Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:


Instructions: All submissions received must include the agency name, Docket ID number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.


Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Guidelines for Carrying Out Section 221(a)(4) of the Flood Control Act of 1970, as Amended

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) has updated the existing guidance for providing in-kind credit under Section 221(a)(4) of the Flood Control Act of 1970, as further amended by Section 1018 of the Water Resources Reform and Development Act of 2014.

DATES: Effective date: December 16, 2015.

Regions and Comments:

1. Purpose. This regulation provides guidance on the implementation of the in-kind contribution credit provisions of Section 221(a)(4) of the Flood Control Act of 1970, as further amended by Section 1018 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (42 U.S.C. 1962d–5b(a)(4)) (hereinafter referred to as “Section 221”). Section 221(a)(4) of the Flood Control Act of 1970, as amended, and Section 1018 of WRRDA 2014 are provided in Appendix A.


3. Applicability. This regulation applies to all HQUSACE elements, Major Subordinate Commands (MSCs), and district commands having Civil Works responsibility and is effective immediately.

a. The Section 221 crediting provisions apply to the study, design, and construction of water resources development projects authorized in the Water Resources Development Act (WRDA) of 1986 or later laws, including projects initiated after November 16, 1986 without specific authorization in law. In addition, the crediting provisions apply to the correction of design deficiencies for projects authorized prior to WRDA of 1986. Finally, these provisions are also applicable to a project under an environmental infrastructure assistance program.

(1) For a project with a project partnership agreement (PPA) that was executed on or after November 8, 2007, such PPA may be amended to include work by the non-Federal sponsor that has not yet been initiated for credit toward any remaining non-Federal cost share under that agreement.

(2) Furthermore, in general, the crediting provisions of Section 221 will be used in lieu of Section 104 of WRDA 1986 and Section 215 of the Flood Control Act of 1968. However, any eligibility for credit under Section 104 of WRDA 1986 that was approved previously by the Secretary will be honored.

b. The authority for credit under Section 221 is in addition to any other authority to provide credit for in-kind contributions. Section 221 credit may be applied in lieu of other crediting provisions if requested by the non-Federal sponsor.

BIBLIOGRAPHY:

1. The U.S. Army Corps of Engineers (Corps) has updated the existing guidance for providing in-kind credit under Section 221(a)(4) of the Flood Control Act of 1970, as further amended by Section 1018 of the Water Resources Reform and Development Act of 2014.

2. The draft ER was published in the August 28, 2015, issue of the Federal Register (80 FR 52258) for a 30-day comment period. The comment period was extended by 30 days (see 50 FR 60135). The regulations.gov docket number is COE–2015–0013. Sixteen comments were received.

In response to one commenter, the guidance was expanded to clarify that in-kind contributions can be provided once the feasibility cost sharing agreement is executed and the project management plan is developed.

Several commenters noted that the non-Federal sponsor’s costs of Coordination Team participation and audits are no longer considered in-kind contributions that are included as a study or project cost subject to cost sharing. The guidance was expanded to clarify that likewise the Federal Government’s cost of Coordination Team participation and audits are not included in study or project costs for cost sharing purposes although these costs are included in calculating any limit on Federal participation.

One commenter requested that the guidance be modified to allow the value of in-kind contributions to be accepted as cash payments toward the additional 10 percent payment required for navigation projects. This request cannot be accommodated. The law is explicit that credit for in-kind contributions shall not alter any requirement for the non-Federal sponsor to pay 5 percent cash for flood damage reduction project and pay the additional 10 percent cash for navigation projects. This requirement was also specified in the in-kind contribution authority as enacted in WRDA 2007 and identified in the implementing guidance for that earlier provision.

Additional minor, non-substantive, edits were made to provide further clarity.


Theodore A. Brown,
Chief, Planning and Policy Division, Directorate of Civil Works.

ER 1165–2–208
This regulation supersedes ER 1165–2–208 dated 17 February 2012.

   a. In General. Section 221 is a comprehensive authority that addresses
      the affording of credit for the value of in-kind contributions provided by
      a non-Federal sponsor toward its required cost share (excluding the required 5
      percent cash for structural flood damage reduction projects and the additional 10
      percent cash payment over 30 years for navigation projects) if those in-kind
      contributions are determined to be integral to a study or project.
   b. Types of In-Kind Contributions. The types of in-kind contributions eligible
      for credit include planning activities (including data collection and other
      services needed for a feasibility study); design related to construction; and
      construction (including management; mitigation; and construction materials
      and services).
      Eligibility for credit is subject to the non-Federal sponsor complying with all
      applicable Federal laws and implementing regulations, including,
      but not limited to Section 601 of the Civil Rights Act of 1964, as amended (42
      U.S.C. 2000d), and Department of Defense Directive 5500.11 issued
      pursuant thereto; the Age
      Discrimination Act of 1975 (42 U.S.C.
      6102); the Rehabilitation Act of 1973, as
      amended (29 U.S.C. 794), and Army
      Regulation 600–7 issued pursuant
      thereto; and 40 U.S.C. 3141–3148 and
      40 U.S.C. 3701–3708 (labor standards
      originally enacted as the Davis-Bacon
      Act, the Contract Work Hours and
      Safety Standards Act, the Copeland
      Anti-Kickback Act); and the National
      Environmental Policy Act (42 U.S.C.
      4321–4347) and other environmental
      laws and regulations.
   d. In-Kind Memorandum of
      Understanding (MOU).
      (1) Construction. Section 221 provides
      that construction work is eligible for credit as
      long as an in-kind MOU or PPA is
      executed prior to the construction being
      carried out. In addition, the
      construction carried out by the non-
      Federal sponsor is not considered as
      part of the future without project
      condition.
      (a) Projects Specifically Authorized.
      For projects that are or will be
      specifically authorized for construction,
      an In-Kind MOU for construction may
      be executed once there is vertical team
      concurrence with the Tentatively
      Selected Plan (TSP) at the TSP
      Milestone. The TSP Milestone is the
      point at which there is vertical team
      concurrence on the plan that will be
      released in the draft study report for
      public and agency review. Given the
      new SMART Planning Process, the TSP
      Milestone should occur much earlier in
      the planning process than what was
      previously achieved. Requests from
      non-Federal sponsors to execute an
      in-kind MOU for construction prior to the
      TSP Milestone will be considered on a
      case-by-case basis and must be
      approved by the Assistant Secretary of
      the Army (Civil Works). Since each
      project presents its unique
      combination of circumstances, each
      request will require an individual
      evaluation that will include
      consideration of, but not limited to, the
      following criteria:
      (i) Whether the proposed work is a
      modification of an existing Federal
      project;
      (ii) Whether the proposed work will
      follow an existing levee alignment in
      the case of a flood risk management
      project;
      (iii) Whether the proposed work
      balances and integrates the wise use of
      the flood plain to ensure public safety;
      (iv) Whether the proposed work
      significantly reduces flood damage risk
      to human life, property or critical
      infrastructure; and
      (v) Whether the proposed work will
      likely be included in the final project
      recommendation.
      (b) Continuing Authority Program. For
      projects implemented under the
      Continuing Authority Program or a
      regional authority that does not require
      additional authorization to implement
      the project, sections 905(c) and 105(a)(3)
      of WRDA 1986, as amended, provide
      that the first $100,000 of these studies
      is a Federal expense. Therefore, once a
      PMP has been developed and the MSC
      Commander has approved initiation of
      the feasibility study, an In-Kind MOU
      for planning may be executed.
      (4) Any work undertaken by a non-
      Federal sponsor pursuant to an In-Kind
      MOU is at its own risk and
      responsibility. An In-Kind MOU
      provides no assurance that the non-
      Federal sponsor’s work will be
      determined to be integral to the Federal
      project or that any construction
      undertaken by the non-Federal sponsor
      will be included as part of any
      ultimately recommended Federal
      project. Execution of an In-Kind MOU
      in no way obligates the Corps to enter
      into any future agreement for the
      project.
      (5) In general, once a FCAs, design
      agreement, or PPA is executed, further
      use of In-Kind MOUs is not appropriate for
      inclusion of additional in-kind
      contributions under that FCAs, design
      agreement, or PPA, respectively. Special
      circumstances requiring expedited
      review and execution of an amendment to
      an executed agreement should be
      coordinated with the HQUSACE RIT.
      (6) MSC Commanders may approve a
      District Engineer’s execution of Model
      In-Kind MOUs for Construction or for
      Design, provided that the In-Kind MOUs
      do not include any deviations. Any
proposed deviations must be submitted to HQUSACE for approval prior to execution. Models for the In-Kind MOU for construction, including design work, and for design work only are available at http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnerships/Agreements/model_other.aspx.

e. Integral Determinations.

(1) Section 221 provides that credit may be afforded only if the Secretary determines that the material or service provided as an in-kind contribution by a non-Federal sponsor is integral to the study or project. To be integral to the study or project, the material or service must be part of the work that the Federal Government would otherwise have undertaken for the study or for construction of what is ultimately determined to be the Federal project. See Appendix B for additional guidance on criteria and procedures for processing integral determinations.

(2) The approval of integral determinations is delegated to the MSC Commander. The approval authority delegated to the MSC Commander is subject to the full compliance of each integral determination to law and policy and may not be further delegated within the MSC or to the District Commander.

A separate integral determination is not required for planning activities included in the PMP, approved by the MSC Commander, as required for the study effort.

f. Determining the Amount of Credit.

(1) The amount of in-kind contributions that may be eligible for inclusion in shared costs for cost sharing purposes under the applicable cost sharing agreement will be subject to an audit by the Government to determine the reasonableness, allocability, and allowability of such amount.

(2) The creditable amount is the lesser of the costs incurred by the non-Federal sponsor to obtain such materials or services; the market value of such materials or services as of the date that the non-Federal sponsor provides such materials or services for use in the study or project; or the Government’s estimate of the cost for such work if it had been accomplished by the Government. This amount is not subject to interest charges or to adjustment to reflect changes in price levels between the time the in-kind contributions were completed and the time the amount is credited.

(3) Any in-kind contributions performed or paid for by the non-Federal sponsor using funds provided by another Federal agency (as well as any non-Federal matching share or contribution that was required by such Federal agency for such program or grant) are not eligible for credit unless the Federal agency providing the Federal portion of such funds verifies in writing that the funds are authorized to be used to carry out the study or project.

(4) After execution of the applicable FCSA, Design Agreement (DA), or PPA, the non-Federal sponsor will submit to the Government (not less frequently than every 6 months or as provided in the agreement) credit request(s) for eligible in-kind contributions under that agreement. The credit request will contain the following: written certification by the non-Federal sponsor of the payments made to contractors, suppliers, or employees for in-kind contributions; copies of all relevant invoices and evidence of such payments; written identification of costs that have been paid with funds or grants provided by a Federal agency as well as any non-Federal matching share or contribution that was required by such Federal agency for such program or grant; and a written request for credit of a specific amount not in excess of such specified payments. Failure to provide sufficient documentation supporting the credit request will result in a denial of credit in accordance with the terms of the applicable cost sharing agreement.

(5) In-kind contributions are subject to a review (for feasibility level and design activities) or on-site inspection (construction), as applicable, and certification by the Government that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies. The Government will not include in the costs to be shared under the applicable cost sharing agreement or afford credit for any work the Government determined was not accomplished in a satisfactory manner or in accordance with applicable Federal laws, regulations, and policies.

(6) In general, the amount of credit for in-kind contributions that can be afforded under a FCSA or a PPA is limited to the amount of the non-Federal sponsor’s cost share for a different separable element.

(7) Credit for in-kind contributions for planning is limited to credit that can be afforded under a specific FCSA. In other words, excess credit may not be carried over to design or construction of the project. Credit for planning work by the non-Federal sponsor is limited to its 50 percent of planning costs and will be done in accordance with the PMP, under the terms and conditions in the FCSA.

(8) Credit for in-kind contributions provided by a non-Federal sponsor for the construction of a separate element of a project may be applied toward the non-Federal cost share for a different authorized separable element of the same project. Additional Federal appropriations will be required to offset the application of any excess credit to another separable element.

(9) If the value of eligible in-kind contributions exceeds the amount of credit that can be afforded pursuant to the provisions of a PPA (i.e., exceeds the required non-Federal cost share for all features covered by that PPA), only the amount of credit afforded should be included in total project costs. Recalculation of total project costs will be required to exclude from total project costs the value of in-kind contributions that exceed the amount of credit that can be afforded. In addition, the amount excluded will not be considered part of total costs for the purposes of Section 902 of WRDA 1986 calculations.

(10) No reimbursements are authorized for in-kind contributions under Section 221 except as provided in paragraph 4 g., below.

g. Lands, Easements, Relocations, Rights-Of-Way, and Areas for Disposal of Dredged Material (LERRDs). Section 221 does not alter any other requirement for the non-Federal sponsor to provide LERRDs for a project, and the non-Federal sponsor should coordinate with the District to ensure that appropriate real estate interests for the project are acquired. Any LERRDs associated with in-kind contributions determined to be integral to the project will be credited to the project as LERRDs except the LERRs
needed for fish and wildlife mitigation. (The costs of LERRs needed for fish and wildlife mitigation are assigned to the project purpose(s) causing the need for such mitigation and are subject to construction cost sharing established for that project purpose.) In addition, for a navigation project, LERRs are creditable only toward the requirement for the non-Federal sponsor to pay an additional 10 percent of the cost of the general navigation features.

(1) Previously, credit for in-kind contributions was afforded only toward the non-Federal sponsor’s required cash contribution after consideration of the value of LERRDs provided by the non-Federal sponsor. WRRDA 2014 changes how credit for in-kind contributions is calculated. For projects other than navigation projects, to the extent that credit for LERRDs, combined with credit for the value of in-kind contributions exceed the non-Federal share of the cost of a project, WRRDA 2014 provides that the Secretary, subject to the availability of funds, shall enter into a separate reimbursement agreement to reimburse the non-Federal sponsor for the difference between creditable LERRDs and in-kind contributions and the non-Federal cost share. Therefore, at the final accounting for the project, to the extent funds for the project remain available, the Secretary shall execute an agreement with the non-Federal sponsor for reimbursement of the difference.

(2) If funds remaining on a project are insufficient to provide full reimbursement under paragraph g.(1), the non-Federal sponsor may request reimbursement. The Secretary shall prioritize such requests, and enter into reimbursements agreements, in the order the requests were received, as funds become available for reimbursements.

5. Design. Design by the non-Federal sponsor must be performed in accordance with the requirements in ER 1110–2–1150, reviewed in accordance with ER 1110–1–12, and subject to the applicable peer review guidance. In accordance with section 105(c) of WRDA 1986, the costs of design shall be shared in the same percentages as the purposes of such project.

a. If the value of eligible in-kind contributions is less than the non-Federal sponsor’s share of design costs, the non-Federal sponsor must contribute sufficient funds to equal its share of total design costs.

b. If the value of eligible in-kind contributions is greater than the non-Federal sponsor’s share of total design costs, then no cash payment from the non-Federal sponsor is required. The value of all of the non-Federal sponsor’s eligible in-kind contributions (including those in excess of its share of total design costs) will be included in total project costs in the PPA. The maximum amount of credit that may be afforded pursuant to the PPA is limited to the non-Federal sponsor’s cost share under that agreement.

6. Construction.

a. To be eligible for credit, in-kind contributions prior to execution of the PPA must have been provided or performed after execution of an In-Kind MOU. Credit for in-kind contributions will not be afforded toward the non-Federal sponsor’s requirement to provide in cash 5 percent of the costs for structural flood damage reduction projects (either specifically authorized or implemented pursuant to Continuing Authority Program Sections 14, 205, or 208 projects); the non-Federal sponsor’s requirement to pay for betterments or any other work performed by the Government on behalf of the non-Federal sponsor; the non-Federal sponsor’s requirement to provide lands, easements, rights-of-way, relocations, or improvements to enable the disposal of dredged or excavated material required for the project or separable element of the project; or the non-Federal sponsor’s additional payment of 10 percent of the cost of general navigation features for a navigation project.

b. The non-Federal sponsor may not initiate construction following execution of a PPA until the designs, detailed plans and specifications, and arrangements for such work have been approved by the Government. In addition, any proposed changes to approved designs and plans and specifications must be approved by the Government in advance of such construction. Upon completion of construction, the non-Federal sponsor will furnish to the Government a copy of all final as-built drawings.

c. For CAP authorities and regional authorities that are implemented with a single agreement covering design and implementation, if a non-Federal sponsor proposes to provide or perform all or a portion of the design for a project as in-kind contributions, a PPA addressing both design and construction is required.

FOR THE COMMANDER:

Colonel, Corps of Engineers Chief of Staff

Enclosures: 2 Appendices


Appendix B—Criteria for In-Kind Contribution Integral Determinations

Appendix A

Section 221(a)(4) of the Flood Control Act of 1970, as Amended (42 U.S.C. 1962d–5(b)(a)(4))

SEC. 221. WRITTEN AGREEMENT REQUIREMENT FOR WATER RESOURCES PROJECTS.

(a) COOPERATION OF NON-FEDERAL INTEREST.—

(4) Credit for in-kind contributions.

(A) In general. A partnership agreement described in paragraph (1) may provide with respect to a project that the Secretary shall credit toward the non-Federal share of the cost of the project, including a project implemented without specific authorization in law or a project under an environmental infrastructure assistance program, the value of in-kind contributions made by the non-Federal interest, including—

(i) the costs of planning (including data collection), design, management, mitigation, construction, and construction services that are provided by the non-Federal interest for implementation of the project;

(ii) the value of materials or services provided before execution of the partnership agreement, including efforts on constructed elements incorporated into the project; and

(iii) the value of materials and services provided after execution of the partnership agreement.

(B) Condition. The Secretary may credit an in-kind contribution under subparagraph (A) only if the Secretary determines that the material or service provided as an in-kind contribution is integral to the project.

(C) Work performed before partnership agreement.

(i) Construction.

(I) In general. In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of construction carried out by the non-Federal interest before execution of a partnership agreement and that construction has not been carried out as of November 8, 2007, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed for the construction.

(II) Eligibility. Construction that is carried out after the execution of an agreement to carry out work described in clause (I) and any design activities that are required for that construction, even if the design activity is carried out prior to the execution of the agreement to carry out work, shall be eligible for credit.

(ii) Planning.

(I) In general. In any case in which the non-Federal interest is to receive credit under subparagraph (A) for the cost of planning carried out by the non-Federal interest before execution of a feasibility cost-sharing agreement, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating that planning.

(II) Eligibility. Planning that is carried out by the non-Federal interest after the
execution of an agreement to carry out work described in clause (I) shall be eligible for credit.  

(D) Limitations. Credit authorized under this paragraph for a project—  

(i) shall not exceed the non-Federal share of the cost of the project;  

(ii) shall not alter any other requirement that a non-Federal interest provide lands, easements, relocations, rights-of-way, or areas for disposal of dredged material for the project;  


(iv) shall not exceed the actual and reasonable costs of the materials, services, or other things provided by the non-Federal interest, as determined by the Secretary.  

(E) Analysis of costs and benefits. In the evaluation of the costs and benefits of a project, the Secretary shall not consider construction carried out by a non-Federal interest under this subsection as part of the future without project condition.  

(F) Transfer of credit between separable elements of a project. Credit for in-kind contributions provided by a non-Federal interest that are in excess of the non-Federal cost share for an authorized separable element of a project may be applied toward the non-Federal cost share for a different authorized separable element of the same project.  

(G) Application of credit.  

(i) In general. To the extent that credit for in-kind contributions, as limited by subparagraph (D), and credit for required land, easements, rights-of-way, dredged material disposal areas, and relocations provided by the non-Federal interest exceed the non-Federal share of the cost of construction of a project other than a navigation project, the Secretary shall apply the provisions of this paragraph, in lieu of paragraph (B) of subsection (a) taking into account the difference between the non-Federal cost share for the construction carried out by a non-Federal interest and the non-Federal cost share for the construction carried out by the non-Federal interest before the non-Federal interest is to receive credit under paragraph (A) for the cost of construction carried out by the non-Federal interest before execution of a partnership agreement and that construction has not been carried out as of November 8, 2007, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed.  

(ii) PLANNING.  

(I) In General.—In any case in which the non-Federal interest is to receive credit under paragraph (A) for the cost of construction carried out by the non-Federal interest before execution of a feasibility cost-sharing agreement, the Secretary and the non-Federal interest shall enter into an agreement under which the non-Federal interest shall carry out such work and shall do so prior to the non-Federal interest initiating construction or issuing a written notice to proceed.  

(ii) Eligibility.—Planning that is carried out by the non-Federal interest after the execution of an agreement to carry out work described in subclause (I) shall be eligible for credit.  

(iii) in subparagraph (D)(iii) by striking “sections 101 and 103” and inserting “sections 101A(a)(2) and 103(a)(1)(A) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(a)(2); 33 U.S.C. 2213(a)(1)(A));”  

(A) by redesignating subparagraph (E) as subparagraph (H);  

(B) by inserting after subparagraph (D) the following:  

(1) by inserting after subparagraph (D) the following:  

(ii) Authorization as addition to other authorizations. The authority of the Secretary to provide credit for in-kind contributions pursuant to this paragraph shall be in addition to any other authorization to provide credit for in-kind contributions and shall not be construed as a limitation on such other authorization. The Secretary shall apply the provisions of this paragraph, in lieu of paragraph (B) of subsection (a) taking into account the difference between the non-Federal cost share for the construction carried out by a non-Federal interest and the non-Federal cost share for the construction carried out by the non-Federal interest under this subsection as part of the future without project condition.  

(F) Transfer of Credit Between Separable Elements of a Project.—Credit for in-kind contributions provided by a non-Federal interest that are in excess of the non-Federal cost share for an authorized separable element of a project may be applied toward the non-Federal cost share for a different authorized separable element of the same project.  

(G) APPLICATION OF CREDIT.—  

(1) In General.—To the extent that credit for in-kind contributions, as limited by subparagraph (D), and credit for required land, easements, rights-of-way, dredged material disposal areas, and relocations provided by the non-Federal interest exceed the non-Federal share of the cost of construction of a project other than a navigation project, the Secretary, subject to the availability of funds, shall enter into a reimbursement agreement with the non-Federal interest, which shall be in addition to a partnership agreement under subparagraph (A), to reimburse the difference to the non-Federal interest.  

(2) Priorities.—If appropriated funds are insufficient to cover the full cost of all requested reimbursement agreements under paragraph (1), the Secretary shall enter into reimbursement agreements in the order in which requests for such agreements are received; and  

(3) in subparagraph (H) as redesignated by paragraph (4)—  

(A) in clause (i) by inserting “, or to water resources projects authorized prior to the date of enactment of the Water Resources Development Act of 1986 (Public Law 99–662), if correction of design deficiencies is necessary” before the period at the end; and  

(B) by striking clause (ii) and inserting the following:  

(II) Authorization As Addition to Other Authorizations.—The authority of the Secretary to provide credit for in-kind contributions pursuant to this paragraph shall be in addition to any other authorization to provide credit for in-kind contributions and shall not be construed as a limitation on such other authorization. The Secretary shall apply the provisions of this paragraph, in lieu of provisions under other crediting authority, only if so requested by the non-Federal interest.”;  

(b) Applicability.—Section 2003(e) of the Water Resources Development Act of 2007 (42 U.S.C. 1962d–5b note) is amended—  

(1) by inserting “, or construction of design deficiency corrections on the project,” after “construction on the project”; and  

(2) by inserting “, or under which construction of the project has not been completed and the work to be performed by the non-Federal interests has not been carried out and is creditable only toward any remaining non-Federal cost share,” after “has not been initiated”;  

(c) Effective Date.—The amendments made by subsections (a) and (b) take effect on November 8, 2007.  

(d) Guidelines.—  

(1) In General.—Not later than 1 year after the date of enactment of this Act, the Secretary shall update any guidance or
regulations for carrying out section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5(b)(a)(4)) (as amended by subsection (a)) that are in existence on the date of enactment of this Act or issue new guidelines, as determined to be appropriate by the Secretary; and (2) Inclusions.—Any guidance, regulations, or guidelines updated or issued under paragraph (1) shall include, at a minimum—(A) the milestone for executing an in-kind memorandum of understanding for construction that is non-Federal interest; (B) criteria and procedures for evaluating a request to execute an in-kind memorandum of understanding for construction by a non-Federal interest that is earlier than the milestone under subparagraph (A) for that execution; and (C) criteria and procedures for determining whether work carried out by a non-Federal interest is integral to a project. (3) Public and Stakeholder Participation.—Before issuing any new or revised guidance, regulations, or guidelines or any subsequent updates to those documents, the Secretary shall—(A) consult with affected non-Federal interests; (B) publish the proposed guidelines developed under this subsection in the Federal Register; and (C) provide the public with an opportunity to comment on the proposed guidelines. (e) Other Credit.—Nothing in section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5(b)(a)(4)) (as amended by subsection (a)) affects any eligibility for credit under section 104 of the Water Resources Development of 1986 (33 U.S.C. 2214) that was approved by the Secretary prior to the date of enactment of this Act.

Appendix B
Criteria and Procedures for In-Kind Contribution Integral Determinations

B–1. Determining If In-Kind Contributions Are Integral to the Study/Project. Establishing and allowing credit is a two-step process whereby: (1) Eligibility for credit is determined based on whether the in-kind contribution is integral to the study or project, and (2) actual affording of credit is accomplished based on an audit of the non-Federal work by the District Engineer under the terms of the FCWA, DA, or PPA, as appropriate. The level of analysis to determine if work is integral to the project is scalable. For example, work accomplished by the non-Federal sponsor on its own under an In-Kind MOU must be fully analyzed to the non-Federal sponsor on its own under an appropriate in-kind MOU must be fully analyzed to the non-Federal sponsor on its own under an appropriate. The level of analysis to determine if work is accomplished based on an audit of the non-Federal work by the District Engineer under the terms of the FCWA, DA, or PPA, as appropriate. The level of analysis to determine whether the in-kind contribution is integral to the project, i.e., work that the Government otherwise would have performed for the project. In general, for work that will be accomplished after execution of a DA or PPA, it will be clearer what work is required for the project and therefore integral to the project. In general, the Government will be approving plans and specifications prior to the work being undertaken by the non-Federal sponsor.

a. Approval Level of Integral Determinations. Under the terms of Paragraph 4.e. of this regulation, approval of integral determinations is delegated to the MSC Commander. This authority may not be further delegated.
b. Timing of Integral Determinations. (1) In general, the integral determination should be completed immediately prior to review and approval of a DA or PPA, or the MSC District Support Team shall prepare an Integral Determination memo for approval and signature by the MSC Commander.

(2) The Integral Determination approval memo will state whether the work identified in the IDR, or a portion thereof, has been determined to be integral to the project. In addition, the memo should state that the determination of the actual value of the in-kind contributions and affording credit for such amount will be accomplished by the Government in accordance with the limitations, conditions, and terms of the applicable cost sharing agreement.

B–2. Considerations in determining whether the work is integral and creditable: The proposed in-kind contributions consist of work that the Government would have otherwise provided or performed for the project, except for performance of activities that are inherently governmental responsibilities (see paragraph B–3 below). Examples of activities that are acceptable in-kind contributions: Performance of design of all or a portion of the Federal project, including data collection related to design work; demolition of buildings on lands required for the project; performance of design or construction related studies for historic preservation activities except data recovery; performance of cost shared monitoring and adaptation; and construction of a portion of the project.

a. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, the in-kind contributions have been reviewed or inspected, as applicable, and certified by the Government that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies.

b. For any proposed in-kind contributions proposed to be performed after execution of the PPA, the plans and specifications must be approved by the District Commander prior to initiation of the construction work.

c. For materials provided for use in construction work managed by the Government, the materials must meet the minimum Government requirements for materials and any substitute materials have been determined by the Government to be a functional equivalent in accordance with policies governing contractor substitution of materials.

d. The non-Federal sponsor should coordinate with the District to ensure that appropriate real estate interests to support the in-kind contributions and project are acquired.

B–3. The following will not be accepted as in-kind contributions:

a. The proposed in-kind contributions are not part of the Federal project.
b. The proposed in-kind contributions consist of performance of activities that are inherently Governmental responsibilities (e.g., management of Government contracts; performance of District Quality Review,
Agency Technical Review, Independent External Peer Review, or Policy Compliance Review; determining if Value Engineering evaluations are acceptable; determining the LERRD required for the project or separable element of the project; determining the value of LERRD for crediting purposes; or making determinations as to compliance with applicable environmental laws and regulations.

c. The proposed in-kind contributions are features or obligations that are a 100 percent non-Federal sponsor responsibility (e.g., purposes of land reclamation, local drainage, to protect against land or bank erosion, and/or the removal of hazardous, toxic, or radioactive wastes; local service facilities; betterments; acquisition and performance of LERRD, except for the provision of dredged or excavated material disposal facilities for commercial navigation projects; and performance of operation, maintenance, repair, rehabilitation, or replacement (OMR&R).

d. The proposed in-kind contributions have or will create a hazard to human life or property.

e. The proposed in-kind contributions have been determined to be environmentally unacceptable.

f. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, after review or inspection, as applicable, the Government cannot certify the proposed in-kind contributions were accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies.

g. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, the non-Federal sponsor has not performed the necessary OMR&R, resulting in the work no longer functioning as needed for the project.

For further information contact: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

Supplementary Information: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/Unsubsidized Stafford/Ford Loan Master Promissory Note.

OMB Control Number: 1845–0007.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 5,027,286.

Total Estimated Number of Annual Burden Hours: 2,513,643.

Abstract: The Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and Federal Direct Unsubsidized Stafford/ Ford Loan (Direct Unsubsidized Loan) Master Promissory Note (MPN) serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan. An MPN is a promissory note under which a borrower may receive loans for a single or multiple academic years. This revision incorporates changes to information based on regulatory changes, expands repayment plan information, and clarifies information through updated language.


Tomakie Washington, Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

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BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0140]

Agency Information Collection Activities; Comment Request; Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/Unsubsidized Stafford/Ford Loan Master Promissory Note

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 et seq.), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use http://www.regulations.gov by searching the Docket ID number ED–2015–ICCD–0140. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at http://www.regulations.gov by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: In response to this notice will be considered public records. The Federal Direct Stafford/Ford Loan Master Promissory Note and Endorser Addendum

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 et seq.), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 16, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use http://www.regulations.gov by searching the Docket ID number ED–2015–ICCD–0141. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at http://www.regulations.gov by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.