the actual repair work performed, and must generally meet the same NFIP requirements as new construction.

In other words, if the cost necessary to fully repair the building to its before damaged condition is equal to or greater than 50 percent of that building's market value before damages, then the building must be elevated (or can be floodproofed if it is non-residential) to or above the level of the BFE and must meet other requirements in the floodplain management ordinance.

ICC Conditions for Repetitive Loss

What are the two conditions that must be met in order for the ICC benefit to be paid for a repetitive loss?

A building is eligible for an ICC claim payment if the local floodplain administrator determines it to be a repetitive loss structure that must comply with State or community floodplain management laws or ordinances. There are two conditions that must be met in order for the ICC benefit to be paid under the SFIP for a repetitive loss structure:

- The State or community must be enforcing a repetitive loss provision or a cumulative substantial damage provision and require action by the property owner to comply with floodplain management laws or ordinances; and
 - The building must have a history of claims payments that satisfy the statutory definition of repetitive loss structure (see page 4-12).
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Determining Repetitive Loss

How are repetitive losses counted in order to satisfy the definition for “repetitive loss structure” for an ICC claim payment?

According to the definition of “repetitive loss structure” in the National Flood Insurance Reform Act, there must be flood-related damages on two occasions during a 10-year period in which the cost of repair for each flood event, on the average, equaled or exceeded 25 percent of the market value of the building before the damage occurred.

Described below are examples of situations that satisfy the definition of “repetitive loss structure.” Within a **10-year period**:

- The first loss is 35 percent of the market value of the building and the second loss is 15 percent of the market value.
- The first loss is 10 percent of the market value of the building and the second loss is 40 percent of the market value.
- The first loss is 45 percent of the market value of the building and the second loss is 5 percent of the market value.

Note: There are other instances of repetitive loss that may not satisfy the definition of “repetitive loss structure” under the National Flood Insurance Reform Act. For example, if the cost of repair for two losses, when combined, is less than 50 percent, the building does not qualify for a claim payment under ICC as a “repetitive loss structure.”

Voluntary Adopting of Repetitive Loss Provision

Are States or communities required to amend their floodplain management laws or ordinances to include a repetitive loss provision?

No. Adoption of a repetitive loss provision is voluntary. The National Flood Insurance Reform Act of 1994 does not mandate that FEMA amend the NFIP Floodplain Management Regulations at 44 CFR 59.1 and 60.3 to require communities to adopt a repetitive loss provision. Since States and communities will not be required to adopt a repetitive loss provision in their floodplain management laws or ordinances, the decision whether to adopt such a provision is made at their discretion.

Section 4: The Community's Role

Cumulative Substantial Damage

What is “cumulative substantial damage” or “cumulative substantial improvement?”

Under the NFIP, a single repair or improvement to a building the cost of which equals or exceeds 50 percent of the market value meets the criterion for a substantially damaged building or a substantially improved building. A substantially damaged structure must meet the minimum requirements of the NFIP.

Communities can reduce flood-related damage by counting repairs or improvements cumulatively (by adding the cost of each successive repair or improvement) over a period of time. Under this requirement, the structure will be brought into compliance with flood protection criteria sooner. This type of requirement in a floodplain management ordinance is generally referred to as a “cumulative substantial damage” requirement or a “cumulative substantial improvement” requirement.

Remember, the structure in question must have suffered substantial damage or repetitive flood damage, as defined by the NFIP, in order to be eligible for an ICC claim.

Impact on Policyholders

What effect is there on policyholders if a community decides not to adopt a repetitive loss provision?

An ICC claim cannot be paid on an insured building that has been repetitively damaged if the State or community has not adopted a repetitive loss or cumulative substantial damage requirement in its floodplain management laws or ordinances.

However, the ICC benefit will still be paid for buildings that have been substantially damaged by flood. It is anticipated that most ICC claim payments will be for buildings that are substantially damaged. Communities should evaluate whether adoption of a repetitive loss provision would significantly mitigate the flood risk to existing buildings and be in the best interest of the community as a whole.

Timing for Amending Ordinances

Can a community adopt a repetitive loss or cumulative substantial damage requirement at any time?

Yes. States and communities can amend their floodplain management laws or ordinances to incorporate a repetitive loss provision or cumulative substantial damage provision at any time.

States and communities need to be aware that ICC coverage is only available when a property owner is required to rebuild in compliance with a community's substantial damage, repetitive loss, or cumulative substantial damage provision. Remember that the cumulative substantial damage provision is based on two losses within a 10-year period that, when combined, equal or exceed 50 percent of the market value of the building.

Timing of Losses

Must both losses occur after the effective date of the ICC coverage (June 1, 1997) in order for a repetitively damaged building to qualify for an ICC claim payment?

No. 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 on the building and the insured building satisfies the definition of "repetitive loss structure" under the National Flood Insurance Reform Act of 1994.

For example, if a community has an existing repetitive loss or cumulative substantial damage provision that was in effect prior to June 1, 1997 and has been enforcing this provision, the ICC coverage will respond once the community enforces its ordinance on the second qualifying loss on buildings for which a renewed or new flood insurance policy has been issued after June 1, 1997, as long as both losses occur within a 10-year period. In addition to the current loss, the NFIP must have paid a claim on a previous qualifying loss.

Amending Provisions That Deviate From the National Flood Insurance Act

If my State or community currently has a cumulative substantial damage provision or a repetitive loss provision in its floodplain management laws or ordinances which deviates from the National Flood Insurance Reform Act's definition of "repetitive loss structure," will the State or community be required to amend its laws or ordinances to conform to this definition?

No. However, States and communities must be aware that there may be instances where existing State or community cumulative substantial damage criteria or repetitive loss structure criteria may require compliance with their floodplain management laws or ordinances, but the building may not qualify for an ICC claim payment.

For example, a community may have a cumulative substantial damage provision that requires that repairs made over a period of years that add up to 50 percent of the building's market value be considered substantial damage so that buildings can be brought into compliance with flood protection criteria sooner. Thus, a building could have three losses of 15 percent, 15 percent, and 23 percent that would trigger compliance with the community's floodplain management ordinance. However, this building would not qualify for an ICC claim payment because there are not two flood events within a 10-year period that together average 25 percent of the market value. In other words, the owner must bring the building into compliance with the code but will not receive ICC coverage.

This situation may apply to communities participating in the NFIP's Community Rating System that have adopted a cumulative substantial damage provision or cumulative substantial improvement provision or a repetitive loss structure provision with thresholds that are less than the one defined under the National Flood Insurance Reform Act. For additional information on CRS, call (317) 848-2898 or write NFIP/CRS, PO Box 501016, Indianapolis, IN 46250-1016.

The decision whether to amend an existing cumulative substantial damage requirement or a repetitive loss requirement that conforms with the definition in the National Flood Insurance Reform Act is made at the discretion of the State or community. States and communities may contact their respective FEMA Regional Office to determine whether an ICC claim could be triggered under a State's or community's existing cumulative substantial damage provision or repetitive loss provision and to what extent, if any, the State's or community's definition differs from the "repetitive loss structure" definition.