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Notices

DEPARTMENT OF HOMELAND SECURITY (DHS)

Mitigation Division

Pilot Program for the Mitigation of Severe Repetitive Loss Properties

69 FR 55642

DATE: Wednesday, September 15, 2004

ACTION: Notice of meeting and request for comments.

SUMMARY: Section 1361A of the National Flood Insurance Act of 1968 (the Act), as amended by section 102 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Pub. L. 108-264), *42 U.S.C. 4102a*, authorizes a new Pilot Program for the Mitigation of Severe Repetitive Loss Properties. Section 1361A(j) of the Act requires FEMA to consult with State and local officials and to provide an opportunity for oral presentation, on the record, of the data and arguments from such officials on developing procedures for the distribution of funds to carry out eligible mitigation activities under the Pilot Program. Accordingly, with this notice FEMA is initiating consultation with State and local officials, as well as members of the public, on procedures for the new Pilot Program. Interested parties may submit written comments in response to this notice during the consultation period. During this period, FEMA will hold a meeting in mid-November, 2004 with representative officials of State and local governments, organizations representing the emergency management, floodplain management, and insurance professions, and other interested parties, for input on overall program requirements and procedures for the new grant funds, including issues raised in this notice.

DATES: Written comments may be received no later than November 30, 2004.

ADDRESSES: Please send written comments, including responses to the questions raised in this notice, to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington DC 20472, (facsimile) (202) 646-4536, or (e-mail) *FEMA-RULES@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Federal Emergency Management Agency, Mitigation Division, Risk Reduction Branch, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-3321 or e-mail *Cecelia.Rosenberg@dhs.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to announce that FEMA is soliciting input from State and local officials, as well as from the emergency management, floodplain management, and insurance

industry communities, and other interested parties on considerations for the development of grant program requirements and procedures for the newly authorized Pilot Program for the Mitigation of Severe Repetitive Loss Properties. FEMA will hold a meeting in mid-November, 2004 with representative State and local officials for oral comment on the issues raised in this notice, and also invites all interested parties to provide written comments by November 30, 2004.

Program Description. Section 1361A of the Act authorizes FEMA to implement a Pilot Program that would provide financial assistance to States and communities for the Mitigation of Severe Repetitive Loss Properties with funding of up to \$ 40 million each year that will remain available until expended. The Pilot Program represents a concentrated effort to mitigate those insured properties that have suffered the greatest amount of damage in terms of claims against the National Flood Insurance Fund. Severe repetitive loss properties are defined in section 1361A(b)(1) of the Act as Single Family Properties consisting of one to four family residences that are covered under a contract for flood insurance made available under the Act which have had four or more claims with each claim exceeding \$ 5,000 and with the cumulative payments exceeding \$ 20,000, or which have had at least two claim payments that cumulatively exceed the value of the property. Section 1361A(l) of the Act requires that the Pilot Program terminate on September 30, 2009.

In summary, the Act contains the following provisions for the Pilot Program:

- . Section 1361A(b)(2) of the Act requires FEMA to provide the definition of a severe repetitive loss property as it pertains to property consisting of five or more residences;
- . Section 1361A(c) of the Act identifies the mitigation activities eligible for funding;
- . Section 1361A(d) of the Act provides FEMA with the authority to establish cost-share incentives for States participating in the program;
- . Section 1361A(e) of the Act requires FEMA to identify severe repetitive loss properties and notify States, communities, and owners of such properties of the availability of mitigation assistance as well as the consequences of declining such mitigation offers;
- . Sections 1361A(f) and section 1361A(g) of the Act establish standards and limitations by which FEMA can make mitigation offers;
- . Section 1361A(h)(1) through (5) of the Act provides for insurance rate increases for property owners who decline mitigation offers within participating States;
- . Section 1361A(h)(6) of the Act requires FEMA to establish a process through which policyholders may appeal insurance rate increases imposed when declining offers of mitigation, and to submit a report to Congress on rules, procedures, and administration of this process;
- . Section 1361A(j)(1) of the Act requires FEMA to develop rules governing procedures for the distribution of funds to States; and
- . Section 1361A(j)(2) of the Act requires FEMA to consult with State and local officials within 90 days of the passage of this Act to provide an oral presentation, on the record, of data and arguments for developing procedures for the distribution of funds to States and communities to carry out eligible mitigation activities.

Incentives and Consequences. Section 1361A of the Act provides FEMA with the authority to establish incentives and consequences designed to increase participation in the Pilot Program and to reduce the number of severe repetitive loss properties in the National Flood Insurance Program. Section 1361A(d)(2) of the Act allows FEMA to increase the Federal share of a grant awarded to recipients under the Pilot Program from 75 percent to 90 percent if the State has a FEMA-approved State mitigation plan consistent with 44 CFR Part 201 that specifies how the State will reduce the

number of severe repetitive loss properties and if the State has taken actions to mitigate the severe repetitive loss properties within the State. Section 1361A(h)(1) and (2) of the Act requires FEMA to impose insurance premium rate increases for property owners who decline mitigation offers under the Pilot Program.

Notification. Section 1361A(e)(1)(A) through (C) and section 1361A(e)(2) of the Act require that FEMA identify and [*55643] notify all owners of severe repetitive loss properties, as well as States and communities, that their properties meet the definition of a severe repetitive loss property; and that the properties are eligible for assistance under this section. Section 1361A(e)(1)(D) and section 1361A(e)(1)(E) of the Act also require FEMA to notify severe repetitive loss property owners that there are insurance implications for declining offers of mitigation assistance proposed by States and/or communities under the Pilot Program and that there is a right to appeal provided for under this section. Section 1361A(h)(6) of the Act requires FEMA to establish a process for the Pilot Program through which policyholders can appeal the increase in their premiums if they turn down a mitigation offer. The Act limits grounds for appeal to those stated in section 1361A(h)(6)(A).

Eligible Activities. Section 1361A(c) of the Act identifies eligible mitigation activities, which are limited to: elevation, acquisition, relocation, flood proofing, minor physical localized flood control projects, and certain demolition and rebuild projects. Section 1361A(g)(1) of the Act places restrictions on the reuse of acquired land that are consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)). Section 1361A(f)(3) of the Act requires that States and communities must consult with all property owners when selecting appropriate mitigation options, and notify each holder of recorded interest in a property of any offers of mitigation assistance.

Allocation of Funds. Section 1361A(f)(1) of the Act requires FEMA to provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time. Section 1361A(f)(5) of the Act stipulates that funds are to be distributed based upon the percentage of severe repetitive loss properties within the State, and identifies additional provisions for the redistribution of unspent funds.

Rules. Section 1361A(j)(1) of the Act requires FEMA to develop procedures for the distribution of funds under the Pilot Program for the Mitigation of Severe Repetitive Loss Properties and to ensure that the procedures meet the following criteria:

- . Require the Director to notify States and communities of the availability of grant funding and that participation in the Pilot Program is optional;
- . Provide that the Director may assist States and communities in identifying severe repetitive loss properties;
- . Allow States and communities to select properties to be mitigated and the eligible mitigation activity to be performed; and
- . Require each State or community to submit a list of severe repetitive loss properties they would like to be the subject of eligible activities.

Consultation. FEMA is providing letters of invitation to the Consultation meeting to representatives from the Association of State Floodplain Managers (ASFPM), the National Emergency Management Association (NEMA), the International Emergency Management Association (IEMA), other interested organizations, representatives from all States, and representatives from communities with 20 or more severe repetitive loss properties. Those wishing to submit written comments should send them to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington DC 20472, (facsimile) 202-646-4536, or (e-mail) FEMA-RULES@dhs.gov.

While the focus of this meeting will be to solicit input for FEMA to consider on the distribution of funds under the Pilot Program, invitees may respond to any of the questions below in their oral or written comments. Section

1361A(j)(2) of the Act specifically directs FEMA to consult on the process for distribution of funds, however FEMA also wishes to gather comments on the overall Program from our partners and stakeholders. FEMA is soliciting responses to the following questions:

1. What key factors should FEMA consider in developing the Pilot Program for Mitigation Severe Repetitive Loss Properties under section 1361A?
2. What parameters should FEMA use to define severe repetitive loss for multi-family structures consisting of five or more residences?
3. What process should FEMA use to notify property owners that their property is considered a severe repetitive loss property as defined by the statute?
4. What criteria should FEMA consider when allocating funds to States and/or communities under the Pilot Program? Should FEMA consider base allocations for States with higher numbers of severe repetitive loss properties?
5. Should there be caps on Pilot Program funding for States and communities similar to Flood Mitigation Assistance program funds? If so, how would the cap amounts be determined?
6. What criteria should FEMA use to review and approve State mitigation plans consistent with 44 CFR Part 201 to ensure that they contain recommended actions to mitigate severe repetitive loss properties?
7. What criteria should FEMA use to make the determination that a State has taken actions to reduce the number of severe repetitive loss properties in its communities?
8. What criteria should FEMA use to determine projects that will result in the greatest amount of savings to the National Flood Insurance Fund? How should the criteria relate to current FEMA procedures for determining cost effectiveness?
9. What types of assistance do States and communities want from FEMA when making offers to owners of severe repetitive loss properties?
10. What role should States and communities have in the appeals process for severe repetitive loss property owners who decline mitigation offers under the Pilot Program? What rules and procedures should be contained in the appeals process?

Dated: September 10, 2004.

David I. Maurstad,

Acting Director Mitigation Division, Emergency Preparedness and Response Directorate, Department of Homeland Security.

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