



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

CECW-CO-R (1145)

19 September 2024

MEMORANDUM FOR DIVISION REGULATORY PROGRAM MANAGERS AND  
DISTRICT REGULATORY CHIEFS

SUBJECT: Principles of Delivery for Mitigation Bank Decisions

1. The Assistant Secretary of the Army, Civil Works provided a memorandum, dated 16 September 2024, *Improving U.S. Army Corps of Engineers Timeline Compliance with the 2008 Compensatory Mitigation Rule*, to HQUSACE for immediate implementation. This memorandum, and Enclosure 1, are provided with ASA(CW)'s memorandum (Enclosure 2) and these documents are posted for internal and external use on the U.S. Army Corps of Engineers official Regulatory Program webpage:  
[https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig\\_info/](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/)
2. The "Principles of Delivery for Mitigation Bank Decisions" is transmitted via this memorandum to complement the ASA(CW)'s policy direction, provide an implementation framework, and supplementary information to assist Divisions and Districts improving Corps' timeline compliance with the 2008 mitigation rule (Enclosure 1). This document is also posted on the Regulatory Program webpage with the ASA(CW)'s memorandum.
3. It is expected that implementation of the Principles of Delivery for Mitigation Bank Decisions will improve District performance in Mission Success Criterion #5.1 (Third Party Mitigation Evaluation, including Mitigation Banks and In- Lieu Fee Programs).
4. The point of contact for this action at HQUSACE is David Olson, Regulatory Program Manager, at david.b.olson@usace.army.mil or 202-469-0222.

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Jennifer Moyer  
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JENNIFER A. MOYER  
Chief, Regulatory Program

## Enclosure 1

# Principles of Delivery for Mitigation Bank Decisions

Overall Purpose of Document: Provide Principles of Delivery for effective and efficient review and decision-making for proposed mitigation banks developed to provide compensatory mitigation to offset losses of aquatic resources functions and services caused by activities authorized by Department of the Army (DA) permits. This document also provides Principles of Delivery for effective and efficient review and decision-making for proposed credit releases for approved mitigation banks. When implemented, it is expected to improve District performance in Mission Success Criterion #5.1 (Third Party Mitigation Evaluation, including Mitigation Banks and In- Lieu Fee Programs).

This document has two parts that are interrelated. When implemented together, these parts provide a framework and clear path to support Corps Districts efficient and effective review and decision-making processes for proposed mitigation banks and for proposed credit release schedules.

Purpose of Part I: To promote compliance with the review timeframes for proposed mitigation banks identified in sections 332.8(d) and (e) of the 2008 mitigation rule. Part I supplements the policy direction memorandum from the ASA(CW) on improving the Corps' timeline compliance with the 2008 mitigation rule.

Purpose of Part II: To offer a performance-focused approach for the Corps' review of proposed mitigation banks that can, over time, reduce the emphasis and time needed for reviewing and making decisions during the instrument development stage for mitigation banks and instead shift focus and review effort to the performance and outcomes of mitigation banks. This performance-focused approach also emphasizes evaluation of the ecological performance of approved mitigation banks during the review of a mitigation bank sponsor's proposed credit releases.

The Principles of Delivery discussed in this document are consistent with 33 CFR part 332 and they do not alter the basic application, meaning, or intent of that regulation. These Principles of Delivery are consistent with the flexibility and discretion provided to district engineers in the text of that regulation. This document is not a substitute for that regulation, does not create legally binding requirements, and is not a regulation itself. The Corps retains the discretion to adopt approaches on a regional or case-by-case basis that differ from those provided in this guidance as appropriate and consistent with statutory and regulatory requirements. This document only applies to Corps districts.

## **Part I – Compliance with Mitigation Bank Review Timeframes**

### ***1. Introduction***

a. Mitigation banks are environmentally beneficial projects because they are aquatic resource restoration, enhancement, establishment, and preservation projects that provide ecological functions and services that support the objective of the Clean Water Act. From an administrative perspective, mitigation banks benefit permittees and the Corps. The use of mitigation bank credits to satisfy the compensatory mitigation requirements of DA permits can help reduce the risk and uncertainty of compensatory mitigation for losses of aquatic resources, as well as temporal losses of aquatic resource functions and services. Permittees can fulfill the compensatory mitigation requirements of DA permits by securing mitigation bank credits from a mitigation bank sponsor and transfer the responsibility for providing that compensatory mitigation to the mitigation bank sponsor. The availability of mitigation bank credits can also increase the effectiveness and efficiency of the Corps' decision-making process for DA permits, by reducing the amount of time needed to reach permit decisions for regulated activities, including infrastructure projects that support national priorities.

b. The Corps' regulations for the review and decision-making for proposed mitigation banks (§332.3(d) and (e)) include time frames for various steps of the mitigation bank review process. Those time frames are listed in the Appendix to Part I, along with the stages of the instrument review process where the mitigation bank sponsor is responsible for preparing documentation and completing other steps in that review process. When the time frames in the rule text are added together, the Corps' review time, which also includes review by IRT members, is 225 days. The steps in the review process in which the mitigation bank sponsor is responsible for preparing documentation and completing other tasks associated with the review process do not have any time frames specified in the regulation. When considering the Corps' review time frames and the steps that are the responsibility of the mitigation bank sponsor, the Corps' review and decision-making process for a proposed mitigation banking instrument should not take more than approximately one-and-a-half years in most circumstances. This one-and-a-half-year timeframe depends on the mitigation bank sponsor completing, with minimal delay, the preparation of draft and final documents for Corps and IRT review and completing other tasks for which they are responsible.

c. From a project management perspective, the review and decision-making processes for a proposed mitigation bank is a "project" in the same general sense that the review and decision-making processes for a standard individual permit application is a "project." The basic steps in the processes for reviewing proposed mitigation banks and reviewing standard individual permit applications are summarized in Table 1, and those basic steps are generally the same. Given the similarities between the processes for reviewing proposed mitigation banks and reviewing applications for standard individual permits, Corps district project managers (PMs) should apply the same project management principles and practices used for standard individual permit reviews in their reviews of proposed mitigation banks. The IRT coordination for a proposed

mitigation bank and the agency coordination for a standard individual permit application require effective project management practices by Corps district PMs to reach decisions without prolonged delays.

**Table 1. Comparison of the basic steps in the review processes for proposed mitigation banks and applications for standard individual permits.**

| <b>Step/Stage</b>                                 | <b>Mitigation bank review process</b>                                      | <b>Standard individual permit review process</b>   |
|---|--|--|
| <b><i>Preliminary coordination</i></b>            | Review of draft prospectus   | Pre-application meeting  |
| <b><i>Initiation of review process</i></b>        | Receipt of complete prospectus   | Receipt of complete permit application   |
| <b><i>Opportunity for public input</i></b>        | Issuance of public notice  | Issuance of public notice  |
| <b><i>Agency coordination</i></b>                 | Coordination with IRT  | Coordination with other federal, tribal, state, and local government agencies                  |
| <b><i>Coordination with project proponent</i></b> | Work with sponsor to respond to comments                                   | Work with applicant to respond to comments   |
| <b><i>Draft product</i></b>                       | Sponsor prepares draft mitigation banking instrument                       | Corps district prepares draft standard individual permit                                       |
| <b><i>Environmental documentation</i></b>         | Corps district prepares environmental documentation for decision-making    | Corps district prepares environmental documentation for decision-making                        |
| <b><i>Addressing agency disagreements</i></b>     | Dispute resolution process if EPA, FWS, or NMFS object to final instrument | 404(q) elevation process if EPA, FWS, or NMFS object to issuance of standard individual permit |
| <b><i>Final product</i></b>                       | Corps district and sponsor sign mitigation banking instrument              | Corps district and permittee sign standard individual permit                                   |

## **2. Roles and responsibilities**

a. Corps district PM. The Corps district has the authority to approve instruments for mitigation banks that produce mitigation credits that can be used by permittees to satisfy the compensatory mitigation requirements of DA permits issued under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The Corps district PM, as the chair of the Interagency Review Team (IRT), is responsible for managing the review processes for proposed mitigation banks and credit release requests in accordance with the procedures specified in §332.8(d), (e), and (o)(9), including the time frames specified for those steps. The Corps district PM should use sound project management principles and practices when managing the review

processes for proposed mitigation banks and for proposed credit releases. The Corps district PM is also responsible for overseeing other aspects of the management and operation of approved mitigation banks and ensuring that mitigation bank sponsors comply with the provisions of approved mitigation banking instruments.

b. Mitigation bank sponsor. The mitigation bank sponsor is responsible for preparing appropriate documentation for the establishment and operation of a mitigation bank, including the prospectus, instrument, mitigation plan, and other applicable documents. The mitigation bank sponsor is also responsible for preparing and providing monitoring reports, conducting corrective actions and adaptive management actions that may be necessary for the mitigation bank to achieve its objectives, and preparing documentation for proposed credit releases.

c. IRT members. Representatives of federal, tribal, state, and/or local governments that participate in the IRT are responsible for reviewing documentation and providing advice to the Corps district PM on the establishment and operation of a mitigation bank, including proposed credit releases. IRT members may sign a mitigation banking instrument to indicate their agreement with the terms of the instrument, but their signatures are not required for approval of the mitigation banking instrument (see §332.8(a)(1) and §332.8(b)(3)).

d. IRT co-chairs. If a mitigation bank sponsor proposes a mitigation bank to provide mitigation credits for one or more federal, tribal, state, or local programs (i.e., a multi-purpose mitigation bank), in addition to providing mitigation credits for DA permits, representative(s) of the federal, tribal, state, or local government agencies responsible for administering those programs would be co-chair(s) of the IRT. Corps districts and IRT co-chairs have independent authority to approve or disapprove proposed mitigation banks, as well as credit releases from the mitigation banks they approve.

### ***3. Review process for mitigation banking instruments***

a. Prospectus. The review process for a proposed mitigation bank begins when the sponsor submits the prospectus to the Corps district. A complete prospectus contains the items listed at §332.8(d)(2)(i)-(viii). The district should not require additional information items for a prospectus, such as a draft mitigation plan or draft mitigation banking instrument. However, while the regulations require the prospectus to include a description of the ecological suitability of the proposed mitigation bank site to achieve the objectives of the proposed mitigation bank, that description can be supported by a conceptual plan that shows the approximate area(s) where specific habitat type(s) are proposed to be restored, enhanced, preserved, and/or established on the proposed mitigation bank site. A conceptual plan included in the prospectus does not need to address the elements of a mitigation plan at §332.4(c)(2)-(14). If the district's initial evaluation letter to the sponsor states that the sponsor may proceed with preparation of the draft mitigation banking instrument, the comments from the Corps, IRT, and the public are required to be considered by the sponsor to develop the draft mitigation plan for the proposed mitigation bank, including the elements at §332.4(c)(2)-(14).

b. Review schedule for a proposed mitigation bank. To guide the review process for a proposed mitigation bank, and to establish common understanding among the district, mitigation bank sponsor, and IRT members, a schedule for the mitigation bank review process may be developed to identify when specific tasks and other milestones in that review process should be completed. After a complete prospectus is received by the district, the schedule may be prepared by the district in consultation with the mitigation bank sponsor. Alternatively, the sponsor may include in the prospectus a proposed schedule for the review of the mitigation bank proposal.

c. Expectations for IRT members. IRT members are responsible for reviewing documents and providing their advice to the Corps district within the time period specified in §332.8(d) for the applicable stage of the mitigation bank review process. Each IRT member is responsible for managing their work schedules and work priorities. Districts should make it clear that IRT members are expected to provide their advice on mitigation bank documents in accordance with the time frames specified in §332.8(d) and (e), and if applicable, the schedule developed by the district and/or sponsor for the review process for the proposed mitigation bank. If an IRT member's other work tasks take precedence over their opportunity to provide their advice during a specific stage in the mitigation bank review process, and the applicable time frame in the regulation cannot be met by the IRT member, then that IRT member should expect that the district will move on to the next step of the review process without their advice.

d. Review of draft instruments. (1) Piecemeal reviews of draft instruments, reviews of multiple iterations of draft instruments, and timeline extension requests by IRT members are typical causes of substantial delays in the mitigation banking instrument review process. After the district receives the complete draft instrument from the sponsor, and distributes copies to IRT members, the district should limit the IRT's review of the entire draft instrument to a single review. The district only needs to consider those comments provided by IRT members within the 30-day time frame specified in §332.8(d)(7). The district should disregard any piecemeal comments provided by the IRT member after the 30-day time frame has ended.

(2) The district will evaluate and consider the comments provided by IRT members during the 30-day review period, and to the extent appropriate, coordinate with the sponsor to address those comments. If IRT comments indicate specific sections of the draft instrument that need additional coordination between the district, the sponsor, and IRT members to attempt to resolve IRT comments, then only those specific sections should be subject to further IRT review and comment. The other sections of the draft instrument should be considered to be completed for the draft instrument stage of the review process and used for the final instrument. The district should not accept additional IRT comments on the completed sections of the draft instrument.

e. Extension of deadlines. The time frames specified in §332.8(d) and (e) may be extended only for the reasons specified in §332.8(f)(1). Those reasons include taking the time necessary to comply with other applicable laws and policies, including conducting consultations under Section 7 of the Endangered Species Act and/or Section 106 of the National Historic Preservation Act, and conducting government-to-government consultations with tribes. The time frames may also be extended when: (1) timely submittal of information necessary for the review of the proposed mitigation bank is not accomplished by the sponsor, or (2) information that is essential to the district's decision cannot be reasonably obtained within the specified time frame. Given the rule's limited reasons for time frame extensions during the review process, if an IRT member fails to submit their advice by the applicable suspense date, the district should move on to the next stage of the mitigation bank review process without that IRT member's advice.

f. Applying the concept of consensus to the mitigation bank review process. The review processes for proposed mitigation banks and credit release requests require providing IRT members an opportunity to review draft documents and provide their advice to the district. Section 332.8(d)(7) states that the district engineer will "seek to resolve issues using a consensus-based approach, to the extent practicable, while still meeting the decision-making time frames specified in this section" (i.e., §332.8(d) and (e)). Furthermore, the preamble of the 2008 mitigation rule states that use of a consensus-based approach "cannot be allowed to jeopardize meeting the time frames in the rule" (73 FR 19655). Therefore, under the rule text and the preamble, the district is responsible for ensuring adherence to the time frames specified in the rule, and the IRT members are responsible for providing their advice to the district within those time frames. If consensus among the district and the IRT members cannot be achieved within the applicable time frame, the district should move to the next stage of the review process or, if the next stage of the review process is deciding whether to approve the final instrument, notify the IRT members whether the district intends to approve the instrument. The dispute resolution process at §332.8(e) is available for IRT members of certain agencies if they object to the Corps district's intent to approve the mitigation banking instrument.

g. Multi-purpose mitigation banks. A mitigation bank may be planned and designed to provide mitigation credits for other federal, tribal, state, or local agencies or programs, in addition to mitigation credits for DA permits. When a proposed mitigation bank also requires approval(s) by other federal, tribal, state, or local agencies to provide compensatory mitigation under programs administered by those entities, those other federal, tribal, state, or local agencies may have time frames for their review processes and decision-making that differ from the time frames in the Corps' regulations. For a multi-purpose mitigation bank, the mitigation bank sponsor may elect to receive a single instrument decision from the district and other agencies with approval authority, or separate instrument decisions from the district and the other agencies with approval authority. If the mitigation bank sponsor elects to receive a single instrument decision from all agencies with approval authority, the district should endeavor to complete its review within the time frames specified in §332.8, but it may delay its final decision until

the other agencies with approval authority are ready to make their final decisions. If the mitigation bank sponsor elects to receive a separate instrument decision from the district, the district should make its decision within the time frames specified in §332.8.

#### ***4. The Development and Use of Templates for Mitigation Bank Documentation***

Districts should work with interested agencies and mitigation providers to develop templates for mitigation banking instruments and key documents associated with mitigation banking instruments, such as financial assurance documents, site protection instruments, and long-term management financing documents. Developing templates for mitigation banking instruments and associated supporting documents through coordination with interested parties can help reduce review times for proposed mitigation banks by providing standard, consistent, and predictable text for instruments and supporting documents. After templates for mitigation banking instruments and associated supporting documents have been developed, districts and mitigation bank sponsors should not deviate from those templates unless exceptional circumstances warrant changes to the template language for a particular mitigation bank.

#### ***5. Review of Credit Release Requests***

a. Credit releases for mitigation banks require approval by the district. Section 332.8(o)(9) of the Corps' regulations provides timeframes for reviewing credit release requests. The sponsor is required to submit documentation to the district that demonstrates that the appropriate milestones for credit release have been achieved. The district provides copies of this documentation to the IRT members for review, and IRT members must provide any comments to the district within 15 days of receiving this documentation. However, if the district determines that a site visit is necessary, IRT members must provide any comments to the district within 15 days of the site visit. The district will coordinate with the mitigation bank sponsor to schedule the site visit. The site visit should not be delayed to accommodate the schedules of IRT members. If an IRT member cannot participate in the scheduled site visit, they can provide comments on the proposed credit release based on their review of the documentation submitted with the credit release request.

b. Reviews of credit release requests can be made more efficient through the development of MOAs under §332.8(b)(5), such as when a state or federal agency is a co-chair of the IRT for a particular mitigation bank or in-lieu fee project, and they agree to take the lead for reviewing proposed credit releases and providing their recommendations to the district on whether to approve (or not approve) requested credit releases.



**Appendix to Part I. Steps and timeframes for the mitigation bank review process.**

| <b>Step in the Review Process</b>   | <b>Number of Days</b>   | <b>Citation</b> |
|---|---|-----------------|
| Preliminary review of prospectus by Corps and IRT (optional).   | Not to exceed 30 days   | §332.8(d)(3)    |
| Sponsor may modify prospectus to address Corps comments and IRT advice.(optional)   | Determined by sponsor   |                 |
| Corps notifies sponsor whether the prospectus is complete.  | Not to exceed 30 days   | §332.8(d)(2)    |
| Corps issues public notice for proposed mitigation bank   | Not to exceed 30 days after receipt of complete prospectus            | §332.8(d)(4)    |
| Comment period for public notice.   | 30 days or longer   | §332.8(d)(4)    |
| After comment period ends, the Corps distributes comments to IRT members and sponsor.   | Not to exceed 15 days   | §332.8(d)(4)    |
| Corps sends the initial evaluation letter to sponsor.   | Not to exceed 30 days after close of the public notice comment period | §332.8(d)(5)(i) |
| If, after receiving the initial evaluation letter, the sponsor chooses to proceed with establishment of the mitigation bank, she or he must prepare a draft instrument and submit it to the Corps.  | Determined by sponsor   | §332.8(d)(6)(i) |
| Corps notifies the sponsor whether the draft mitigation banking instrument is complete.   | Not to exceed 30 days of receipt of draft instrument                  | §332.8(d)(6)(i) |
| If the draft mitigation banking instrument is incomplete, the sponsor provides the Corps with the information necessary to make the draft instrument complete.  | Determined by sponsor   | §332.8(d)(6)(i) |
| Once any additional information is submitted by the sponsor, the Corps must notify the sponsor as soon as it determines that the draft instrument is complete. This can be an iterative process if the additional information initially submitted by the sponsor does not make the draft instrument complete. | Not specified in rule text  | §332.8(d)(6)(i) |

| <b>Step in the Review Process</b>   | <b>Number of Days</b> | <b>Citation</b>                       |
|---|-----------------------|---------------------------------------|
| Upon receipt of notification by the Corps that the draft mitigation banking instrument is complete, the sponsor must provide the Corps with a sufficient number of copies of the draft instrument to distribute to the IRT members.   | Determined by sponsor | §332.8(d)(7)                          |
| The Corps promptly distributes copies of the draft instrument to the IRT members for a 30-day comment period, which begins 5 days after the Corps distributes the copies of the draft instrument to the IRT.  | 35 days               | §332.8(d)(7)                          |
| After the 30-day comment period for the IRT ends, the Corps will discuss any comments with the appropriate agencies and with the sponsor.   | 60 days               | Inferred from §332.8(d)(7)            |
| After receipt of the complete draft instrument by the IRT members, the Corps must notify the sponsor of the status of the IRT review, including whether the draft instrument is generally acceptable and what changes, if any, are needed for the draft instrument.   | Not to exceed 90 days | §332.8(d)(7)                          |
| Sponsor modifies draft instrument to address changes requested by the district engineer, to produce final instrument. The sponsor must submit a final instrument to the Corps for approval, with supporting documentation that explains how the final instrument addresses the comments provided by the IRT. The final instrument must be provided directly by the sponsor to all members of the IRT. | Determined by sponsor | Inferred from §332.8(d)(7) and (d)(8) |
| After receipt of the final instrument, the Corps will notify the IRT members on whether it intends to approve the instrument.   | Not to exceed 30 days | §332.8(d)(8)                          |
| After receipt of the final instrument, an IRT member may initiate the dispute resolution process in §332.8(e).  | Not to exceed 45 days | §332.8(d)(8)                          |

| Step in the Review Process   | Number of Days             | Citation     |
|--|----------------------------|--------------|
| If no IRT member initiates the dispute resolution process, the Corps will notify the sponsor of its final decision and, if the instrument is to be approved, arrange for it to be signed by the appropriate parties. | 45 days                    | §332.8(d)(8) |
| Corps signs the mitigation banking instrument  | Not specified in rule text |              |
| Sponsor signs the mitigation banking instrument  | Determined by sponsor      |              |

## **Part II – A Performance-Focused Approach for Delivering Mitigation Bank Decisions**

### ***1. Why use a performance-focused approach for delivering mitigation bank decisions?***

a. Ecosystems are complex and dynamic, and their physical, chemical, and biological processes are influenced by a variety of environmental and biological drivers at various scales. Ecosystems naturally exhibit a range of variability in physical, chemical, and biological characteristics. After a restoration, enhancement, or establishment action is implemented, the development of ecosystem structure and function is influenced by random (i.e., stochastic) variations in ecological processes, natural and anthropogenic stressors and disturbances, and biotic and abiotic components, as well as external boundary conditions such as climate and upstream watersheds. While restoration, enhancement, and establishment activities can help change ecosystem structure and function, it is not feasible to control the many variables that influence ecosystem development and the specific functions and services that a restored, enhanced, or established aquatic resource will provide. Therefore, the ecological outcomes of aquatic resource restoration, enhancement, and establishment projects, including mitigation bank projects, cannot be predicted with a high degree of certainty during project planning. Aquatic ecosystem restoration, enhancement, and establishment activities, no matter how rigorously planned, financed, and executed, are likely to have unexpected and even surprising outcomes.

b. Because of the inherent uncertainty in the ecological outcomes of aquatic resource restoration, enhancement, and establishment activities, monitoring, corrective actions, and adaptive management are crucial mechanisms for achieving the objectives of mitigation bank projects, including the production of gains in aquatic resource functions that generate mitigation credits. For mitigation banks, most credit releases are contingent on achievement of performance-based milestones linked to the objectives of a mitigation bank. The credit release review and approval process for mitigation banks is the primary risk management tool for ensuring that mitigation banks produce gains in ecological functions that offset losses of ecological functions caused by permitted activities. While the district's review and approval of the mitigation work plan is an important task during the establishment of a mitigation bank, the review, revision, and approval of a mitigation work plan cannot ensure that a mitigation bank's restoration, enhancement, and/or establishment activities will achieve their intended ecological outcomes.

c. Corps district staff should work with the mitigation bank sponsor, and fully consider the advice provided by IRT members, to establish appropriate objectives and ecological performance standards for the mitigation bank project, including the performance-based milestones in the credit release schedule. During the operational phase of an approved mitigation bank, the district should give the mitigation bank sponsor latitude to take corrective actions that are necessary to achieve the performance-based milestones specified in the credit release schedule. If those

corrective actions do not get the mitigation bank project on track towards achieving its performance-based milestones, adaptive management may be necessary. Adaptive management may be used to revise performance standards to address deficiencies in the mitigation bank project or when the mitigation bank project results in ecological benefits that are comparable or superior to the originally approved mitigation bank project (see §332.7(c)(4)).

d. The mitigation bank sponsor bears the responsibility for producing an ecologically successful mitigation bank project that achieves the objectives and ecological performance standards established during the instrument approval process. If the mitigation bank is not achieving its specified objectives and ecological performance standards, the mitigation bank sponsor is responsible for taking corrective actions to achieve those objectives and ecological performance standards. If those corrective actions are not successful, then the mitigation bank sponsor is responsible for notifying the district and working with the district on adaptive management actions to address deficiencies in the mitigation bank project.

e. By focusing the district's efforts on determining whether credit releases should be approved, rather than focusing on the district's efforts on conducting a lengthy and detailed review of a mitigation work plan that may or may not result in the mitigation bank achieving its expected ecological outcomes, the performance-focused approach discussed in this document should reduce the amount of time for the district to decide whether to approve the mitigation banking instrument. Putting more emphasis on the operational phases of mitigation banks, including reviewing monitoring reports and taking necessary corrective actions and adaptive management actions, should promote ecologically successful mitigation banks that offset losses of aquatic resource functions caused by activities authorized by DA permits.

## **2. Review of Mitigation Plans**

a. There are specific elements of a mitigation plan that are important components of a performance-focused approach for efficiently delivering decisions on proposed mitigation banking instruments: objectives (§332.4(c)(2)), mitigation work plans (§332.4(c)(7)), performance standards (§332.4(c)(9)), and adaptive management plans (§332.4(c)(12)).

b. The regulations do not require the mitigation bank sponsor to provide contract-ready mitigation plans for the final mitigation plans for the mitigation banking instrument (see 73 FR 19641). The preamble of the 2008 rule states that the approved mitigation plan needs to be sufficiently detailed to demonstrate that the items listed in §332.4(c)(2)-(14) have been appropriately addressed, which provides flexibility in the level of detail needed to approve a mitigation plan for a mitigation bank. Mitigation plan components, such as the objectives, mitigation work plan, performance standards, and adaptive management plan, should consider the range of variability of the aquatic resource type(s) identified in the objectives, and the factors discussed in Section 4 of this document regarding the complexities associated with aquatic resource restoration,

enhancement, and establishment activities. Incorporating flexibility (e.g., ranges of acceptable outcomes) in these mitigation plan components can reduce the need to review and approve modifications of the mitigation plan.

c. Objectives (§332.4(c)(2)). The objectives of the mitigation bank project describe the resource type(s) and approximate amount(s) intended to be produced by implementation of the proposed mitigation bank project. The resource type(s) and amount(s) that actually develop on the mitigation bank site during the monitoring period may vary because of the numerous factors that affect the ecological outcomes of aquatic resource restoration, enhancement, and establishment activities.

d. Mitigation work plan (§332.4(c)(7)). Since ecosystem restoration is an open-ended process and ecological outcomes cannot necessarily be predicted with a high degree of certainty, a mitigation work plan is more of a strategy than a project design. A mitigation bank sponsor attempts to restore or enhance aquatic resources by taking actions (i.e., implements a strategy) to reinitiate ecosystem processes to improve functions. A project design implies a predictable and exact outcome, which is unlikely to occur with an aquatic resource restoration or enhancement project. There are many environmental and ecological drivers that will influence how the aquatic ecosystem develops after the restoration or enhancement actions are taken. Because ecosystem development processes are often highly variable and unpredictable, a mitigation work plan with a 60% level of design detail should be sufficient to cover the basic tasks for constructing the mitigation bank project, and for the Corps' decision on whether to approve or disapprove the mitigation plan for the mitigation banking instrument. A 60% level of design detail can also provide the mitigation bank sponsor the ability to make adjustments to address unforeseen situations, such as unanticipated site conditions and unknown contingencies, that may arise during implementation of the approved mitigation bank project. Achievement of a mitigation bank's objectives often depends on taking corrective actions after the restoration or enhancement tasks are initiated, if monitoring data indicate the mitigation bank is not on track towards achieving its ecological performance standards. Therefore, the mitigation work plan should allow those corrective actions to occur.

e. Performance standards (§332.4(c)(9)). Performance standards are observable or measurable physical, chemical, and/or biological attributes that are used to determine if a mitigation bank project is meeting its objectives. Performance standards should be reasonably achievable and reflect the range of variability exhibited by reference aquatic resources in the region as a result of natural processes and anthropogenic disturbances. Because of the complexity and dynamics of wetlands, streams, and other aquatic ecosystems, and their range of variability in structure and function, performance standards should not require precise ecological outcomes. Requiring precise targets for ecological outcomes may lead to conclusions of "failure" even though the restored, enhanced, or established aquatic resources in the mitigation bank appear to be producing gains in functions. Instead of requiring precise targets, performance standards should allow for a range of acceptable ecological outcomes that indicate that the mitigation bank is producing gains in aquatic resource functions.

f. Adaptive management plan (§332.4(c)(12)). Because of the risk, uncertainty, and dynamic nature of aquatic ecosystem restoration, enhancement, and establishment activities, and the likely need to guide modifications of these projects to achieve objectives, an adaptive management plan is an important component of the mitigation plan. The adaptive management plan should address the relevant considerations in §332.7(c). There is a strong likelihood that some adaptive management will be necessary to address both foreseeable and unforeseen circumstances that adversely affect the ecological outcomes of a mitigation bank project. The adaptive management plan guides decisions for revising mitigation plans and implementing measures to address those foreseeable and unforeseen circumstances. Providing flexibility in the mitigation work plan to allow the sponsor to make corrective actions during mitigation bank project implementation to respond to actual site conditions, and establishing performance standards that allow for a range of acceptable ecological outcomes, can help reduce the need for adaptive management and modifications of the mitigation banking instrument.

### **3. Credit Release Schedules**

a. The credit release schedule is the primary risk management tool for mitigation banks. Credit releases are contingent on achieving the applicable performance-based milestone(s) specified in the credit release schedule. The credit release schedule is linked to the length of the monitoring period for a mitigation bank, and the credit release schedule should reserve a significant share of the total credits for release only after full achievement of ecological performance standards. Under adaptive management, the credit release schedule may be adjusted, and performance standards revised to account for measures taken to address deficiencies in the mitigation bank project. Section 332.7(c)(4) allows revisions to performance standards to reflect changes in management strategies and objectives if the new performance standards provide for ecological benefits that are comparable or superior to the approved mitigation bank project.

b. The three-stage credit release schedule described in paragraph 2(c) of Regulatory Guidance Letter 19-01 presents one option for credit release schedules for mitigation banks, but under the performance-focused approach to mitigation bank review described in these Principles of Delivery, it may be appropriate for the credit release schedule for a mitigation bank to have additional (e.g., two or three) interim credit releases between the initial credit release and the final credit release to provide interim evaluations to ensure that the mitigation bank project is on track towards achieving its objectives and ecological performance standards. Additional interim credit releases can help identify the need to take corrective actions to achieve the mitigation bank's objectives and ecological performance standards, conduct adaptive management, or adjust the number of released credits to reflect the actual ecological performance of the mitigation bank.

c. A performance-focused approach to mitigation bank review and oversight should not increase the length of monitoring periods for mitigation banks, or the overall duration of the credit release schedule. For a particular mitigation bank project, Corps districts should approve ecological performance standards that are appropriate for the duration of the monitoring period and the credit release schedule, and the expected stages of aquatic ecosystem development during that time period.





DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON, DC 20310-0108

SACW

16 September 2024

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF  
ENGINEERS

SUBJECT: Improving U.S. Army Corps of Engineers Timeline Compliance with the 2008  
Compensatory Mitigation Rule

1. Purpose and applicability:

a. Purpose – On April 10, 2008, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) published a final rule in the Federal Register (73 Fed Reg 19594) regarding compensatory mitigation for losses of aquatic resources (hereafter the 2008 Mitigation Rule or mitigation rule). Among other aspects, the 2008 Mitigation Rule lays out a timeline for review of proposed mitigation banks and in-lieu fee (ILF) programs by the district engineer. The 2008 Mitigation Rule stipulates a review timeline of no longer than 225 days for the Corps' steps in the review process. Recent analysis of Corps data has shown that this timeline is not, on average, being met. This memorandum provides clarification on certain aspects of the 2008 Mitigation Rule to improve compliance with the mitigation bank and ILF program review timeline and thus support rapid investment in, and timely production of conserved and restored aquatic resources. The availability of mitigation banks and ILF programs provides benefits not only to permittees, but also projects implemented through the Corps' Civil Works Program. Ultimately, taking the actions delineated in paragraph four of this memorandum is consistent with the Administration's priorities of improving the permitting process and expanding the tools available to preserve, restore, enhance, and establish critical aquatic resources.

b. Applicability – This memorandum applies to the Corps' role in reviewing, approving, and evaluating mitigation banks and ILF programs and projects under 33 CFR Part 332. This memorandum is based on regulations that contain legally binding requirements. This memorandum is not a substitute for those regulations, does not create legally binding requirements, and is not a regulation itself. It does not impose legally binding requirements on the Corps, mitigation providers, or permittees, and may not apply to every situation. The Corps retains the discretion to adopt approaches on a regional or case-by-case basis that differ from those provided in this memorandum as appropriate and consistent with statutory and regulatory requirements.

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## 2. References:

a. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (73 Fed Reg 19594) (33 CFR Part 332) (2008 Mitigation Rule).

b. Regulatory Guidance Letter 08-03, Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources, October 10, 2008.

c. Regulatory Guidance Letter 19-01, Mitigation Bank Credit Release Schedules and Equivalency in Mitigation Banks and In-Lieu Fee Program Service Areas, February 22, 2019.

d. The Mitigation Rule Retrospective: A Review of the 2008 Regulations Governing Compensatory Mitigation for Losses of Aquatic Resources, U.S. Army Corps of Engineers Institute for Water Resources Report 2015-R-03, 2015.

e. Improving Compensatory Mitigation Project Review, R. Kihlslinger, J.J. McElfish and D. Scicchitano, Environmental Law Institute, 2020.

f. The Time it Takes for Restoration: An Analysis of Mitigation Bank Instrument Timelines, S. Martin and B. Madsen, Environmental Policy Innovation Center (EPIC) and Ecological Restoration Business Association, 2023.

g. Civil Works Actions to Sustain and Advance the Nation's Waters and Wetlands After the Sackett Decision, Assistant Secretary of the Army (Civil Works) Memo for Commanding General, USACE, dated March 22, 2024.

## 3. Background:

a. Several positive trends have been documented since the issuance of the 2008 Mitigation Rule. In the ten years following issuance of the mitigation rule, the number of mitigation banks doubled, and, as of 2018, all or part of 46 states were covered by the geographic service areas of approved mitigation banks and/or ILF programs. Additionally, the percentage of permits using mitigation bank credits or ILF program credits doubled between 2010 and 2017. The use of mitigation banks and ILF programs have improved the Corps' permit processing times, which are approximately 50% faster when mitigation bank or ILF program credits are used when compared to using permittee-responsible mitigation.

b. Challenges with compensatory mitigation timelines – The 2008 Mitigation Rule stipulates that mitigation bank and ILF program proposals should be reviewed over a series of steps, each with specific timeframes for completion (e.g., 30 days). The total

amount of time allotted for the Corps to decide whether to approve or not approve an instrument is 225 days (details provided in the Appendix). Section 332.8(f) of the mitigation rule gives the district engineer discretion to extend the review timeline (i.e., discretionary and non-discretionary delays). Previous studies conducted by a range of investigators have documented that the Corps' mean processing times exceed 225 days; most recently, one study found the Corps' nationwide average processing time was 336 days for the portion of the timeline that the Corps itself is responsible for, which is 49% greater than the 2008 Mitigation Rule timeline.

c. Sources of delays – There are several factors likely contributing to delayed processing times including the sponsor's time for producing documentation and information; sponsors submitting incomplete information; competing priorities for Corps staff time; discretionary delays by the district engineer during the Interagency Review Team (IRT) review process (e.g., negotiations with IRT members); requests for additional information; time extension requests; review processes that are inconsistent with the 2008 mitigation rule; extensive focus on and review of plans rather than outcomes; and lack of, or not using, tools to standardize and streamline review processes. Existing data do not allow quantifying the delay associated with each potential source of delay. That said, the Corps should take actions to address sources of mitigation rule timeline delays that are within its purview, in particular, by exercising more effective project management of the review process and through better managing and leading of the IRT review process. This policy memorandum thus focuses on additional actions that the Corps can take to improve compliance with the mitigation rule timeline specifically related to the review process.

#### 4. Improving Compliance with Timelines in the 2008 Mitigation Rule:

a. Clarifying the Role of District Engineer and the IRT –Under the regulations, there are two review processes for proposed mitigation banks and ILF programs: a public notice and comment process, and an IRT process.

During the public notice and comment process (see Phase II in the Appendix), the key timeline feature for the Corps is that the district engineer must provide the sponsor an Initial Evaluation Letter (IEL) within 30 days of the close of the public notice comment period on the prospectus. This IEL indicates the potential of the proposed mitigation bank or in-lieu fee program to provide compensatory mitigation for activities authorized by Department of the Army (DA) permits (See 33 CFR §332.8(d)(5)). If the district engineer determines that the proposed mitigation bank or ILF program does not have potential for providing appropriate compensatory mitigation for DA permits, the initial evaluation letter must discuss the reasons for that determination, and this IEL must be provided to the sponsor within that 30-day, post public comment period.

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The IRT process in the 2008 Mitigation Rule was not prescribed by any statute, nor was it prescribed by any regulation prior to the promulgation of the mitigation rule. Under 33 CFR §332.8(b), the IRT consists of a group of federal, Tribal, state, and/or local regulatory and resource agency representatives that review documentation for, and advises the district engineer on, the establishment and management of a mitigation bank or an ILF program. The IRT is led by the Corps, and usually includes representatives from the EPA, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Natural Resources Conservation Service. Other federal agencies, as well as representatives from Tribal, state, and local regulatory and resource agencies, may also participate on the IRT.

The IRT works together to review and provide comments on mitigation bank and ILF program proposals; the IRT can also advise on developing templates, assessment methods, Standard Operating Procedures (SOPs), and other tools for implementation of third-party mitigation project review and oversight. In addition, securing the agreement of IRT agencies on initial approval of a mitigation bank or ILF program can help ensure that these agencies will not object to future use of credits for offsetting impacts authorized by DA permits. However, the only two signatures required for the approval of a mitigation banking instrument or ILF program instrument are the Corps' and the sponsor's (33 CFR §332.8(a)(1)); members of the IRT serve an advisory role and have the option to sign the mitigation banking instrument or the ILF program instrument to indicate their agreement with the terms of the instrument, but their signatures are not required (33 CFR §332.8(b)(3)). In the case of multi-purpose banks, signatures would be required from other federal, Tribal, state, or local agencies that have relevant regulatory authority for programs they administer (i.e., other approving agencies that are co-chairs of the IRT).

Despite the benefits of IRT agency collaboration, to meet the 2008 Mitigation Rule timeline, the Corps must act in its capacity as chair of the IRT and lead the review process by managing the review process in accordance with the stipulated timeframes and other provisions in Section 332.8. Importantly, unanimity of the IRT members is not required, and reaching unanimity may often be impossible; thus, the district engineer should seek to gain general consensus rather than unanimity amongst the IRT. As stated in 33 CFR §332.8(d)(7), "the district engineer will seek to resolve issues using a consensus-based approach, to the extent practicable, while still meeting the decision-making time frames specified in this section." While achieving consensus is not a requirement of the 2008 Mitigation Rule, the district engineer should use a consensus-based approach so long as that approach does not conflict with the time frames in 33 CFR §332.8. As discussed above, it is the district engineer who has the decision-making authority for instruments for mitigation banks and ILF programs.

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*Therefore, as chair of the IRT, the district engineer should strive to achieve consensus with IRT members within the mitigation rule timeline; if consensus is not readily possible, the district engineer will move the review process forward so as to meet the 2008 Mitigation Rule timeline.*

b. Complying with Stipulated 2008 Mitigation Rule Timeline - Under 33 CFR §332.8(d), the timeline specified in the 2008 Mitigation Rule for IRT and Corps review during the three required phases of mitigation bank and ILF proposal development is 225 days (i.e., prospectus – 90 days, draft instrument – 90 days, and final instrument – 45 days). The regulations also include a dispute resolution process that enables other federal regulatory agencies to elevate disputes remaining at the time the district engineer notifies the IRT of the Corps' intent to approve the final instrument (or amendment). The dispute resolution timeline does not exceed 150 days.

(1) Multiple Drafts and Timeline Extensions: The requests for multiple versions and iterations of draft instruments, including draft mitigation plans, along with IRT-related timeline extensions, are a cause of delay that the Corps can address through more effective management of the review process. The current review process, as it is often implemented with multiple reviews of draft instruments, mitigation plans, and other documents, may be a significant cause of delays. The 2008 Mitigation Rule (at 33 CFR §332.8(d)(6) and §332.8(d)(7)) requires a complete "draft instrument," and the review of the complete draft instrument should not exceed 90 days from its distribution to the IRT. If a sponsor requests review of one or more components of an incomplete draft instrument, doing so is at the discretion of the Corps and should not be considered initiation of the draft instrument review. The Corps is afforded up to 30 days to determine completeness of a draft instrument; if complete, distribute the draft to the IRT for review; 30 days for IRT review; and the remaining time for the district engineer to seek to resolve any remaining issues with the sponsor and the IRT. Within 90 days of the IRT receiving a complete draft instrument, the district engineer must indicate to the sponsor if the draft instrument is generally acceptable and what changes, if any, are needed. The district engineer must also state at this time if there are significant unresolved concerns that may lead to formal objections by IRT members, recognizing that the final decision remains that of the district engineer. Multiple draft instruments (including mitigation plans) and multiple reviews of those draft instruments have become common, and generally result in prolonged review times that further delay decision-making. IRT concerns with the draft instrument and mitigation plan should be identified and addressed during the 60-day review period for this stage of the review process, with a focus on revising specific sections of the draft instrument to attempt to resolve IRT concerns about those sections.

*The district engineer should, to all extents practicable, minimize the number of review iterations of complete draft instruments. If a draft instrument is not complete, it should be returned with the missing components identified. If specific provision(s) of a complete*



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*draft instrument have been identified as substantive area(s) of concern by IRT members, the district engineer should work with the IRT members and sponsor to address those specific concerns within the constraints of the mitigation rule timeline. Extending the mitigation rule timeline should be limited to the scenarios cited in 33 CFR §332.8(f).*

(2) Timeline for Credit Release Requests: The 2008 Mitigation Rule *requires* that upon receipt of a request for credit releases from mitigation banks or ILF projects, IRT members have 15 days to provide comments to the district engineer on suitability of the requested release (e.g., whether the applicable milestones have been achieved or partially achieved to warrant a full or partial credit release). After the IRT's 15-day comment period, the district engineer then has 30 days to decide on the credit release request; (33 CFR §332.8(o)(9)); i.e., the 2008 Mitigation Rule's cumulative timeline for credit release requests is 45 days. The mitigation rule does not provide for delays or timeline extensions for credit release requests, except in cases where site visits are necessary for evaluation of milestone achievement. While site visits may be necessary in some circumstances, they are not required in the 2008 Mitigation Rule for every credit release. Credit release decisions can often be made after reviewing the appropriate documentation, such as monitoring reports.

*The district engineer should comply with the 2008 Mitigation Rule timeline for credit release decisions of 45 days.*

*Site visits may not be necessary for every credit release but should be used when documentation provided by the sponsor does not sufficiently inform a decision by the district engineer; when the district engineer determines that a site visit is necessary, the district engineer should immediately notify the sponsor.*

*Notification and scheduling of a site visit related to a credit release request should occur within the mitigation rule timeline for credit release requests of 45-days. The district engineer and sponsor's availability should determine when the site visit occurs, which may be outside the 45-day period. IRT members should be invited to participate in the scheduled site visit, but the availability of individual IRT member(s) should not drive the scheduling of, nor delay the site visit.*

c. Tools and Practices in Support of Timeline Compliance – Corps Headquarters, along with district engineers, are encouraged to develop tools to facilitate compensatory mitigation decision-making and provide transparency. These tools can streamline the review process and thus reduce the amount of time to reach decisions. Nationwide templates, particularly for key elements of mitigation bank and ILF program instruments not specific to regional considerations, can facilitate greater consistency across districts.

(1) Templates: Templates for mitigation banking and ILF program instruments, prospectuses, credit release schedules, site protection instruments, and financial assurances are tools that can better enable the district engineer to comply with mitigation rule timelines. Some templates are appropriate at the nationwide level, such as the general elements of mitigation banking and ILF program instruments and financial assurances. In contrast, templates for site protection instruments, credit release schedules, and service area determinations should be developed at the district or division level. While templates can improve mitigation rule timeline compliance, timeline delays can occur if template language is changed during the review process for a proposed mitigation bank or ILF program.

*Headquarters should develop nationwide templates for the general elements that should be included in any mitigation bank or ILF program instruments for use where there are no locally developed templates. In addition, Headquarters should seek input from federal (e.g., federal IRT members), Tribal, and state partners as well as the public and private sectors (including mitigation bank sponsors and in-lieu fee program sponsors) and/or NGO partners to develop national templates for specific types of financial assurances. Finally, the district engineer should develop, in collaboration with the IRT, templates for site protection instruments, credit release schedules, and service area determinations.*

(2) Standard Operating Procedures and Rapid Assessment Methods: Greater use of tools for quantifying debits and credits (impacts and offsets) will improve consistency and transparency, while supporting compliance with the 2008 Mitigation Rule timeline. SOPs may include impact/compensation calculators that are not rapid assessment methods (RAMs) but provide regional standardized approaches to assessing project impacts and determining compensatory mitigation requirements for DA permits. Impact or compensation calculators may have descriptive narratives and/or scoring procedures to assist users in producing consistent, repeatable results. SOPs can be used for permittee-responsible mitigation, mitigation banks, and ILF programs. For mitigation banks and ILF projects, SOPs for compensation calculators can be used to determine credit quantities.

RAMs include functional and condition assessment methods that estimate the level of functions performed by wetlands, streams, and other aquatic resources or the ecological condition of those ecosystems. RAMs are an effective approach to estimate the degree to which an authorized impact results in the loss of aquatic resource functions or a change in ecological condition. For mitigation banks and ILF projects, RAMs can be used to determine credit values. The 2008 Mitigation Rule establishes a preference for RAMs over SOPs. IRT members including state agencies and EPA (among others) have led or funded the development of SOPs and RAMs in some areas, reducing the burden on Corps staff.

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*The district engineer should, in collaboration with the IRT, develop and regularly update RAMs for quantifying impact and offset actions, while using SOPs until such RAMs are available. As part of this effort, the district engineer should issue a public notice on draft rapid assessment procedures and SOPs to allow the regulated public and other interested members of the public (including third-party mitigation sponsors) to provide comments on these tools.*

5. Identifying Sources of Delays:

While the 2008 Mitigation Rule timeline is not being consistently met, the causes likely differ across districts. A limited number of studies have investigated timeline details, and even fewer have investigated the causes of those delays. This Policy Memo provides some actions that the district engineer can take within the context of current practices. However, adaptively managing the compensatory mitigation program in the future to meet ecological goals and stipulated timelines will require a better understanding of the causes of delays and what mechanisms could be introduced to address such delays.

*Headquarters should take steps to better document the causes of delays in the mitigation rule timeline and credit release timeline, including adapting existing databases and record-keeping (e.g., ORM data fields). Additionally, the Corps should seek input from federal (e.g., EPA or other federal IRT members), Tribal, and state partners as well as the private sector and/or NGO partners to better identify the sources of delay and potential solutions.*

6. Point of Contact. Questions regarding this matter may be directed to Elliott Carman, Water Resources Regulation and Policy Advisor, Office of the Assistant Secretary of the Army (Civil Works), at (703) 300-2899 or [elliott.n.carman.civ@army.mil](mailto:elliott.n.carman.civ@army.mil).



MICHAEL L. CONNOR  
Assistant Secretary of the Army  
(Civil Works)



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### Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval\*

|   |         | Event   | # of Days** |    |   |
|---|---------|---|-------------|----|---|
| Phase I   |         | <b>Optional Preliminary Review of Draft Prospectus</b>  | 30          |    | DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.                                       |
|   |         | <b>Sponsor Prepares and Submits Prospectus</b><br>~DE must notify sponsor of completeness w/in 30 days of submission~ |             |    |   |
| Phase II  | Day 1** | <b>Complete Prospectus Received by DE</b>   |             |    |   |
|   | Day 30  | Public notice must be provided within 30 days of receipt of a complete prospectus                                     | 30          |    |   |
|   | Day 60  | 30-Day Public Comment Period  | 30          |    |   |
|   | Day 90  | DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period. | 30          | 15 | DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.                                      |
| <b>Sponsor Considers Comments, Prepares and Submits Draft Instrument</b><br>~DE must notify sponsor of completeness w/in 30 days of submission~ |         |   |             |    |   |
| Phase III   | Day 1   | <b>Complete Draft Instrument Received by IRT Members</b>  |             |    |   |
|   |         | 30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members                          | 30          |    |   |
|   |         | DE discusses comments with IRT and seeks to resolve issues<br>~ # of days variable~                                   | 60          | 90 |   |
|   | Day 90  |   |             |    | Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.      |
| <b>Sponsor Prepares Final Instrument</b><br>~Sponsor provides copies to DE and all IRT members~   |         |   |             |    |   |
| Phase IV  | Day 1   | <b>Final Instrument Received by DE &amp; IRT</b>  |             |    |   |
|   | Day 30  | DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.                     | 30          | 45 |   |
|   |         | Remainder of time for initiation of dispute resolution process by IRT members   | 15          |    | IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process. |
|   | Day 45  | <b>INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED</b>                                      |             |    |   |

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days

\*Timeline also applies to amendments

\*\*The timeline in this column uses the maximum number of days allowed for each phase.

Appendix.