



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

CECW-CO

JUL 11 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1111 of the Water Resources Development Act of 2016 (WRDA 2016), Harbor Deepening

1. Section 1111 of WRDA 2016 further amends Section 101(a) of WRDA 1986 to change the cost sharing of navigation projects for harbors or inland harbors, or separable elements thereof, for which a contract for physical construction has not been awarded before June 10, 2014 (the date of enactment of the Water Resources Reform and Development Act of 2014). For such projects, or separable elements, the non-federal sponsor is required to provide during construction:

a) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

b) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 50 feet; plus

c) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 50 feet.

Section 101(a) and (b) of WRDA 1986, as amended (33 U.S.C. 2211(a) and (b)), and Section 1111 of WRDA 2016 are enclosed.

2. The new cost sharing applies only to navigation projects for harbors or inland harbors where the first construction contract for the project, or separable element thereof, is awarded after June 9, 2014. In accordance with the current Budget EC 11-2-210, if an investment increment is part of an authorized project, but is physically separable from other features of the authorized project, and is not covered under an already-executed Project Partnership Agreement (PPA) for other features, that increment will be treated as a separable element. In such cases, if the first construction contract for the separable element is awarded after June 9, 2014, the new cost sharing applies.

3. The model PPA for navigation is currently under revision, and the revised model will reflect the new cost sharing. In the case of a project for which a PPA was executed prior to enactment of WRDA 2016 on December 16, 2016, but the first construction contract was not awarded until after June 9, 2014, the PPA may be amended to reflect the new cost sharing for the portion of a project with depths between 20 feet and 50

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feet. The district should submit the amendment through the Major Subordinate Command (MSC) to the appropriate Headquarters Regional Integration Team for Headquarters review and approval.

4. The new cost sharing enacted in WRDA 2016 did not change the cost sharing for utility relocations under Section 101(a)(4) of WRDA 1986. Section 101(a)(4) provides that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-federal interests under Section 204 of WRDA 1986, as amended, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-federal interests. Section 214(1) of WRDA 1986 defines a "deep-draft harbor" as a harbor which is authorized to be constructed to a depth of more than 45 feet. Therefore, the requirements for cost sharing for utility relocations as provided in Section 101(a)(4) of WRDA 1986 apply to harbors with authorized depths of more than 45 feet.

5. In the case of construction of dredged material placement facilities required for placement of dredged material from operation and maintenance of a navigation project, the cost sharing applicable to construction of that project, or separable element thereof, applies. In other words, the new cost sharing does not apply to construction of dredged material placement facilities if the first contract for the underlying project, or separable element thereof, was awarded before June 10, 2014.

6. Future budgetary data and documents, as well as any other project documents, should reflect the appropriate cost-sharing. Project specific questions will be directed from the district through their MSC to the appropriate HQUSACE Regional Integration Team.



JAMES C. DALTON, P.E.  
Director of Civil Works

Encl

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**Section 101 (a) and (b) of WRDA 1986, as amended (33 U.S.C. 2211 (a) and (b)).**

(a) Construction.

(1) Payments during construction. The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before the date of enactment of the Water Resources Reform and Development Act of 2014 [enacted June 10, 2014] shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

(B) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 50 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 50 feet.

(2) Additional 10 percent payment over 30 years. The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 106. The value of lands, easements, rights-of-way, and relocations provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.

(3) Lands, easements, and rights-of-way. Except as provided under section 906(c), the non-Federal interests for a project to which paragraph (1) applies shall provide the lands, easements, rights-of-way, and relocations (other than utility relocations under paragraph (4)) necessary for the project, including any lands, easements, rights-of-way, and relocations (other than utility relocations accomplished under paragraph (4)) that are necessary for dredged material disposal facilities.

(4) Utility relocations. The non-Federal interests for a project to which paragraph (1) applies shall perform or assure the performance of all relocations of utilities necessary to carry out the project, except that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-Federal interests under section 204, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interests.

(5) Dredged material disposal facilities for project construction. In this subsection, the term "general navigation features" includes constructed land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for project construction and for which a contract for construction has not been awarded on or before the date of the enactment of this paragraph [enacted Oct. 12, 1996].

(b) Operation and maintenance.

(1) In general. The Federal share of the cost of operation and maintenance of each navigation project for a harbor or inland harbor constructed by the Secretary pursuant to this Act or any other law approved after the date of the enactment of this Act [enacted

Nov. 17, 1986] shall be 100 percent, except that in the case of a deep-draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of such project over the cost which the Secretary determines would be incurred for operation and maintenance of such project if such project had a depth of 50 feet.

(2) Dredged material disposal facilities. The Federal share of the cost of constructing land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for the operation and maintenance of a project and for which a contract for construction has not been awarded on or before the date of the enactment of this paragraph shall be determined in accordance with subsection (a). The Federal share of operating and maintaining such facilities shall be determined in accordance with paragraph (1).

**SEC. 1111. of WRDA 2016. HARBOR DEEPENING.**

Section 101(a)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(a)(1)) is amended—

- (1) in the matter preceding subparagraph (A) by striking “the date of enactment of this Act” and inserting “the date of enactment of the Water Resources Reform and Development Act of 2014 (Public Law 113–121)”;
- (2) in subparagraph (B) by striking “45 feet” and inserting “50 feet”; and
- (3) in subparagraph (C) by striking “45 feet” and inserting “50 feet”.