

U. S. Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, GA 30341



FEMA

April 29, 2024

The Honorable Rick Scott
United State Senate
110 Hart Senate Office Building
Washington, DC 20510

Dear Senator Scott:

Thank you for your April 16 and 23, 2024 letters to FEMA regarding the Community Rating System (CRS) standing for five communities of southwest Florida. I appreciate your support and partnership as we work with these communities to demonstrate compliance with the National Flood Insurance Program's (NFIP) Minimum Floodplain Management Standards (44 C.F.R. Parts 59 and 60). As you are aware, if FEMA finds that a CRS participating community fails to adequately enforce the NFIP's Minimum Floodplain Management Standards, it may be retrograded to a CRS class 10.

We have worked closely with Lee County and the four affected municipalities during the last few weeks to clarify FEMA's April 8, 2024, determination that the communities in question are not in compliance with the NFIP's Minimum Floodplain Management Standards and the supporting Findings Report ("April 8 Determinations"). FEMA's April 8 Determinations included a list of specific program deficiencies and substantive violations (individual property violations) for each community. FEMA has provided the communities with a 60-day period to provide new information/data or to clarify any factual misunderstandings. FEMA continues to work with the communities to assist them in demonstrating compliance with the NFIP's Minimum Floodplain Management Standards during this 60-day period.

As we have discussed, over-communication is key to addressing these information gaps. To that end, we have deployed staff to support the local communities and address the questions provided in your letters to FEMA. I am also sharing our response to those requests below.

In your April 16 letter, you requested additional time for communities to comply with our request for information. On April 19, we granted the communities additional time to submit documentation to FEMA. Communities now have until June 10, 2024. However, we have asked communities submit documentation in batches, so that we can expeditiously review and work with each community on any questions that may arise.

Below, we have provided answers to your additional questions that were outlined in both the April 16 and 23 letters:

- 1. Please provide timely feedback on information submitted by local officials to FEMA so they are aware of any additional documentation needed well before any set deadlines.**

Our staff are working seven days a week to review any submitted documentation and are available to help

answer any questions as they arise. Additionally, I have held phone calls with leaders in each community since visiting the area in early April to ensure an open line of communication.

- 2. Please provide clarification regarding the regulation for damage assessments. The manual allows a choice of proactively inspecting buildings soon after the event, or notifying owners of the requirement to get permits and making the determination when owners apply for permits. Some local officials have been told that they should have reviewed proactively and that the manual will be changed in the future to eliminate options. Please confirm in writing if these evaluations will be based on the regulations and policies in effect at the time of Hurricane Ian, and not upon proposed or future changes to regulations or policies.**

Yes, communities that participate in the NFIP can choose either process, to proactively collect and make Substantial Damage (SD) determinations post-disaster on a community-wide basis or to wait and make the SD determination as part of the permitting process. The NFIP's Minimum Floodplain Management Standards requires that all development, new construction, or substantial improvements (SI) within the Special Flood Hazard Area (SFHA) be permitted by the community.

Regardless of the method that the community chooses for determinations, the community must permit all development in the SFHA and document the SD determinations. At a minimum, SD determinations must be made when property specific permits in the SFHA are issued.

All evaluations were and will continue to be based on regulations and policies already in effect when Hurricane Ian made landfall, and no decisions will be made on future policies or proposed policy changes. FEMA's April 8 determinations were based on a list of specific program deficiencies and substantive violations (individual property violations). For example, this included specific violations that individual properties were improved in the SFHA without a SD determination and/or without permits. This was based on information available to FEMA, including information submitted by communities, NFIP claim data, FEMA Individual Assistance/Public Assistance claims, and information collected during site visits.

- 3. Once an individual property identified in the Findings Report is submitted from the municipality to FEMA, please confirm a standard timeframe of response of sufficiency. Further, once an individual property is determined sufficient, please confirm a standard timeframe of response from FEMA to the municipality on a determination of compliance.**

We have asked each community to submit their documentation to use in batches, so we can immediately begin reviewing and communicate any questions that may arise. Our staff are working seven days a week to review submitted information and have responses back to community officials as quickly as possible.

- 4. For FEMA's Substantial Improvement/Substantial Damage manual, please verify, in writing, that both options available to communities under section 7.5 comply with the National Floodplain Insurance Program's current floodplain management standards. It seems more fair if future change to update the manual should be applied to future events and ratings.**

Yes, as stated previously, regardless of the choice, the outcomes should be the same - that permits are issued for all development in the special flood hazard area, which includes repair from damages. All evaluations will be based on policies already in effect when Hurricane Ian made landfall, and no decisions will be made on future policies or proposed policy changes.

- 5. Previously, local officials had received some pictures and claims data from FEMA related to the properties in their Findings Report. However, some had not yet received individual assistance data or other documentation related to FEMA's Findings Report. Please confirm when local**

officials will receive this documentation.

As of April 17, 2024, each community has received NFIP data sets and claim information, approximate preliminary damage assessment and potential substantial damage data analytics, which included Individual Assistance inspection data, and field tour photos.

- 6. Local officials would like clarification on procedures and shared data. Local officials would like to know what happened to change the parameters so drastically that lead to FEMA's current position.**

Section 211 of the CRS Coordinator's Manual states that the basic requirement for participation is that *"The community must be in full compliance with the minimum requirements of the NFIP."* ... *"If a community is determined at any time to be in less-than-full compliance, it will retrograde to a CRS Class 10."*

After working with the communities via technical assistance, community contacts and/or visits, and document review over the last 18 months, FEMA found that these communities are not enforcing the program's Minimum Floodplain Management Standards. When a community fails to enforce the standards, communities are retrograded to a CRS class 10, and receive no policy discounts. The initial decision to retrograde was due to the large amount of unpermitted work in the SFHA, failure to maintain permit records for development in the area, failure to make substantial damage and substantial improvement determinations and calculations for development, and failure to maintain substantial damage and substantial improvement records for development.

- 7. Please resend documentation in a readily accessible format to local officials and confirm that all information has been shared with local officials to date.**

As of April 17, 2024, we ensured that each community received and can access the data shared and our staff are deployed to the community to aid in any access issues.

- 8. Some local officials have not received the letter and are unclear in their understanding of when the "clock starts on the 30 days." Please confirm these letters were provided to local officials with clarity on this language.**

The retrograde letters, privacy notice, and the findings report were emailed with a read receipt requested to the community's Chief Executive Officer and Floodplain Administrators for Bonita Springs, Cape Coral, Estero, Fort Myers Beach, and Lee County on April 8, 2024. Not all the recipients accepted the option to send a read receipt.

Additionally, copies of the retrograde letters, privacy notice, and the findings report were sent to the Chief Executive Officer of all five communities by UPS on April 9, 2024. We received UPS delivery confirmation on April 10, 2024.

The letters initially gave each community 30 days with a stated due date of May 9, 2024. Communities now have until June 10, 2024, to submit all documentation.

- 9. Please confirm that FEMA has provided additional clarity to local officials about which subset(s) of data will be used by FEMA to make determination decisions.**

We provided a letter to each of the five communities on April 19, 2024. We've attached the letter for your reference.

Thank you for your continued support and coordination over these past few weeks. We look forward to working with your office and local officials over the coming weeks to help these communities remain in the NFIP program and ensure they build back better than before.

Sincerely,



Robert D. Samaan
Regional Administrator
FEMA Region 4