

# **NATIONAL FLOOD INSURANCE ACT OF 1968**

## **NATIONAL FLOOD INSURANCE REFORM ACT OF 1994**

*Acronyms:* NFIA, NFIRA

*Citation:* 42 U.S.C. §§ 4001-4129 (2002).

***Legislative Purpose:***

The National Flood Insurance Act authorizes the issuance of federal flood insurance and the completion of activities designed to reduce the risk of flood damage to eligible structures.

***Summary:***

Under the National Flood Insurance Act, property owners in participating coastal communities can obtain federal flood insurance. Most flood insurance is issued under this act, which was adopted in 1968 because private insurers had stopped covering floods except at exorbitant premiums. Now, flood insurance can be issued either by the Federal Emergency Management Agency (FEMA) or by a private insurer. But, in either case, it is governed by federal law, whereas other types of homeowner's insurance are governed by state law.

There are many critics to the NFIA program because of instances of severe shoreline migration and erosion following hazard events. Some critics suggest that the program encourages construction in hazardous areas, especially flood-resistant construction, such as elevated homes on pilings, that actually makes erosion more likely.

While there is an increased risk in building in coastal areas, the Federal Emergency Management Agency currently does not increase insurance rates to reflect the increased risk. Therefore, these property owners may be receiving an artificially low insurance rate. FEMA is currently reconsidering this question, and may factor erosion into rates in the future.

***Notable Amendment:***

The NFIRA established the Flood Mitigation Assistance (FMA) Program. Section 1366 of the NFIRA assigns to the Federal Emergency Management Agency (FEMA) Director the authority and responsibility for carrying out the program. Section 1367 establishes National Flood Mitigation Funds to fund FMA grants.

The Flood Mitigation Assistance programs are pre-disaster programs. There are three types of FMA grants. *Planning grants* assist states and communities in developing flood mitigation plans. Under section 1366 of NFIRA, a FEMA-approved Flood Mitigation Plan (FMP) is required in order for a state or community to receive a FMA project grant. *Project grants* fund eligible flood mitigation projects. FEMA encourages states to prioritize the mitigation activities outlined in their FMPs and fund projects that will greatly reduce or eliminate the risk of flood damage to buildings, manufactured homes, and other NFIP-

insurable structures. Mitigation of repetitively or substantially damaged structures is a high priority. *Technical assistance grants* assist states in providing technical assistance to applicants applying for the program or in implementing approved projects.

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 50. NATIONAL FLOOD INSURANCE

42 U.S.C. §§ 4001-4129 (2002).

§ 4001. Congressional findings and declaration of purpose

(a) Necessity and reasons for flood insurance program. The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation's resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection.

(b) Participation by Federal Government in flood insurance program carried out by private insurance industry. The Congress also finds that (1) many factors have made it uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions; but (2) a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry is feasible and can be initiated.

(c) Unified national program for flood plain management. The Congress further finds that (1) a program of flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and (2) the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this title the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.

(d) Authorization of flood insurance program; flexibility in program. It is therefore the purpose of this title to (1) authorize a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry, and (2) provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public.

(e) Land use adjustments by State and local governments; development of proposed future construction;

assistance of lending and credit institutions; relation of Federal assistance to all flood-related programs; continuing studies. It is the further purpose of this title to (1) encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, (2) guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards, (3) encourage lending and credit institutions, as a matter of national policy, to assist in furthering the objectives of the flood insurance program, (4) assure that any Federal assistance provided under the program will be related closely to all flood-related programs and activities of the Federal Government, and (5) authorize continuing studies of flood hazards in order to provide for a constant reappraisal of the flood insurance program and its effect on land use requirements.

(f) Mudslides. The Congress also finds that (1) the damage and loss which results from mudslides is related in cause and similar in effect to that which results directly from storms, deluges, overflowing waters, and other forms of flooding, and (2) the problems involved in providing protection against this damage and loss, and the possibilities for making such protection available through a Federal or federally sponsored program, are similar to those which exist in connection with efforts to provide protection against damage and loss caused by such other forms of flooding. It is therefore the further purpose of this title to make available, by means of the methods, procedures, and instrumentalities which are otherwise established or available under this title for purposes of the flood insurance program, protection against damage and loss resulting from mudslides that are caused by accumulations of water on or under the ground.

(g) [Repealed]

§ 4002. Additional Congressional findings and declaration of purpose

(a) The Congress finds that--

(1) annual losses throughout the Nation from floods and mudslides are increasing at an alarming rate, largely as a result of the accelerating development of, and concentration of population in, areas of flood and mudslide hazards;

(2) the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and of private industrial, commercial, and residential facilities;

(3) property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose for which such assistance was extended;

(4) Federal instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides;

(5) the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief benefits; and

(6) it is in the public interest for persons already living in flood-prone areas to have both an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified for their losses in the event of future flood disasters.



(b) The purpose of this Act, therefore, is to--

- (1) substantially increase the limits of coverage authorized under the national flood insurance program;
- (2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas;
- (3) require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plain ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses; and
- (4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

§ 4003. Additional definitions

(a) As used in this Act, unless the context otherwise requires, the term--

- (1) "community" means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;
- (2) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;
- (3) "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;
- (4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief and Emergency Assistance Act (other than assistance under such Act in connection with a flood);
- (5) "Federal entity for lending regulation" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;
- (6) "Director" means the Director of the Federal Emergency Management Agency;
- (7) "Federal agency lender" means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;
- (8) the term "improved real estate" means real estate upon which a building is located;
- (9) "lender" means a regulated lending institution or Federal agency lender;
- (10) "regulated lending institution" means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and
- (11) "servicer" means the person responsible for receiving any scheduled periodic payments from a

borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(b) The Director is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

§ 4011. Authorization to establish and carry out program; participation by insurance companies and other insurers

(a) Establishment of national flood insurance program. To carry out the purposes of this title, the Director of the Federal Emergency Management Agency is authorized to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.

(b) Additional coverage for compliance with land use and control measures. The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of compliance with land use and control measures established under section 1361 [42 USC § 4102] for--

- (1) properties that are repetitive loss structures;
- (2) properties that have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and
- (3) properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures.

The Director shall impose a surcharge on each insured of not more than \$ 75 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.

(c) Participation by insurance companies, etc. In carrying out the flood insurance program the Director shall, to the maximum extent practicable, encourage and arrange for--

- (1) appropriate financial participation and risk sharing in the program by insurance companies and other insurers, and
- (2) other appropriate participation, on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, in accordance with the provisions of chapter II [42 USC § § 4041 et seq.].

§ 4012. Scope of program and priorities

(a) Priority for insurance for certain residential and church properties and small business concerns. In carrying out the flood insurance program the Director shall afford a priority to making flood insurance available to cover residential properties which are designed for the occupancy of from one to four families,

church properties, and business properties which are owned or leased and operated by small business concerns.

(b) Availability of insurance for other properties. If on the basis of--

(1) studies and investigations undertaken and carried out and information received or exchanged under section 1307 [42 USC § 4014], and

(2) such other information as may be necessary,

the Director determines that it would be feasible to extend the flood insurance program to cover other properties, he may take such action under this title as from time to time may be necessary in order to make flood insurance available to cover, on such basis as may be feasible, any types and classes of--

(A) other residential properties,

(B) other business properties,

(C) agricultural properties,

(D) properties occupied by private nonprofit organizations, and

(E) properties owned by State and local governments and agencies thereof,

and any such extensions of the program to any types and classes of these properties shall from time to time be prescribed in regulations.

(c) Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures. The Director shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have--

(1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program, and

(2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 1361 [42 USC § 4102], and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available.

§ 4012a. Flood insurance purchase and compliance requirements and escrow accounts

(a) Amount and term of coverage. After the expiration of sixty days following the date of enactment of this Act [enacted Dec. 31, 1973], no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the

loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) Requirement for mortgage loans.

(1) Regulated lending institutions. Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

(2) Federal agency lenders. A Federal agency lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Government-sponsored enterprises for housing. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is--

(A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

(B) purchased by such entity,

the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

(4) Applicability.

(A) Existing coverage. Except as provided in subparagraph (B), paragraph (1) shall apply on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994].

(B) New coverage. Paragraphs (2) and (3) shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994]. Paragraph (1) shall apply with respect to any loan made, increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

(C) Continued effect of regulations. Notwithstanding any other provision of this subsection, the

regulations to carry out paragraph (1), as in effect immediately before the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994], shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of such Act take effect.

(c) Exceptions to purchase requirements.

(1) State-owned property. Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

(2) Small loans. Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having--

- (A) an original outstanding principal balance of \$ 5,000 or less; and
- (B) a repayment term of 1 year or less.

(d) Escrow of flood insurance payments.

(1) Regulated lending institutions. Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

(2) Federal agency lenders. Each Federal agency lender shall by regulation require and provide for escrow and payment of any flood insurance premiums and fees relating to residential improved real estate and mobile homes securing loans made by the Federal agency lender under the circumstances and in the manner provided under paragraph (1). Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Applicability of RESPA. Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974 [12 USC § 2609].

(4) Definition. For purposes of this subsection, the term "residential improved real estate" means improved real estate for which the improvement is a residential building.

(5) Applicability. This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994].

(e) Placement of flood insurance by lender.

(1) Notification to borrower of lack of coverage. If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been

identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to paragraph (1), (2), or (3) of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

(2) Purchase of coverage on behalf of borrower. If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

(3) Review of determination regarding required purchase.

(A) In general. The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.

(B) Effect of determination. Any person to whom a borrower provides a letter issued by the Director pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) Effect of failure to respond. If a request under subparagraph (A) is made in connection with the origination of a loan and the Director fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

(4) Applicability. This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994].

(f) Civil monetary penalties for failure to require flood insurance or notify.

(1) Civil monetary penalties against regulated lenders. Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).

(2) Lender violations. The violations referred to in paragraph (1) shall include--

(A) making, increasing, extending, or renewing loans in violation of--

(i) the regulations issued pursuant to subsection (b) of this section;

(ii) the escrow requirements under subsection (d) of this section; or

(iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968 [42

*USC § 4104a*]; or

(B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

(3) Civil monetary penalties against GSE's.

(A) In general. If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

(B) Definition. For purposes of this subsection, the term "enterprise" means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) Notice and hearing. A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

(5) Amount. A civil monetary penalty under this subsection may not exceed \$ 350 for each violation under paragraph (2) or paragraph (3). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed \$ 100,000.

(6) Lender compliance. Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b).

(7) Effect of transfer on liability. Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

(8) Deposit of penalties. Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 1367 of the National Flood Insurance Act of 1968 [42 USC § 4104d].

(9) Additional penalties. Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

(10) Statute of limitations. No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

(g) Other actions to remedy pattern of noncompliance.

(1) Authority of Federal entities for lending regulation. A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

(2) Determination of violations. A determination under this paragraph shall be a finding that--

(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968 [42 USC § 4104a]; and

(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f).

(h) Fee for determining location. Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) Borrower fee. The borrower under such a loan may be charged the fee, but only if the determination--

(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(B) is made pursuant to a revision or updating under section 1360(f) [42 USC § 4101(f)] of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360 [42 USC § 4101(h) or (i)] that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or

(C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2).

(2) Purchaser or transferee fee. The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

#### § 4013. Nature and limitation of insurance coverage; regulations

(a) The Director shall from time to time, after consultation with the advisory committee authorized under section 1318 [42 USC § 4025], appropriate representatives of the pool formed or otherwise created under section 1331 [42 USC § 4051], and appropriate representatives of the insurance authorities of the respective States, provide by regulation for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage under section 1305 [42 USC § 4012], including--

(1) the types, classes, and locations of any such properties which shall be eligible for flood insurance;

(2) the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such insurance;

(3) the classification, limitation, and rejection of any risks which may be advisable;

(4) appropriate minimum premiums;

(5) appropriate loss-deductibles; and

(6) any other terms and conditions relating to insurance coverage or exclusion which may be necessary to carry out the purposes of this title.

(b) In addition to any other terms and conditions under subsection (a), such regulations shall provide that--

(1) any flood insurance coverage based on chargeable premium rates under section 1308 [42 USC § 4015] which are less than the estimated premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)] shall not exceed--

(A) in the case of residential properties--

(i) \$ 35,000 aggregate liability for any single-family dwelling, and \$ 100,000 for any residential

structure containing more than one dwelling unit,

(ii) \$ 10,000 aggregate liability per dwelling unit for any contents related to such unit, and

(iii) in the States of Alaska and Hawaii, and in the Virgin Islands and Guam, the limits provided in clause (i) of this sentence shall be: \$ 50,000 aggregate liability for any single-family dwelling, and \$ 150,000 for any residential structure containing more than one dwelling unit;

(B) in the case of business properties which are owned or leased and operated by small business concerns, an aggregate liability with respect to any single structure, including any contents thereof related to premises of small business occupants (as that term is defined by the Director), which shall be equal to (i) \$ 100,000 plus (ii) \$ 100,000 multiplied by the number of such occupants and shall be allocated among such occupants (or among the occupant or occupants and the owner) under regulations prescribed by the Director; except that the aggregate liability for the structure itself may in no case exceed \$ 100,000; and

(C) in the case of church properties and any other properties which may become eligible for flood insurance under section 1305 [42 USC § 4012]--

(i) \$ 100,000 aggregate liability for any single structure, and

(ii) \$ 100,000 aggregate liability per unit for any contents related to such unit; and

(2) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1) [42 USC § 4014(a)(1)], additional flood insurance in excess of the limits specified in clause (i) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(i)) of \$ 250,000;

(3) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1) [42 USC § 4014(a)(1)], additional flood insurance in excess of the limits specified in clause (ii) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable any such insured on applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(ii)) of \$ 100,000;

(4) in the case of any nonresidential property, including churches, for which the risk premium rate is determined in accordance with the provisions of section 1307(a)(1) [42 USC § 4014(a)(1)], additional flood insurance in excess of the limits specified in subparagraphs (B) and (C) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance, in respect to any single structure, up to a total amount (including such limit specified in subparagraph (B) or (C) of paragraph (1), as applicable) of \$ 500,000 for each structure and \$ 500,000 for any contents related to each structure; and

(5) any flood insurance coverage which may be made available in excess of the limits specified in subparagraph (A), (B), or (C) of paragraph (1), shall be based only on chargeable premium rates under section 1308 [42 USC § 4015] which are not less than the estimated premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)], and the amount of such excess coverage shall not in any case exceed an amount equal to the applicable limit so specified (or allocated) under paragraph (1)(C), (2), (3), or (4), as applicable.

(6) [Deleted]

(c) Effective date of policies.

(1) Waiting period. Except as provided in paragraph (2), coverage under a new contract for flood insurance coverage under this title entered into after the date of enactment of the Riegle Community

Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994], and any modification to coverage under an existing flood insurance contract made after such date, shall become effective upon the expiration of the 30-day period beginning on the date that all obligations for such coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed.

(2) Exception. The provisions of paragraph (1) shall not apply to--

(A) the initial purchase of flood insurance coverage under this title when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan; or

(B) the initial purchase of flood insurance coverage pursuant to a revision or updating of floodplain areas or flood-risk zones under section 1360(f) [42 USC § 4101(f)], if such purchase occurs during the 1-year period beginning upon publication of notice of the revision or updating under section 1360(h) [42 USC § 4101(h)].

#### § 4014. Estimates of premium rates

(a) Studies and investigations. The Director is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis--

(1) the risk premium rates for flood insurance which--

(A) based on consideration of the risk involved and accepted actuarial principles, and

(B) including--

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 1311 [42 USC § 4018] and reflected in such rates,

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates, and

(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360 [42 USC § 4101]) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes, would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 1305 (a) [42 USC § 4012(a)] (or is recommended to the Congress under section 1305 (b) [42 USC § 4012(b)]);

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this title, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360 [42 USC § 4101]); and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after the date of the enactment of this title [enacted Aug. 1, 1968] affect such rates.

(b) Utilization of services of other Departments and agencies. In carrying out subsection (a), the Director shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of the Department of the Army, the Department of the Interior, the Department of Agriculture, the Department of Commerce,

and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) Priority to studies and investigations in States or areas evidencing positive interest in securing insurance under program. The Director shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Parishes of Louisiana; premium rates. Notwithstanding any other provision of law, any structure existing on the date of enactment of the Flood Disaster Protection Act of 1973 [enacted Dec. 31, 1973] and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Director determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Eligibility of community making adequate progress on construction of flood protection system for rates not exceeding those applicable to completed flood protection system; determination of adequate progress. Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Director, on the construction of a flood protection system which will afford flood protection for the one-hundred year frequency flood as determined by the Director, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Director shall find that adequate progress on the construction of a flood protection system as required herein has been only if (1) 100 percent of the project cost of the system has been authorized, (2) at least 60 percent of the project cost of the system has been appropriated, (3) at least 50 percent of the project cost of the system has been expended, and (4) the system is at least 50 percent completed.

(f) Flood control restoration zone. Notwithstanding any other provision of law, this subsection shall only apply in a community which has been determined by the Director of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so. Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the disaccreditation of the flood protection system at premium rates that do not exceed those which would be applicable to any property located in an area of special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the Director for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood hazard that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if--

(1) the flood protection system has been deemed restorable by a Federal agency in consultation with the local project sponsor;

(2) a minimum level of flood protection is still provided to the community by the discredited system; and

(3) restoration of the flood protection system is scheduled to occur within a designated time period and in accordance with a progress plan negotiated between the community and the Federal Emergency Management Agency.

Communities that the Director of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the discredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The Director of the Federal Emergency Management Agency shall develop and promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after the date of enactment of this subsection [enacted Oct. 28, 1992].

#### § 4015. Chargeable premium rates

(a) Establishment; terms and conditions. On the basis of estimates made under section 1307 [42 USC § 4014] and such other information as may be necessary, the Director shall from time to time, after consultation with the advisory committee authorized under section 1318 [42 USC § 4025], appropriate representatives of the pool formed or otherwise created under section 1331 [42 USC § 4051], and appropriate representatives of the insurance authorities of the respective States, prescribe by regulation--

(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 1305 [42 USC § 4012] (at less than the estimated risk premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)], where necessary), and

(2) the terms and conditions under which, and the areas (including subdivisions thereof) within which, such rates shall apply.

(b) Considerations for rates. Such rates shall, insofar as practicable, be--

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures.

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this title,

(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a) [42 USC § 4014(a)(1)(B)(iii) or (2)], to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360 [42 USC § 4101]), and

(4) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)] and the estimated rates under section 1307(a)(2) [42 USC § 4014(a)(2)].

(c) Rate with respect to property the construction or substantial improvement of which has been started after December 31, 1974, or effective date of initial rate map published for area in which property is located, whichever is later. Subject only to the limitation under subsection (e), the chargeable rate with respect to any property, the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or the effective date of the initial rate map published by the Director under paragraph (2) of section 1360 [42 USC § 4101(2)] for the area in which such property is located, whichever is later, shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) [42 USC § 4014(a)(1)].

(d) Payment of certain sums to Director; deposit in Fund. With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section [42 USC § 4014(a)(1)(B)(ii) and (iii) or (2)] (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310 [42 USC § 4017]].

(e) Annual limitation on premium increases. Notwithstanding any other provision of this title, the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 10 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period.

§ 4016. Financing provisions; issuance of notes or other obligations; limitation; report to Congressional committees; deposits in Fund

(a) All authority which was vested in the Housing and Home Finance Administrator by virtue of section 15(e) of the Federal Flood Insurance Act of 1956 (70 Stat. 1084) [42 USC § 2414(e)] (pertaining to the issue of notes or other obligations to the Secretary of the Treasury), as amended by subsections (a) and (b) of section 1303 of this Act, shall be available to the Director for the purpose of carrying out the flood insurance program under this title; except that the total amount of notes and obligations which may be issued by the Director pursuant to such authority (1) without the approval of the President, may not exceed \$ 500,000,000, and (2) with the approval of the President, may not exceed \$ 1,500,000,000 through December 31, 2002, and \$ 1,000,000,000 thereafter. The Director shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at any time when he requests the approval of the President in accordance with the preceding sentence.

(b) Any funds borrowed by the Director under this authority shall, from time to time, be deposited in the National Flood Insurance Fund established under section 1310 [42 USC § 4017].

§ 4017. National Flood Insurance Fund

(a) Establishment; availability. To carry out the flood insurance program authorized by this title, the Director shall establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the "fund") which shall be an account separate from any other accounts or funds available to the Director and shall be available as described in subsection (f), without fiscal year limitation (except as otherwise provided in this section)--

(1) for making such payments as may, from time to time, be required under section 1334 [42 USC § 4054];

(2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 1335 [42 USC § 4055];

(3) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 1309 [42 USC § 4016]; and

(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360 [42 USC § 4101]);

(5) for the purposes specified in subsection (d) under the conditions provided therein;

(6) for carrying out the program under section 1315(b) [42 USC § 4022(b)];

(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 1367(b)(1) [42 USC § 4104d(b)(1)]; and

(8) for costs of preparing the report under section 577 of the Riegle Community Development and Regulatory Improvement Act of 1994, except that the fund shall be available for the purpose under this paragraph in an amount not to exceed an aggregate of \$ 5,000,000 over the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994].

(b) Credits to Fund. The fund shall be credited with--

(1) such funds borrowed in accordance with the authority provided in section 1309 [42 USC § 4016] as may from time to time be deposited in the fund;

(2) premiums, fees, or other charges which may be paid or collected in connection with the excess loss reinsurance coverage provided under section 1335 [42 USC § 4055];

(3) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

(4) interest which may be earned on investments of the fund pursuant to subsection (c);

(5) such sums as are required to be paid to the Director under section 1308(d) [42 USC § 4015(d)]; and

(6) receipts from any other operations under this title (including premiums under the conditions specified in subsection (d), and salvage proceeds, if any, resulting from reinsurance coverage).

(c) Investment of moneys in obligations issued or guaranteed by United States. If, after--

- (1) all outstanding obligations of the fund have been liquidated, and
- (2) any outstanding amounts which may have been advanced to the fund from appropriations authorized under section 1376(a)(2)(B) [42 USC § 4127(a)(2)(B)] have been credited to the appropriation from which advanced, with interest accrued at the rate prescribed under section 15(e) of the Federal Flood Insurance Act of 1956 [42 USC § 2414(e)], as in effect immediately prior to the enactment of this title [enacted Aug. 1, 1968],

the Director determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) Availability of Fund if operation of program is carried out through facilities of Federal Government. In the event the Director makes a determination in accordance with the provisions of section 1340 [42 USC § 4071] that operation of the flood insurance program, in whole or in part, should be carried out through the facilities of the Federal Government, the fund shall be available for all purposes incident thereto, including--

- (1) cost incurred in the adjustment and payment of any claims for losses, and
- (2) payment of applicable operating costs set forth in the schedules prescribed under section 1311 [42 USC § 4018],

for so long as the program is so carried out, and in such event any premiums paid shall be deposited by the Director to the credit of the fund.

(e) Annual budget. An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31, United States Code, for wholly-owned Government corporations.

(f) Availability of funds dependent on future appropriation acts. The fund shall be available, with respect to any fiscal year beginning on or after October 1, 1981, only to the extent approved in appropriation Acts; except that the fund shall be available for the purpose described in subsection (d)(1) without such approval.

#### § 4018. Operating costs and allowances; definitions

(a) The Director shall from time to time negotiate with appropriate representatives of the insurance industry for the purpose of establishing--

- (1) a current schedule of operating costs applicable both to risk-sharing insurance companies and other insurers and to insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations participating on other than a risk-sharing basis, and
- (2) a current schedule of operating allowances applicable to risk-sharing insurance companies and other insurers,

which may be payable in accordance with the provisions of chapter II [42 USC § § 4041 et seq.], and

such schedules shall from time to time be prescribed in regulations.

(b) For purposes of subsection (a)--

(1) the term "operating costs" shall (without limiting such term) include--

(A) expense reimbursements covering the direct, actual, and necessary expenses incurred in connection with selling and servicing flood insurance coverage;

(B) reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers;

(C) loss adjustment expenses; and

(D) other direct, actual, and necessary expenses which the Director finds are incurred in connection with selling or servicing flood insurance coverage; and

(2) the term "operating allowances" shall (without limiting such term) include amounts for profit and contingencies which the Director finds reasonable and necessary to carry out the purposes of this title.

#### § 4019. Payment of claims

The Director is authorized to prescribe regulations establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by flood insurance made available under the provisions of this title.

#### § 4020. Dissemination of flood insurance information

The Director shall from time to time take such action as may be necessary in order to make information and data available to the public, and to any State or local agency or official, with regard to--

(1) the flood insurance program, its coverage and objectives, and

(2) estimated and chargeable flood insurance premium rates, including the basis for and differences between such rates in accordance with the provisions of section 1308 [42 USC § 4015].

#### § 4022. State and local land use controls

(a) Requirement for participation in flood insurance program.

(1) In general. After December 31, 1971, no new flood insurance coverage shall be provided under this title in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate land use and control measures (with effective enforcement provisions) which the Director finds are consistent with the comprehensive criteria for land management and use under section 1361 [42 USC § 4102].

(2) Agricultural structures.

(A) Activity restrictions. Notwithstanding any other provision of law, the adequate land use and control measures required to be adopted in an area (or subdivision thereof) pursuant to paragraph (1) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to predamaged conditions of an agricultural structure that--

(i) is a repetitive loss structure; or

(ii) has incurred flood-related damage to the extent that the cost of restoring the structure to its predamaged condition would equal or exceed 50 percent of the market value of the structure before the

damage occurred.

(B) Premium rates and coverage. To the extent applicable, an agricultural structure repaired or restored pursuant to subparagraph (A) shall pay chargeable premium rates established under section 1308 [42 USC § 4015] at the estimated risk premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)]. If resources are available, the Director shall provide technical assistance and counseling, upon request of the owner of the structure, regarding wet flood-proofing and other flood damage reduction measures for agricultural structures. The Director shall not be required to make flood insurance coverage available for such an agricultural structure unless the structure is wet flood-proofed through permanent or contingent measures applied to the structure or its contents that prevent or provide resistance to damage from flooding by allowing flood waters to pass through the structure, as determined by the Director.

(C) Prohibition on disaster relief. Notwithstanding any other provision of law, any agricultural structure repaired or restored pursuant to subparagraph (A) shall not be eligible for disaster relief assistance under any program administered by the Director or any other Federal agency.

(D) Definitions. For purposes of this paragraph--

(i) the term "agricultural structure" means any structure used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities; and

(ii) the term "agricultural commodities" means agricultural commodities and livestock.

(b) Community rating system and incentives for community floodplain management.

(1) Authority and goals. The Director shall carry out a community rating system program, under which communities participate voluntarily--

(A) to provide incentives for measures that reduce the risk of flood or erosion damage that exceed the criteria set forth in section 1361 [42 USC § 4102] and evaluate such measures;

(B) to encourage adoption of more effective measures that protect natural and beneficial floodplain functions;

(C) to encourage floodplain and erosion management; and

(D) to promote the reduction of Federal flood insurance losses.

(2) Incentives. The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures that reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361 [42 USC § 4102]. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have implemented measures that protect natural and beneficial floodplain functions.

(3) Credits. The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section 1366 [42 USC § 4104c], the credits shall be phased in a manner, determined by the Director, to recover the amount of such assistance provided for the community.

(4) Reports. Not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994] and not less than every 2 years thereafter, the Director shall submit a report to the Congress regarding the program under this subsection. Each report shall include an analysis of the cost-effectiveness of the program, any other accomplishments or shortcomings of the program, and any recommendations of the Director for legislation regarding the

program.

§ 4023. Properties in violation of State and local law

No new flood insurance coverage shall be provided under this title for any property which the Director finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

§ 4024. Coordination with other programs

In carrying out this title, the Director shall consult with other departments and agencies of the Federal Government, and with interstate, State, and local agencies having responsibilities for flood control, flood forecasting, or flood damage prevention, in order to assure that the programs of such agencies and the flood insurance program authorized under this title are mutually consistent.

§ 4025. Flood insurance advisory committee

(a) Appointment; duties. The Director shall appoint a flood insurance advisory committee without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such committee shall advise the Director in the preparation of any regulations prescribed in accordance with this title and with respect to policy matters arising in the administration of this title, and shall perform such other responsibilities as the Director may, from time to time, assign to such committee.

(b) Membership. Such committee shall consist of not more than fifteen persons and such persons shall be selected from among representatives of--

- (1) the insurance industry,
- (2) State and local governments,
- (3) lending institutions,
- (4) the homebuilding industry, and
- (5) the general public.

(c) Compensation and travel expenses. Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the Director but not exceeding \$ 100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code [5 for persons in the Government service employed intermittently.

§ 4026. Expiration of program

No new contract for flood insurance under this title shall be entered into after December 31, 2002.

§ 4027. Biennial report to the President

(a) In general. The Director shall biennially submit a report of operations under this title to the President for submission to the Congress.

(b) Effects of flood insurance program. The Director shall include, as part of the biennial report submitted under subsection (a), a chapter reporting on the effects on the flood insurance program observed through implementation of requirements under the Riegle Community Development and Regulatory Improvement Act of 1994.

§ 4028. John H. Chafee Coastal Barrier Resources System

(a) No new flood insurance coverage may be provided under this title on or after October 1, 1983, for any new construction or substantial improvements of structures located on any coastal barrier within the John H. Chafee Coastal Barrier Resources System established by section 4 of the Coastal Barrier Resources Act [16 USC § 3503]. A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section.

(b) No new flood insurance coverage may be provided under this title after the expiration of the 1-year period beginning on the date of the enactment of the Coastal Barrier Improvement Act of 1990 [enacted Nov. 16, 1990] for any new construction or substantial improvements of structures located in any area identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act [16 USC § 3503(a)] as an area that is (1) not within the John H. Chafee Coastal Barrier Resources System and (2) is in an otherwise protected area. Notwithstanding the preceding sentence, new flood insurance coverage may be provided for structures in such protected areas that are used in a manner consistent with the purpose for which the area is protected.

§ 4029. Colorado River Floodway

(a) Renewal and transfer of policies; acquisition of policies after filing of maps. Owners of existing National Flood Insurance Act policies with respect to structures located within the Floodway established under section 5 of the Colorado River Floodway Protection Act [43 USC § 1600c] shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act [enacted Oct. 8, 1986] who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act [43 USC § 1600c(b)(2)] and to renew and transfer such policies.

(b) New coverage for new construction or substantial improvements. No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the Colorado River Floodway Protection Act [enacted Oct. 8, 1986] for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act [43 USC § 1600c]. New construction includes all structures that are not

insurable prior to that date.

(c) Establishment of temporary boundaries. The Secretary of the Interior may by rule after notice and comment pursuant to 5 *U.S.C. 553* establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway Protection Act [*43 USC § 1600c(b)(2)*] are filed, for the purpose of enforcing subsections (b) and (d) of this section.

(d) Loans by federally supervised, approved, regulated, or insured financial institutions. A regulated lending institution or Federal agency lender may make loans secured by structures which are not eligible for flood insurance by reason of this section: Provided, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.

#### § 4041. Implementation of program

Following such consultation with representatives of the insurance industry as may be necessary, the Director shall implement the flood insurance program authorized under chapter I [*42 USC § § 4011 et seq.*] in accordance with the provisions of part A of this chapter [*42 USC § § 4051 et seq.*] and, if a determination is made by him under section 1340 [*42 USC § 4071*], under part B of this chapter [*42 USC § § 4071 et seq.*].

#### § 4051. Industry flood insurance pool; requirements for participation

(a) The Director is authorized to encourage and otherwise assist any insurance companies and other insurers which meet the requirements prescribed under subsection (b) to form, associate, or otherwise join together in a pool--

(1) in order to provide the flood insurance coverage authorized under chapter I [*42 USC § § 4011 et seq.*]; and

(2) for the purpose of assuming, on such terms and conditions as may be agreed upon, such financial responsibility as will enable such companies and other insurers, with the Federal financial and other assistance available under this title, to assume a reasonable proportion of responsibility for the adjustment and payment of claims for losses under the flood insurance program.

(b) In order to promote the effective administration of the flood insurance program under this part [*42 USC § § 4051 et seq.*], and to assure that the objectives of this title are furthered, the Director is authorized to prescribe appropriate requirements for insurance companies and other insurers participating in such pool including, but not limited to, minimum requirements for capital or surplus or assets.

#### § 4052. Agreements with flood insurance pool

(a) Authorization. The Director is authorized to enter into such agreements with the pool formed or otherwise created under this part [*42 USC § § 4051 et seq.*] as he deems necessary to carry out the purposes of this title.

(b) Terms and conditions. Such agreements shall specify--

(1) the terms and conditions under which risk capital will be available for the adjustment and payment of claims,

(2) the terms and conditions under which the pool (and the companies and other insurers participating therein) shall participate in premiums received and profits or losses realized or sustained,

(3) the maximum amount of profit, established by the Director and set forth in the schedules prescribed under section 1311 [42 USC § 4018], which may be realized by such pool (and the companies and other insurers participating therein),

(4) the terms and conditions under which operating costs and allowances set forth in the schedules prescribed under section 1311 [42 USC § 4018] may be paid, and

(5) the terms and conditions under which premium equalization payments under section 1334 [42 USC § 4054] will be made and reinsurance claims under section 1335 [42 USC § 4055] will be paid.

(c) Additional provisions. In addition, such agreements shall contain such provisions as the Director finds necessary to assure that--

(1) no insurance company or other insurer which meets the requirements prescribed under section 1331(b) [42 USC § 4051(b)], and which has indicated an intention to participate in the flood insurance program on a risk-sharing basis, will be excluded from participating in the pool,

(2) the insurance companies and other insurers participating in the pool will take whatever action may be necessary to provide continuity of flood insurance coverage by the pool, and

(3) any insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations will be permitted to cooperate with the pool as fiscal agents or otherwise, on other than a risk-sharing basis, to the maximum extent practicable.

#### § 4053. Adjustment and payment of claims; judicial review; limitation; jurisdiction

The insurance companies and other insurers which form, associate, or otherwise join together in the pool under this part [42 USC § § 4051 et seq.] may adjust and pay all claims for proved and approved losses covered by flood insurance in accordance with the provisions of this title and, upon the disallowance by any such company or other insurer of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance of the claim, may institute an action on such claim against such company or other insurer in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

#### § 4054. Premium equalization payments; basis; aggregate amount; establishment of designated periods

(a) The Director, on such terms and conditions as he may from time to time prescribe, shall make periodic payments to the pool formed or otherwise created under section 1331 [42 USC § 4051], in recognition of such reductions in chargeable premium rates under section 1308 [42 USC § 4015] below estimated premium rates under section 1307(a)(1) [42 USC § 4014(a)(1)] as are required in order to make flood insurance available on reasonable terms and conditions.

(b) Designated periods under this section and the methods for determining the sum of premiums paid or payable during such periods shall be established by the Director.

§ 4055. Reinsurance coverage

(a) Availability for excess losses. The Director is authorized to take such action as may be necessary in order to make available, to the pool formed or otherwise created under section 1331 [42 USC § 4051], reinsurance for losses (due to claims for proved and approved losses covered by flood insurance) which are in excess of losses assumed by such pool in accordance with the excess loss agreement entered into under subsection (c).

(b) Availability pursuant to contract, agreement, or other arrangement; payment of premium, fee, or other charge. Such reinsurance shall be made available pursuant to contract, agreement, or any other arrangement, in consideration of such payment of a premium, fee, or other charge as the Director finds necessary to cover anticipated losses and other costs of providing such reinsurance.

(c) Excess loss agreement; negotiation. The Director is authorized to negotiate an excess loss agreement, from time to time, under which the amount of flood insurance retained by the pool, after ceding reinsurance, shall be adequate to further the purposes of this title, consistent with the objective of maintaining appropriate financial participation and risk sharing to the maximum extent practicable on the part of participating insurance companies and other insurers.

(d) Submission of excess losses on portfolio basis. All reinsurance claims for losses in excess of losses assumed by the pool shall be submitted on a portfolio basis by such pool in accordance with terms and conditions established by the Director.

§ 4056. Emergency implementation of flood insurance program; applicability of other provisions of law

(a) Notwithstanding any other provisions of this title, for the purpose of providing flood insurance coverage at the earliest possible time, the Director shall carry out the flood insurance program authorized under chapter I [42 USC § § 4011 et seq.] during the period ending December 31, 2002, in accordance with the provisions of this part [42 USC § § 4051 et seq.] and the other provisions of this title insofar as they relate to this part [42 USC § § 4051 et seq.] but subject to the modifications made by or under subsection (b).

(b) In carrying out the flood insurance program pursuant to subsection (a), the Director--

(1) shall provide insurance coverage without regard to any estimated risk premium rates which would otherwise be determined under section 1307 [42 USC § 4014]; and

(2) shall utilize the provisions and procedures contained in or prescribed by this part [42 USC § § 4051 et seq.] (other than section 1334 [42 USC § 4054]) and sections 1345 and 1346 [42 USC § § 4081, 4082] to such extent and in such manner as he may consider necessary or appropriate to carry out the purpose of this section.

§ 4071. Federal operation of program; determination by Director; fiscal agents; report to the Congress

(a) If at any time, after consultation with representatives of the insurance industry, the Director determines that operation of the flood insurance program as provided under part A [42 USC § § 4051 et seq.] cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this title (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under chapter I [42 USC § § 4011 et seq.] through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either--

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States,

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5 of the United States Code) as the Director and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

(3) both the alternatives specified in paragraphs (1) and (2).

(b) Upon making the determination referred to in subsection (a), the Director shall make a report to the Congress and, at the same time, to the private insurance companies participating in the National Flood Insurance Program pursuant to section 1310 of this Act [42 USC § 4017]. Such report shall--

(1) state the reason for such determinations,

(2) be supported by pertinent findings,

(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in providing flood insurance coverage under the program, and

(4) contain such recommendations as the Director deems advisable.

The Director shall not implement the program of flood insurance authorized under chapter I [42 USC § § 4011 et seq.] through the facilities of the Federal Government until 9 months after the date of submission of the report under this subsection unless it would be impossible to continue to effectively carry out the National Flood Insurance Program operations during this time.

§ 4072. Adjustment and payment of claims; judicial review; limitations; jurisdiction

In the event the program is carried out as provided in section 1340 [42 USC § 4071], the Director shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Director of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Director, may institute an action against the Director on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

§ 4081. Services by insurance industry; contracts, agreements, or other arrangements

(a) In administering the flood insurance program under this chapter [42 USC § § 4041 et seq.], the

Director 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 1311 [42 USC § 4018].

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) 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) The Director of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this title [42 USC § § 4001 et seq.] 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 Director of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

§ 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 Director may enter into contracts with pool formed or otherwise created under section 1331 [42 USC § 4051], or any insurance company or other private organization, 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 Director, 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; and
- (4) otherwise assisting in such manner as the contract may provide to further the purposes of this title.

(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 Director finds necessary or appropriate for carrying out responsibilities under subsection (a), and may provide for payment of any costs which the Director determines are incidental to carrying out such responsibilities which are covered by the contract.

(c) Competitive bidding. Any contract entered into under subsection (a) may be entered into without

regard to section 3709 of the Revised Statute (*41 U.S.C. 5*) or any other provision of law requiring competitive bidding.

(d) Findings of Director. No contract may be entered into under this section unless the Director finds that the pool, company, or organization will perform its obligations under the contract efficiently and effectively, and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(e) Bond; liability of certifying officers and disbursing officers.

(1) Any such contract may require the pool, company, or organization or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract [contract], to give surety bond to the United States in such amount as the Director may deem appropriate.

(2) No individual designated pursuant to a contract under this section to certify payments shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this section.

(3) No officer disbursing funds shall in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by an individual designated to certify payments as provided in paragraph (2) of this subsection.

(f) Term of contract; renewals; termination. Any contract entered into under this section shall be for a term of one year, and may be made automatically renewable from term to term in the absence of notice by either party of an intention to terminate at the end of the current term; except that the Director may terminate any such contract at any time (after reasonable notice to the pool, company, or organization involved) if he finds that the pool, company, or organization has failed substantially to carry out the contract, or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the flood insurance program authorized under this title.

#### § 4083. Settlement of claims; arbitration

(a) The Director is authorized to make final settlement of any claims or demands which may arise as a result of any financial transactions which he is authorized to carry out under this chapter [*42 USC § § 4041 et seq.*], and may, to assist him in making any such settlement, refer any disputes relating to such claims or demands to arbitration, with the consent of the parties concerned.

(b) Such arbitration shall be advisory in nature, and any award, decision, or recommendation which may be made shall become final only upon the approval of the Director.

#### § 4084. Records and audits

(a) The flood insurance pool formed or otherwise created under part A of this chapter [*42 USC § § 4051 et seq.*], and any insurance company or other private organization executing any contract, agreement, or other appropriate arrangement with the Director under part B of this chapter [*42 USC § § 4071 et seq.*]

or this part [42 USC § § 4071 et seq.], shall keep such records as the Director shall prescribe, including records which fully disclose the total costs of the program undertaken or the services being rendered, and such other records as will facilitate an effective audit.

(b) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the pool and any such insurance company or other private organization that are pertinent to the costs of the program undertaken or the services being rendered.

§ 4101. Identification of flood-prone areas

(a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss. The Director is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may--

(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act [enacted Aug. 1, 1968], and

(2) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 1319 [42 USC § 4026].

(b) Accelerated identification of flood-risk zones; authority of Director; grants, technical assistance, transactions, and payments. The Director is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Director is authorized, without regard to subsections (a) and (b) of section 3324 of title 31, *United States Code*, and section 3709 of the Revised Statutes (41 U.S.C. 5) to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) Priority in allocation of manpower and other available resources for identification and mapping of flood hazard areas and flood-risk zones. The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Director, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Director to meet the deadline established by this section.

(d) Plan for bringing communities into full program status. The Director shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(e) Review of flood maps. Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994]) or more often as the Director determines necessary, the Director shall assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.

(f) Updating flood maps. The Director shall revise and update any floodplain areas and flood-risk zones--

(1) upon the determination of the Director, according to the assessment under subsection (e), that revision and updating are necessary for the areas and zones; or

(2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Director, but which may not exceed 50 percent of the cost of carrying out the requested revision or update.

(g) Availability of flood maps. To promote compliance with the requirements of this title, the Director shall make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6) [42 USC § 4017(b)(6)].

(h) Notification of flood map changes. The Director shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to flood insurance map panels and any change to flood insurance map panels issued in the form of a letter of map amendment or a letter of map revision. Such notice shall be published or otherwise provided not later than 30 days after the map change or revision becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes or revisions.

(i) Compendia of flood map changes. Every 6 months, the Director shall publish separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Director shall make such compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 1310 [42 USC § 4017] and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund,

pursuant to section 1310(b)(6) [42 USC § 4017(b)(6)].

(j) Provision of information. In the implementation of revisions to and updates of flood insurance rate maps, the Director shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

§ 4102. Criteria for land management and use

(a) Studies and investigations. The Director is authorized to carry out studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal departments or agencies, and State and local governmental agencies, and any other organizations, with respect to the adequacy of State and local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention, and may enter into any contracts, agreements, or other appropriate arrangements to carry out such authority.

(b) Extent of studies and investigations. Such studies and investigations shall include, but not be limited to, laws, regulations, or ordinances relating to encroachments and obstructions on stream channels and floodways, the orderly development and use of flood plains of rivers or streams, floodway encroachment lines, and flood plain zoning, building codes, building permits, and subdivision or other building restrictions.

(c) Development of comprehensive criteria designed to encourage adoption of adequate State and local measures. On the basis of such studies and investigations, and such other information as he deems necessary, the Director shall from time to time develop comprehensive criteria designed to encourage, where necessary, the adoption of adequate State and local measures which, to the maximum extent feasible, will--

- (1) constrict the development of land which is exposed to flood damage where appropriate,
- (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
- (3) assist in reducing damage caused by floods, and
- (4) otherwise improve the long-range land management and use of flood-prone areas,

and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures.

§ 4103. [Repealed]

§ 4104. Flood elevation determinations

(a) Publication or notification of proposed flood elevation determinations. In establishing projected flood elevations for land use purposes with respect to any community pursuant to section 1361 [42 USC § 4102], the Director shall first propose such determinations by publication for comment in the Federal

Register, by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper.

(b) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations. The Director shall publish notification of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the ninety-day period following the second publication, any owner or lessee of real property within the community who believes his property rights to be adversely affected by the Director's proposed determination may appeal such determination to the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations being proposed by the Director with respect to an identified area having special flood hazards are scientifically or technically incorrect, and the sole relief which shall be granted under the authority of this section in the event that such appeal is sustained in accordance with subsection (e) or (f) is a modification of the Director's proposed determination accordingly.

(c) Appeals by private persons; submission of negating or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Director; filing of community action with Director. Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Director's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Director's determination, copies of individual appeals shall be sent to the Director as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Director not later than ninety days after the date of the second newspaper publication of the Director's notification.

(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Director; form and distribution. In the event the Director does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (e), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Director's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Director; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information. Upon appeal by any community, as provided by this section, the Director shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Director shall resolve such appeal by consultation with officials of the local

government involved, by administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Until the conflict in data is resolved, and the Director makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Director shall make his determination within a reasonable time. The community shall be given a reasonable time after the Director's final determination in which to adopt local land use and control measures consistent with the Director's determination. The reports and other information used by the Director in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(f) Reimbursement of certain expenses; appropriation authorization. When, incident to any appeal under subsection (b) or (c), the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed \$ 250,000.

(g) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations. Any appellant aggrieved by any final determination of the Director upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5, United States Code [5 USC § § 701 et seq.]. During the pendency of any such litigation, all final determinations of the Director shall be effective for the purposes of this title unless stayed by the court for good cause shown.

#### § 4104a. Notice requirements

##### (a) Notification of special flood hazards.

(1) Regulated lending institutions. Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) Federal agency lenders. Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) Contents of notice. Written notification required under this subsection shall include--

(A) a warning, in a form to be established by the Director, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973 [42 USC § 4012a(b)];

(C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers; and

(D) any other information that the Director considers necessary to carry out the purposes of the national flood insurance program.

(b) Notification of change of servicer.

(1) Lending institutions. Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

(2) Federal agency lenders. Each Federal agency lender shall by regulation provide for notification in the manner provided under paragraph (1) with respect to any loan described in subsection (a)(1) that is made by the Federal agency lender. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1) of this subsection.

(c) Notification of expiration of insurance. The Director (or the designee of the Director) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Director) the owner of the loan.

§ 4104b. Standard hazard determination forms

(a) Development. The Director, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available. The form shall be

established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994].

(b) Design and contents.

(1) Purpose. The form under subsection (a) shall be designed to facilitate compliance with the flood insurance purchase requirements of this title.

(2) Contents. The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Director. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

(c) Required use. The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

(d) Guarantees regarding information. In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

(e) Reliance on previous determination. Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless--

(1) map revisions or updates pursuant to section 1360(f) [42 USC § 4101(f)] after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or

(2) the person contacts the Director to determine when the most recent map revisions or updates affecting

such property occurred and such revisions and updates have occurred after such previous determination.

(f) Effective date. The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regulations required under subsection (a) and shall take effect upon the expiration of the 180-day period beginning on such issuance.

#### § 4104c. Mitigation assistance

(a) Authority. The Director 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 1367 [42 USC § 4104d], for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this title. Such financial assistance shall be made available to States and communities in the form of grants under subsection (b) for planning assistance and in the form of grants under this section for carrying out mitigation activities.

#### (b) Planning assistance grants.

(1) In general. The Director may make grants under this subsection to States and communities to assist in developing mitigation plans under subsection (c).

(2) Funding. Of any amounts made available from the National Flood Mitigation Fund for use under this section in any fiscal year, the Director may use not more than \$ 1,500,000 to provide planning assistance grants under this subsection.

#### (3) Limitations.

(A) Timing. A grant under this subsection may be awarded to a State or community not more than once every 5 years and each grant may cover a period of 1 to 3 years.

(B) Single grantee amount. A grant for planning assistance may not exceed--

(i) \$ 150,000, to any State; or

(ii) \$ 50,000, to any community.

(C) Cumulative State grant amount. The sum of the amounts of grants made under this subsection in any fiscal year to any one State and all communities located in such State may not exceed \$ 300,000.

(c) 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 Director, 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 Director under section 1361 [42 USC § 4102], and provides protection against flood losses to structures for which contracts for flood insurance are available under this title. 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.

#### (d) Notification of approval and grant award.

(1) In general. The Director shall notify a State or community submitting a mitigation plan of the approval or disapproval of the plan not later than 120 days after submission of the plan.

(2) Notification of disapproval. If the Director does not approve a mitigation plan submitted under this

subsection, the Director shall notify, in writing, the State or community submitting the plan of the reasons for such disapproval.

(e) Eligible mitigation activities.

(1) Use of amounts. Amounts provided under this section (other than under subsection (b)) may be used only for mitigation activities specified in a mitigation plan approved by the Director under subsection (d). The Director 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) Determination of eligible plans. 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.

(3) Standard for approval. 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.

(4) Priority. 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.

(5) Eligible activities. The Director shall determine whether mitigation activities described in a mitigation plan submitted under subsection (d) comply with the requirements under paragraph (1). Such activities 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 Director determines is consistent with sound land management and use in such area;

(D) 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 Director specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund;

(E) beach nourishment activities;

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

(G) other activities that the Director considers appropriate and specifies in regulation; and

(H) 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.

(f) Limitations on amount of assistance.

(1) Amount. The sum of the amounts of mitigation assistance provided under this section during any 5-year period may not exceed--

- (A) \$ 10,000,000, to any State; or
- (B) \$ 3,300,000, to any community.

(2) Geographic. The sum of the amounts of mitigation assistance provided under this section during any 5-year period to any one State and all communities located in such State may not exceed \$ 20,000,000.

(3) Waiver. The Director may waive the dollar amount limitations under paragraphs (1) and (2) for any State or community for any 5-year period during which a major disaster or emergency declared by the President (pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act) as a result of flood conditions is in effect with respect to areas in the State or community.

(g) Matching requirement.

(1) In general. The Director may not provide mitigation 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 to develop a mitigation plan under subsection (c) and to carry out mitigation activities under the approved mitigation plan. In no case shall any in-kind contribution by any State or community exceed one-half of the amount of non-Federal funds contributed by the State or community.

(2) 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 mitigation 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.

(h) Oversight of mitigation plans. The Director shall conduct oversight of recipients of mitigation assistance under this section to ensure that the assistance is used in compliance with the approved mitigation plans of the recipients and that matching funds certified under subsection (g) are used in accordance with such certification.

(i) Recapture.

(1) Noncompliance with plan. If the Director 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 Director shall recapture any unexpended amounts and deposit the amounts in the National Flood Mitigation Fund under section 1367 [42 USC § 4104d].

(2) Failure to provide matching funds. If the Director determines that a State or community that has received mitigation assistance under this section has not provided matching funds in the amount certified under subsection (g), the Director shall recapture any unexpended amounts of mitigation assistance exceeding 3 times the amount of such matching funds actually provided and deposit the amounts in the National Flood Mitigation Fund under section 1367 [42 USC § 4104d].

(j) Reports. Not later than 1 year after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994] and biennially thereafter, the Director shall submit a report to the Congress describing the status of mitigation activities carried out with assistance provided under this section.

(k) Definition of community. For purposes of this section, the term "community" means--

(1) a political subdivision that (A) has zoning and building code jurisdiction over a particular area having special flood hazards, and (B) is participating in the national flood insurance program; or

(2) a political subdivision of a State, or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of paragraph (1).

§ 4104d. National Flood Mitigation Fund

(a) Establishment and availability. The Director 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) and shall be available, to the extent provided in appropriation Acts, for providing assistance under section 1366 [42 USC § 4104c].

(b) Credits. The National Flood Mitigation Fund shall be credited with--

(1) amounts from the National Flood Insurance Fund, in amounts not exceeding--

(A) \$ 10,000,000 in the fiscal year ending September 30, 1994;

(B) \$ 15,000,000 in the fiscal year ending September 30, 1995;

(C) \$ 20,000,000 in the fiscal year ending September 30, 1996; and

(D) \$ 20,000,000 in each fiscal year thereafter;

(2) any penalties collected under section 102(f) of the Flood Disaster Protection Act of 1973 [42 USC § 4012a(f)]; and

(3) any amounts recaptured under section 1366(i) [42 USC § 4104c(i)].

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

(d) Report. The Director shall submit a report to the Congress not later than the expiration of the 1-year period beginning on the date of enactment of this Act [enacted Sept. 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.

§ 4105. Disaster mitigation requirements; notification to flood-prone areas

(a) Initial notification. Not later than six months following the enactment of this title [enacted Dec. 31, 1973], the Director shall publish information in accordance with subsection 1360(1) of the National Flood Insurance Act of 1968 [42 USC § 4101(a)], and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

(b) Alternative actions of tentatively identified communities; public hearing; opportunity for submission of evidence; finality of administrative determination of existence or extent of flood hazard area. After such notification, each tentatively identified community shall either (1) promptly make proper application to

participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Director that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The Director may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Director decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Director's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

(c) Subsequent notification to additional communities known to be flood prone areas. As information becomes available to the Director concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

(d) Provisions of *42 USC § 4106* applicable to flood-prone communities disqualified for flood insurance program. Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 202 [*42 USC § 4106*], whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program.

(e) Administrative procedures; establishment; reimbursement of certain expenses; appropriation authorization. The Director is authorized to establish administrative procedures whereby the identification under this section of one or more areas in the community as having special flood hazards may be appealed to the Director by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Director shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Director in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed \$ 250,000.

#### § 4106. Nonparticipation in flood insurance program

(a) Prohibition against Federal approval of financial assistance. No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Director as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

(b) Notification of purchaser or lessee of property in flood hazard area of availability of Federal disaster relief assistance in the event of a flood disaster. In addition to the requirements of section 1364 of the National Flood Insurance Act of 1968 [42 USC § 4104a], each Federal entity for lending regulation shall by regulation require the regulated lending institutions described in such section, and each Federal agency lender shall issue regulations requiring the Federal agency lender, described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property.

§ 4107. Consultation with local officials; scope

In carrying out his responsibilities under the provisions of this title and the National Flood Insurance Act of 1968 which relate to notification to and identification of flood-prone areas and the application of criteria for land management and use, including criteria derived from data reflecting new developments that may indicate the desirability of modifying elevations based on previous flood studies, the Director shall establish procedures assuring adequate consultation with the appropriate elected officials of general purpose local governments, including but not limited to those local governments whose prior eligibility under the program has been suspended. Such consultation shall include, but not be limited to, fully informing local officials at the commencement of any flood elevation study or investigation undertaken by any agency on behalf of the Director concerning the nature and purpose of the study, the areas involved, the manner in which the study is to be undertaken, the general principles to be applied, and the use to be made of the data obtained. The Director shall encourage local officials to disseminate information concerning such study widely within the community, so that interested persons will have an opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the agency during the course of the study.

§ 4121. Definitions

(a) As used in this title--

(1) the term "flood" shall have such meaning as may be prescribed in regulations of the Director, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms "United States" (when used in a geographic sense) and "State" includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms "insurance company", "other insurer" and "insurance agent or broker" include any organizations and persons authorized to engage in the insurance business under the laws of any State;

(4) the term "insurance adjustment organization" includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term "person" includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term "Director" means the Director of the Federal Emergency Management Agency;

(7) the term "repetitive loss structure" means a structure covered by a contract for flood insurance under this title that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event;

(8) the term "Federal agency lender" means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(9) the term "Federal entity for lending regulation" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(10) the term "improved real estate" means real estate upon which a building is located;

(11) the term "lender" means a regulated lending institution or Federal agency lender;

(12) the term "natural and beneficial floodplain functions" means--

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

(13) the term "regulated lending institution" means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; and

(14) the term "servicer" means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(b) The term "flood" shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director may prescribe to achieve (with respect to such mudslides) the purposes of this title and the objectives of the program.

(c) The term "flood" shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Director may prescribe to achieve (with respect to such collapse or

subsidence) the purposes of this title and the objectives of the program.

§ 4122. Studies of other natural disasters; cooperation and consultation with other departments and agencies

(a) The Director is authorized to undertake such studies as may be necessary for the purpose of determining the extent to which insurance protection against earthquakes or any other natural disaster perils, other than flood, is not available from public or private sources, and the feasibility of such insurance protection being made available.

(b) Studies under this section shall be carried out, to the maximum extent practicable, with the cooperation of other Federal departments and agencies and State and local agencies, and the Director is authorized to consult with, receive information from, and enter into any necessary agreements or other arrangements with such other Federal departments and agencies (on a reimbursement basis) and such State and local agencies.

§ 4123. Advance payments

Any payments under this title may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Director may determine.

§ 4124. Applicability of fiscal controls

The provisions of chapter 91 of title 31, United States Code [*31 USC § § 9101 et seq.*], shall apply to the program authorized under this title to the same extent as they apply to wholly owned Government corporations.

§ 4125. Finality of certain financial transactions

Notwithstanding the provisions of any other law--

- (1) any financial transaction authorized to be carried out under this title, and
- (2) any payment authorized to be made or to be received in connection with any such financial transaction,

shall be final and conclusive upon all officers of the Government.

§ 4126. Administrative expenses

Any administrative expenses which may be sustained by the Federal Government in carrying out the flood insurance and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4) [*42 USC § 4017(a)(4)*]), subject to approval in appropriations Acts.

§ 4127. Authorization of appropriations; availability

(a) There are hereby authorized to be appropriated such sums as may from time to time be necessary to carry out this title, including sums--

(1) to cover administrative expenses authorized under section 1375 [42 USC § 4126];

(2) to reimburse the National Flood Insurance Fund established under section 1310 [42 USC § 4017] for--

(A) premium equalization payments under section 1334 [42 USC § 4054] which have been made from such fund; and

(B) reinsurance claims paid under the excess loss reinsurance coverage provided under section 1335 [42 USC § 4055]; and

(3) to make such other payments as may be necessary to carry out the purposes of this title.

(b) All such funds shall be available without fiscal year limitation.

(c) There are authorized to be appropriated such sums as may be necessary through December 31, 2002, for studies under this title. Any amount appropriated under this subsection shall remain available until expended.

§ 4128. Rules and regulations

(a) The Director is authorized to issue such regulations as may be necessary to carry out the purpose of this Act.

(b) The head of each Federal agency that administers a program of financial assistance relating to the acquisition, construction, reconstruction, repair, or improvement of publicly or privately owned land or facilities, and each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions, shall, in cooperation with the Director, issue appropriate rules and regulations to govern the carrying out of the agency's responsibilities under this Act.

§ 4129. Federal Insurance Administrator; establishment of position

There is hereby established in the Federal Emergency Management Agency the position of Federal Insurance Administrator.