

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart F – ACEP-ALE Cooperative Agreements and Grant Agreements

528.50 Overview of ACEP-ALE Agreements

A. Background

- (1) NRCS will enter into a cooperative agreement with noncertified eligible entities or a grant agreement with certified eligible entities. The cooperative agreement and grant agreement (hereinafter cooperative agreement; unless otherwise noted all guidance applies to both cooperative and grant agreements) are the legal agreements with which the Federal Government establishes a financial assistance relationship with the eligible entity.
- (2) NRCS, on behalf of the Commodity Credit Corporation, enters into a cooperative agreement for eligible entities to acquire agricultural land easements on eligible parcels selected for funding. The cooperative agreement is the principal program document under which NRCS and an eligible entity identify how they will coordinate the activities needed for the eligible entity to purchase an agricultural land easement with ACEP-ALE cost-share assistance, including each parties respective rights, roles, responsibilities, and obligations.
- (3) Once NRCS selects an eligible parcel for funding, the eligible entity works with NRCS to finalize and sign the cooperative agreement prior to NRCS obligation deadlines. The cooperative agreement incorporates all necessary ACEP-ALE requirements including deadlines, reporting, and the requirement that each easement must have an associated agricultural land easement plan.
- (4) Each fiscal year, NRCS National Headquarters (NHQ) publishes the standard cooperative agreement template for noncertified eligible entities for use in that fiscal year. For all new cooperative agreements entered into in a given fiscal year, the State Conservationist will use cooperative agreement template published for that fiscal year.
- (5) For cooperative agreements with noncertified eligible entities only, the Easement Programs Division (EPD) may approve limited changes to the terms of the cooperative agreement template, as follows:
 - (i) The eligible entity may submit a request for a revision to the cooperative agreement template to the State Conservationist. For example, if the eligible entity is a State, Tribal, and local government with statutory authorities that conflict with specific terms of the cooperative agreement template.
 - (ii) If the State Conservationist supports the requested revision they will forward the proposed amended cooperative agreement to EPD with a copy to the Grants and Agreements Team in the Administrative Services Division for review and determination.
 - (iii) EPD and the Grants and Agreements Team will determine if the revisions are consistent with ACEP-ALE authorities and policy and Title 120, General Manual (GM), Part 401. EPD will consult with the USDA Office of General Counsel as needed to determine the consistency of the revisions with the statutory or regulatory authorities of ACEP-ALE.
 - (iv) State Conservationists must receive written approval from EPD director prior to executing a revised cooperative agreement template.
 - (v) The published cooperative agreement and any revisions thereto provide the needed flexibility to meet program purposes and goals at the State or local level while satisfying all ACEP-ALE program requirements.
- (6) For grant agreements with certified eligible entities, the published grant agreement must be used. Revisions to the grant agreement are not authorized. The grant agreement is inherently more flexible and contains fewer specific terms than the cooperative agreement for

noncertified eligible entities. Acceptance of the grant agreement as published by NHQ is a condition of certification and eligible entities must affirm their ability and willingness to use the published grant agreement at the time certification is requested.

B. Required Agreement Provisions.—Cooperative agreements must contain the provisions necessary to ensure the ACEP-ALE program purposes and requirements are met and the cooperative agreement is implemented in compliance with NRCS authorities. The specific terms of these required provisions are included in the standard cooperative agreement template or standard grant agreement published by NHQ. Required provisions of the ACEP-ALE agreements include, but are not limited to—

- (1) Identification of the eligible entity.
- (2) The interests in land to be acquired, including the United States' right of enforcement, the minimum deed requirements, and the form and other terms and conditions of the easement deed.
- (3) The management and enforcement of the rights on easements acquired with ACEP-ALE funds by the eligible entity or its designee.
- (4) The responsibilities of NRCS.
- (5) The responsibilities of the eligible entity on easements acquired with ACEP-ALE funds.
- (6) Identification and responsibilities of any entities other than the primary eligible entity that will be party to the agricultural land easement or the cooperative agreement.
- (7) The requirement for each easement to have an associated agricultural land easement plan that is approved by NRCS State Conservationist and signed by the landowner and the eligible entity.

Note: For easements acquired by noncertified eligible entities, these approvals are required prior to execution of the easement deed and payment of easement compensation to the landowner.

- (8) The allowance of eligible parcel substitution upon mutual agreement of the NRCS State Conservationist and the eligible entity.
- (9) The certification by the landowner prior to the planned easement closing date of the extent of any charitable contribution the landowner has provided to eligible entity.
- (10) An attachment with the list of all parcels selected for funding, including the following information for each parcel:
 - (i) The NEST parcel ID
 - (ii) The landowner's names
 - (iii) Estimated acres
 - (iii) The type of easement or other interest to be acquired
 - (iv) The estimated fair market value and the estimated purchase price
 - (v) ACEP-ALE Federal share
- (11) A list of any substitute parcels identified at the time the cooperative agreement is executed.
- (12) The length, expiration date, and process for extension or amendment of the cooperative agreement.
- (13) Standard provisions or required information related to cooperative agreements, including provisions requiring the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282, as amended) and 2 CFR Parts 25 and 170, related Executive orders, and OMB Circulars.
- (14) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

528.51 Fund Obligation and Adjustments Under the Cooperative Agreement

A. Overview

- (1) At the time of application, the entity provides a breakdown of the estimated fair market value of the agricultural land easement, the purchase price, the non-Federal eligible entity cash contribution, the qualified landowner contribution, if any, and the Federal share for each individual parcel. The Federal share may not exceed 50 percent of the appraised fair market value of the agricultural land easement except in the case of grasslands of special environmental significance, in which case the Federal share may not exceed 75 percent of the appraised fair market value of the agricultural land easement, contingent upon all eligible entity contribution requirements being met as identified in section 528.43.
- (2) After eligibility determinations and ranking have been completed on all eligible applications submitted prior to an application cutoff date, the State Conservationist tentatively selects parcels for funding. The parcels tentatively selected for funding and the estimated Federal share amount for each parcel are listed in an attachment to the cooperative agreement. Eligible, high ranking, unfunded substitute parcels may also be identified on the attachment at this time.
- (3) The cooperative agreement is the document used to obligate the ACEP funds that may be provided to the eligible entity for the purchase of agricultural land easements. The amount of ACEP funds obligated to an approved cooperative agreement is based on the cumulative total of the estimated Federal share of the tentatively selected parcels listed on the attachment to the agreement. There is only one attachment for a fiscal year.
- (4) If the terms of the cooperative agreement allow for amendments to add funds in subsequent fiscal years for additional parcels selected for funding, a new attachment is developed for that fiscal year and funds added to the cooperative agreement by the obligation deadlines for the given fiscal year. The new attachment and the amendment to the cooperative agreement are the obligating documents for those subsequent year funds.

Note: Cooperative agreements entered into in FY 2014 cannot be amended to add subsequent fiscal year funding or parcels.

- (5) The estimated Federal share for the individual parcel tentatively selected for funding as identified on the attachment, represents the maximum amount of ACEP funds that may be provided to the eligible entity for the purchase of that individual agricultural land easement.
- (6) Once an individual parcel has an approved fair market value of the agricultural land easement the State Conservationist must determine whether adjustments are needed to the Federal share amount for the individual parcel as follows:
 - (i) If the approved appraised value or the available entity match is lower than the original estimate, the Federal share for the parcel must be decreased to no more than the maximum allowable cost-share amount. The ACEP-ALE funds that become available as a result of a decrease in the Federal share remain available for use under that cooperative agreement.
 - (ii) If the approved appraised value and associated entity match supports a Federal share amount that is higher than the original estimate, the State Conservationist has discretion to determine if the Federal share amount for the individual parcel will be increased. Pursuant to the terms of the cooperative agreement, NRCS is under no obligation to increase the Federal share above the original estimated amount. The State Conservationist may only authorize an increase in the Federal contribution amount to an individual parcel if the increase is within the scope of the original cooperative agreement and if there are sufficient funds remaining available in the cooperative agreement.

- (iii) If there is a change to a parcel selected for funding that is outside the scope of the original cooperative agreement a separate determination of funding must be made before acquisition of the agricultural land easement can continue on that parcel under the same cooperative agreement. Out-of-scope changes typically include changes in the area of land offered for enrollment after the cooperative agreement is executed or after the appraisal is completed, including acreage substitutions, additions, or deletions, affecting more than 10 percent of the original acreage. Depending on the timing and circumstances of the out of scope changes, the parcel may need to be re-ranked, re-appraised, and have updated eligibility determinations made.
- (6) The State Conservationist is responsible for managing the ACEP funds obligated to the cooperative agreement. Once funds are obligated to the cooperative agreement or attachment, the number of parcels ultimately funded and any subsequent increases or decreases in the Federal share amounts for the individual parcels must be managed within the funds obligated to that agreement. Additional ACEP-ALE funds will not be obligated to a cooperative agreement for increases in the Federal share amount for an individual parcel as long as funds remain available in the cooperative agreement.

B. Obligation of Funds through the Agreement

- (1) Prior to the obligation of funds, the State Conservationist will ensure all necessary reviews and authorizations are in place, as follows:
 - (i) All cooperative and grant agreements must undergo, at a minimum, a first and second level State preobligation review pursuant to the most current easement internal controls policy.
 - (ii) Prior to execution, all agreements with a Federal share exceeding \$100,000 must be submitted to NHQ Grants and Agreements Team for review and delegation of authority, with a copy to EPD.
 - (iii) All agreements or amendments with a Federal share exceeding the State's identified threshold for national level review under the most current easement internal controls policy must be submitted to EPD. National preobligation internal control reviews may take up to 30 days.
- (2) After the State Conservationist conducts all required reviews and receives required approvals and delegations of authority, the State Conservationist will send the cooperative agreement to the eligible entity for signature. After the eligible entity executes the cooperative agreement, and then the State Conservationist, on behalf of the Commodity Credit Corporation, executes the cooperative agreement, NRCS will obligate the ACEP funds in the NRCS financial system and report the agreement and parcels in NEST.
 - (i) The fully executed cooperative agreement is the document that authorizes NRCS to obligate ACEP-ALE funds for the eligible entities to purchase agricultural land easements from eligible landowners on eligible parcels selected for funding.
 - (ii) Funds obligated to the cooperative agreement in a given fiscal year may be expended over multiple years in accordance with the terms and deadlines identified in the cooperative agreement.
 - (iii) If the terms of the cooperative agreement allow for amendments to add funds and parcels in subsequent fiscal years, the subsequent fiscal year's selected eligible parcels will be identified on a new attachment to the cooperative agreement. There is no guarantee of funding for additional parcels in subsequent fiscal years.

C. Parcels Listed in Attachments to the Cooperative Agreement

- (1) An individual attachment to the cooperative agreement lists the parcels that are intended to be acquired with the funds obligated in that fiscal year. In addition the attachment may list

- substitute parcels that are eligible but did not rank high enough to be funded at the time of obligation.
- (2) The terms of the cooperative agreement provide that nothing in the agreement obligates NRCS or the entity to purchase all or any of the agricultural land easement parcels listed on the cooperative agreement attachment. Listing parcels on the cooperative agreement attachment and obligation of funds often occurs prior to the completion of due diligence investigations, appraisals and reviews, and title clearance.
 - (3) Due to changing circumstances, including but not limited to landowner withdrawal, insufficient funds, unapproved appraised values, inability to clear title or provide sufficient access, hazardous substance issues, or expiration of offers, parcels originally selected for funding may ultimately not be funded or may be removed from the list. If sufficient funds remain available in the cooperative agreement, eligible parcels listed as substitutes may be funded or new eligible parcels not listed as substitutes may be added through an amendment to the cooperative agreement and selected for funding. Substitute parcels may be funded as long as the—
 - (i) Parcel is replacing a parcel previously selected for funding.
 - (ii) Landowners meet the ACEP-ALE landowner eligibility criteria in the year the parcel is selected for funding.
 - (iii) Parcel meets ACEP-ALE land eligibility criteria.
 - (iv) Parcel can be purchased with the existing funds obligated in the cooperative agreement.
 - (v) Parcel provides an equivalent or greater conservation value than the deleted parcel.
 - (vi) Parcel to be funded is the highest ranked unfunded parcel of the available substitute parcels offered under the agreement.
 - (vii) Parcel ranks high enough to be selected for funding in the fiscal year in which it is added to the cooperative agreement.
 - (4) If a parcel is listed as selected for funding on a cooperative agreement attachment, it must not be listed as a funded or substitute parcel on any other cooperative agreements.
 - (5) The substitution of acres within a pending offer must not decrease the conservation value of the offered easement or the value of the parcel in meeting the program purposes. If the substitution affects more than 10 percent of the originally offered area, the parcel must be re-ranked using the most current ALE ranking worksheet. The reconfigured parcel must rank high enough to be selected for funding in the fiscal year in which it is re-ranked. If lands of lesser fair market value are substituted in the pending offer, the payment must be reduced according to a new appraisal.

D. Cooperative Agreement Lengths, Deadlines, and Extensions

- (1) The initial term of a cooperative agreement with a noncertified eligible entity is up to 3 fiscal years following the fiscal year the agreement is signed, with the possibility of extensions up to a maximum of 5 fiscal years. The initial term of a grant agreement with a certified eligible entity is up to 5 fiscal years following the fiscal year the grant agreement is signed, with the possibility of extensions up to a maximum of 7 fiscal years.
- (2) Each fiscal year attachment to an ACEP-ALE agreement expires 24 months after the end of the fiscal year the attachment is added to the agreement. Each attachment may be extended for one 12-month period. If the terms of the agreement allow subsequent fiscal year attachments—
 - (i) A 3-year cooperative agreement that is extended to 5 years may have a total of three attachments.
 - (ii) A 5-year grant agreement that is extended to 7 years may have a total of four attachments.

- (4) All ACEP-ALE agreement and attachment expiration dates are always August 31 of the applicable year. To request an extension of either the agreement or the attachment expiration dates, eligible entities may submit a request in writing to the State Conservationist.
- (i) The State Conservationist should only grant extensions of the attachment expiration date due to circumstances beyond the control of the entity.
- Note:** Extending the attachment expiration date will reduce the closing efficiency of the eligible entity. Closing efficiency is a consideration in ranking parcel applications submitted by the eligible entity as well as in an eligible entity request for certification.
- (ii) Extending an expiration date requires an amendment to the cooperative agreement and any such amendment must be executed prior to expiration of the cooperative agreement or attachment being extended.
- (iii) Eligible entities must request cooperative agreement or attachment extensions at least 30 days in advance of the expiration date.
- (iv) A copy of each amendment must be uploaded into NEST.
- (v) Agreements or attachments that are expired may not be extended under any circumstances.
- (5) Each attachment to the cooperative agreement has two performance deadlines: the closing deadline and the payment request deadline. The eligible entity may request an extension to either performance deadline from the State Conservationist.
- (i) All parcels listed on a given attachment that will receive ACEP funds must close within 18 months and request payment within 23 months of the end of the fiscal year in which the funding is obligated for that attachment (e.g., parcels funded with FY 2015 funds must close on or before March 31, 2017, and payment must be requested on or before July 31, 2017).
- (ii) Performance deadlines may be extended for any length of time up to a total of 12 months.
- (iii) The State Conservationist must provide a written response to the eligible entity within 10 business days of the entity’s request for an extension any performance deadlines.
- (iv) Extending these performance deadlines does not require an amendment to the cooperative agreement as long as the expiration date of the agreement or attachment is not extended.
- (v) The performance deadlines cannot be extended beyond the expiration date of the cooperative agreement or applicable attachment.

Figure 528-F1: Example – Cooperative Agreement for 3 Years, Extended to 5 Years

Cooperative Agreement Execution Date			September 1, 2015		FY 15
Initial Agreement Expiration Date			August 31, 2018		FY 18
Maximum Agreement Expiration Date			August 31, 2020		FY 20
FY of Fund Obligation (Attachment)	Attachment Listing Parcels	Closing Deadline	Payment Request Deadline	Attachment Expiration Deadline	Maximum Attachment Extension
2015	A	March 31, 2017	July 31, 2017	August 31, 2017	August 31, 2018
2016	B	March 31, 2018	July 31, 2018	August 31, 2018	August 31, 2019
2017	C	March 31, 2019	July 31, 2019	August 31, 2019	August 31, 2020

- (6) Approval of amendments to extend cooperative agreement or attachment expiration dates will only be approved by the State Conservationist and cannot be further delegated.
- (7) Funds in cooperative agreements or attachments that are not disbursed before the cooperative agreement or attachment expires will be deobligated and returned to the NHQ.

528.52 Determining Fair Market Value of the Agricultural Land Easement

A. The Federal share must not exceed 50 percent of the fair market value as approved by NRCS of the agricultural land easement, as determined using any of the following:

- (1) An appraisal using the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA/Yellow Book)
- (2) An areawide market analysis or survey
- (3) Another industry-approved method approved by NRCS

B. For parcels selected for funding, the eligible entity is responsible for obtaining and providing NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets NRCS appraisal policy, including the requirements found in Title 440, Conservation Programs Manual (CPM), Part 527, Subparts E and F, and in this part.

C. The eligible entity is approved to use either the USPAP or UASFLA appraisal methodologies. If the eligible entity requests to use an areawide market analysis or other industry-approved method, NRCS approval of the methodology is required prior to entering into the cooperative agreement.

D. If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser (see 440-CPM, Part 527, Subparts E and F). The effective date of the appraised value must be within 6 months before or after the date the cooperative agreement or applicable amendment is executed identifying the parcel selected for funding or must be within 12 months of the easement closing date.

E. Noncertified eligible entities must provide a copy of the applicable valuation report used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date or the earlier when possible. NRCS must obtain a technical review and approve the value determination prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner.

F. Requests by the eligible entity to obtain and use an areawide market analysis for determining fair market value of the agricultural land easement must be submitted to the State Conservationist and approved by EPD director prior to entering into the cooperative agreement. The areawide market analysis must be conducted in accordance with NRCS specifications and completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis. As part of the request, the eligible entity must include the following documentation:

- (1) A map and description of the market areas to be analyzed.
- (2) Adequately descriptive definitions of the land uses to be analyzed.
- (3) The proposed standard agricultural land easement deed to be used on all enrollments within each market area.

G. Requests from eligible entities to use another industry-approved method must be submitted to State Conservationist and approved by the Chief of NRCS prior to entering into the cooperative agreement. As part of the request, the entity must identify the industry-approved method proposed, and copies of or references to the applicable industry standards. If approved, NRCS will identify the acceptable applicable industry standards and provide any associated NRCS specifications for the methodology approved.

H. NRCS will review, for quality assurance purposes, appraisals, areawide market analysis, valuation reports, other information resulting from another industry-approved method approved for use by NRCS, and associated technical reviews.

Title 440 – Conservation Programs Manual

I. Agency-approved appraisal reports and technical appraisal reviews must be retained in the individual easement case file.