

Case: LERRD ≤25% TPC	Basic project	Credit Example 2, Compatible work, 30.0
Increase in Federal Costs .....	.....	² 18.75

¹This portion of the compatible external work is not incorporated in the project costs because it would be a disadvantage to the project sponsor to do so (if included, the sponsor would become obligated for an additional 5% up-front cash contribution but without any savings in other local cooperation because there would be nothing left to give credit against).
²This is also the measure of the net savings to non-Federal interests by virtue of crediting.

6. *Combined integral and external works.* For cases where non-Federal interests have accomplished compatible work, some of which is integral with the project as authorized and some of which is outside the original scope (external), determination of the allowable credit is a two step process. Work that is integral to the project is credited first. This, C1, is accomplished in accordance with paragraph 4 above. If, after this step, there remain local cooperation requirements against which credit may be given, credit for compatible external work, C2, is determinable on the following basis.

- a. LERRD ≤20% (TPC+C2)
 C2=Value of compatible work up to 25% TPC-1.25C1

Case: LERRD ≤20% (TPC+C2)	Basic project	Credit Example 3: Compatible work, ¹ 25.0		
		Step 1	Step 2	Final
Non-Federal:				
5% Cash	5.0	5.0	0.94	5.94
LERRD	14.0	14.0	0.0	0.0
Extra cash (toward constr.)	6.0	1.0	0.0	0.0
Construction (actual) .....	.....	5.0	18.75	23.75
Subtotal	25.0	25.0	.....	29.69
Federal:				
Construction	75.0	75.0	0.06	75.06
LERRD .....	.....	.....	14.0	14.0
Subtotal	75.0	75.0	.....	89.06
TPC	100.0	100.0	.....	.....
Adjusted TPC .....	.....	.....	.....	118.75
Excess of Compatible Worth .....	.....	.....	1.25	1.25
Increase in Federal Costs .....	.....	.....	.....	14.06

¹Compatible work consisting of 5.0 integral work credited in first step of calculations plus 20.0 external work credited, to the extent possible, in second step.

- b. LERRD ≥20% (TPC+C2)
 C2=Value of compatible work up to remaining LERRD

Note that total credit, C=C1+C2. Formula 6.a. is derived from C=C1+C2=20% (TPC+C2). An example of crediting in a case involving both kinds of compatible works is provided below. In this example non-Federal interests have accomplished \$25.0 million in compatible work, \$5.0 of which was integral with the project as authorized and \$20.0 of which was external. The integral work is credited in the first step against the extra cash component of the original local cooperation requirements. TPC is unaffected; however, the target against which credit for the external work might be credited has been partially used up. The second step shows only the incremental effects of crediting external work. Using 6.a. the maximum credit that can be given for this work is \$18.75 million. Although other non-Federal requirements are extinguished as a result of the credit for the external work, the non-Federal 5% cash contribution increases by \$0.9375 million, say \$0.94 (5% of \$18.75). In the final step, the incremental effects of crediting the external work are added in with the values obtained in step 1.

PART 241—FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

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AUTHORITY: Sec. 103(m), Pub. L. 99-662, 100 Stat. 4082 (33 U.S.C. 2201 *et seq.*), as amended by Sec. 201, Pub. L. 102-580, 106 Stat. 4797 (33 U.S.C. 2201 *et seq.*)

SOURCE: 54 FR 40581, Oct. 2, 1989, unless otherwise noted.

§ 241.1

33 CFR Ch. II (7-1-06 Edition)

§ 241.1 Purpose.

This rule gives general instructions on the implementation of section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended by section 201 of the Water Resources Development Act of 1992, Public Law 102-588, for application to flood control projects.

[60 FR 5133, Jan. 26, 1995]

§ 241.2 Applicability.

This rule applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE), elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works Responsibilities.

[60 FR 5133, Jan. 26, 1995]

§ 241.3 References.

References cited in paragraphs (f) thru (i) may be obtained from USACE Pub. Depot, CEIM-SP-D, 2803, 52d Avenue, Hyattsville, MD 20781-1102. References cited in paragraphs (d) and (e) may be obtained from the National Information Services, 5285 Port Royal Road, Springfield, VA 22161. References (a), (b) and (c) may be reviewed in your local library or by writing your local Congressman.

(a) Water Resources Development Act, 1986, Public Law 99-662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) Water Resources Development Act 1992, Public Law 102-580, 106 Stat. 4797, 33 U.S.C. 2201 *et seq.*

(c) U.S. Water Resources Council, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

(d) Office of Personnel Management, FPM Bulletin 591-30.

(e) Office of Personnel Management, FPM 591-32.

(f) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-29.

(g) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-121.

(h) U.S. Army Corps of Engineers, Engineer Regulation 1165-2-131.

(i) U.S. Army Corps of Engineers, Engineer Regulation 405-1-12.

[60 FR 5133, Jan. 26, 1995]

§ 241.4 General policy.

(a) Procedures described herein establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the standard non-Federal share that would be required under the provisions of section 103 of Pub. L. 99-662, 33 U.S.C. 2213. The "standard share", as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m) requires that all cost-sharing agreements for flood control covered by the terms of section 103(a) or 103(b) be subject to the ability to pay test. The test must therefore be applied not only to projects specifically authorized by Congress, but to the continuing authority projects constructed under section 14 of the 1946 Flood Control Act (33 U.S.C. 701r), section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act (33 U.S.C. 701g), all as amended.

(c) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance and rehabilitation responsibilities are unaffected by the ability to pay test.

(e) When projects are eligible for credits as outlined in ER 1165-2-29, reference §241.3(e), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal