11. Flood Compliance and Mitigation Coverage – Enables policyholders to purchase higher coverage limits to cover the cost of complying with floodplain management ordinances or laws.

Legislative text:

Section ____. Flood compliance and mitigation coverage.

(a) Section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) is amended—

(1) in paragraph (4), by redesigning subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(3) by inserting before “The national flood insurance program” the following:

“(1) In general.—”;

(4) by striking the unnumbered paragraph at the end; and

(5) by adding at the end the following:

“(2) Coverage amounts.—

“(A) Basic coverage.—Unless a policyholder chooses additional coverage pursuant to subparagraph (B), the Administrator shall make available coverage provided under paragraph (1) in an amount equal to 20 percent of a policy’s amount of building coverage.

“(B) Additional coverage.—The Administrator may offer, and a policyholder may choose to purchase for an additional premium, coverage provided under paragraph (1) in an amount greater than that offered pursuant to subparagraph (A), but not exceeding an amount equal to 40 percent of a policy’s amount of building coverage.

“(C) Treatment of coverage limits.—Any amount of coverage for a property provided pursuant to this subsection shall not be considered or counted for purposes of any limitation on coverage applicable to such property under section 1306(b) and any claim on such coverage shall not be considered a claim for purposes of identifying properties with multiple losses.

“(3) Premiums.—The Administrator shall charge risk premium rates for coverage made available pursuant to this section in accordance with section 1307(a)(1).

“(4) Assignment of coverage for mitigation grant cost share requirement.—

"(A) In general.— A policyholder may assign the rights or benefits of the coverage made available under this subsection to a governmental entity for the purposes of using payments made for a claim against coverage made available under this subsection to satisfy a required non-federal contribution for a flood-related mitigation project funded by mitigation assistance programs described in paragraphs (1)(E)(i)-(iii).

"(B) Eligible expenses.—If a policyholder assigns rights or benefits of coverage pursuant to subparagraph (A), then a required non-federal contribution for a flood-related mitigation project funded by mitigation assistance programs described in paragraph (1)(E)(i)-(iii) shall be an eligible expense for coverage made available under this subsection.

"(C) Terms and conditions.—The Administrator may adopt procedures for assigning rights or benefits of coverage pursuant to subparagraph (A)."

(4) Implementation.— Notwithstanding any other provision of law, the Administrator may implement this subsection by adopting one or more standard endorsements to the Standard Flood Insurance Policy by publication of such standards endorsement in the Federal Register or by comparable means.

Analysis:

As part of its Standard Flood Insurance Policy (SFIP), FEMA offers a coverage called "Increased Cost of Compliance" (ICC), or Coverage D. ICC coverage is a coverage that is designed to help aid policyholders who have had a flood loss and as a result of that loss have been declared "substantially damaged" by the community and are required to follow higher floodplain ordinance standards. This coverage, which is designed to allow people to build back in more resilient manners to more stringent standards, is so limited and convoluted that it is rarely used. Only 3% of all NFIP historical claims have involved ICC coverage.

Current ICC coverage is limited in multiple ways. This coverage provides up to $30,000 per claim, subject to eligibility requirements, regardless of type of policy or coverage needs. However, that $30,000 applies to the statutory structural coverage limit ($250,000 for residential, $500,000 for non-residential and commercial). That is, for any residential loss above $220,000, the available ICC coverage decreases dollar for dollar. According to NFIP data, between 2009 and October 30, 2019, 10,144 residential homes had more than $220,000 in paid structural damage and would have had limited or no available ICC coverage, despite paying premiums for this coverage.

ICC coverage is only available to individuals after they have completed eligible work, commonly known as FRED (Floodproof, Relocate, Elevate, or Demolish). Given the magnitude and cost of eligible work, policyholders are often stuck in a situation where they are required to comply to reconstruct in a better way but have no funding availability. The money isn't there upfront, necessitating loans.

Even if the money was available up front and wasn't capped by statutory limits, $30,000 is inadequate for most FRED activities for most people. The overall ICC limit was set back in 1994. FEMA should be offering approximately $53,000 to simply match inflation. As the other statutory coverage limits show, placing a fixed value in statute creates economic and marketplace anomalies.

Future State

To create a bold new vision of the National Flood Insurance Program (NFIP) for the next fifty years of its existence, FEMA is proposing a revamp to ICC to make it available, usable, and

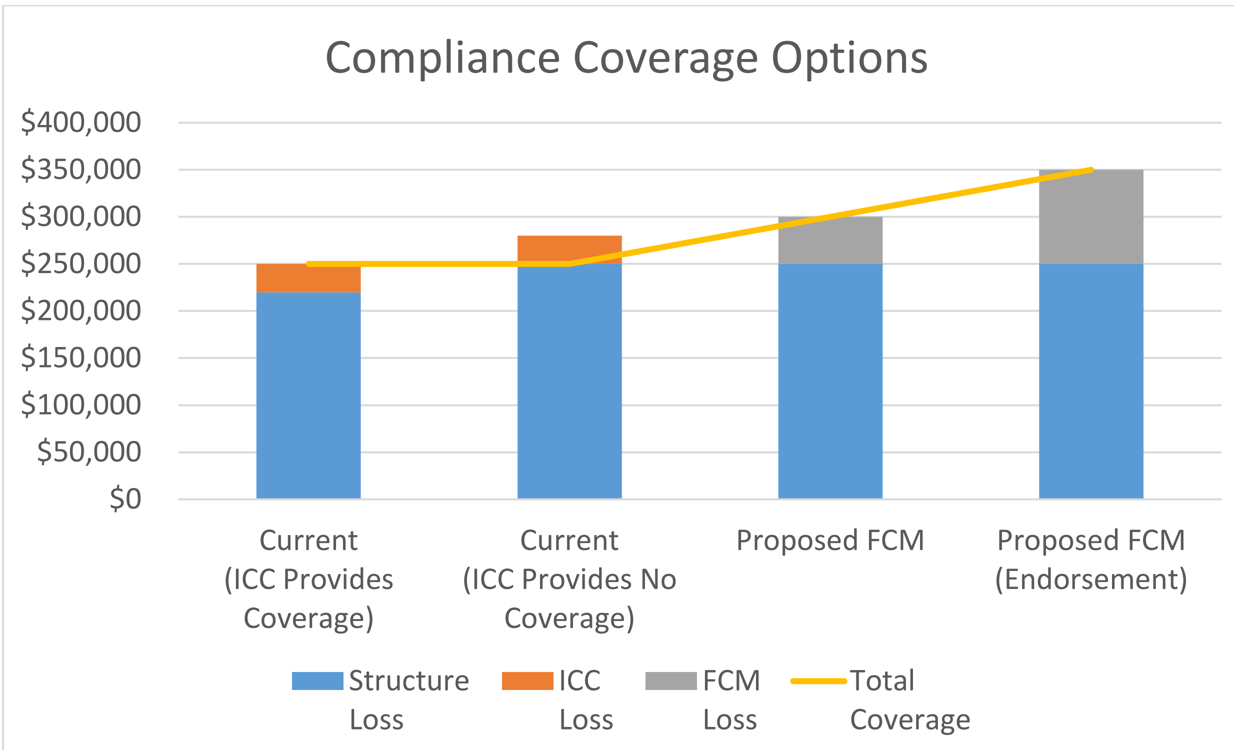
useful. This proposal renames ICC as "Flood Compliance and Mitigation (FCM)" coverage to emphasize both the trigger and what it pays for, includes statutory language to provide a better product for policyholders, who, after suffering a loss, can rebuild to a more resilient state and mitigate future flood losses. Greater resiliency and mitigation of future flood losses benefits policyholders, their communities, and taxpayers. This proposal still maintains FCM as a fundamentally insurance-based product—based on fortuitous loss—and provides the customer the ability to choose the appropriate amount of coverage at actuarially sound rates of insurance.
If policyholders have a loss, FEMA wants to put them in a position to make resilient decisions in the future.

Proposal Details

To meet this lofty goal, FEMA proposes statutory changes to improve FCM. These changes, outlined below, remove FCM from the statutory structural limit so FCM can be used even on structures whose damage exceeds statutory caps, increase the available limits of FCM, allow FEMA to offer additional FCM coverage as an endorsement, remove premium caps on FCM so FEMA can make actuarially sound pricing, and allow FEMA to pay FCM prior to completion of work if the proceeds are used as the cost share for eligible grant activities.

- **Removes FCM coverage from the statutory structural coverage limit**
  Currently, payments to policyholders for their structure and ICC cannot exceed the statutory cap on available coverage. For residential homes, that total is $250,000 and the most coverage that FEMA offers for structures is $250,000. This creates situations where people are paying for coverage that they might not be able to use, even if there is a covered loss. The new FCM proposal removes this constraint. If a policyholder has $50,000 in FCM and has $250,000 of eligible losses, they will receive that FCM money to put towards compliance and mitigation, regardless of how much money was spent to repair the underlying structure to the pre-loss condition.
- **Allows FEMA to offer FCM at 20% of the statutory structural coverage limit**
  ICC coverage amounts have remained at $30,000 since 2003. Housing costs and repair costs have increased in those 25 years, making $30,000 of coverage barely adequate, particularly to elevate structures, the most effective form of mitigation. The FCM proposal changes amount of coverage to be 20% of the statutory limit on structural coverage. That is, with current statutory limits, residential buildings would be eligible for $50,000 of FCM and non-residential buildings would be eligible for $100,000 of FCM. If the statutory limits are raised in the future, FCM would automatically adjust upwards.
- **Allows FEMA to offer an endorsement for FCM at 40% of the statutory structural coverage limit.**
  ICC coverage limits are fixed at $30,000 regardless of the type of property, the value of the property, or any policyholder choice. The FCM proposal would allow FEMA to offer an endorsement increasing FCM coverage to up to 40% of the statutory limit on structural coverage. Not only would this provide more coverage if there was a covered loss, but it would give policyholders a choice.
- **Removes caps on FCM premium and directs FEMA to offer as much coverage as possible.**
  Currently, there is a statutory cap on the amount of premiums that FEMA can charge for ICC coverage set at $75. This creates a scenario in which FEMA cannot raise the amount of ICC coverage offered without running a direct subsidy or by creating a cross subsidy by raising the rates on properties unlikely to use the coverage. FCM is contingent upon the idea that there is no specific cap on the amount of chargeable premium for FCM. FEMA may charge rates for FCM that are actuarially appropriate for the risk. This removes the potential for subsidies, pure or cross, from the coverage. The proposal goes further and states that FEMA shall offer as much coverage as possible.

- **Allow FCM to be used as cost share and provide up front funding.**
  After catastrophic floods, there is often a surfeit of grant money available to states and communities to provide to individuals to rebuild in a more resilient manner. While policyholders can currently assign their ICC claim to communities, it creates a first mover problem where grantors want to provide grants after the cost share has been met while FEMA only pays ICC claims after the costs are incurred. To solve this problem, the FCM proposal explicitly allows for individuals to assign their FCM claim for cost-share purposes. It also allows FEMA to pay the FCM loss upfront; if it is used in this context and meets certain eligibility requirements. This will allow for people who need the money to receive it more quickly.



Comparative type:

National Flood Insurance Act of 1968

Sec. 1304. Authorization to establish and carry out program. (42 U.S.C. 4011)

(b) Additional coverage for compliance with land use and control measures

(1) In general.—The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 4102 of this title for-

~~(1)~~ (A) properties that are repetitive loss structures;

~~(2)~~ (B) properties that are substantially damaged structures;

~~(3)~~ (C) properties that have sustained flood damage on multiple occasions, if the Administrator determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require the implementation of such measures; and

~~(4)~~ (D) properties for which an offer of mitigation assistance is made under-

~~(A)~~ (i) section 4104c of this title (Flood Mitigation Assistance Program);
~~(B)~~ (ii) the Hazard Mitigation Grant Program authorized under section 5170c of this title;
~~(C)~~ (iii) the Predisaster Hazard Mitigation Program under section 5133 of this title; and
~~(D)~~ (iv) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.

~~The Administrator shall impose a surcharge on each insured of not more than $75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.~~

(2) Coverage amounts.—

(A) Basic coverage.—Unless a policyholder chooses additional coverage pursuant to subparagraph (B), the Administrator shall make available coverage provided under paragraph (1) in an amount equal to 20 percent of a policy's amount of building coverage.

(B) Additional coverage.—The Administrator may offer, and a policyholder may choose to purchase for an additional premium, coverage provided under paragraph (1) in an amount greater than that offered pursuant to subparagraph (A), but not exceeding an amount equal to 40 percent of a policy's amount of building coverage.

(C) Treatment of coverage limits.—Any amount of coverage for a property provided pursuant to this subsection shall not be considered or counted for purposes of any limitation on coverage applicable to such property under section 1306(b) and any claim on such coverage shall not be considered a claim for purposes of identifying properties with multiple losses.

(3) Premiums.—The Administrator shall charge risk premium rates for coverage made available pursuant to this section in accordance with section 1307(a)(1).

(4) Assignment of coverage for mitigation grant cost share requirement.—

(A) In general.— A policyholder may assign the rights or benefits of the coverage made available under this subsection to a governmental entity for the purposes of using payments made for a claim against coverage made available under this subsection to satisfy a required non-federal contribution for a flood-related mitigation project funded by mitigation assistance programs described in paragraph (1)(E)(i)-(iii).

(B) Eligible expenses .—If a policyholder assigns rights or benefits of coverage pursuant to subparagraph (A), then a required non-federal contribution for a flood-related mitigation project funded by mitigation assistance programs described in paragraph (1)(E)(i)-(iii) shall be an eligible expense for coverage made available under this subsection.

(C) Terms and conditions.—The Administrator may adopt procedures for assigning rights or benefits of coverage pursuant to subparagraph (A).