



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-I

MAY 11 2017

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1119 of the Water Resources Development Act (WRDA) 2016, Indian Tribes

1. Section 1119 of WRDA 2016 further amends Section 1156 of WRDA 1986 (33 U.S.C. 2310). Section 1032 of the Water Resources Reform and Development Act (WRRDA) of 2014 previously amended Section 1156 to provide that the non-federal cost sharing waiver of up to \$200,000 be adjusted to account for inflation from the date of enactment of WRDA 1986 up to the date of enactment of WRRDA 2014, for studies and projects in specified territories of the United States and in Puerto Rico. Section 1119 of WRDA 2016 extends the waiver provision to Indian Tribes as defined in Section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). Section 1156, as amended, is enclosed.

2. Adjusted Waiver Amount. The adjusted waiver amount under Section 1156, as amended, is \$455,000. The adjusted amount was calculated using an inflation factor based on the composite index for the first quarter of FY 1986 and the composite index for the third quarter of FY 2014 contained in the Civil Works Construction Cost Index System guidance in effect on March 31, 2014 (EM 1110-2-1304).

3. Application of the Waiver Amount. Section 1156 applies to American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and Federally Recognized Tribes (those listed by the Department of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130-5131)). A waiver of up to \$455,000 is applied to the study and a separate waiver of up to \$455,000 is applied to construction of the project.

a. For the Territories and Puerto Rico, the adjusted waiver amount can be applied only to studies for which a Feasibility Cost Sharing Agreement (FCSA) is executed on or after June 10, 2014, and to projects for which the initial construction contract is awarded on or after June 10, 2014.

b. For Federally Recognized Tribes, the adjusted waiver amount can be applied only to studies for which a FCSA is executed on or after December 16, 2016 and to projects for which the initial construction contract is awarded on or after December 16, 2016.

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4. Cost Sharing Procedures.

a. For studies, up to \$455,000 is excluded from shared study costs and funded with federal funds. This excluded amount is included in calculating the maximum federal study cost, which is \$1.5 million absent approval of a higher amount. The new model FCSAs posted on the Civil Works Agreements website include optional language to address the adjusted waiver amount for studies.

b. For construction of projects, cost sharing is first calculated using the general cost sharing criteria. Then the non-Federal sponsor's cash requirement, including the 5 percent minimum cash contribution required for structural flood risk management projects, is reduced by up to \$455,000, or to zero if the non-Federal cash requirement is less than \$455,000. As the model Project Partnership Agreements are updated, they will include optional language to address the adjusted waiver amount for construction of projects. Model Project Partnership Agreements are posted on the Civil Works Agreements website.

5. Executed FCSA's or Project Partnership Agreements. For studies or projects to which the adjusted waiver amount applies, existing agreements may be amended to adjust the amount of the Section 1156 waiver, or to add waiver language for the agreements involving Puerto Rico or Federally Recognized Tribes, consistent with the guidance in this memorandum. Review and approval of an amendment for this purpose is delegated to the Major Subordinate Commander and may not be further delegated. The district commander is authorized to execute the amendment after its approval.

6. Applicability to Study and Project Categories. The Section 1156 waiver is applicable to specifically authorized water resources development studies and projects, continuing authorities program (CAP) studies and projects, and water resources development studies and projects authorized by the Tribal Partnership Program (Section 203 of WRDA 2000, as amended, 33 U.S.C. 2269). It is not applicable to environmental infrastructure studies or projects, watershed studies under the Section 203 Tribal Partnership Program, or to watershed and river basin assessments under Section 729 as amended (33 U.S.C. 2267a).

7. This guidance supersedes the Implementation Guidance for Section 1032 of the Water Resources Reform and Development Act of 2014 dated December 3, 2014. This guidance will be incorporated into ER 1105-2-100 when the ER is updated.

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8. Questions regarding this implementation guidance should be directed to Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415, Ada.Benavides@usace.army.mil.



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Encl

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Section 1156 of the Water Resources Development Act of 1986, as amended by Section 1032 of the Water Resources Reform and Development Act of 2014 and by Section 1119 of the Water Resources Development Act of 2016 (33 U.S.C. 2310)

(a) In General.—The Secretary shall waive local cost-sharing requirements up to \$200,000 for all studies and projects--

(1) in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, and the Trust Territory of the Pacific Islands; and

(2) for any Indian tribe (as defined in section 102 of the Federally Recognized Tribe List Act of 1994 (25 U.S.C. 5130)).

(b) Inflation Adjustment.—The Secretary shall adjust the dollar amount specified in subsection (a) for inflation for the period beginning on November 17, 1986, and ending on the date of enactment of this subsection [June 10, 2014].