

§ 80.1

permit to be erected and structures or other improvements on the land unless such structures are, except for restrooms, open on all sides and functionally related to a designated open space use without the prior approval in writing of the Administrator; and that the community shall not permit any use which will create a threat to human life from flooding.

(2) In general, allowable open space uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved parking lots, buffer zones, or open space areas that are part of Planned Unit Developments (PUD's). Structures functionally related to these uses are open-sided picnic and camping facilities, kiosks and refreshment stands or non-habitable, elevated or floodproofed service structures associated with a marina.

(3) The rights to enforce the restrictive covenants shall be assigned to the Administrator as assignee, together with a declaration that any future violation of the restrictive covenants or agreements, delivered in writing to the Chief Executive Officer within thirty (30) days from the date the Administrator receives actual notice of the violation, shall be deemed at the Administrator's option to cause a reversion of title to FEMA.

(4) The property shall be transferred subject to zoning and building laws and ordinances; easements, agreements, reservations, covenants and restriction of record; any state of facts an accurate survey might show; encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences;

(e) Any structures, as described at paragraph (d)(2) of this section, and built in accordance with the deed restrictions shall be floodproofed or elevated to withstand the effects of the 500 year or .02 percent chance flood.

(f) Appraisals for the determination of compensation for flood damaged real property will be undertaken in conformance with the "Uniform Appraisal

44 CFR Ch. I (10–1–96 Edition)

Standards for Federal Land Acquisitions" published by the Inter-agency Land Acquisition Conference, GPO (1973). Appraisals will reflect the adjusted (for time) pre-damage fair market value (FMV) of the structure and land to the extent that this FMV may have been reduced or depressed in the open market as a result of flooding. Actual compensation of FMV will be inclusive of any flood insurance claim payments made or to be made as a result of the most recent flood event to the extent that repairs have not yet been made.

(g) Agreement to sell real property on the part of owners will be completely voluntary. No property owners will be required to sell their properties under section 1362.

(h) Relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) is not available to property owners who sell their properties under section 1362.

[45 FR 50282, July 28, 1980, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

PARTS 78–79 [RESERVED]

FEDERAL CRIME INSURANCE PROGRAM

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

Sec.

80.1 Definitions.

80.2 Description of program.

80.3 Operation of program and inapplicability of State laws.

80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.

80.5 Duties of servicing companies.

80.6 Name and address of invoicing company.

AUTHORITY: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 80.1 Definitions.

(a) As used in this subchapter and in the crime insurance policies issued by the Federal Insurance Administrator, unless otherwise defined in the text of such policies—

Federal Emergency Management Agency

§ 80.1

(1) [Reserved]

(2) *Adjuster* means any person engaged in the business of adjusting loss claims arising under property insurance policies issued by an insurance company. The term also includes the staff adjusters of servicing companies;

(3) *Affordable rate* means such premium rate as the Director determines would permit the purchase of a specific type of insurance coverage by a reasonably prudent person in similar circumstances with due regard to the costs and benefits involved. For the purposes of the sale of Federal crime insurance, the rates set forth in part 83 of this chapter shall be deemed affordable;

(4) *Agent or broker* means any person authorized to engage in the property insurance business as an agent or broker under the laws of any State;

(5) *Crime insurance* means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in part 83 of this chapter and in the various crime insurance policies issued by the insurer. The term does not include automobile insurance or losses resulting from embezzlement;

(6) *Discounts*. The premium credit issued to a residential or business insured protected by a burglar alarm system, or other protective devices or methods used to mitigate losses and considered adequate by the Administrator for the type of risk involved, such as protective armored car services.

(7) *Deductible* means the fixed amount or percentage of any loss not covered by an insurance policy. The amount of the deductible must be exceeded before insurance coverage takes effect;

(8) *Eligible premises* means a property eligible for crime insurance coverage under one or more of the types of policies described in part 83 of this chapter;

(9) *Insurance company* means any property insurance company, or group of companies, authorized to engage in the insurance business under the laws of any State;

(10) *Insurer* means the Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC.

(11) *Policyholder premium* means the total insurance premium payable by the insured for the coverage or coverages provided under any insurance policy;

(12) *Program* means the Federal crime insurance program authorized by title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, December 31, 1970), set forth principally in 12 U.S.C. 1749bbb-10a, et seq.;

(13) *Protective device* means any structural, mechanical, electrical, chemical, or other physical obstacle or device that can be utilized by a property owner to prevent or deter crime or to minimize losses;

(14) *Protective measure* means any protective device or other measure or procedure employed to prevent or deter crime or to minimize losses; and

(15) *Servicing company* means an insurance company or other organization that has entered into an agreement with the insurer to issue and service Federal crime insurance policies on the insurer's behalf in one or more States or areas eligible for the sale of such insurance.

(16) *Act* means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb-1749bbb-21), which authorized the program. Section references are to the National Housing Act;

(17) *Administrator* means the Federal Insurance Administrator within the Federal Emergency Management Agency, to whom the Director has delegated the administration of the program.

(18) *Binder* means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(19) *Person* includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(20) *Property owner* or *owner*, with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(21) *Director* means the Director of the Federal Emergency Management Agency;

§ 80.2

(22) *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(23) *State insurance authority* means the person having legal responsibility for regulating the business of insurance within a State.

(24) *Vacant Property* means a property “without contents”, that is, a premises from which all personal property has been removed.

(b) Technical or trade terms used in this subchapter or in the crime insurance policies issued by the Federal Insurance Administrator and not otherwise defined therein shall be deemed to have the most general meaning they have in the standard crime insurance policies providing similar coverages issued by private insurance companies.

[36 FR 24769, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, as amended at 47 FR 13150, Mar. 29, 1982; 50 FR 16494, Apr. 26, 1985; 51 FR 34605, Sept. 30, 1986; 53 FR 11276, Apr. 6, 1988; 54 FR 31681, Aug. 1, 1989]

§ 80.2 Description of program.

(a) Title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, approved December 31, 1970) authorizes the Director of the Federal Emergency Management Agency on and after August 1, 1971, to make crime insurance available at affordable rates in any State in which a critical market unavailability situation for crime insurance exists that has not been met through appropriate State action. The Director is directed to conduct a continuing review of the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law. The Director's basic authority under this title has been delegated to the Federal Insurance Administrator.

(b) The purpose of the delayed effective date for the Federal program is to give the private property insurance industry and the State insurance authorities an opportunity to solve the crime insurance unavailability problem through the establishment of appropriate programs under the author-

44 CFR Ch. I (10-1-96 Edition)

ity of State law. Where adequate State solutions to the price and market problems are adopted, Federal crime insurance will not be sold.

(c) In States where the sale of Federal crime insurance is undertaken, policies will initially be sold primarily through agents and brokers licensed to engage in the insurance business within the State for which the policy is written. Policies may also be purchased from the appropriate servicing company.

(d) Lists of States designated as eligible for the sale of Federal crime insurance will be published from time to time in § 81.1 of this chapter, subject to periodic revisions pursuant to determinations by the Federal Insurance Administrator that a critical crime insurance market unavailability or prohibitive cost situation exists in a particular State, or that the standard lines of crime insurance have become available at affordable rates either through a suitable State program or through the private insurance market.

§ 80.3 Operation of program and inapplicability of State laws.

(a) The crime insurance program authorized by the Act is a direct Federal program, and its operations, receipts, and funds are exempt from any form of Federal, State, or local taxation in accordance with section 1250 of the Act (12 U.S.C. 1749bbb-20). In carrying out the program, the Administrator is authorized to define terms (sections 1203 (b); 1749bbb-2(b)), to issue regulations (sections 1247; 1749bbb-17), to establish premium rates (sections 1233; 1749bbb-10c), to prescribe terms, conditions, and limits of coverage (sections 1231(b); 1749bbb-10a(b)), and to make use of the existing facilities and services of insurance companies, agents, and brokers as fiscal agents of the United States (sections 1232; 1749bbb-10b).

(b) No Federal crime insurance policy issued by or on behalf of the insurer shall be subject to any State or local tax or insurance law or regulation, nor shall any agent, broker, or servicing company be subject thereto with respect to any monies received or action taken in providing insurance to the public under the authority of this subchapter; and no insurance policy shall

Federal Emergency Management Agency

§ 80.4

be written by any agent, broker, or servicing company in the name or on behalf of the insurer in any form, or on terms and conditions, or with limits of coverage, or at premium rates, other than those then currently prescribed by the insurer. Failure by any insurance company, broker, or agent to comply with this requirement may result in the immediate suspension or debarment of the violator from any further participation in the program.

(c) Nothing in this § 80.3 shall be construed as authorizing or denying any State or subdivision thereof the right to impose any income or other tax on fees, commissions, or profits earned by agents, brokers, or servicing companies solely for their own account.

§ 80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.

(a) The insurer hereby offers to pay to an eligible State licensed property insurance agent or broker a commission in an amount equal to the specified percentage of the applicable policyholder premium with respect to each Federal crime insurance policy procured for an eligible applicant in accordance with the provisions of this subchapter. The actual submission of a valid and complete application, together with the applicable premium, resulting in the issuance of a policy to an eligible insured, all on approved forms and in accordance with the provisions of this subchapter, shall be deemed an acceptance of this offer subject to avoidance from the inception of the policy in the event of fraud or misrepresentation and to cancellation by the insurer (for any of the reasons set forth in § 81.7 of this chapter) or by the insured, and provided the agent or broker promptly submits the application and transmits the gross amount of the policyholder premium then due to the insurer and complies with respect to such policy, with any additional procedural requirements the insurer may then have imposed. It shall be a further condition of this offer that the agent or broker must certify on the application that any duties set forth in the application have been fully carried out. The

amount of the commission shall be prorated in the event of the cancellation of any validly issued policy, and the agent or broker shall repay to the insurer the amount of any unearned commission in excess of the minimum annual commission applicable to the then current term of the policy resulting from any such cancellation. Premiums must be paid by a check or money order made payable to the Federal Crime Insurance Program, and no agent or broker shall cause any applicant to make any Federal crime insurance premium payable to anyone other than the Federal Crime Insurance Program.

(b) Commissions earned by eligible agents and brokers under the authority of paragraph (a) of this section shall be paid to them in a lump sum by the insurer either monthly or on such other equitable basis as the insurer may approve.

(c) Subject to a minimum annual commission of \$15 on each commercial policy and \$5 on each residential policy, the specified commission percentage of the policyholder premium for both residential and commercial insurance coverages shall be the following: Initial policies 14% and for all renewal policies 12%. The renewal commission rate shall apply to any property that has previously been insured under the Program unless the lapse of time since the termination of the previous policy is in excess of 6 months. The commission for any renewal policy shall be deemed payable only to the property insurance agent or broker, of record, if any. A change of agent or broker made at any time other than on a policy anniversary date must be accomplished by the submission of a new application with the applicable premium and a request to replace the policy in force.

(d) No service, placement, or other fee of whatsoever nature shall be charged by any agent, broker, or servicing company to any applicant or property owner under the Program as a condition of placement or for service on an existing policy; nor shall any applicant be compelled to purchase any other services or merchandise as a condition for having his application submitted. No fee may be collected, retained or shared by any agent or

§ 80.5

44 CFR Ch. I (10–1–96 Edition)

broker for the reporting or adjustment of any Federal crime insurance claim.

(e) For the purposes of this offer, an eligible agent or broker means an agent or broker who is at the time of making application for the policy and at the time of subsequent renewals, licensed and authorized to act as a property insurance agent or broker with respect to the State where the insured premises are located and who has not been suspended or debarred by the insurer. Such agent or broker is the agent or broker of the insured and is not an agent of the Federal government nor any Federal agency, except as otherwise expressly provided herein. An eligible applicant is one whose premises to be insured are located in a State then currently designated as eligible for the sale of Federal crime insurance in § 81.1 of this chapter.

(f) Insureds will be billed directly by the insurer for all installments (including any servicing fee) and renewal payments, and insureds should make payment by check or money order payable to the Federal Crime Insurance Program and mail such payment to the insurer and not to the agent or broker. But, nevertheless, in the event that an insured makes a timely installment payment of the current premium (after the initial payment submitted with the application) to any agent or broker, proof submitted by the insured, the agent or the broker of the timely receipt by the agent or broker may be deemed by the Administrator to be proof of timely payment to the insurer so that the insured will not be penalized because of an error or omission on the part of the agent or broker in forwarding the payment to the insurer.

(g) Neither this § 80.4 nor any acceptance of this offer shall be deemed to confer upon any agent or broker any authority to act for, represent, or bind the insurer or the United States except as otherwise expressly provided herein.

(h) Failure of any person to comply with any provision of these regulations may result in the immediate suspension or debarment of the violator from any further participation in the Program.

[45 FR 41950, June 23, 1980, as amended at 47 FR 19348, May 5, 1982; 52 FR 30684, Aug. 17, 1987]

§ 80.5 Duties of servicing companies.

(a) The general duties of servicing companies shall be as set forth in this § 80.5, subject to the provisions of the actual contracts entered into with such companies by the insurer.

(b) Except as otherwise required by their contracts with the insurer, servicing companies shall:

(1) Provide information to eligible property owners and to interested agents and brokers within the servicing area;

(2) Provide crime insurance manuals to eligible agents and brokers within the servicing area;

(3) Supply application forms and notice and proof of loss forms to eligible agents and brokers and to prospective applicants on request;

(4) Maintain, control, and account for applications for insurance received from eligible agents, brokers, and applicants;

(5) Verify the eligibility of applicants for the coverages sought;

(6) Issue policies only on forms prescribed and supplied by the insurer, or else promptly notify applicants (through the appropriate agent or broker, if any) of ineligibility;

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant.

(8) Issue periodic commission payment checks to cooperating agents and brokers;

(9) Provide statistical and accounting records, coding, and reports, in hard copy and machine-readable forms, as specified in the insurer's statistical plan and accounting instructions, and as may be specifically requested by the insurer, all in timely fashion;

(10) Receive, control, and account for all crime insurance claims submitted within its servicing area;

(11) Verify claims data and existence of required protective devices, adjust losses as required by insurer through an impartial selection of adjusters, and promptly pay all valid claims;

(12) Bill policyholders directly at least 30 days in advance of due dates, and send a copy of each premium or renewal notice to the agent or broker of record, if any;

Federal Emergency Management Agency

§ 81.1

(13) Periodically obtain updated applications or certifications from insureds for verification and incorporation in statistical and accounting records.

[36 FR 24769, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, as amended at 45 FR 41951, June 23, 1980; 54 FR 31681, Aug. 1, 1989]

§ 80.6 Name and address of invoicing company.

The following company has been designated to act as servicing company for the Federal Crime Insurance Program, National Con-Serv, Inc. Written communications with the servicing company should be addressed to: Federal Crime Insurance, P.O. Box 6301, Rockville, MD 20850. The toll free telephone number for the servicing company is 800-638-8780 (policyholder service) and 800-526-2662 (claim inquiries). These numbers serve the continental United States, Puerto Rico and the Virgin Islands, except Maryland and the Washington Metropolitan Area. In the Washington Metropolitan Area call 251-1660. In Maryland, outside the Washington Metropolitan Area, call collect 301-251-1660.

[52 FR 30684, Aug. 17, 1987]

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Sec.

- 81.1 States eligible for the sale of crime insurance.
- 81.2 Eligibility requirements applicable to property owners.
- 81.3 Use of prescribed forms required.
- 81.4 Terms and conditions of policy to govern.
- 81.5 Where to purchase coverage.
- 81.6 How to report claims.
- 81.7 Cancellations, modifications, and renewals of coverage.
- 81.7a Cancellations in order to renew.
- 81.8 Inquiries and complaints.
- 81.9 Penalties for false statements.
- 81.10 Nondiscrimination.

AUTHORITY: 12 U.S.C. 1749bbb *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 36 FR 24771, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 81.1 States eligible for the sale of crime insurance.

(a) In accordance with section 1231 of the Act (12 U.S.C. 1749bbb-10a), the Administrator has reviewed the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law.

(b)(1) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the States set forth in this paragraph have an unresolved critical crime insurance market unavailability problem requiring the operation of the Federal Crime Insurance Program therein as of June 30, 1993.

California	New York
Florida	Pennsylvania
Illinois	Tennessee
Kansas	District of Columbia
Maryland	Puerto Rico
New Jersey	Virgin Islands

(2) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the States set forth in this paragraph have an unresolved critical crime insurance market unavailability problem which requires the operation of the Federal Crime Insurance Program, therein, as of October 1, 1987. Accordingly, the Program is in operation in the following jurisdictions, as of October 1, 1987.

Alabama	Maryland
California	New Jersey
Connecticut	New York
Delaware	Pennsylvania
Florida	Rhode Island
Georgia	Tennessee
Illinois	District of Columbia
Kansas	Puerto Rico
	Virgin Islands

(c) If any of the States listed in paragraph (b) of this section, after the effective date of this subchapter, adopts a suitable program under State law to