

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### PART C—GENERAL PROVISIONS

### § 4081. Services by insurance industry

#### (a) Contracting for services and facilities

In administering the flood insurance program under this subchapter, the Administrator is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 4018 of this title.

#### (b) Certain laws inapplicable to contracting

Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 6101 of title 41 or any other provision of law requiring competitive bidding and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

#### (c) Hold harmless

The Administrator of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this chapter harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The Administrator of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

#### (d) FEMA authority on transfer of policies

Notwithstanding any other provision of this chapter, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this chapter that are written and administered by any insurance company or other insurer, or any insurance agent or broker.

(Pub. L. 90-448, title XIII, §1345, Aug. 1, 1968, 82 Stat. 585; Pub. L. 97-35, title III, §341(e), Aug. 13, 1981, 95 Stat. 419; Pub. L. 98-181, title I [title IV, §451(d)(1)], Nov. 30, 1983, 97 Stat. 1229; Pub. L. 103-325, title V, §574, Sept. 23, 1994, 108 Stat. 2278;

Pub. L. 112-141, div. F, title II, §§100238(b)(1), 100245, July 6, 2012, 126 Stat. 958, 966.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This chapter, referred to in subssecs. (c) and (d), was in the original a reference to “this title” meaning title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

#### CODIFICATION

In subsec. (b), “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes (41 U.S.C. 5)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### AMENDMENTS

2012—Subsecs. (a), (c). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director” wherever appearing.

Subsec. (d). Pub. L. 112-141, §100245, added subsec. (d).

1994—Subsec. (b). Pub. L. 103-325 inserted before period at end “and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)”.

1983—Subsec. (a). Pub. L. 98-181 substituted “Director” for “Secretary”.

1981—Subsec. (c). Pub. L. 97-35 added subsec. (c).

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

#### TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### OVERSIGHT AND EXPENSE REIMBURSEMENTS OF INSURANCE COMPANIES

Pub. L. 112-141, div. F, title II, §100224, July 6, 2012, 126 Stat. 936, provided that:

“(a) SUBMISSION OF BIENNIAL REPORTS.—

“(1) TO THE ADMINISTRATOR.—Not later than 20 days after the date of enactment of this Act [July 6, 2012], each property and casualty insurance company participating in the Write Your Own program shall submit to the Administrator any biennial report required by the Federal Emergency Management Agency to be prepared in the prior 5 years by such company.

“(2) TO GAO.—Not later than 10 days after the submission of the biennial reports under paragraph (1), the Administrator shall submit all such reports to the Comptroller General of the United States.

“(3) NOTICE TO CONGRESS OF FAILURE TO COMPLY.—The Administrator shall notify and report to the

Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on any property and casualty insurance company participating in the Write Your Own program that failed to submit its biennial reports as required under paragraph (1).

“(4) FAILURE TO COMPLY.—A property and casualty insurance company participating in the Write Your Own program which fails to comply with the reporting requirement under this subsection or the requirement under section 62.23(j)(1) of title 44, Code of Federal Regulations (relating to biennial audit of the flood insurance financial statements) shall be subject to a civil penalty in an amount of not more than \$1,000 per day for each day that the company remains in noncompliance with either such requirement.

“(b) METHODOLOGY TO DETERMINE REIMBURSED EXPENSES.—Not later than 180 days after the date of enactment of this Act [July 6, 2012], the Administrator shall develop a methodology for determining the appropriate amounts that property and casualty insurance companies participating in the Write Your Own program should be reimbursed for selling, writing, and servicing flood insurance policies and adjusting flood insurance claims on behalf of the National Flood Insurance Program. The methodology shall be developed using actual expense data for the flood insurance line and can be derived from—

“(1) flood insurance expense data produced by the property and casualty insurance companies;

“(2) flood insurance expense data collected by the National Association of Insurance Commissioners; or

“(3) a combination of the methodologies described in paragraphs (1) and (2).

“(c) SUBMISSION OF EXPENSE REPORTS.—To develop the methodology established under subsection (b), the Administrator may require each property and casualty insurance company participating in the Write Your Own program to submit a report to the Administrator, in a format determined by the Administrator and within 60 days of the request, that details the expense levels of each such company for selling, writing, and servicing standard flood insurance policies and adjusting and servicing claims.

“(d) FEMA RULEMAKING ON REIMBURSEMENT OF EXPENSES UNDER THE WRITE YOUR OWN PROGRAM.—Not later than 12 months after the date of enactment of this Act [July 6, 2012], the Administrator shall issue a rule to formulate revised expense reimbursements to property and casualty insurance companies participating in the Write Your Own program for their expenses (including their operating and administrative expenses for adjustment of claims) in selling, writing, and servicing standard flood insurance policies, including how such companies shall be reimbursed in both catastrophic and noncatastrophic years. Such reimbursements shall be structured to ensure reimbursements track the actual expenses, including standard business costs and operating expenses, of such companies as closely as practicably possible.

“(e) REPORT OF THE ADMINISTRATOR.—Not later than 60 days after the effective date of the final rule issued pursuant to subsection (d), the Administrator shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing—

“(1) the specific rationale and purposes of such rule;

“(2) the reasons for the adoption of the policies contained in such rule; and

“(3) the degree to which such rule accurately represents the true operating costs and expenses of property and casualty insurance companies participating in the Write Your Own program.

“(f) GAO STUDY AND REPORT ON EXPENSES OF WRITE YOUR OWN PROGRAM.—

“(1) STUDY.—Not later than 180 days after the effective date of the final rule issued pursuant to subsection (d), the Comptroller General of the United States shall—

“(A) conduct a study on the efficacy, adequacy, and sufficiency of the final rules issued pursuant to subsection (d); and

“(B) report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the findings of the study conducted under subparagraph (A).

“(2) GAO AUTHORITY.—In conducting the study and report required under paragraph (1), the Comptroller General—

“(A) may use any previous findings, studies, or reports that the Comptroller General previously completed on the Write Your Own program;

“(B) shall determine if—

“(i) the final rule issued pursuant to subsection (d) allows the Federal Emergency Management Agency to access adequate information regarding the actual expenses of property and casualty insurance companies participating in the Write Your Own program; and

“(ii) the actual reimbursements paid out under the final rule issued pursuant to subsection (d) accurately reflect the expenses reported by property and casualty insurance companies participating in the Write Your Own program, including the standard business costs and operating expenses of such companies; and

“(C) shall analyze the effect of the final rule issued pursuant to subsection (d) on the level of participation of property and casualty insurers in the Write Your Own program.”

[For definitions of terms used in section 100224 of Pub. L. 112-141, set out above, see section 4004 of this title.]

#### **§ 4082. Use of insurance pool, companies, or other private organizations for certain payments**

##### **(a) Authorization to enter into contracts for certain responsibilities**

In order to provide for maximum efficiency in the administration of the flood insurance program and in order to facilitate the expeditious payment of any Federal funds under such program, the Administrator may enter into contracts with pool formed or otherwise created under section 4051 of this title, or any insurance company or other private organizations, for the purpose of securing reinsurance of insurance coverage provided by the program or for the purpose of securing performance by such pool, company, or organization of any or all of the following responsibilities:

(1) Estimating and later determining any amounts of payments to be made.

(2) Receiving from the Administrator, disbursing, and accounting for funds in making such payments.

(3) Making such audits of the records of any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization as may be necessary to assure that proper payments are made.

(4) Placing reinsurance coverage on insurance provided by such program.

(5) Otherwise assisting in such manner as the contract may provide to further the purposes of this chapter.

##### **(b) Terms and conditions of contract**

Any contract with the pool or an insurance company or other private organization under this section may contain such terms and conditions as the Administrator finds necessary or