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Congress of the United States
House of Representatives
Washington, DC 20515-2404

March 13, 2006

Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff,

I am writing to request your immediate action to correct a foolish FEMA policy with regard to the Increase Cost of Compliance program, the FEMA flood maps, and FEMA flood elevation requirements.

As you know, Hurricane Katrina's storm surge inundated more than 50,000 homes in Mississippi. Many of the homes that were severely damaged or destroyed were not located in special flood hazard areas according to the FEMA flood maps.

In October, FEMA recommended new advisory elevations for Hancock, Harrison, and Jackson counties in Mississippi, but did not require that the new elevations be adopted by local governments. Many areas that were not identified as flood hazard areas before Katrina will be in V-zones or A-zones under the new flood maps. The advisory base flood elevations are three to eight feet higher than those in effect before Katrina. In V-zones, where waves and tidal surge are expected, additional elevation is required to account for waves on top of the base flood elevation.

In a meeting in my office, I urged David Maurstad, Director of NFIP, to require new elevations rather than merely suggesting them. Maurstad and other FEMA officials have insisted that they do not have authority to implement new flood maps without going through a lengthy bureaucratic process.

I brought this matter to the attention of the leaders of the House Financial Services Committee when the committee was considering a bill to increase the borrowing authority of NFIP. On October 28, 2005, Committee Chairman Michael Oxley, Ranking Member Barney Frank, Subcommittee Chairmen Robert Ney and Richard Baker, and Subcommittee Ranking Member Maxine Waters joined in a letter to FEMA Director David Paulison, insisting that he had the authority to implement interim flood elevations and encouraging him to do so. Director Paulison maintains that he does not have authority to implement the new elevations without the formal process.

A few local governments on the Gulf Coast have adopted the new elevations suggested by FEMA, but many local government have not done so. In communities that have not adopted new elevations, building permits are being issued to rebuild structures at the base flood elevations under the old maps.

The National Flood Insurance Program offers Increased Cost of Compliance (ICC) assistance to help flood insurance policyholders to elevate their properties in order to comply with flood elevations and building requirements. However, NFIP has said that a homeowner who wants to build to the advisory elevation is not eligible for ICC assistance if the local government has not adopted the new suggested maps.

This is a ridiculously foolish policy that I know to be the case because of my own personal experience. I bring this to your attention because I know it would affect thousands of homeowners who will find themselves in the same predicament if they attempt to rebuild to the higher elevations that FEMA has recommended.

My house facing the Bay of St. Louis was 14 feet above sea level. The house and most of my lot were in a B-zone, the so-called 500-year flood zone. The frontage on Beach Boulevard is in an A-zone, the 100-year flood zone, with a base flood elevation of 12 feet. I have had a flood insurance policy for as long as I have owned the home, but my flood coverage was less than the total value of the home.

Katrina destroyed my house and every other home in my neighborhood. I have received my flood insurance claim, but like most other South Mississippians, my homeowners insurance refuses to pay for the damages caused by the six hours of hurricane force winds that preceded the storm surge.

Under FEMA's new advisory flood maps, my home site would be in a V-zone with base flood elevation of 22 feet. I would like to rebuild to the higher elevation, so I applied for Increased Cost of Compliance assistance. My application was denied. A FEMA representative informed me that because the City of Bay St. Louis has not adopted the advisory flood elevations, I am not eligible for ICC assistance to comply with them.

This policy could result in thousands of homes being rebuilt in flood hazard areas at the old elevations, even though the property owners would prefer to rebuild at the higher elevations. If FEMA believes that homes should be rebuilt higher, then your policies should encourage and assist property owners to do so. It is absurd to ask local governments to enforce new elevations, but refuse to help property owners who would voluntarily comply with the new FEMA elevations where the local government has not adopted them. Please change this policy immediately. Do not punish property owners who want to rebuild according to your recommendations. If you doubt that you have the authority to take decisive action, then request that authority from Congress immediately.

I urge you also to clarify that Hazard Mitigation funds can be used to rebuild homes at the new elevations. In the past, the program has helped to elevate existing structures, but has not allowed projects to destroy damaged structures and then rebuild

higher on the same sites. In many cases, reconstruction at the new advisory elevation is a much better option than elevating and repairing a damaged structure. In some areas of Mississippi and Louisiana, it is the only responsible option.

In February, FEMA announced a policy that any projects funded by Hazard Mitigation grants must comply with the new advisory flood elevations even if the local government has not adopted them for the community as a whole. The FEMA guidance accompanying this announcement suggests combining ICC funds with Hazard Mitigation funds, but FEMA's own policies prohibit that course in any community that has not adopted the advisory flood elevations.

FEMA should use both ICC assistance and Hazard Mitigation grants to encourage reconstruction at the higher elevations. Homeowners who have flood insurance should be eligible for ICC assistance to build to the higher elevations. Homeowners who did not have flood insurance could be eligible for Hazard Mitigation projects to rebuild homes to the higher elevations recommended by FEMA.

Thank you for your attention to this request. This situation demands decisive leadership. Please take immediate steps to correct the policy flaws that undermine efforts to reduce risk to future hurricanes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gene", written in black ink.

GENE TAYLOR
Member of Congress

GT:jbm



MAY 18 2006
FEMA

May 8, 2006

The Honorable Gene Taylor
United States House
of Representatives
Washington, DC 20515-2404

Dear Representative Taylor:

Thank you for your letter dated March 13, 2006, sent to R. David Paulison, Acting Director of the Department of Homeland Security's Federal Emergency Management Agency (FEMA) on behalf of your constituents. You stated that National Flood Insurance Program (NFIP) policyholders should be eligible for Increased Cost of Compliance (ICC) claims to elevate damaged structures to Advisory Base Flood Elevations (ABFEs), even if their communities have not adopted the ABFEs. You also asked that FEMA clarify whether projects funded by mitigation grant programs will be required to adhere to the ABFEs. I apologize for the delay in responding.

Under the NFIP, communities are required to adopt and enforce floodplain management regulations that meet or exceed the minimum floodplain management requirements of the NFIP in order for FEMA to make flood insurance available to property owners. In general, communities that participate in the NFIP are required to adopt floodplain management regulations that require new structures and substantially improved or substantially damaged residential structures be elevated to or above the Base Flood Elevation (BFE). Non-residential structures either can be elevated or dry floodproofed. However, dry floodproofing is not allowed in V-zones because the velocity and wave action hazards exert hydrodynamic forces.

Assessment of the flooding from Hurricanes Katrina and Rita indicated that the effective Flood Insurance Studies (FISs) and Flood Insurance Rate Maps (FIRMs) underestimate the extent of the flood hazard. Therefore, FEMA recommends that the lowest floor of new structures or substantially damaged or substantially improved structures be elevated to the ABFEs, which are designed to help minimize flood damages until new effective FIRMs are issued following the required restudy of flood hazards.

Although participating communities in the NFIP are not required to adopt the ABFEs, they are encouraged to use this data to minimize future flood damages. FEMA ordinarily provides flood data to communities in accordance with a well-defined regulatory process. This process involves providing preliminary data, affording an appeals procedure, finalizing the data, and providing a six-month period of time for communities to adopt the data into their local ordinances and codes. FEMA cannot require a community to adopt new data unless it goes through this process. Remapping and completing the entire regulatory process generally takes a minimum of two years from the inception of the restudy until new FIRMs become effective. The Flood Recovery Guidance

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is an interim product that will provide communities with an estimate of the minimum flood elevations that they can use during reconstruction to protect their citizens against future damages. Although NFIP regulations prevent FEMA from requiring communities to adopt ABFEs, continued use of the flood data on the currently effective FIRMs could result in structures that will be vulnerable to flood damage because they will not be built high enough or have the structural integrity to resist flood forces that may be encountered in future large flooding events.

In order to ensure that communities affected by major disasters are rebuilt stronger, safer and less vulnerable to damages from future flood disasters, FEMA will require communities to adhere to the elevation requirements established by ABFEs in order to be eligible for FEMA funding for certain mitigation and recovery projects. FEMA's new elevation policy for FEMA grant programs requires communities to use the ABFEs for all reconstruction activities funded through the following programs:

- Hazard Mitigation Grant Program (HMGP), which provides grants to fund mitigation projects after a disaster strikes to enable mitigation measures to be implemented during the recovery process;
- Flood Mitigation Assistance (FMA) program, which provides grants to mitigate future flood damages for structures insured under the NFIP;
- Pre-Disaster Mitigation (PDM) program, which awards nationally competitive grants to fund hazard mitigation projects; and
- Public Assistance Grant Program, which provides funds for the repair, replacement, and restoration of public facilities

Hurricanes Katrina, Rita, and Wilma struck Louisiana, Texas, Mississippi, Alabama, and Florida, producing severe flooding and wind damage that resulted in catastrophic physical and economic impacts on these States. The nature of damages has led to requests from several States for FEMA to consider providing HMGP funds for the purpose of mitigation reconstruction grants, where an existing structure is demolished and an improved elevated structure is built on the same site. As a result, FEMA has determined it will support PILOT HMGP activities for Hurricanes Katrina, Rita, and Wilma in Louisiana (DR-1603 and DR-1607), Texas (DR-1606), Mississippi (DR-1604), Alabama (DR-1605), and Florida (DR-1602 and DR-1609).

The PILOT mitigation reconstruction activities may involve the demolition of the existing structure followed by on-site replacement by a hazard resistant (flood, wind, and fire) code-compliant structure. PILOT grants may involve the reconstruction of pre-existing residential, commercial and public structures and may include substantially damaged structures. All PILOT activities must adhere to Federal environmental and historic preservation requirements, including those of the National Environmental Policy and National Historic Preservation Acts. In addition, they must adhere to other applicable State environmental and historic preservation laws. Verification must be provided that the PILOT grant resulted in a completed, code-compliant structure supported through a certificate of occupancy.

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The ability of States to utilize their authorized HMGP assistance from Hurricanes Katrina, Rita, and Wilma is directly linked to the need for sound, thorough guidance for all components of the HMGP. Since the HMGP is driven at the State and local levels, successfully utilizing program funds in the aftermath of these hurricanes requires the need for program guidance, particularly for new project types such as the introduction of this PILOT. FEMA staff are working to develop guidance materials for the PILOT, and FEMA will be working closely with its State counterparts on implementation.

Flood insurance policyholders may be eligible for ICC coverage benefits, and ICC coverage is an important part of most flood insurance policies. In accordance with NFIP regulations, this coverage provides up to \$30,000 to help property owners comply with local floodplain management laws and ordinances that require elevation, floodproofing (for nonresidential structures), demolishing, or relocation of a building. This coverage is in addition to the building coverage for the repair of the actual physical damages from flooding, although the total claims payments cannot exceed statutory limits.

If the community adopts and enforces the FEMA-provided ABFEs, they become a local floodplain management requirement, and ICC benefits will then be available to elevate buildings to the ABFEs. If the community does not adopt and enforce the ABFEs, ICC benefits will only pay to elevate to the BFE on the current FIRM. The community also must declare the building to be substantially damaged by flood by the time the repair permit is issued by the community. In addition, the community must enforce the ABFE or BFE uniformly throughout the community. ICC benefits will also pay for any freeboard elevation adopted and being uniformly enforced by the time the repair permit is issued by the community.

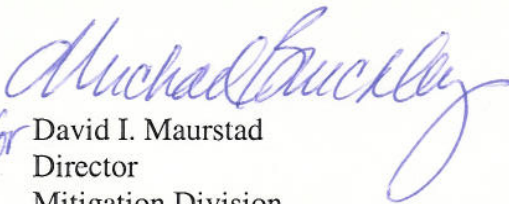
A claim for ICC coverage is filed separately from a flood insurance claim. Mitigation activities eligible under ICC are also eligible under the HMGP. The prohibition on the duplication of benefits prevents a policyholder from receiving HMGP funds and ICC claim payments for the same project expenses. However, the ICC claim payment can be counted toward the required non-federal cost-share for an eligible HMGP project. This is beneficial to policyholders because in many cases the cost of elevation or other eligible mitigation activities may be more than the \$30,000 available through ICC coverage, and their communities can pay for the additional cost of the project with mitigation grant funds.

ICC pays to comply with State or local floodplain management laws or ordinances. If the communities choose to adopt and enforce the new ABFE or flood elevations that exceed the effective BFE, then ICC coverage is available to help pay for the cost to elevate to that standard. I am enclosing a series of questions and answers that further clarify this policy.

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I hope this information is helpful to you in addressing your concerns. If you need additional information or assistance, please have a member of your staff contact our Office of Legislative Affairs by telephone at (202) 646-4500.

Sincerely,


for David I. Maurstad
Director
Mitigation Division

Enclosure

DM:js

cc: William E. Peterson, Regional Director, FEMA Region VI
Frank A. Pagano, Director, Federal Insurance and Mitigation Division, FEMA Region VI

IF A STRUCTURE IS LOCATED OUTSIDE THE MAPPED FLOODPLAIN SUCH AS IN A B OR X ZONE, SHOULD FLOOD INSURANCE BE PURCHASED FOR THIS STRUCTURE?

As Hurricanes Katrina and Rita demonstrated, severe storms can far exceed the 1-percent-annual-chance flood depicted on the current effective FIRMs. The new assessments were based on storm surge data from Hurricanes Katrina and Rita, as well as tide and storm data from the past 155 years. Future severe storms can still exceed the ABFEs and property owners outside the mapped floodplain are always encouraged to purchase flood insurance as a protection against flood losses.

INCREASE COST OF COMPLIANCE COVERAGE

This section addresses issues regarding Increased Cost of Compliance benefits when the building is declared substantially damaged by the community.

WHAT IS INCREASED COST OF COMPLIANCE (ICC) COVERAGE?

ICC coverage is a standard coverage in most NFIP policies. The coverage provides up to \$30,000 to help property owners reduce the risk of damage from future floods by elevating, flood proofing (for nonresidential structures), demolishing, or relocating their building or home to meet the requirements of a local community's building ordinances. This coverage is in addition to the building coverage for the repair of the actual physical damages from flooding. However, the total claims payments can not exceed statutory limits. Therefore, the maximum amount collectible for both ICC and physical damage from flood for a single family dwelling is \$250,000.

IF COMMUNITIES ADOPT ABFEs, HOW WILL IT AFFECT PROPERTY OWNERS WITH FLOOD INSURANCE POLICIES?

If the community adopts and enforces the ABFEs, ICC benefits will be available to elevate buildings to the ABFEs. If the community does not adopt and enforce the ABFEs, ICC benefits will only pay to elevate to the BFE on the current effective FIRM or BFE plus freeboard if the community has adopted this standard. The community must declare the building to be substantially damaged by flood by the time the repair permit is issued by the community. Note: Elevations for floodplain management purposes must be applied uniformly whether the community adopts BFEs, BFEs plus freeboard, or ABFEs.

WILL ICC COVERAGE PAY TO ELEVATE BUILDINGS TO THE ABFEs?

Yes. If your community adopts and enforces the advisory base flood elevations and requires a substantially damaged building to be elevated to that elevation, that building would qualify for ICC coverage, which will pay up to \$30,000, provided it meets the other requirements in the policy.

WILL ICC BENEFITS APPLY TO B OR X ZONES IF THE COMMUNITY ADOPTS AND ENFORCES ABFE?

Yes, if the ABFEs are applicable to those zones.

IF A HOUSE WAS BUILT IN COMPLIANCE WITH THE CURRENT EFFECTIVE FIRM WAS SUBSTANTIALLY DAMAGED AND SUBSIDENCE HAD OCCURRED CAUSING THE LOWEST FLOOR TO BE LOWER THAN THE CURRENT EFFECTIVE BFE, WOULD ICC PAY TO ELEVATE THE STRUCTURE TO THE BFE OR ABFE?

Yes, to whichever elevation the community has adopted and is enforcing throughout the community.

IF A SECOND FLOOR IS ADDED TO THE HOUSE AND THE LOWEST FLOOR IS CONVERTED TO PARKING, STORAGE, OR ACCESS, IS THIS ELEVATION TECHNIQUE ELIGIBLE FOR ICC?

Yes. ICC will pay to elevate the structure using posts, piers, pilings, or foundation walls. However, ICC will not pay for the construction of a second floor or any additional floors.

IF A PROPERTY OWNER DEMOLISHES A HOUSE, ARE WE ELIGIBLE FOR UP TO \$30,000 TO ELEVATE A NEW HOUSE?

Only if the elevation is to the BFE, BFE plus freeboard, or the ABFE as required by the community and the structures is in a mapped floodplain on the current effective FIRM. ICC will pay up to \$30,000 for any combination of the following activities:

- Elevation
- Flood proofing (non-residential buildings only)
- Relocation
- Demolition

WHAT IS THE DEADLINE FOR FILING AN ICC?

The NFIP requires that the ICC claim be filed as soon as the property owner is notified by the community that the building has been substantially damaged by flood.

IS ICC TAXABLE INCOME?

No. The ICC coverage is insurance proceeds and is not considered taxable income.

HOW LONG DOES AN ICC APPLICATION TAKE?

There is no application to complete. ICC is part of the flood insurance coverage and is available if the ICC eligibility requirements are met. To file an ICC claim, the property owner will need to provide to the insurance company or NFIP a letter from the community stating the structure is substantially damaged. In order for the property owner to receive ICC benefits, the structures must be 50 percent damaged by flood.

IF A COMMUNITY IS DEMOLISHING DAMAGED HOMES, BUT NOT DEMOLISHING THE SLAB, WILL ICC PAY FOR DEMOLISHING THE SLAB? CAN THE SAME SUBCONTRACTOR DO BOTH AND HAVE ICC REIMBURSE THE CONTRACTOR FOR DEMOLISHING THE SLAB?

Yes. ICC will pay for the demolition of the slab, but ICC will not pay for the demolition cost that has already been paid for from another funding source. The insured may arrange for the same contractor to demolish the slab and the insured can then submit the ICC claim to their insurance company or the NFIP for reimbursement. The insured is responsible for paying the contractor.

CAN A RESIDENTIAL STRUCTURE BE ELEVATED FOR \$30,000?

It depends. There are many factors that affect the costs associated with raising houses. These include size of home, construction type including foundation type such as slab-on-grade or crawl space, etc., condition and shape of home, condition of slab, extending utilities, engineering, ability of a company that specializes in elevating homes to mobilize the equipment at the property site, relandscaping, and most importantly the height of elevation. FEMA and the USACE have existing publications including case studies and guidance on elevating homes. These documents include the following:

FEMA Publications

- *Principles and Practices of Retrofitting Floodprone Residential Structures*, FEMA 259/January 1999
- *Homeowner's Guide to Retrofitting, Six Ways to Protect Your House from Flooding*, FEMA 312/June 1998

These publications can be found on the following website:

<http://www.fema.gov/hazard/flood/pubs/lib259.shtm>

<http://www.fema.gov/hazard/flood/pubs/lib312.shtm>

USACE Floodproofing Publications

- *Raising and Moving a Slab-on-Grade House with Slab*, 1990
- *Flood Proofing - How to Evaluate Your Options*, 1993
- *A Flood Proofing Success Story Along Dry Creek at Goodlettsville, Tennessee*, 1993

These and other publications can be found on the following website:

<http://www.usace.army.mil/inet/functions/cw/cecwp/NFPC/nfpc.htm>

WHAT OTHER GUIDANCE IS AVAILABLE ON ICC COVERAGE?

- *National Flood Insurance Program Increased Cost of Compliance Coverage, Guidance for State and Local Officials*, FEMA 301/September 2003
- *Increased Cost of Compliance*, F-663/August 2002
- Additional information about ICC can be found at: <http://www.fema.gov/business/nfip/icc.shtm>