

§ 240.7

as originally authorized, a reasonable estimate of what Federal expenditures would have been if that work had been Federally constructed. Costs of subsequent maintenance of the creditable non-Federal flood control work will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or other Federal funds, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount, unless the law governing the grant permits grant funds to be used to meet the non-Federal share of Corps of Engineers cost sharing requirements. However, there will be no corresponding reduction in the costs or benefits considered in the project's economic evaluation.

(f) Regardless of the total amount creditable for compatible work at the time of construction, the local sponsor will be required to contribute 5 percent of the total project cost in cash during construction of the project by the Corps. The credit can only be applied toward the value of needed lands, easements, rights-of-way, relocations, and disposal areas (LERRD) the sponsor would otherwise have to provide plus any additional required cash contribution needed to make the total sponsor contribution equal at least 25 percent of total project costs. As a consequence of crediting non-Federal construction costs against LERRD requirements some costs for LERRD may become a Federal responsibility.

(g) Reimbursement to non-Federal interests will not be made for any excess of costs for compatible works beyond that which can be credited in accordance with § 240.6(f). In this regard, reimbursements pursuant to section 103(a)(3) of Pub. L. 99-662 will not be made should the non-Federal share of project-related costs exceed 50 percent of total project-related costs by virtue of such excess of costs for compatible work.

(h) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those costs, including engineering and overhead, directly attributable to the creditable part of local work may be included in the amount credited.

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(i) Non-Federal costs in connection with LERRD required for the Federal project, regardless of when incurred, will be recognized in computation of the LERRD component of project costs (the credit provisions of section 104, Pub. L. 99-662, have no direct bearing on this).

(j) Non-Federal construction and LERRD costs in connection with compatible work for which credit can be given will, when those costs are incorporated in project costs, be included in their related categories, and total project cost sharing responsibilities will be adjusted accordingly.

§ 240.7 Credit criteria for projects authorized on or before 17 November 1986.

(a) For work accomplished prior to project authorization, the following local improvements can be construed as compatible and considered for credit:

(1) Work that would constitute an integral part of the Federal project as authorized (integral work);

(2) Work that would have been included in the Federal project if it had not been assumed to be part of the without project condition (external work); and

(3) Work that reduces the construction cost of the Federal plan (substitute work).

(b) For local work accomplished subsequent to project authorization, only work started prior to authorization, and for which credit consideration was requested by letter dated on or before 31 March 1987, is eligible for credit under the provisions of section 104. New non-Federal work initiated after project authorization, provided it is on an element of the authorized project, is subject to limited credit under a separate authority. Such work, if the sponsor desires related credit, should be undertaken under formal agreement pursuant to section 215 of the Flood Control Act of 1968 Pub. L. 90-483, approved August 13, 1968, as amended.

(c) All creditable non-Federal costs for compatible work, and related benefits, may be considered in the project economic evaluation and, to the extent the related benefits are required for economic justification, creditable costs

shall be included in total project first costs. In any event, costs for compatible work shall be included in total project first costs to at least the extent that credit is actually given, including LERRD.

(d) Flood control projects authorized in Pub. L. 99-662 subject to sections 903 (a) and (b) or similar provisions 401(b) and 601(b) of that act fall, with respect to crediting non-Federal costs, under this paragraph. (However, pending completion of the relevant procedural requirements for such projects, as set forth in those provisions of the act, section 215 agreements covering proposed non-Federal accomplishment of compatible work on the project will not be executed.) Works eligible for credit will be explicitly addressed in new project reports submitted to the Secretary of the Army pursuant to sections 903 (a) and (b) or similar provisions.

(e) Formulas for determining the amount of allowable credit in accordance with these guidelines are provided in appendix B.

§ 240.8 Credit criteria for projects authorized after 17 November 1986.

(a) In general, for projects authorized after 17 November 1986, work eligible for credit will be explicitly addressed in recommendations to Congress. If a report has been submitted to Congress, work on an element of the recommended Federal project or work that reduces its construction cost can be considered for credit.

(b) Local work initiated after 17 November 1981 or within 5 years before the first obligation of funds for the reconnaissance study began, whichever is later, can be incorporated into the recommended plan for the purpose of economic evaluation. However, credit can be considered only for local work undertaken after the end of the reconnaissance study and for which a credit application has been acted upon prior to construction pursuant to § 240.9 procedures. (For any portion of such work undertaken prior to 17 November 1986, credit may be granted only if a letter application was received prior to 31 March 1987.) If such work was undertaken between 17 November 1986 and the effective date of this regulation, an

after-the-fact application pursuant to the § 240.9 procedures will be accepted.

(c) Reports recommending Federal participation in a plan should include the following, "Future non-Federal expenditures for improvements that, prior to their construction, are found to be compatible with the plan recommended herein, as it may be subsequently modified, will entitle the (*sponsor's name*) to consideration for credit in accordance with the guidelines established under section 104, Pub. L. 99-662."

(d) All costs for non-Federal work incorporated in the recommended plan in accordance with this paragraph shall be included in total project first costs and will therefore be subject to cost sharing. Related benefits will be included in the project's economic evaluation.

§ 240.9 Procedures.

(a) For non-Federal works undertaken prior to 17 November 1986, credit determinations (deferred until these guidelines became effective) will be made by the Secretary in response to the applications received prior to 31 March 1987. Future non-Federal works for which credit may be allowed under the provisions of section 104 of Pub. L. 99-662 are limited, basically, to local works undertaken while Federal preauthorizations studies of a Federal project for the locality are in progress. Credit consideration for such works will be governed by the procedures set forth here. Non-Federal entities desiring credit should confer with the District Engineer and submit a written application to him. The application will include a full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the Federal Plan and determine what part of the proposed local improvement would be eligible for credit. The District Engineer will forward his recommendations through the Division Engineer and the Chief of Engineers to the Assistant Secretary of the Army