

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 50 - NATIONAL FLOOD INSURANCE
SUBCHAPTER III - COORDINATION OF FLOOD INSURANCE WITH
LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§ 4102a. Pilot program for mitigation of severe repetitive loss properties

(a) Authority

To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b) of this section) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

(b) Severe repetitive loss property

For purposes of this section, the term “severe repetitive loss property” has the following meaning:

(1) Single-family properties

In the case of a property consisting of 1 to 4 residences, such term means a property 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 coverage, with the cumulative amount of such claims exceeding the value of the property.

(2) Multifamily properties

In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

(c) Eligible activities

Amounts provided under this section to a State or community may be used only for the following activities:

(1) Mitigation activities

To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

(2) Purchase

To purchase severe repetitive loss properties, subject to subsection (g) of this section.

(d) Matching requirement

(1) In general

Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

(2) Reduced community match

With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 5165 of this title that specifies how the State intends to reduce the number of severe repetitive loss properties; and

(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

(3) Non-Federal funds

For purposes of this subsection, the term “non-Federal funds” includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

(e) Notice of mitigation program

(1) In general

Upon selecting a State or community to receive assistance under subsection (a) of this section to carry out eligible activities, the Director shall notify the owners of a severe repetitive loss property, in plain language, within that State or community—

(A) that their property meets the definition of a severe repetitive loss property under this section;

(B) that they may receive an offer of assistance under this section;

(C) of the types of assistance potentially available under this section;

(D) of the implications of declining such offer of assistance under this section; and

(E) that there is a right to appeal under this section.

(2) Identification of severe repetitive loss properties

The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

(f) Standards for mitigation offers

The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

(1) Priority

In determining the properties for which to provide assistance for eligible activities under subsection (c) of this section, the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

(2) Offers

The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) of this section as soon as practicable.

(3) Consultation

In determining for which eligible activities under subsection (c) of this section to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

(4) Deference to local mitigation decisions

The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

(5) Allocation

(A) In general

Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

(B) Redistribution

Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

(C) Exception

Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

- (i) contain one or more severe repetitive loss properties; and
- (ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

(6) Notice

Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c) of this section, the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

(g) Purchase offers

A State or community may take action under subsection (c)(2) of this section to purchase a severe repetitive loss property only if the following requirements are met:

(1) Use of property

The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 5170c (b)(2)(B) of this title for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 5170c (b) of this title.

(2) Offers

The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

(3) Purchase price

The amount of purchase offer is not less than the greatest of—

- (A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this chapter;
- (B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and
- (C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

(4) Comparable housing payment

If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

(h) Increased premiums in cases of refusal to mitigate

(1) In general

In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) of this section with respect to such property, the Director shall—

(A) notify each holder of a recorded interest on the property of such refusal; and

(B) notwithstanding subsections (a) through (c) of section 4015 of this title, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

(2) Increased premiums upon subsequent flood damage

Notwithstanding subsections (a) through (c) of section 4015 of this title, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) of this section with respect to such property and a claim payment exceeding \$1,500 is made under flood insurance coverage under this chapter for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

(3) Limitation on increased premiums

In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 4014 (a)(1) of this title.

(4) Treatment of deductibles

Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this chapter for the property.

(5) Notice of continued offer

Upon each renewal or modification of any flood insurance coverage under this chapter for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) of this section is still open.

(6) Appeals

(A) In general

Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an

accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from non-Federal sources, will not cover the actual cost of mitigation.

(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) of this section for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) of this section is at least as cost effective as the initial offer of assistance.

(B) Procedure

An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

(C) Effect of final determination

In an appeal under this paragraph—

- (i) if a final determination is made in favor of the property owner under subparagraph (A) exist,¹ the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c) of this section; and
- (ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

(D) Costs

If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

- (i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and
- (ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

(E) Report

Not later than 6 months after June 30, 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

- (i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- (ii) the Committee on Financial Services of the House of Representatives.

(i) Discretionary actions in cases of fraudulent claims

If the Director determines that a fraudulent claim was made under flood insurance coverage under this chapter for a severe repetitive loss property, the Director may—

- (1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this chapter for the property; or
- (2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this chapter to such policyholder for the property.

(j) Rules

(1) In general

The Director shall, by rule—

- (A) subject to subsection (f)(4) of this section, develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and
- (B) ensure that the procedures developed under paragraph (1)—
 - (i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;
 - (ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;
 - (iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and
 - (iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

(2) Consultation

Not later than 90 days after June 30, 2004, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

(k) Funding

(1) In general

Pursuant to section 4017 (a)(8) of this title, the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed \$40,000,000 and shall remain available until expended. Notwithstanding any other provision of this chapter, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this chapter.

(2) Administrative expenses

Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

(l) Termination

The Director may not provide assistance under this section to any State or community after September 30, 2009.

Footnotes

¹ So in original. Word “exist” probably should not appear.

(Pub. L. 90–448, title XIII, § 1361A, as added Pub. L. 108–264, title I, § 102(a), June 30, 2004, 118 Stat. 714.)

References in Text

This chapter, referred to in text, 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

June 30, 2004, referred to in subsec. (j)(2), was in the original “the date of enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 108–264, which enacted this section, to reflect the probable intent of Congress.

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.