in Historic Areas of Oklahoma (Excluding Urbanized Areas), part 1, Table 10, or *General Social and Economic Characteristics—United States Summary (1980)*, Table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the standard cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The alternative non-Federal share will be calculated and reported to the nearest one tenth of one percent. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Pub. L. 99–662, 33 U.S.C. 2213, as follows:

(1) When EF ≥ 1, non-Federal cost-share = BBF

(2) For structural projects covered by section 103(a), when 0 < EF < 1:

(i) If LERRD equals or exceeds 45 percent:

non-Federal cost-share = 50 − EF × (50 − BBF)

(ii) If LERRD exceeds 20 percent but is less than 45 percent:

non-Federal cost-share = (LERRD + 5) − ER × [(LERRD + 5) − BBF]

(iii) If LERRD is less than 20 percent:

non-Federal cost-share = 25 − EF × (25 − BBF)

(3) For non-structural projects covered by section 103(b), when 0 < EF < 1:

non-Federal cost-share = 25 − EF × (25 − BBF)

(4) In no case however, can the non-Federal share be less than five percent, even if the calculation made in §241.5(c) (1), (2), or (3) results in a smaller number.

(5) NOTE: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas expressed as a percentage of total project costs. The BBF and numerical terms in the equations above are also expressed as percentages.

(d) Additional consideration for high cost projects. For any project where the normal non-Federal share exceeds 35 percent, and the per capita non-Federal cost (*i.e.*, normal non-Federal share of total construction costs divided by the population in the sponsor's geographic jurisdiction) exceeds $300, the non-Federal share under the ability to pay provision will be either LERRD's (*i.e.*, no cash requirement) or 35 percent, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. Projects which qualify under the benefits and income tests will receive the reduction under the high cost criteria only if the high cost criteria results in a greater reduction in the non-Federal cost share.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

§241.6 Deferred payments for certain qualifying projects.

(a) Whenever a project's Eligibility Factor exceeds zero, the project sponsor will be permitted to defer a portion of its share of flood control costs. The maximum allowable amount deferred equals the total non-Federal share less (for structural projects) five percent of total project costs and less (for all projects) any amounts for LERRD paid for or acquired by the sponsor prior to the time the PCA is signed. If for example, the non-Federal share of a structural project = 35.0 percent (after the ability to pay adjustment, if any) of which 10 percent is LERRD already paid for by the local sponsor, the maximum allowable amount to be deferred = 20 percent of project flood control costs (35 less the 5 percent cash requirements, less the 10 percent LERRD already acquired). Deferred payments at the option of the sponsor will be allowed regardless of the outcome of the benefits test described in §241.5(a) whenever the Eligibility Factor exceeds zero.

(b) When EF ≥ 1, the project sponsor may defer as much as the maximum allowable amount as described in §241.6(a).

(c) When 0 < EF < 1, the sponsor may defer a fraction of the maximum allowable amount described in § 241.6(a), where the fraction equals the Eligibility Factor expressed to three decimal places. Continuing the example described in § 241.6(a), if EF = .712, total allowed deferral equals .712 × 20 percent = 14.2 percent of total project costs.

(d) The deferred payment can be made in equal installments over any period of time selected by the non-Federal sponsor, provided that all repayments are made between the end of construction and thirty years thereafter. The amount repaid shall include interest during the repayment period as well as interest for the appropriate portion of the construction period for any amounts deferred prior to the end of construction. The rate of interest shall be determined in accordance with the provisions of section 106 of Pub. L. 99–662, 33 U.S.C. 2216.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

§ 241.7 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the standard share, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Project Cooperation Agreement (PCA) between the Corps of Engineers and the Non-Federal sponsor is signed. For structural flood control projects, the standard level of cost-sharing will not be known until the end of the project (since the standard level as specified in section 103(a), 33 U.S.C. 2213, includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs.

(c) The PCA for all projects subject to the ability to pay test will include a ''whereas'' clause indicating the results of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the PCA (there will be no recalculation of this share once the PCA is signed).

(2) An exhibit attached to the Project Cooperation Agreement (PCA) will include the Benefits Based Floor (BBF) determined in § 241.5(a): the Eligibility Factor (EF) determined in § 241.5(b): If the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share; the formula used in determining the ability to pay share as described in § 241.5(c)(1) through (c)(4); and a display of the non-Federal cost share under the high cost criteria described in § 241.5(d).

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the PCA, the standard share will apply.

(e) *For structural projects.* (1) If the standard LERRD plus cash requirement exceeds the ability to pay cost-share, the Federal Government will make any necessary adjustments in expenditures in the following order: First, paying any cash requirement in excess of five percent of total project costs (if any) that would, under standard cost-sharing, have been the responsibility of the non-Federal sponsor; second, making payments for LERRD; and third, providing for reimbursement at the end of construction. Federal payments for LERRD will be made only after the non-Federal payment for LERRD reaches a percentage of total project costs equal to the ability to pay non-Federal cost-share less the five percent cash requirement. If such arrangements are necessary, the PCA should be prepared to reflect agreement on the best manner available for acquisition of those LERRD over the limiting percentage, or for reimbursing the sponsor upon completion of construction.

(2) The non-Federal sponsor will be required to provide a cash payment equal to the minimum of five percent of estimated project costs, regardless of the outcome of the ability to pay test, unless any or all of the five percent cash requirement is waived by application of the high cost criteria described in § 241.5(d). The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the