

## 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.

**§ 4104c. Mitigation assistance****(a) Authority**

The Administrator shall carry out a program to provide financial assistance to States and communities, using amounts made available from the National Flood Mitigation Fund under section 4104d of this title, for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this chapter. Such financial assistance shall be made available—

- (1) to States and communities in the form of grants under this section for carrying out mitigation activities;
- (2) to States and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to severe repetitive loss structures; and
- (3) to property owners in the form of direct grants under this section for carrying out mitigation activities that reduce flood damage to individual structures for which 2 or more claim payments for losses have been made under flood insurance coverage under this chapter if the Administrator, after consultation with the State and community, determines that neither the State nor community in which such a structure is located has the capacity to manage such grants.

**(b) Eligibility for mitigation assistance**

To be eligible to receive financial assistance under this section for mitigation activities, a State or community shall develop, and have approved by the Administrator, a flood risk mitigation plan (in this section referred to as a “mitigation plan”), that describes the mitigation activities to be carried out with assistance provided under this section, is consistent with the criteria established by the Administrator under section 4102 of this title, provides for reduction of flood losses to structures for which contracts for flood insurance are available under this chapter, and may be included in a multi-hazard mitigation plan. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan, that has been adopted by the State or community following a public hearing.

**(c) Eligible mitigation activities****(1) Requirement of consistency with approved mitigation plan**

Amounts provided under this section may be used only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified under paragraph (4). The Administrator shall provide assistance under this section to the extent amounts are available in the National Flood Mitigation Fund pursuant to appropriation Acts, subject only to the absence of approvable mitigation plans.

**(2) Requirements of technical feasibility, cost effectiveness, and interest of National Flood Insurance Fund****(A) In general**

The Administrator may approve only mitigation activities that the Administrator determines—

- (i) are technically feasible and cost-effective; or
- (ii) will eliminate future payments from the National Flood Insurance Fund for severe repetitive loss structures through an acquisition or relocation activity.

**(B) Considerations**

In making a determination under subparagraph (A), the Administrator shall take into consideration recognized ancillary benefits.

**(3) Eligible activities**

Eligible activities under a mitigation plan may include—

- (A) demolition or relocation of any structure located on land that is along the shore of a lake or other body of water and is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or flooding;
- (B) elevation, relocation, demolition, or floodproofing of structures (including public structures) located in areas having special flood hazards or other areas of flood risk;
- (C) acquisition by States and communities of properties (including public properties) located in areas having special flood hazards or other areas of flood risk and properties substantially damaged by flood, for public use, as the Administrator determines is consistent with sound land management and use in such area;
- (D) elevation, relocation, or floodproofing of utilities (including equipment that serves structures);
- (E) minor physical mitigation efforts that do not duplicate the flood prevention activities of other Federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, which shall not include major flood control projects such as dikes, levees, seawalls, groins, and jetties unless the Administrator specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;
- (F) the development or update of mitigation plans by a State or community which

meet the planning criteria established by the Administrator, except that the amount from grants under this section that may be used under this subparagraph may not exceed \$50,000 for any mitigation plan of a State or \$25,000 for any mitigation plan of a community;

(G) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities;

(H) other activities that the Administrator considers appropriate and specifies in regulation;

(I) other mitigation activities not described in subparagraphs (A) through (G) or the regulations issued under subparagraph (H), that are described in the mitigation plan of a State or community; and

(J) without regard to the requirements under paragraphs (1) and (2) of subsection (d), and if the State applied for and was awarded at least \$1,000,000 in grants available under this section in the prior fiscal year, technical assistance to communities to identify eligible activities, to develop grant applications, and to implement grants awarded under this section, not to exceed \$50,000 to any 1 State in any fiscal year.

**(4) Eligibility of demolition and rebuilding of properties**

The Administrator shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood elevation or greater, if required by the Administrator or if required by any State regulation or local ordinance, and in accordance with criteria established by the Administrator.

**(d) Matching requirement**

The Administrator may provide grants for eligible mitigation activities as follows:

**(1) Severe repetitive loss structures**

In the case of mitigation activities to severe repetitive loss structures, in an amount up to—

(A) 100 percent of all eligible costs, if the activities are approved under subsection (c)(2)(A)(i); or

(B) the expected savings to the National Flood Insurance Fund from expected avoided damages through acquisition or relocation activities, if the activities are approved under subsection (c)(2)(A)(ii).

**(2) Repetitive loss structures**

In the case of mitigation activities to repetitive loss structures, in an amount up to 90 percent of all eligible costs.

**(3) Other mitigation activities**

In the case of all other mitigation activities, in an amount up to 75 percent of all eligible costs.

**(e) Recapture**

**(1) Noncompliance with plan**

If the Administrator determines that a State or community that has received mitigation assistance under this section has not carried out the mitigation activities as set forth in the mitigation plan, the Administrator shall re-

capture any unexpended amounts and deposit the amounts in the National Flood Mitigation Fund under section 4104d of this title.

**(2) Failure to provide matching funds**

If the Administrator determines that a State or community that has received mitigation assistance under this section has not provided matching funds in the amount required under subsection (d) of this section, the Administrator shall recapture any unexpended amounts of mitigation assistance exceeding the amount of such matching funds actually provided and deposit the amounts in the National Flood Mitigation Fund under section 4104d of this title.

**(f) Reports**

Not later than 1 year after July 6, 2012, and biennially thereafter, the Administrator shall submit a report to the Congress describing the status of mitigation activities carried out with assistance provided under this section.

**(g) Failure to make grant award within 5 years**

For any application for a grant under this section for which the Administrator fails to make a grant award within 5 years of the date of the application, the grant application shall be considered to be denied and any funding amounts allocated for such grant applications shall remain in the National Flood Mitigation Fund under section 4104d of this title and shall be made available for grants under this section.

**(h) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Community**

The term “community” means—

(A) a political subdivision that—

(i) has zoning and building code jurisdiction over a particular area having special flood hazards; and

(ii) is participating in the national flood insurance program; or

(B) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of subparagraph (A), to administer grants for mitigation activities for such political subdivisions.

**(2) Repetitive loss structure**

The term “repetitive loss structure” has the meaning given such term in section 4121 of this title.

**(3) Severe repetitive loss structure**

The term “severe repetitive loss structure” means a structure that—

(A) is covered under a contract for flood insurance made available under this chapter; and

(B) has incurred flood-related damage—

(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(ii) for which at least 2 separate claims payments have been made under such cov-

erage, with the cumulative amount of such claims exceeding the value of the insured structure.

(Pub. L. 90-448, title XIII, §1366, as added Pub. L. 103-325, title V, §553(a), Sept. 23, 1994, 108 Stat. 2270; amended Pub. L. 108-264, title I, §103(a)-(c), (e), (f), June 30, 2004, 118 Stat. 721, 722; Pub. L. 112-95, title VIII, §815(b), Feb. 14, 2012, 126 Stat. 125; Pub. L. 112-141, div. F, title II, §§100225(a), 100238(b)(1), July 6, 2012, 126 Stat. 938, 958.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (h)(3)(A), (B)(i), 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.

#### AMENDMENTS

2012—Subsec. (a). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director” in introductory provisions.

Pub. L. 112-141, §100225(a)(3), substituted “Such financial assistance shall be made available—” for “Such financial assistance shall be made available to States and communities in the form of grants under subsection (b) of this section for planning assistance and in the form of grants under this section for carrying out mitigation activities.” and added pars. (1) to (3).

Subsec. (b). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director” in two places.

Pub. L. 112-141, §100225(a)(4), substituted “provides for reduction of” for “and provides protection against” and inserted “, and may be included in a multihazard mitigation plan” after “under this chapter”.

Pub. L. 112-141, §100225(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to mitigation planning assistance grants.

Subsec. (c). Pub. L. 112-141, §100225(a)(2), redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 112-141, §100238(b)(1), substituted “Administrator shall” for “Director shall”.

Pub. L. 112-141, §100225(a)(5)(A), substituted “Requirement of consistency with approved mitigation plan” for “Use of amounts” in heading and “Amounts provided under this section may be used only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified under paragraph (4).” for “Amounts provided under this section (other than under subsection (b) of this section) may be used only for mitigation activities specified in a mitigation plan approved by the Director under subsection (d) of this section.” in text.

Subsec. (c)(2). Pub. L. 112-141, §100225(a)(5)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The Director may approve only mitigation plans that specify mitigation activities that the Director determines are technically feasible and cost-effective and only such plans that propose activities that are cost-beneficial to the National Flood Mitigation Fund.”

Subsec. (c)(3). Pub. L. 112-141, §100225(a)(5)(D)(i), substituted “Eligible activities under a mitigation plan may” for “The Director shall determine whether mitigation activities described in a mitigation plan submitted under subsection (d) of this section comply with the requirements under paragraph (1). Such activities may” in introductory provisions.

Pub. L. 112-141, §100225(a)(5)(B), (C), redesignated par. (5) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows: “The Director shall approve mitigation plans meeting the requirements for approval under paragraph (1) that will be most cost-beneficial to the National Flood Mitigation Fund. The Director may approve only mitigation plans

that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.”

Subsec. (c)(3)(C). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director”.

Subsec. (c)(3)(D). Pub. L. 112-141, §100225(a)(5)(D)(iv), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (c)(3)(E). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director”.

Pub. L. 112-141, §100225(a)(5)(D)(ii), (iii), redesignated subpar. (D) as (E) and struck out former subpar. (E) which read as follows: “beach nourishment activities;”.

Subsec. (c)(3)(F), (G). Pub. L. 112-141, §100225(a)(5)(D)(iii), (v), added subpar. (F) and redesignated former subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (c)(3)(H). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director”.

Pub. L. 112-141, §100225(a)(5)(D)(ii), (iii), redesignated subpar. (G) as (H) and struck out former subpar. (H) which read as follows: “other mitigation activities not described in subparagraphs (A) through (F) or the regulations issued under subparagraph (G), that are described in the mitigation plan of a State or community.”

Subsec. (c)(3)(I), (J). Pub. L. 112-141, §100225(a)(5)(D)(vi), (vii), added subpars. (I) and (J).

Subsec. (c)(4). Pub. L. 112-141, §100225(a)(5)(B), (E), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) of this section are available.”

Subsec. (c)(5). Pub. L. 112-141, §100225(a)(5)(C), redesignated par. (5) as (3).

Subsec. (c)(6). Pub. L. 112-141, §100225(a)(5)(E), struck out par. (6). Text read as follows: “The Director shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood levels or higher, if required by the Director or if required by any State or local ordinance, and in accordance with project implementation criteria established by the Director.”

Subsec. (d). Pub. L. 112-141, §100225(a)(1), (6), added subsec. (d) and struck out former subsec. (d) which related to notification of mitigation plan approval and grant award.

Subsec. (e). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director” wherever appearing.

Pub. L. 112-141, §100225(a)(2), redesignated subsec. (i) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(2). Pub. L. 112-141, §100225(a)(7), substituted “required under subsection (d)” for “certified under subsection (g)” and “the amount” for “3 times the amount”.

Subsec. (e)(6). Pub. L. 112-95 added par. (6).

Subsec. (f). Pub. L. 112-141, §100238(b)(1), substituted “Administrator” for “Director”.

Pub. L. 112-141, §100225(a)(8), substituted “July 6, 2012” for “September 23, 1994”.

Pub. L. 112-141, §100225(a)(1), (2), redesignated subsec. (j) as (f) and struck out former subsec. (f) which related to limitations on amount of mitigation assistance during any 5-year period.

Subsecs. (g), (h). Pub. L. 112-141, §100225(a)(1), (9), added subsecs. (g) and (h) and struck out former subsecs. (g) and (h) which related to the matching requirements for mitigation assistance and oversight of recipients of mitigation assistance, respectively.

Subsecs. (i), (j). Pub. L. 112-141, §100225(a)(2), redesignated subsecs. (i) and (j) as (e) and (f), respectively.

Subsecs. (k), (m). Pub. L. 112-141, §100225(a)(1), struck out subsecs. (k) and (m) which defined “community” for purposes of this section and which related to encouraging and improving participation in the national flood insurance program, respectively.

2004—Subsec. (b)(2). Pub. L. 108-264, §103(f), substituted “7.5 percent of the available funds under this section” for “\$1,500,000”.

Subsec. (e)(3). Pub. L. 108-264, §103(a), inserted at end “The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.”

Subsec. (e)(4). Pub. L. 108-264, §103(b), added par. (4) and struck out heading and text of former par. (4). Text read as follows: “The Director shall make every effort to provide mitigation assistance under this section for mitigation plans proposing activities for repetitive loss structures and structures that have incurred substantial damage.”

Subsec. (g)(2), (3). Pub. L. 108-264, §103(e), added par. (2) and redesignated former par. (2) as (3).

Subsec. (m). Pub. L. 108-264, §103(c), added subsec. (m).

#### REGULATIONS

Pub. L. 103-325, title V, §553(b), Sept. 23, 1994, 108 Stat. 2273, required the Director of the Federal Emergency Management Agency to issue regulations no later than 6 months after Sept. 23, 1994, to carry out this section.

#### TRANSFER OF FUNCTIONS

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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.

### § 4104d. National Flood Mitigation Fund

#### (a) Establishment and availability

The Administrator shall establish in the Treasury of the United States a fund to be known as the National Flood Mitigation Fund, which shall be credited with amounts described in subsection (b) of this section and shall be available, to the extent provided in appropriation Acts, for providing assistance under section 4104c of this title.

#### (b) Credits

The National Flood Mitigation Fund shall be credited with—

(1) in each fiscal year, amounts from the National Flood Insurance Fund not to exceed \$90,000,000 and to remain available until expended, of which—

(A) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 4104c(a)(1) of this title;

(B) not more than \$40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 4104c(a)(2) of this title; and

(C) not more than \$10,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 4104c(a)(3) of this title;

(2) any penalties collected under section 4012a(f) of this title; and

(3) any amounts recaptured under section 4104c(e) of this title.

#### (c) Administrative expenses

The Administrator may use not more than 5 percent of amounts made available under subsection (b) of this section to cover salaries, expenses, and other administrative costs incurred by the Administrator to make grants and provide assistance under section 4104c of this title.

#### (d) Prohibition on offsetting collections

Notwithstanding any other provision of this chapter, amounts made available pursuant to this section shall not be subject to offsetting collections through premium rates for flood insurance coverage under this chapter.

#### (e) Continued availability and reallocation

Any amounts made available pursuant to subparagraph (A), (B), or (C) of subsection (b)(1) that are not used in any fiscal year shall continue to be available for the purposes specified in the subparagraph of subsection (b)(1) pursuant to which such amounts were made available, unless the Administrator determines that reallocation of such unused amounts to meet demonstrated need for other mitigation activities under section 4104c of this title is in the best interest of the National Flood Insurance Fund.

#### (f) Investment

If the Administrator determines that the amounts in the National Flood Mitigation Fund are in excess of amounts needed under subsection (a) of this section, the Administrator may invest any excess amounts the Administrator determines advisable in interest-bearing obligations issued or guaranteed by the United States.

#### (g) Report

The Administrator shall submit a report to the Congress not later than the expiration of the 1-year period beginning on September 23, 1994, and not less than once during each successive 2-year period thereafter. The report shall describe the status of the Fund and any activities carried out with amounts from the Fund.

(Pub. L. 90-448, title XIII, §1367, as added Pub. L. 103-325, title V, §554(a), Sept. 23, 1994, 108 Stat. 2273; amended Pub. L. 108-264, title I, §103(d), June 30, 2004, 118 Stat. 721; Pub. L. 112-141, div. F, title II, §§100225(e), 100238(b)(1), July 6, 2012, 126 Stat. 941, 958.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (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

September 23, 1994, referred to in subsec. (g), was in the original “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 103-325, which enacted this section, to reflect the probable intent of Congress.