

Part 530 – Working Lands Conservation Programs Manual

Subpart L – Alternative Funding Arrangements (AFAs) for EQIP and CSP

530.111 General

A. Purpose

- (1) NRCS may enter into alternative funding arrangements (AFAs) with Indian Tribes and Alaska Native corporations (Tribes) under both the Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP). Any AFA NRCS enters into must support the applicable program’s purposes as outlined in subparts Q (CSP) and R (EQIP) of this manual. NRCS will collaborate with Tribes to develop AFAs to help fund and implement conservation projects on tribal land.
- (2) This subpart does not apply to the Regional Conservation Partnership Program (RCPP) or the Agricultural Management Assistance (AMA) program. Refer to 440-CPM, Part 531, “Regional Conservation Partnership Program,” for guidance related to RCPP AFAs.
- (3) AFAs provide NRCS and Tribes additional flexibilities with regard to funding, planning, and administration to implement EQIP and CSP where existing processes create barriers to program participation. States will fund AFAs through Programmatic Agreements (PAs) directly with the Tribe (refer to 530.119A, “Programmatic Agreement Template for EQIP and CSP AFAs”).

Note: PAs for AFAs with Tribes under EQIP and CSP are not the same as RCPP programmatic partnership agreements.

- (4) If conflicts between this subpart and other subparts of Part 530 exist, the policy in this subpart will prevail.

B. Authority

- (1) This subpart contains NRCS policy, guidance, and operating procedures for EQIP and CSP AFAs in accordance with the Food Security Act of 1985, as Amended (“the statute”), Sec. 1244(m) [16 U.S.C. 3844(m)]. Refer to subpart O, exhibit 530.143I, of this manual.
- (2) This subpart is effective for new enrollments during fiscal year 2022 and forward until superseded.

C. NRCS may consider AFAs nationwide for any Tribe that meets the requirements in 530.21B of this manual. In determining whether to fund a proposal through an AFA, NRCS will consider the extent to which the proposal:

- (1) Achieves conservation benefits for the Tribe and EQIP or CSP program goals;
- (2) Demonstrates that the goals and objectives of the program would be more easily achieved through an AFA than a traditional contract; and
- (3) Addresses natural resource concerns, including the development and implementation of tribal resource management plans.

530.112 AFA Funds Management

- ##### A. Fund Spending Limits and Management.—National Headquarters (NHQ) or State Conservationists may set aside financial assistance (FA) and technical assistance (TA) funds specifically to support AFAs. Funds allocated by NHQ will be included in the annual allocation guidance. In addition, States may set aside a portion of the funds allocated for EQIP and CSP for AFAs.

- B. **Funding Preparation Activities.**—An AFA is a nation-to-nation negotiation. States should conduct outreach to inform Tribes of the opportunity to request an AFA with NRCS. The Tribe and NRCS should discuss the project’s requirements, the funds available to support it, and other parameters.

Note: Reasonable outreach in this context includes suggesting the availability of AFAs for a project when NRCS determines that a project may be appropriate. It does not include a suggestion that AFAs may be appropriate for every project.

- C. **Technical Assistance.**—NRCS may provide Tribes with technical assistance (TA) funds for approved activities as laid out in the PA.
- D. **Indirect Costs**
- (1) To be eligible to recover any indirect cost under a Federal award, recipients must either have a current negotiated indirect cost rate agreement with a Federal agency that has not expired, or they must qualify for use of the de minimis rate of 10% authorized by 2 CFR 200.414.
 - (2) A Tribe that receives more than \$35 million in direct Federal funding in one year is not eligible for the de minimis rate and must negotiate its indirect cost rate with NRCS.
- E. **Reporting.**—The PA must specify that Tribes will submit semiannual reports to NRCS that include status updates as well as invoices of funds expended. NRCS and the Tribe will determine the specific format of these reports and document their decision in the PA.

530.113 AFA Payments and Payment Limitations

- A. States will work with Tribes to determine practice payment rates for each approved AFA and document their decisions in the PA. Payment rates may be based on actual costs, average costs, predetermined payment schedules, or other methods approved by NRCS.
- B. States and Tribes have flexibility to determine how FA and TA will be provided to Tribes.
- NRCS may handle all TA and pay the Tribe only FA.
 - NRCS may pay the Tribe for all TA in addition to FA.
 - The Tribe may manage all funding for activities covered within the AFA.
 - NRCS may manage funds through the usual contracting methods.
- C. If funds will be managed by the Tribe, they may be transferred upfront, annually (or at some other regular interval), or on a reimbursement basis. If on a reimbursement basis, NRCS and the Tribe may establish a process for providing advance payments if desired by the Tribe.
- D. The Tribe must submit an NRCS SF-270 to request transfer of funds.
- E. Tribal entities are not subject to payment limitations or adjusted gross income (AGI) provisions. This exemption only applies to business type 20 (Indian Tribe Venture) in the FSA system. This exemption does not apply to business Type 15 (Indian Represented by the BIA) or to individual tribal members. Refer to section 530.21B of this manual for additional guidance. The Tribe must provide information on each participant to NRCS prior to receiving its first AFA payment so the agency can ensure each individual is eligible for payments.
- F. To assist in the implementation of the program, NRCS may waive the AGI limitation on a case-by-case basis as per section 530.23C “Adjusted Gross Income (AGI) Waivers” of this manual.
- G. Refer to 530.119B, “AFA Obligations and Payments,” for information on processing payments to Tribes under AFAs.

530.114 AFA Requests from Tribes

- A. An eligible Tribe must submit requests for AFAs as follows:
- (1) Tribes interested in entering into an AFA under EQIP or CSP must submit a request to the State Conservationist.
 - (2) The request must include:
 - a description of the proposed activities,
 - the program under which the Tribe wishes to build the AFA,
 - the preferred length of the agreement period (not to exceed 10 years for EQIP or five years for CSP with the potential for a five-year renewal, unless NRCS determines that a longer period of time is necessary to meet the program objectives),
 - an estimate of funds to be requested,
 - the approximate number of participants needed to accomplish the underlying purposes and objectives of the program, and
 - a description of how those participants will be involved.
- B. All States and Tribes are unique, so the process for developing AFAs may differ greatly among States. Each State will develop a transparent process for selecting AFAs in collaboration with Tribes, State Tribal Conservation Advisory Councils, and other analogous groups and share this process with their Regional Conservationists in advance of making selections.
- C. Refer to 530.119B, “AFA Obligations and Payments,” for information on obligating funds once an AFA request has been granted.

530.115 AFA Programmatic Agreements (PAs)

- A. NRCS and the Tribe should collaborate to determine the specific terms of the AFA and lay these out in the PA (refer to 530.119A, “Programmatic Agreement Template for EQIP and CSP AFAs”). The responsibilities of the Tribe and NRCS are clearly documented in the PA and should include:
- (1) Demonstration that the Tribe will enlist an adequate number of participants necessary to accomplish the relevant program’s purposes.
 - (i) The Tribe may hold the AFA as the primary participant and install conservation practices or activities that benefit multiple tribal members without transferring payment.
 - (ii) The Tribe may hold the AFA and pay tribal members to install conservation practices or activities.
 - (iii) The Tribe may hold the AFA and receive payment for conservation practices or activities the Tribe installs while also paying tribal members to install practices (as long as duplicative payments for the same practice are avoided).
 - (2) A description of the conservation objectives of the AFA, along with the conservation practices or activities that will be funded to achieve those objectives, as well as the length of the agreement period. If traditional conservation practices or activities will be implemented, the AFA should detail the NRCS practice standards upon which they are based.
 - (3) The details, terms, and conditions of the FA and TA NRCS will provide to the Tribe.
 - (4) A description of the activities the Tribe and NRCS will manage under the agreement, including if applicable:
 - (i) Setting up an internal application process for tribal members.
 - (ii) Determining eligibility and control of land for individual tribal members.
 - (iii) Ensuring statutory limitations regarding contracts with individual producers will not be exceeded by any individual tribal member.
 - (iv) Making payments to individual tribal members for completed conservation practices or activities.

- (v) Documenting how the Tribe will determine method of payment for completed conservation practices or activities, whether they be based on actual costs, average costs, predetermined payment schedules, or other methods approved by NRCS. Costs for conservation practices or activities will be based on NRCS cost components approved under existing payment scenarios.
 - (vi) Managing TA funding and activities as negotiated with NRCS, such as:
 - Development of conservation plans with individual tribal members for activities covered within the PA.
 - Design, implementation, and certification of conservation practices and activities.
 - Program management activities such as outreach, application management, ranking, contract management, etc.
 - (5) The terms of how the Tribe will coordinate with NRCS to document compliance with National Environmental Protection Act (NEPA), Highly Erodible Land Conservation and Wetland Conservation Certification requirements, and all applicable Federal, State, and local laws.
- B. NRCS should upload PAs and any supporting documentation to the Document Management System (DMS).
 - C. The AFA will also describe the process for handling contract modifications and instances of noncompliance by tribal members.
 - D. See exhibit 530.116A for a PA template.

530.116 AFA Conservation Practices and Resource Concerns

- A. Eligible Conservation Practices and Activities
 - (1) Refer to the program-specific subparts for general guidance on eligible conservation practices and activities.
 - (2) AFAs may incorporate traditional ecological knowledge or cultural application methods, provided that the purposes of the corresponding NRCS conservation practice standards or activity requirements can be met. If existing conservation practices or activities do not meet the Tribe's objectives, States may request a practice variance, interim conservation practice, or new activity following policy in Title 450-General Manual, Part 401-Technical Guides, Subpart B-Conservation Practice Standards and Supporting Documents.
 - (3) Tribes have the option to develop their own conservation plans within the AFA or to work with NRCS to do so. The plans must demonstrate how they will achieve the purposes of the AFA and applicable program.
 - (4) At a minimum, NRCS must provide limited TA for each project, including ensuring NEPA and National Historic Preservation Act requirements are met. NRCS must confirm and document that the tribal partner collects adequate information to make certain that AFA projects and activities comply with NEPA and other applicable Federal, State, and local laws and regulations. NRCS is not necessarily responsible for data collection, which can be negotiated, but the agency cannot delegate analytical and decision-making responsibility for these items.
- B. Eligible Resource Concerns.—NRCS's approved resource concerns are broad and, in most cases, will encompass tribal resource concerns. NRCS should work to align the agency's approved resource concerns with tribal resource concerns.

530.117 AFA Tribal Member Applications and Contracting

- A. If the Tribe chooses to have NRCS manage the individual tribal members' application process, then NRCS and the Tribe will adhere to the application processes laid out in the relevant programs' subparts as well as subparts C and D of this manual. Ranking priorities will be based on the priorities set forth by the Tribe in the PA.
- B. If the Tribe chooses to manage its own application process, then it should develop a process analogous to NRCS's in terms of how applications are approved for funding, ensuring a transparent process where selections are made based on the greatest conservation benefit as per sections 1240C and 1240K(b)(1) of the statute.
- C. Similarly, if the Tribe chooses to enter into contracts with tribal members, then it should develop a schedule of operations analogous to the NRCS process. Refer to subpart D, "Application Processing," and the program-specific subparts of this manual for general guidance on the schedule of operations. NRCS should work with the Tribe to ensure they have an appropriate management plan in place if the AFA includes conservation practices related to forest land, organic systems, or nutrient management.
- D. Reviews.—Refer to subpart H, "Contract Reviews and Quality Assurance," and subpart I, "Contract Violations," of this manual for information about completing reviews and addressing noncompliance and contract violations.

530.118 AFA Changes: Amendments, Modifications, and Terminations

- A. In the event a Tribe wishes to modify or amend an agreement, NRCS and the Tribe shall agree upon the new terms of the agreement and record the new terms and the reasons for the change in the PA. NRCS must document any changes to proposed activities, resource concerns to be addressed, or obligation amounts, and NRCS and the Tribe must both sign and date the modified PA.
- B. Prior to NRCS approval of a modification that increases the AFA obligation, States' financial management staff must document funds availability.
- C. In the event a Tribe wishes to cancel an agreement, it must submit this request in writing to NRCS. Any unexpended funds that have been transferred to the Tribe by NRCS must be returned.
- D. If a Tribe fails to adhere to the terms of the agreement, NRCS should attempt to work with the Tribe to bring it back into compliance. If these efforts fail, NRCS may terminate the agreement and pursue liquidated damages as appropriate. NRCS must provide information on appeal rights to the Tribe at the time of termination.

530.119 AFA Exhibits

- A. Programmatic Agreement Template for EQIP and CSP AFAs
- B. AFA Obligations and Payments