

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance Letter No. 13, Use of Federal Funds to Meet Local Cost Sharing Requirements

1. Office of Management and Budget (OMB) and the Assistant Secretary of the Army (Civil Works) (ASA(CW)) have directed that HQUSACE incorporate language into Local Cooperation Agreements (LCA's) which prohibits, in principle, the use of Federal funds by local sponsors to satisfy any part of the non-Federal cost share. Effective immediately, you are to insert the following language at the end of "Article II - Obligation of the Parties" in all new LCA's on regularly authorized, as well as all Continuing Authority, New Construction Starts:

No Federal funds may be used to meet the local sponsor's share of project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency.

2. This policy also applies to Section 215 (P.L. 90-483, as amended) projects and project work performed under of Sections 104 and 204(e) of P.L. 99-662. Appropriate language should be inserted into any agreements which are currently being developed or existing agreements which require modifications for other reasons. This can be done as follows:

a. For Section 104 project work, the District Commander should advise the local applicant of the limitations on credit in his letter notifying the applicant of the ASA(CW)'s approval of their Section 104 application. (See ER 1165-2-29, "General Credit for Flood Control", dated 18 November 1987, Sections 6.e. and 9.c.) Any credit approved by ASA(CW) would be carried into an LCA on the project and such credit would be limited, under the terms of the LCA (i.e., the language in paragraph 1 above).

b. For Section 204(e) Agreements, insert the required language as a new section under Article 6 - Obligations of the Local Sponsor (See ER 1165-2-120, "Reimbursement for Advance Non-Federal Construction of Authorized Federal Harbor and Inland Harbor Improvements", Appendix B.).

c. For Section 215 Agreements, insert the following as a section under Article 9, Additional Responsibilities of the Cooperating Agency (See ER 1165-2-18, "Reimbursement for Non-Federal Participation in Civil Works Projects," dated 1 November 1988, Appendix B.):

No Federal funds may be used to meet the Cooperating Agency's share of the proposed work under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Granting Agency.

You do not need to modify previously executed agreements for the express purpose of incorporating the new language. However, the presence or absence of the required language in any such agreement is not controlling; provisions of Federal Appropriations Law will still govern.

3. The required language underscores the principle that local sponsors must rely on non-Federal funding sources to comply with the cost sharing requirements of P.L. 99-662. The restriction applies to any intended use of Federal funds by the local sponsor to either acquire lands, easements, or rights-of-way; or perform construction in advance of a Federal project; or perform or assure performance of relocations; or to satisfy cash contributions to construct a project. The language precludes use of any Federal funds for the non-Federal share of projects, unless such use is authorized by law and confirmed in writing by the responsible granting Federal agency. A letter permitting such use must be secured from the granting Federal agency and furnished with the draft LCA package referred to HQUSACE.

4. The local sponsors shall fully disclose all sources of funds that will be used to accomplish the items of local cooperation, under the provisions of EC 1105-2-280. Any undisclosed use of Federal funds by a sponsor without written approval from the granting agency would be in violation of the terms of the LCA and will result in either termination or suspension of the project, and possible legal action to recover such funds. Similarly, any undisclosed use of Federal funds to accomplish any work under Section 215 of P.L. 90-483, as amended; or Section 104 of P.L. 99-662; or Section 204(e) of P.L. 99-662, would be in violation of the terms of the related agreements and would result in loss of credit and/or reimbursement eligibility.

5. If you seek more background on the policy, consult Principles of Federal Appropriations Law, GAO, 1982, Sections 13-25 to 13-28, which your Counsel and/or Comptroller Offices should have access to. We have incorporated the policy and specific language in the upcoming ER 1165-2-131 and appended Model LCA's.

FOR THE COMMANDER:

PATRICK J. KELLY
Brigadier General, USA
Director of Civil Works