

**§ 2317a. Cooperative agreements****(a) In general**

For the purpose of expediting the cost-effective design and construction of wetlands restoration that is part of an authorized water resources project, the Secretary may enter into cooperative agreements under section 6305 of title 31 with nonprofit organizations with expertise in wetlands restoration to carry out such design and construction on behalf of the Secretary.

**(b) Limitations****(1) Per project limit**

A cooperative agreement under this section may not obligate the Secretary to pay the nonprofit organization more than \$1,000,000 for any single wetlands restoration project.

**(2) Annual limit**

The total value of work carried out under cooperative agreements under this section may not exceed \$5,000,000 in any fiscal year.

(Pub. L. 110–114, title II, § 2015, Nov. 8, 2007, 121 Stat. 1076.)

**Editorial Notes**

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**Statutory Notes and Related Subsidiaries**

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

**§ 2317b. Mitigation banks and in-lieu fee arrangements****(1) In general**

Not later than 180 days after December 16, 2016, the Secretary shall issue implementation guidance that provides for the consideration in water resources development feasibility studies of the entire amount of potential in-kind credits available at mitigation banks approved by the Secretary and in-lieu fee programs with an approved service area that includes the location of the projected impacts of the water resources development project.

**(2) Requirements**

All potential mitigation bank and in-lieu fee credits that meet the criteria under paragraph (1) shall be considered a reasonable alternative for planning purposes if—

(A) the applicable mitigation bank—

(i) has an approved mitigation banking instrument; and

(ii) has completed a functional analysis of the potential credits using the approved Corps of Engineers certified habitat assessment model specific to the region; and

(B) the Secretary determines that the use of such banks or in-lieu fee programs provide reasonable assurance that the statutory (and

regulatory) mitigation requirements for a water resources development project are met, including monitoring or demonstrating mitigation success.

**(3) Effect**

Nothing in this subsection—

(A) modifies or alters any requirement for a water resources development project to comply with applicable laws or regulations, including section 2283 of this title; or

(B) shall be construed as to limit mitigation alternatives or require the use of mitigation banks or in-lieu fee programs.

(Pub. L. 110–114, title II, § 2036(c), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 114–322, title I, § 1163, Dec. 16, 2016, 130 Stat. 1669.)

**Editorial Notes**

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

## AMENDMENTS

2016—Pub. L. 114–322 amended section generally. Prior to amendment, section related to use of the mitigation bank for certain water resources projects that involved wetlands mitigation.

**Statutory Notes and Related Subsidiaries**

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110–114, set out as a note under section 2201 of this title.

**§ 2318. Flood plain management****(a) Exclusion of elements from benefit-cost analysis**

The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

**(b) Flood damage reduction benefits****(1) In general**

In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the bene-