

(Pub. L. 110-114, title V, § 5024, Nov. 8, 2007, 121 Stat. 1203.)

### Editorial Notes

#### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the National Dam Safety Program Act which comprises this subchapter.

#### 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.

### § 467f-2. Rehabilitation of high hazard potential dams

#### (a) Establishment of program

The Administrator shall establish, within FEMA, a program to provide technical, planning, design, and construction assistance in the form of grants to States with dam safety programs for rehabilitation of eligible high hazard potential dams.

#### (b) Eligible activities

A grant awarded under this section to a State may be used by the State to award grants to eligible subrecipients for—

- (1) repair;
- (2) removal; or
- (3) any other structural or nonstructural measures to rehabilitate an eligible high hazard potential dam.

#### (c) Award of grants

##### (1) Application

###### (A) In general

A State interested in receiving a grant under this section may submit to the Administrator an application for the grant.

###### (B) Requirements

An application submitted to the Administrator under this section shall be submitted at such time, be in such form, and contain such information as the Administrator may prescribe by regulation.

##### (2) Grant

###### (A) In general

The Administrator may make a grant in accordance with this section for rehabilitation of eligible high hazard potential dams to a State that submits an application for the grant in accordance with the regulations prescribed by the Administrator.

###### (B) Grant agreement

The Administrator shall enter into a grant agreement with the State to establish the terms of the grant and the projects for which the grant is awarded, including the amount of the grant.

###### (C) Grant assurance

As part of a grant agreement under subparagraph (B), the Administrator shall require that each eligible subrecipient to

which the State awards a grant under this section provides an assurance, with respect to the dam to be rehabilitated by the eligible subrecipient, that the dam owner will carry out a plan for maintenance of the dam during the expected life of the dam.

#### (D) Limitation

A State may not award a grant to an eligible subrecipient under this section that exceeds, for any 1 dam, the lesser of—

- (i) 12.5 percent of the total amount of funds made available to carry out this section; or
- (ii) \$7,500,000.

#### (d) Requirements

##### (1) Approval

A grant awarded under this section to an eligible subrecipient for a project shall be approved by the relevant State dam safety agency.

##### (2) Eligible subrecipient requirements

To receive a grant under this section, an eligible subrecipient shall, with respect to the dam to be rehabilitated by the eligible subrecipient—

(A) demonstrate that the community in which the dam is located participates in, and complies with, all applicable Federal flood insurance programs, including demonstrating that such community is participating in the National Flood Insurance Program, and is not on probation, suspended, or withdrawn from such Program;

(B) beginning not later than 2 years after the date on which the Administrator publishes criteria for hazard mitigation plans under paragraph (3), demonstrate that the Tribal or local government with jurisdiction over the area in which the dam is located has in place a hazard mitigation plan that—

- (i) includes all dam risks; and
- (ii) complies with the Disaster Mitigation Act of 2000 (Public Law 106-390; 114 Stat. 1552);

(C) commit to provide operation and maintenance of the project for the expected life of the dam following completion of rehabilitation;

(D) comply with such minimum eligibility requirements as the Administrator may establish to ensure that each owner and operator of a dam under a participating State dam safety program and that receives assistance under this section—

- (i) acts in accordance with the State dam safety program; and
- (ii) carries out activities relating to the public in the area around the dam in accordance with the hazard mitigation plan described in subparagraph (B); and

(E) comply with section 5196(j)(9) of title 42 (as in effect on December 16, 2016) with respect to projects receiving assistance under this section in the same manner as recipients are required to comply in order to receive financial contributions from the Administrator for emergency preparedness purposes.

**(3) Hazard mitigation plan criteria**

Not later than 1 year after December 27, 2020, the Administrator, in consultation with the Board, shall publish criteria for hazard mitigation plans required under paragraph (2)(B).

**(e) Floodplain management plans****(1) In general**

As a condition of receipt of assistance under this section, an eligible subrecipient shall demonstrate that a floodplain management plan to reduce the impacts of future flood events in the area protected by the project—

- (A) is in place; or
- (B) will be—

- (i) developed not later than 2 years after the date of execution of a project agreement for assistance under this section; and
- (ii) implemented not later than 2 years after the date of completion of construction of the project.

**(2) Inclusions**

A plan under paragraph (1) shall address—

- (A) potential measures, practices, and policies to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse impacts of flooding in the area protected by the project;
- (B) plans for flood fighting and evacuation; and
- (C) public education and awareness of flood risks.

**(3) Plan criteria and technical support**

The Administrator, in consultation with the Board, shall provide criteria, and may provide technical support, for the development and implementation of floodplain management plans prepared under this subsection.

**(f) Priority system**

The Administrator, in consultation with the Board, shall develop a risk-based priority system for use in identifying eligible high hazard potential dams for which grants may be made under this section.

**(g) Funding****(1) Cost sharing****(A) In general**

Any assistance provided under this section for a project shall be subject to a non-Federal cost-sharing requirement of not less than 35 percent.

**(B) In-kind contributions**

The non-Federal share under subparagraph (A) may be provided in the form of in-kind contributions.

**(2) Allocation of funds**

The total amount of funds made available to carry out this section for each fiscal year shall be distributed as follows:

**(A) Equal distribution**

$\frac{1}{3}$  shall be distributed equally among the States in which the projects for which applications are submitted under subsection (c)(1) are located.

**(B) Need-based**

$\frac{2}{3}$  shall be distributed among the States in which the projects for which applications are submitted under subsection (c)(1) are located based on the proportion that—

- (i) the number of eligible high hazard potential dams in the State; bears to
- (ii) the number of eligible high hazard potential dams in all such States.

**(h) Use of funds**

None of the funds provided in the form of a grant or otherwise made available under this section shall be used—

- (1) to rehabilitate a Federal dam;
- (2) to perform routine operation or maintenance of a dam;
- (3) to modify a dam to produce hydroelectric power;
- (4) to increase water supply storage capacity; or
- (5) to make any other modification to a dam that does not also improve the safety of the dam.

**(i) Contractual requirements****(1) In general**

Subject to paragraph (2), as a condition on the receipt of a grant under this section of an amount greater than \$1,000,000, an eligible subrecipient that receives the grant shall require that each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services entered into using funds from the grant be awarded in the same manner as a contract for architectural and engineering services is awarded under—

- (A) chapter 11 of title 40; or
- (B) an equivalent qualifications-based requirement prescribed by the relevant State.

**(2) No proprietary interest**

A contract awarded in accordance with paragraph (1) shall not be considered to confer a proprietary interest upon the United States.

**(j) Authorization of appropriations**

There are authorized to be appropriated to carry out this section—

- (1) \$10,000,000 for fiscal years 2017 and 2018;
- (2) \$25,000,000 for fiscal year 2019;
- (3) \$40,000,000 for fiscal year 2020; and
- (4) \$60,000,000 for each of fiscal years 2021 through 2026.

(Pub. L. 92-367, §8A, as added Pub. L. 114-322, title IV, §5006(b), Dec. 16, 2016, 130 Stat. 1893; amended Pub. L. 116-260, div. AA, title I, §132(b), Dec. 27, 2020, 134 Stat. 2645.)

**Editorial Notes**

## REFERENCES IN TEXT

The Disaster Mitigation Act of 2000, referred to in subsec. (d)(2)(B)(ii), is Pub. L. 106-390, Oct. 30, 2000, 114 Stat. 1552. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 5121 of Title 42, The Public Health and Welfare, and Tables.

## AMENDMENTS

2020—Subsec. (a). Pub. L. 116-260, §132(b)(1), substituted “to States with dam safety programs” for “to non-Federal sponsors”.

Subsec. (b). Pub. L. 116-260, §132(b)(2), substituted “to a State may be used by the State to award grants to eligible subrecipients for” for “a project may be used for” in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 116-260, §132(b)(3)(A), substituted “State” for “non-Federal sponsor”.

Subsec. (c)(2)(A). Pub. L. 116-260, §132(b)(3)(B)(i), substituted “eligible high hazard potential dams to a State” for “an eligible high hazard potential dam to a non-Federal sponsor”.

Subsec. (c)(2)(B). Pub. L. 116-260, §132(b)(3)(B)(ii), in heading, substituted “Grant” for “Project grant” and, in text, substituted “grant agreement with the State” for “project grant agreement with the non-Federal sponsor” and “projects for which the grant is awarded,” for “project.”

Subsec. (c)(2)(C). Pub. L. 116-260, §132(b)(3)(B)(iii), amended subpar. (C) generally. Prior to amendment, text read as follows: “As part of a project grant agreement under subparagraph (B), the Administrator shall require the non-Federal sponsor to provide an assurance, with respect to the dam to be rehabilitated under the project, that the owner of the dam has developed and will carry out a plan for maintenance of the dam during the expected life of the dam.”

Subsec. (c)(2)(D). Pub. L. 116-260, §132(b)(3)(B)(iv), substituted “A State may not award a grant to an eligible subrecipient under this section that exceeds, for any 1 dam,” for “A grant provided under this section shall not exceed” in introductory provisions.

Subsec. (d)(1). Pub. L. 116-260, §132(b)(4)(A), inserted “to an eligible subrecipient” after “this section”.

Subsec. (d)(2). Pub. L. 116-260, §132(b)(4)(B)(i), (ii), substituted “Eligible subrecipient” for “Non-Federal sponsor” in heading and “an eligible subrecipient shall, with respect to the dam to be rehabilitated by the eligible subrecipient” for “the non-Federal sponsor shall” in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 116-260, §132(b)(4)(B)(iii), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “participate in, and comply with, all applicable Federal flood insurance programs;”.

Subsec. (d)(2)(B). Pub. L. 116-260, §132(b)(4)(B)(iv), substituted “beginning not later than 2 years after the date on which the Administrator publishes criteria for hazard mitigation plans under paragraph (3), demonstrate that the Tribal or local government with jurisdiction over the area in which the dam is located has” for “have” in introductory provisions.

Subsec. (d)(2)(C). Pub. L. 116-260, §132(b)(4)(B)(v), substituted “expected life of the dam” for “50-year period”.

Subsec. (d)(3). Pub. L. 116-260, §132(b)(4)(C), added par. (3).

Subsec. (e)(1). Pub. L. 116-260, §132(b)(5)(A)(i), substituted “an eligible subrecipient” for “non-Federal sponsor” in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 116-260, §132(b)(5)(A)(ii), substituted “2 years” for “1 year” in cls. (i) and (ii).

Subsec. (e)(3). Pub. L. 116-260, §132(b)(5)(B), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “The Administrator may provide technical support for the development and implementation of floodplain management plans prepared under this subsection.”

Subsec. (i)(1). Pub. L. 116-260, §132(b)(6), substituted “an eligible subrecipient” for “a non-Federal sponsor” in introductory provisions.

## Statutory Notes and Related Subsidiaries

## RULEMAKING

Pub. L. 114-322, title IV, §5006(c), Dec. 16, 2016, 130 Stat. 1896, provided that:

“(1) PROPOSED RULEMAKING.—Not later than 90 days after the date of enactment of this Act [Dec. 16, 2016], the Administrator of the Federal Emergency Management Agency shall issue a notice of proposed rulemaking regarding applications for grants of assistance under the amendments made by subsection (b) to the National Dam Safety Program Act (33 U.S.C. 467 et seq.) [enacting this section].

“(2) FINAL RULE.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Emergency Management Agency shall promulgate a final rule regarding the amendments described in paragraph (1).”

## REHABILITATION OF CORPS OF ENGINEERS CONSTRUCTED DAMS

Pub. L. 114-322, title I, §1177, Dec. 16, 2016, 130 Stat. 1674, as amended by Pub. L. 115-270, title I, §1132, Oct. 23, 2018, 132 Stat. 3781; Pub. L. 116-260, div. AA, title III, §305, Dec. 27, 2020, 134 Stat. 2703, provided that:

“(a) IN GENERAL.—If the Secretary [of the Army] determines that the project is feasible, the Secretary may carry out a project for the rehabilitation of a dam described in subsection (b).

“(b) ELIGIBLE DAMS.—A dam eligible for assistance under this section is a dam—

“(1) that has been constructed, in whole or in part, by the Corps of Engineers for flood control purposes;

“(2) for which construction was completed before 1940;

“(3) that is classified as ‘high hazard potential’ by the State dam safety agency of the State in which the dam is located; and

“(4) that is operated by a non-Federal entity.

“(c) COST SHARING.—Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all land, easements, rights-of-way, and necessary relocations.

“(d) AGREEMENTS.—Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary [of the Army]—

“(1) to pay the non-Federal share of the costs of construction under subsection (c); and

“(2) to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.

“(e) COST LIMITATION.—The Secretary shall not expend more than \$60,000,000 for a project at any single dam under this section.

“(f) FUNDING.—There is authorized to be appropriated to carry out this section \$60,000,000 for each of fiscal years 2017 through 2026.”

## § 467g. Research

## (a) In general

The Administrator, in cooperation with the Board, shall carry out a program of technical and archival research to develop and support—

(1) improved techniques, historical experience, and equipment for rapid and effective dam construction, rehabilitation, and inspection;

(2) devices for the continued monitoring of the safety of dams;

(3) development and maintenance of information resources systems needed to support managing the safety of dams; and

(4) initiatives to guide the formulation of effective public policy and advance improvements in dam safety engineering, security, and management.

## (b) Consultation

The Administrator shall provide for State participation in research under subsection (a) and