**Questions & Answers**

**ACEP Interim Rule Webinar**

**January 30, 2020**

*Questions have been edited for clarity. Some involve program details subject to interpretation by USDA Natural Resources Conservation Service (NRCS) that will be addressed in program rules. Questions related to buy-protect-sell are not included here because they will be addressed in a separate, topic-specific webinar. A timestamp indicates where in the webinar video NRCS answered the question. Additional answers are based on American Farmland Trust’s understanding of the program.*

*To view a recording of the webinar, visit* [*www.farmlandinfo.org/media/acep-ale-interim-rule-overview/*](http://www.farmlandinfo.org/media/acep-ale-interim-rule-overview/)*.*

Adjusted Gross Income Requirement

**Q: Could you provide clear instructions on seeking a waiver of the AGI of a landowner? We have a large property with 4 landowners, one of whom is above the AGI limit.**

A: AGI waiver instructions have not been finalized yet for state and field offices. The process will not be program-specific but rather will cover all programs.

**Q: When will the AGI waiver instructions be finalized? We have been told that the ACEP-ALE applications will have a 30-day window and that the grant announcement is imminent. Will we be able to get an AGI waiver with time to make an application?**

A: You can submit your application, the landowner’s AGI will be determined ineligible, and then the waiver process begins. As soon as the waiver process is released, you will be ready to go apply for a waiver. The AGI waiver regulations are released by FSA, not NRCS, and so the timeline is slightly different and the states do not have information about that yet.

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**Q: Will the entity know if an AGI waiver is granted at the beginning of the process/before applying?**

A: NRCS will accept applications with the expectation that it will know more about the waiver process when the program application windows are announced.

Ranking Criteria

**Q: Regarding the new agreements, at what point are individual parcels ranked? Are they ranked against other parcels submitted for funding throughout the state, as was done previously?**

A: Yes. States may establish and advertise one or more application cutoff dates during the fiscal year in coordination with any required national application cutoff dates. Applications are ranked against other parcels submitted for funding by the cutoff dates. Applications received after the cutoff date may be considered in the next application period.

**Q: What would be an example of a state criteria based on geographical differences?**

A: There are a range of possibilities. One example could be the identification of a particular geographic area or land use type that may be in peril. Ranking criteria would then be developed to address that priority.

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**Q: Who determines state ranking items and under what conditions are these items decided? Is there any way to participate in that process?**

A: The NRCS State Office determines the ranking for the state criteria, with input from the State Technical Committee which is comprised of NRCS partners. ACEP-ALE applicants cannot participate in this process.

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Cash Match Contributions

**Q: What happens if the landowner is the party that typically pays for the boundary survey or other transaction costs in our transactions?**

A: The landowner is **not** a client for the ACEP-ALE appraisal and cannot pay for the appraisal under any of the ACEP-ALE options. Procured costs are to be paid by the entity and can be used to meet the non-Federal share.

**Q: Most land trusts take stewardship contributions from the landowner for each project. If funds for stewardship cannot come from the landowner, how will the landowner show their capacity to monitor?**

A: The entity is responsible for monitoring and enforcement, not the landowner.

**Q: In the past we are required to put a dollar figure on our entity contribution in advance of closing. How will these new non-cash items that are incurred later in the process up to and including closing be handled?**

A: Estimates are provided at application. After closing, actual costs will be identified on the Form 230 “Statement to Confirm Matching Funds”. Actual costs of any procured items such as appraisals, surveys, etc. will be identified. If the entity cash contribution and landowner donations will not meet the non-federal share requirements, then receipts or invoices are required to document the non-Federal share.

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Entity Eligibility and Certification

**Q: If you were certified under the 2014 Farm Bill, do you need to re-apply for certification under the 2018 Farm Bill?**

A: No. Certified Entities do not have to get recertified for the 2018 FB and should have received a letter in 2019 stating this and will receive a letter in 2020.

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**Q: How long does certification last?**

A: Certification lasts for the term of the Farm Bill but the agency is not requiring recertification for the 2018 Farm Bill.

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**Q: Do ACEP-ALE co-holders have to eligible entities or is having one co-holder qualify as an eligible entity sufficient?**

A: It depends on whether or not both co-holders will participate in the ACEP-ALE, i.e. receive funds. A co-holder that is a grantee on the deed but does not receive ACEP funding would not have to be an eligible entity.

**Q: If you co-hold easements, do both entities have to be certified to work through the certified entity process?**

A: The agency does not have experience with this scenario so will discuss this internally and get back to you.

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**Q: Can the 25 easements that must be held by an eligible entity be conservation restrictions, or a combination of agricultural easements and conservation easements?**

A: 25 agricultural easements are required. Of the 25, the entity must hold, manage, and monitor a minimum of 10 ACEP-ALE, FRPP, or FPP funded conservation easements in good standing.

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Program, Grant, and Cooperative Agreements

**Q: What are the benefits of entering into an ACEP-ALE program agreement versus a standard cooperative agreement?**

A: ACEP-ALE program agreements establish the framework under which NRCS and an eligible entity will operate and identifies the potential co-holder and third-party right holders that may be party to the acquisition of any ACEP-ALE easement associated with the ACEP-ALE program agreement. ACEP-ALE funds are not obligated to an ACEP-ALE program agreement so therefore the administrative process is streamlined since 2 CFR 200 does not apply so the application materials do not get processed through the FPAC Business Center. Individual parcel applications do not require the Entity Applications and can be submitted throughout the life of the 3-5 year agreement, with a parcel contract executed within about 3 months, if the parcel is selected for funding. In addition, different parcel types (General ALE and GSS) and different transaction types (Standard and Buy-Protect-Sell) can be on the same agreement.

**Q: When do co-holders or 3rd parties sign on to agreements? At the program agreement stage or the individual contract level?**

A: All potential co-holders and 3rd party right holders should be on the program agreement.

**Q: Once a program agreement is signed, can you add additional co-holders/3rd party right holders?**

A: Yes, but are encouraged to include any potential co-holders and 3rd party right holders on the original agreement.

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**Q: As a potential 3rd party holder, would a state department of agriculture need to join in or support an application by a land trust for one of these program contracts?**

A: All co-holders and 3rd party holders must be on the executed ACEP-ALE program agreement. They can be added if needed but you are encouraged to include any potential co-holders and 3rd party right holders on the original agreement.

**Q: If a land trust applies for and receives a program contract without designating [the state department of agriculture] as a 3rd party holder, would that preclude the state from being a 3rd party holder on ACEP-ALE easements funded under that contract?**

A: All co-holders and 3rd party holders must be on the executed ACEP-ALE program agreement. They can be added if needed but you are encouraged to include any potential co-holders and 3rd party right holders on the original agreement.

**Q: Does 2 CFR 200 (“Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” regulations) apply to program agreements?**

A: This regulation does not apply to a program agreement.

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Administration/Miscellaneous

**Q: What is the expected time frame for the release of a new policy manual and updated forms?**

A: The ACEP Program Manual has been released and is available on the FIC website at the following link: <https://farmlandinfo.org/law/agricultural-conservation-easement-program-policy-manual/>

The updated application forms are available on the FIC website at the following link: <https://farmlandinfo.org/sample_documents/acep-ale-application-forms/>

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**Q: When will the new model deed terms be available?**

A: The 2020 minimum deed terms are available on the FIC website at the following link:

<https://farmlandinfo.org/sample_documents/acep-ale-minimum-deed-terms/>

**Q: Can you speak to how NRCS can increase transparency and accountability as an application moves between the state office and the national office or FPAC business center?**

A: In 2019, NRCS developed a standardized letter to address critical tasks in the agreement process so as to keep entities updated.

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**Q: We have a 2019 GSS enrollment which has not yet closed. What will be required in relation to an ALE Plan and/or grasslands management plan?**

A: A GSS Plan is required though other components of an ALE Plan are not unless there is highly erodible land (HEL) which would require a HEL conservation plan. The entity also has the option to use the 2020 Minimum Deed Terms.

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**Q: What is the rationale behind limiting allowable easement modifications to 10% of the original easement area?**

A: NRCS utilizes specific criteria for ranking and selecting parcels for funding. Therefore, the agency must ensure there are minimal impacts on the parcel once the parcel has been funded. Typically, certain rights-of-ways, minor infrastructure changes, and minor adjustments to acreage due to a survey have minimal impacts. If there are significant changes in the area or value of the easement, or other elements that would change the ranking of the parcel, the parcel would need to be reevaluated and possibly not rank high enough for funding.

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**Q: Will there be state application forms?**

A: No. In FY 20, applicants will use the updated ACEP-ALE application forms CPA-41 and CPA-41A. Links to the forms are available on the FIC website: <https://farmlandinfo.org/sample_documents/acep-ale-application-forms/>.