

**A TRAINING COURSE FOR
MITIGATION BANKING AND IN-LIEU FEE PROGRAM
INTERAGENCY REVIEW TEAMS**



**Reference Document:
Financial Assurances – Remedial and Long-Term**

A. Federal Financial Assurances Policy

2008 Compensatory Mitigation Regulations

§332.3 General compensatory mitigation requirements

(n) *Financial assurances.*

§332.4 Planning and documentation

(c) *Mitigation Plan.* [The mitigation plan must include:]

(13) *Financial assurances.* A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards (see § 332.3(n)).

§332.7 Management

(d) *Long-term management.*

2005 Regulatory Guidance Letter (RGL 05-1)

U.S. Army Corps of Engineers. February 14, 2005. *Guidance on the Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds.*

2003 Model Compensatory Mitigation Plan Checklist

- ☐ Adaptive Management Plan
 - o Remedial measures (financial assurances, management plan, etc.)
- ☐ Financial Assurances
 - o Identify party (ies) responsible for assurances
 - o Specify type of assurance, contents and schedule

9. Financial Assurances

- a. For each of the following, identify party(ies) responsible to establish and manage the financial assurance, the specific type of financial instrument, the method used to estimate assurance amount, the date of establishment, and the release and forfeiture conditions:

1. Construction phase
2. Maintenance

3. Monitoring
 4. Remedial measures
 5. Project success
- b. Types of assurances (e.g., performance bonds, irrevocable trusts, escrow accounts, casualty insurance, letters of credit, etc.).
 - c. Schedule by which financial assurance will be reviewed and adjusted to reflect current economic factors.

B. Bibliography of Corps District & State Financial Assurances Rules and Models

Florida Department of Environmental Protection. Rules governing financial assurance requirements for mitigation banking. "Financial Responsibility." Amended May 21, 2001. Florida Administrative Code § 62-342.700.

Form No. 62-342.900(3). "Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction and Implementation Financial Assurance." Effective May 21, 2001.

Form No. 62-342.900(4). "Mitigation Bank Trust Fund Agreement to Demonstrate Construction and Implementation Financial Assurance." Effective May 21, 2001.

Form No. 62-342.900(5). "Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance." Effective May 21, 2001.

Form No. 62-342.900(6). "Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management." Effective May 21, 2001.

Los Angeles District, U.S. Army Corps of Engineers. "Recommended Bond Surety Companies." Undated.
<http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>

Standard Operating Procedures for Financial Assurances 2009

New Orleans District, U.S. Army Corps of Engineers. "Escrow Agreement – Construction and Establishment"

Wilmington District, U.S. Army Corps of Engineers. "Template Letter of Credit
"Undated"

ADDITIONAL RESOURCES ON FINANCIAL ASSURANCES:

Institute for Water Resources, U.S. Army Corps of Engineers. December 1995.
“National Wetland Mitigation Banking Study: Technical and Procedural
Support to Mitigation Banking Guidance.” IWR Technical Paper WMB-TP-2.
See Chapter Five: “Financial and Legal Assurances.”

Scodari, P. S. Martin, & A. Willis. 2016. Implementing Financial Assurances For
Mitigation Project Success. Institute for Water Resources White Paper. 36pp.

HQ USACE OC. 2011. Financial Assurance Instruments for Compensatory
Mitigation Under the Corps Regulatory Program. Memorandum to Division &
District Counsel. December 2011. 5pp.

