

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart I – ACEP-ALE Financial Management Procedures

528.80 Overview

- A. This subpart provides guidance on the administration of ACEP-ALE agreements, including contracting and fund management activities. In particular, this subpart addresses topics related to the use of ACEP-ALE funds, cooperative agreement management, easement payments issued under the ALE agreement, and NRCS procurement of review reports, easement conveyance, and recording requirements. Several topics addressed in this subpart are covered in greater detail in other agency policy. Wherever possible, these policies have been cross-referenced.
- B. NRCS is responsible for the administration and management of ACEP-ALE funds. NRCS uses the Financial Management Modernization Initiative (FMMI) system for the obligation and payment of ACEP-ALE funds and the National Easement Staging Tool (NEST) for the tracking of ACEP-ALE applications, agreements, and parcels.
- C. All obligations and payments for the acquisition of the easement will comply with the most current easement internal controls policy. Notwithstanding the payment type, NRCS will not provide tax advice, including any representations about the tax implications of any easement, contract, or financial transaction.
- D. Once the appropriate documents are reviewed, determined complete and proper, and funds availability is verified, the State Conservationist will sign the appropriate obligating document. Funds are then obligated in FMMI to the eligible entity as the vendor. States must work with the eligible entity to obtain all information needed to establish the eligible entity as the vendor in FMMI. Typically, this will come from the entity's registration in SAM. If vendor records are not available through SAM, States must provide this information to the financial management staff at the time the obligation is entered.
- E. NRCS enters into a cooperative agreement with the eligible entity, obligates funds to the cooperative agreement, maintains the cooperative agreement and easement case file, ensures the terms of the cooperative agreement are fulfilled, and issues payments in accordance with applicable policies, including the most current easement internal controls policy, financial management policy, and grants and agreements policy (see Title 120, Federal Grants and Cooperative Agreements Handbook (FGCAH), and National Instruction (NI) 120-301, "Processing Grants, Agreements, and Memorandums of Understanding").

528.81 Calculating Final Easement Payment Amounts

- A. ACEP-ALE funds are obligated to the cooperative agreement or subsequent attachments and are based on the eligible entity's estimates of acreage and easement value of the individual parcels. ACEP-ALE funds are obligated to the entire cooperative agreement and not to the individual parcels. After the cooperative agreement has been entered into there may be changes to the estimated easement value based on the final approved appraisal or changes in estimated acreage. These final approved acreages and appraised easement values, along with any approved waivers of eligible entity cash match requirements, bargain sale reductions, NRCS scope determinations, and ACEP-ALE funds available under the cooperative agreement, will be the basis for determining whether adjustments to the Federal share are needed to determine the final ACEP-ALE cost-share payment amounts in accordance with limitations described in Section 528.43, "Cost-Share Assistance and

Match Requirements.” and Section 528.51, “Fund Obligation and Adjustments Under the Cooperative Agreement.”

B. If the landowner is paid more than the appraised fair market value of the agricultural land easement, the eligible entity is responsible for 100 percent of the easement cost over the appraised fair market value of the agricultural land easement.

C. In the case of a bargain sale, where the landowner chooses to donate part of the agricultural land easement value by accepting a payment less than the full appraised market value of the easement, the eligible entity must contribute a minimum of the purchase price (appraised fair market value of the agricultural land easement minus the landowner donation) as provided in this section (see Subpart U, “Exhibits,” for example donation scenarios).

D. Prior to closing, the eligible entity must provide the applicable “Statement to Confirm Matching Funds” (NRCS-CPA-230 or successor form) signed by the landowner and the eligible entity acknowledging:

- (1) The appraised fair market value of the agricultural land easement
- (2) The landowner’s qualified donation or contribution.
- (3) The agricultural land easement purchase price.
- (4) The eligible entity cash contribution amount.
- (5) The Federal share.
- (6) The administrative costs for the agricultural land easement and the eligible entity’s recommended entity and landowner contributions to acquisition costs and to a stewardship fund. (see Subpart U, “Exhibits,” for Form CCC-230, “Confirmation of Matching Funds (2014 Farm Bill)”).

E. The estimate of an eligible entity’s recommended contribution to a stewardship fund should be justified by an estimate of the expenses the eligible entity will incur over time in monitoring and enforcing the easement.

- (1) State program managers must scrutinize recommended contributions of more than 2 percent of the appraised fair market value.
- (2) State program managers must review the matching funds requirement during the site review of the parcel to ensure that the landowners understand that ACEP-ALE does not require them to contribute to the stewardship fund or the easement acquisition cost.

F. The eligible entity is required to certify that its minimum required cash contribution comes from other sources outside of the landowner. This applies to both formal and informal agreements made between the landowner and the eligible entity. For the purposes of making this determination, the term “landowner” includes the landowner’s immediate family members and organizations controlled or funded by the landowner or an immediate member of the landowner’s family.

528.82 Easement Closing and Payment Procedures

A. Overview

- (1) Payment of the Federal share of the agricultural land easement will be issued to the eligible entity on a reimbursable basis after the easement is acquired or as an advance payment issued prior to closing. Typically, ACEP-ALE funds will be paid to an eligible entity on a reimbursable basis once the easement is acquired. When the eligible entity cannot obtain 100 percent of the funds to be paid to the landowners at the closing of an agricultural land easement on a parcel and needs the United States to provide the Federal share at closing rather than on a reimbursable basis, the eligible entity may request an advance of the Federal share for the parcel from the State Conservationist.

- (2) Payments made for the purchase of agricultural land easements will be based on the information provided on Standard Form (SF) 270, “Request for Advance or Reimbursement” and the applicable SF 270 supplement. The SF-270 and all required payment request documentation will be prepared by the eligible entity and submitted to NRCS. The eligible entity may submit the SF-270—
 - (i) Prior to closing when a payment is to be issued at closing (advance payment).
 - (ii) After the agricultural land easement has been recorded and the landowners have been paid (reimbursement).
 - (iii) On a quarterly basis for each quarter that agricultural land easements have been recorded and the landowners have been paid (reimbursement).
- (3) The entity will submit a separate SF-270 to NRCS for parcels on each attachment of each cooperative agreement. A copy of the NRCS approval letter for each parcel that has received an eligible entity cash contribution waiver requests must be submitted with the payment request for that parcel. When an advance is requested, the eligible entity must notify NRCS and provide the required payment request package documents at least 60 days prior to the planned closing date. NRCS will not issue the payment more than 30 days prior to the planned closing date. The timelines for submission of documents to NRCS are outlined in this part.
- (4) Noncertified entities only.—In addition to submitting the required payment request documents, noncertified eligible entities must also obtain NRCS approval of the agricultural land easement deed, appraisal, title commitment, baseline documentation report, and agricultural land easement plan prior to requesting advance of the Federal share or closing on an agricultural land easement for which the Federal share will be requested. NRCS will document its approval of the required documents by completing and signing the “NRCS Approval Letter for a Noncertified Eligible Entity to Proceed with the ACEP-ALE Acquisition” and provide a copy to the eligible entity (see Subpart U, “Exhibits,” for the NRCS approval letter for a noncertified eligible entity to proceed with the ACEP-ALE acquisition).
- (5) Payments will be made to the eligible entity established as the vendor in FMMI, unless payment has been assigned to a payee on the SF-270. Payments will be made to through an electronic funds transfer (EFT). The payee must provide their bank routing and account information to NRCS. If an escrow or closing agent is the payee to administer the funds for the agricultural land easement purchase, their address is established as another address code under the eligible entity’s vendor number in FMMI. For payments to the closing agent, a separate “Assignment of Payment” form (NRCS-CPA-1236 or successor form) is not required.
- (6) The eligible entity or the closing agent will prepare all IRS-1099 reporting for landowners. The closing agent must prepare the IRS-1099 for advances.

B. Closing and Payment Review Procedures for Noncertified Eligible Entities

- (1) Pre-closing Steps: Reimbursements and Advances
 - (i) Step 1.—No less than 90 days prior to the targeted closing date, for each parcel the eligible entity must send to NRCS—
 - The agricultural land easement deed.
 - A hardcopy and electronic copy of the appraisal report.
 - A copy of the title company’s title commitment and underlying documents.
 - A summary of the findings or recommendations from the entity review of the recorded and unrecorded exceptions.
 - A draft baseline documentation report for each parcel.
 - A copy of the agricultural land easement plan.

- Any impervious surface waiver requests and supporting documentation.
 - A map of any existing and proposed building envelopes.
 - Any waiver requests and supporting documentation for eligible entity cash contribution waivers for projects of special significance submitted after the cooperative agreement is entered into.
- (ii) Step 2.—NRCS must review the materials provided by the eligible entity as described below. Generally NRCS should complete the review within 45 days of receipt of complete materials from the eligible entity. However for parcels above the internal control national review threshold that will request an advance payment, NRCS must complete this review with 30 days of receipt of a complete package of materials from the entity. These timelines apply only after NRCS receives a complete set of the required materials from the entity. NRCS must—
- Review the deed for conformance to policy and required deed terms. NRCS will provide the eligible entity with notification of the acceptability of the agricultural land easement deed or a list of changes needed to meet ACEP-ALE program purposes.
 - Conduct a technical review of the appraisal to ensure that the Federal share being provided by the United States is supported by the appraised fair market value of the agricultural land easement. NRCS will provide the eligible entity with notification of the acceptability of the appraisal or information on the changes needed to meet applicable appraisal standards and NRCS requirements.
 - Examine the title commitment and complete Form NRCS-LTP-23, “Certificate of Use and Consent” (see Subpart U, “Exhibits,” for Form NRCS-LTP-23). NRCS will consult with the USDA Office of the General Counsel as necessary.
 - Inspect the parcel and complete a Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” (see Subpart U, “Exhibits” for Form, NRCS-LTP-27).
 - Provide the eligible entity with written notification of title issues that must be remedied, such as—
 - Recorded and unrecorded exceptions to the title that must be removed or subordinated.
 - Leases that must be terminated.
 - Options that must be cancelled.
 - Review the agricultural land easement plan and draft baseline documentation report. NRCS will notify the eligible entity if the plan is approved or if additional changes are needed.
 - Review and complete determinations on eligible entity cash contribution requirement waiver requests submitted 90 days prior to the planned closing date.
 - Advances only: The State Conservationist must send the letter to the eligible entity providing the closing agent requirements for an advance payment of ACEP-ALE funds and attach the NRCS closing agent requirements (see Subpart U, “Exhibits” for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements).
- (2) Pre-closing Steps: Reimbursements Only
- (i) Step 3.—No less than 30 days prior to the planned closing date, the eligible entity must—
- Notify NRCS of the planned date to close on the agricultural land easement.
 - Provide NRCS with documentation of resolution of identified issues with title, appraisals, deeds, or easement plans.
 - Provide NRCS with a signed and completed “Confirmation of Matching Funds (2014 Farm Bill),” and a copy of any approved entity cash contribution waivers.
- (ii) Step 4.—Prior to the closing, NRCS must—

- Sign the “Confirmation of Matching Funds” and provide a copy to the eligible entity.
 - Complete and sign the “NRCS Approval Letter for a Noncertified Eligible Entity to Proceed with the ACEP-ALE Acquisition” and provide a copy to the eligible entity (see Subpart U, “Exhibits,” for the NRCS approval letter for a noncertified eligible entity to proceed with the ACEP-ALE acquisition).
- (3) Pre-closing Steps: Advances Only
- (i) Step 3.—No less than 60 days prior to the planned closing date, the eligible entity must—
- Send NRCS a completed SF-270, “Request for Advance or Reimbursement” and a completed “SF-270 Supplement for Noncertified Eligible Entities” with all required documentation as identified in the cooperative agreement (see Subpart U, “Exhibits,” for SF-270 and SF-270 supplement for noncertified eligible entities).
 - Notify NRCS of the planned date to close on the agricultural land easement.
 - Provide NRCS with documentation of resolution of identified issues with title, appraisals, deeds, or easement plans.
 - Provide NRCS a copy of the unexecuted agricultural land easement deed with all exhibits.
 - Provide NRCS with a signed and completed “Confirmation of Matching Funds (2014 Farm Bill),” and a copy of any approved entity cash contribution waivers.
 - Provide a copy of the agricultural land easement plan signed by the landowner and the baseline documentation report signed by the eligible entity and the landowner.
 - Return the completed NRCS closing agent requirements document to NRCS signed by the closing agent verifying that the he or she meets the requirements and signed by the eligible entity in concurrence. The completed document must also include the closing agent’s name, address, and electronic funds transfer information (e.g., banking and routing information or wire instructions, and escrow account information). (see Subpart U, “Exhibits” for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements).
 - Provide a copy of the American Land Title Association (ALTA) title commitment and evidence of liability insurance equal to at least the amount of the Federal funds being provided.
 - Provide a signed settlement statement prepared by the closing agent.
- (ii) Step 4.—Prior to the closing, NRCS must—
- Complete the review of the SF-270 payment request in accordance most current easement internal controls policy. States must submit a copy of the payment request package for national review and approval for all agricultural land easement payments that meet the national review threshold. Complete payment request packages for national review must be submitted to NHQ no less than 30 days before the planned closing date.
 - Sign the “Confirmation of Matching Funds” and provide a copy to the eligible entity.
 - Complete and sign the “NRCS Approval Letter for a Noncertified Eligible Entity to Proceed with the ACEP-ALE Acquisition” and provide a copy to the eligible entity (see Subpart U, “Exhibits,” for the NRCS approval letter for a noncertified eligible entity to proceed with the ACEP-ALE acquisition).
- (iii) Step 5.—No more than 30 calendar days prior to the planned closing date and only after NRCS has received, reviewed and approved all required documentation, NRCS may make an advance payment of the Federal share. The advance payment of the Federal share will be issued to the closing agent via electronic funds transfer for the closing agent to hold in escrow.

- (iv) Step 6.—After the Federal share is deposited in escrow and prior to the closing, the eligible entity must obtain a receipt for the Federal funds from the closing agent and provide it to NRCS.

C. Reimbursement to Noncertified Eligible Entities

- (1) Step 1.—After the eligible entity has completed the contractual requirements and paid the ACEP-ALE landowners, the eligible entity must—
 - (i) Send the NRCS State office a completed and signed SF-270 and a completed “SF-270 Supplement for Noncertified Eligible Entities” with all required documentation as identified in the cooperative agreement (see Subpart U, “Exhibits,” for SF-270 and SF-270 supplement for noncertified eligible entities).
 - (ii) Provide a copy of the closing agent’s closing statement for each parcel.
 - (iii) Attach on a separate piece of paper, the landowner’s names, acres acquired, term of agricultural land easements, amounts paid, Federal share of the agricultural land easement cost, and dates payments were made to the landowners.
 - (iv) Include a copy of the recorded agricultural land easement deed for each parcel.
 - (v) Provide a copy of the ALTA title insurance policy.
- (2) Step 2.—Upon receipt of a completed and signed SF-270, NRCS must—
 - (i) Date stamp the SF-270.
 - (ii) Complete the review of the payment request in accordance with the most current easement internal controls policy. States must submit a copy of the payment request package for national review and approval for all agricultural land easement payments that meet the national review threshold within 10 days of receipt of a complete payment request package. States must inform entities with payment requests requiring national review that the national review of complete payment request packages may take up to 30 days.
 - (iii) Ensure recorded agricultural land easement deed contains the approved language.
 - (iv) Ensure the final policy of title insurance contains only those exceptions approved by NRCS and the eligible entity.
 - (iv) Ensure funds are available for payment.
 - (v) Enter payment request in FMML. “Prompt Payment Act” interest is not applicable to NRCS-funded programs.
 - (vi) Enter Federal Assistance Award Data System (FAADS) data, if applicable, using Code for Federal Data Assistance (CFDA) number 10.931. FAADS reporting is not required for Federal and State government payees.
- (3) Step 3.—In the SF-270 block labeled “This space for agency use,” NRCS must include—
 - (i) A two-digit payment-type code.
 - Use “FP” for payments made in the same fiscal year the cooperative agreement was entered into.
 - Use “FL” for payments made after the fiscal year the cooperative agreement was entered into.
 - (ii) A two-digit fiscal year of cooperative agreement.
 - (iii) The NEST cooperative agreement number, the NEST parcel number, and the FMML WBS element.
 - (iv) The same cooperative agreement number obligated in FMML.
 - (v) The name, signature, and telephone number of the NRCS certification official.

D. Closing and Payment Review Procedures for Certified Eligible Entities

- (1) Step 1.—At the time the payment request is submitted, the certified eligible entity must provide NRCS—

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- (i) A completed SF-270, “Request for Advance or Reimbursement” and a completed “SF-270 Supplement for Certified Eligible Entities” with all required documentation as identified in the grant agreement (see Subpart U, “Exhibits,” for SF-270 and SF-270 supplement for certified eligible entities).
- (ii) A signed and completed “Confirmation of Matching Funds (2014 Farm Bill),” and a copy of any approved entity cash contribution waivers.
- (iii) The agricultural land easement deed.
- (iv) A hardcopy and electronic copy of the appraisal report.
- (v) A copy of the title company’s title commitment and underlying documents.
- (vi) A certificate of use and consent or similar document with the summary of the findings or recommendations from the entity review of the recorded and unrecorded exceptions.
- (vii) A signed baseline documentation report for each parcel.
- (viii) A copy of the signed agricultural land easement plan.
- (ix) Any impervious surface waiver requests and supporting documentation.
- (x) A map of any existing and proposed building envelopes.
- (xi) For advance payments only, Return the completed NRCS closing agent requirements document to NRCS signed by the closing agent verifying that the he or she meets the requirements and signed by the eligible entity in concurrence. The completed document must also include the closing agent’s name, address, and electronic funds transfer information (e.g., banking and routing information or wire instructions, and escrow account information). (see Subpart U, “Exhibits” for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements).

Note: For payments to certified eligible entities, NRCS will not review the content of items (iii)-(x), above, prior to issuing the payment. NRCS will retain these documents in the official easement case file and will review these documents for agricultural land easement transactions selected for quality assurance review.

- (2) Step 2.—Upon receipt of a completed and signed SF-270, NRCS must—
 - (i) Date stamp the SF-270.
 - (ii) Complete the review of the payment request in accordance with the most current easement internal controls policy. States must submit a copy of the payment request package for national review and approval for all agricultural land easement payments that meet the national review threshold within 10 days of receipt of a complete payment request package. States must inform entities with payment requests requiring national review that the national review of complete payment request packages may take up to 30 days.
 - (iii) Ensure funds are available for payment.
 - (iv) Enter payment request in FMFI. Prompt Payment Act interest is not applicable to NRCS-funded programs.
 - (v) Enter Federal Assistance Award Data System (FAADS) data, if applicable, using Code for Federal Data Assistance (CFDA) number 10.931. FAADS reporting is not required for Federal and State government payees.
- (3) Step 3.—In the SF-270 block labeled “This space for agency use,” NRCS must include—
 - (i) A two-digit payment-type code.
 - Use “FP” for payments made in the same fiscal year the grant agreement was entered into.
 - Use “FL” for payments made after the fiscal year the grant agreement was entered into.
 - (ii) A two-digit fiscal year of grant agreement.
 - (iii) The NEST agreement number, the NEST parcel number, and the FMFI WBS element.

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- (iv) The same grant agreement number obligated in FMML.
- (v) The name, signature, and telephone number of the NRCS certification official.

E. Closing Agent Responsibilities for all Advance Payments

- (1) The term “closing agent” refers to a title company, an escrow company, a private attorney, or other qualified entity or entities that assist the eligible entity and NRCS with the execution and recordation of the agricultural land easement deed and other closing responsibilities.
- (2) The closing agent must meet the NRCS closing agent requirements. See Subpart U, “Exhibits,” for NRCS closing agent requirements.
- (3) The closing agent may not hold the funds in escrow for more than 30 calendar days. If the agricultural land easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with NRCS instructions. The VC document type will be created in the financial system, liquidating the advance and creating an accounts receivable. Once the payment is received from the closing agent, the funds are returned to the original obligation and would then be available for advance.
- (4) The escrow account must be fully insured by the closing agent to ensure that Federal funds are not lost due to bank failure or otherwise.
- (5) If interest accrues while the funds are deposited in escrow, the closing agent will return the interest accrued, unless otherwise indicated within the cooperative agreement to the NRCS State office. The check will be made payable to the CCC/NRCS.

F. Post-closing Requirements for All Reimbursements and Advances

- (1) Step 1.—Immediately following closing, the eligible entity must ensure that the closing agent—
 - (i) Issues a policy of title insurance on a standard ALTA owner’s policy in the amount of the purchase price as of the time and date of the recording of the agricultural land easement deed to the eligible entity.
 - (ii) Records or files the agricultural land easement deed with local county registrar of land records within 5 business days of conveyance of the agricultural land easement to the holder.
- (2) Step 2.—The closing agent is also responsible for delivering all of the following to the eligible entity:
 - (i) A statement covering the agreed upon closing costs
 - (ii) Original policy of title insurance on the standard ALTA owner’s policy form
 - (iii) Original and one copy of executed settlement statements
 - (iv) Recorder’s certified copies of the agricultural land easement deed, and clearance documents, including subordination agreements
 - (v) IRS 1099 reporting information
- (3) Step 3.—Within 30 days of recordation or with the request for reimbursement, whichever is sooner the eligible entity must provide NRCS a copy of the—
 - (i) Recorded agricultural land easement deed and clearance documents, including subordination agreements.
 - (ii) Final policy of title insurance.

G. Repayments for Cooperative Agreement Violation or Overpayment

The NRCS will notify the eligible entity in writing of the amount due, specifying the exact contract violation or the extent of the overpayment. The notification should advise the eligible entity that they will receive a formal bill from the National Financial Center with information on where to send the payment. The bill should be received in approximately 2 weeks. The NRCS finance staff creates a bill in Internet Billing (IBIL) that provides the necessary information for

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the National Financial Center to produce the actual hardcopy bill that is mailed to the eligible entity.