



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

CECW-P (1105)

16-Jan-2024

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Update for Section 22 of the Water Resources Development Act (WRDA) of 1974, as amended (42 U.S.C. 1962d-16)

1. References:

a. Section 22 of the Water Resources Development Act (WRDA) of 1974, as amended (42 U.S. Code 1962d-16).

b. Engineer Regulation (ER) 1105-2-100, Planning Guidance Notebook, 2000.

c. Section 160 WRDA 2020, Definition of Economically Disadvantaged Community.  
<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll5/id/36002>

d. Section 8119 WRDA 2022, Technical Assistance.

2. The purpose of this memorandum is to provide further guidance on the provision of assistance under the Section 22 Planning Assistance to States (PAS) program to economically disadvantaged communities (EDC), in accordance with Section 8119 of WRDA 2022. This memorandum supersedes the Memorandum dated 23 May 2023, Planning Update for Section 8119 of the Water Resources Development Act of 2022 (WRDA 2022), Technical Assistance.

3. Section 8119 of WRDA 2022 further amends Section 22 of WRDA 1974, as amended (42 U.S.C. 1962d-16), to authorize the Secretary to waive the collection of fees for any local government to which assistance is provided under Section 22 of WRDA 1974, as amended, for economically disadvantaged communities as defined by the Secretary under Section 160 of WRDA 2020. Implementation guidance (IG) for Section 160 of WRDA 2020, to include the definition of EDC, is published here:  
<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll5/id/36002>. Teams will use the definition provided in the IG and the Council on Environmental Quality's Climate and Economic Justice Screening tool (CEJST) as well as data from U.S. Census and the U.S. Bureau of Labor Statistics to identify eligible EDC(s).

4. Eligible entities that meet the definition of EDC as defined in the IG for Section 160 of WRDA 2020 may request technical assistance and comprehensive water resource planning support under the PAS program at full federal cost. A Letter of Intent from the non-federal interest requesting assistance must be submitted to the respective District, identifying the EDC(s), the PAS assistance requested, and the benefit of such assistance to the eligible EDC(s). The District will determine and document eligibility under the definition of EDC

CECW-P

SUBJECT: Planning Update for Section 22 of the Water Resources Development Act (WRDA) of 1974, as amended (42 U.S.C. 1962d-16)


provided in the IG for Section 160 of WRDA 2020 as well as document how the PAS assistance will benefit the EDC(s).

5. The approval to apply the Section 8119 fee waiver to any PAS effort is with the HQ PAS Program Manager. The District must submit to their Major Support Command (MSC) PAS Program Manager the LOI, a determination of eligibility, written description of the benefits of the PAS assistance to the EDC(s), and a scope of work with tasks, costs, and schedule. The scope of work is to be developed in coordination with the requesting entity. The MSC PAS Program Manager will review the documentation and provide to the HQ PAS Program Manager for approval to apply the Section 8119 fee waiver. Upon approval, the District will enter the project into the PAS Database to request funding and commence work. A Frequently Asked Questions document is enclosed for further assistance. Any further questions about the applicability of the Section 8119 fee waiver should be coordinated through the MSC PAS Program Manager to the HQ PAS Program Manager.

6. In any case where the cost-share is waived because the non-federal interest is an eligible EDC per the IG for Section 160 of WRDA 2020 and the PAS assistance is provided at full federal expense, a Section 22 Agreement and accompanying documentation will not be required. Required documentation is listed in paragraph 5.

7. This policy does not apply to any case where the non-federal interest is not an eligible EDC per the IG for Section 160 of WRDA 2020 but is nevertheless eligible for a cost-share waiver under Section 1156 of WRDA 1986, as amended (33 U.S.C. 2310), as applied to the PAS program. Such cases should be referred to the appropriate HQUSACE Regional Integration Team for further coordination.

7. Proponent. The point of contact for this memorandum is the National PAS Program Manager, CEIWR, Ms. Sharon M. Sartor, 202-809-6142 or [sharon.m.sartor@usace.army.mil](mailto:sharon.m.sartor@usace.army.mil).

 Edward E. Belk, Jr PE  
2024.01.16 11:44:21  
-05'00'

EDWARD E. BELK, JR. P.E.  
Director of Civil Works

DISTRIBUTION:

COMMANDERS, REGIONAL BUSINESS AND PROGRAM DIRECTORS  
GREAT LAKES AND OHIO RIVER DIVISION, CELRD  
MISSISSIPPI VALLEY DIVISION, CEMVD  
NORTH ATLANTIC DIVISION, CENAD  
NORTHWESTERN DIVISION, CENWD  
PACIFIC OCEAN DIVISION, CEPOD  
SOUTH ATLANTIC DIVISION, CESAD  
SOUTH PACIFIC DIVISION, CESP  
SOUTHWESTERN DIVISION, CESWD

**Planning Assistance to States**  
**Section 8119 WRDA 2022**  
**Frequently Asked Questions**

**1. What is the process to apply the Section 8119 fee waiver? What is the required documentation?**

Eligible entities that meet the definition of economically disadvantaged community (EDC) as defined in the Implementation Guidance (IG) for Section 160 of the Water Resources Development Act of 2020 (WRDA 2020) may request technical assistance and comprehensive water resource planning assistance under the PAS program at full federal cost through providing a Letter of Intent to the district. The Letter of Intent (LOI) should clearly indicate the EDC(s), the assistance requested and the benefit of the PAS assistance to the EDC(s). Upon receipt of the LOI, the district would review and document eligibility of the EDC(s) identified per the definition in the IG for Section 160 WRDA 2020. The district would then work with the requesting entity to scope the requested assistance and verify and document the benefits to the eligible EDC(s). A PAS Agreement is not required where the Section 8119 fee waiver is applied, however the required documentation listed below must be prepared by the district, reviewed by the MSC PAS Program Manager, and submitted to the HQ PAS Program Manager for approval to apply the Section 8119 fee waiver. PAS Studies under the Section 8119 fee waiver must be in compliance with guidance for the PAS program as provided in Engineer Regulation (ER) 1105-2-100, the Planning Guidance Notebook (PGN), or its successor, as well as the Guidance provided on the [PAS website](#).

Required Documentation must be uploaded to the PAS Database and includes:

- Letter of Intent (see enclosed example template)
- Eligibility Determination for EDC prepared by the district (requestor only needs to meet one of the criteria below)
  - If requestor is a Federally recognized Tribe, a U.S. Territory, or in the proximity of an Alaskan Native Village no requirement for documentation is required
  - Screenshot from the Climate and Economic Justice Screening Tool (CEJST) of study area;
  - Data from U.S. Census or Bureau of Labor Statistics identifying study area as having a low per capita income of 80 percent of the national average; and/or
  - Data from U.S. Census or Bureau of Labor Statistics identifying study area as having an unemployment rate at least 1 percent greater than the national average for the most recent 24-month period for which data are available.
- Written description of benefits of the PAS assistance to the EDC(s) prepared by district
- Scope of work developed in coordination with the requesting entity. Scope must identify if the PAS study is Comprehensive Plan or Technical Assistance.

**2. Can a non-federal interest, such as a county, request assistance on behalf of an economically disadvantaged community?**

A non-federal public body that is eligible to partner under PAS [State, group of States, non-federal interest working with a State or group of States, local government or regional coalition of governmental entities] may request assistance under PAS on behalf of the eligible EDC(s). The NFI must submit an LOI requesting assistance under PAS for either comprehensive water resources planning or technical assistance. The Letter of Intent (LOI) should clearly indicate the EDC(s) for which the NFI is requesting assistance, the assistance requested and the benefit of the PAS assistance to the EDC(s). Upon receipt of

the LOI, the district would review and document eligibility of the EDC(s) identified per the definition in the IG for Section 160 WRDA 2020. The district would then work with the requesting entity to scope the requested assistance and verify and document that the primary benefits of the PAS would be to the eligible EDC(s). A PAS Agreement is not required where the Section 8119 fee waiver is applied, however the required documentation listed below must be prepared by the district, reviewed by the MSC PAS Program Manager, and submitted to the HQ PAS Program Manager for approval to apply the Section 8119 fee waiver. PAS Studies under the Section 8119 fee waiver must be in compliance with guidance for the PAS program as provided in Engineer Regulation (ER) 1105-2-100, the Planning Guidance Notebook (PGN), or its successor, as well as the Guidance provided on the [PAS website](#).

Required Documentation must be uploaded to the PAS Database and includes:

- Letter of Intent from non-federal interest identifying the EDC for which assistance is being requested (see enclosed example template)
- Eligibility Determination for EDC prepared by the district (community only needs to meet one of the criteria below)
  - If requestor is a Tribe, Territory, or in the proximity of a Alaskan Native Village, no requirement for documentation
  - Screenshot from the Climate and Economic Justice Screening Tool (CEJST) of study area; and/or
  - Data from U.S. Census or Bureau of Labor Statistics identifying study area as having a low per capita income of 80 percent of the national average; and/or
  - Data from U.S. Census or Bureau of Labor Statistics identifying study area as having an unemployment rate at least 1 percent greater than the national average for the most recent 24-month period for which data are available.
- Written description of benefits of the PAS assistance to the EDC(s) prepared by district
- Scope of work developed in coordination with the requesting entity. Scope must identify if the PAS study is Comprehensive Plan or Technical Assistance.

### **3. Can the Section 8119 fee waiver be applied retroactively?**

No, the Section 8119 fee waiver cannot be applied retroactively.

### **4. Is the NFI eligible for the Section 8119 fee waiver if a portion of the study area meets the Section 160 definition (i.e., only a portion of census blocks in the area are identified as disadvantaged)?**

A study area may encompass both eligible and non-eligible tracts under the definition of EDC provided in the IG for Section 160 of WRDA 2020. In the case that more than 51% of the study area is eligible as an EDC, the Section 8119 fee waiver can be applied. As described in the preceding responses, the process would be the same. An LOI from an NFI eligible to partner with USACE under PAS must be submitted to the district and the district must prepare the required documentation as listed above. The required documentation will be submitted from the district to the Division PAS Program Manager for review, and subsequently submitted to the HQ PAS Program Manager for approval to apply the Section 8119 fee waiver.

In cases where the 51% threshold is not met, but the PAS assistance would provide benefits specifically to eligible EDC(s), the district can choose to follow the process outlined above for consideration by the Division and HQ PAS Program Managers. An example may be that while 51% of the study area is not an

eligible EDC(s), a large concentration of the population within the study area is an eligible EDC(s) that would benefit from the PAS assistance.

**5. Can a nonprofit entity request assistance on behalf of an eligible economically disadvantaged community?**

A nonprofit entity may request assistance on behalf of an eligible economically disadvantaged community. Per current implementation requirements for Section 22, 19 JUL 2018 Memorandum, Implementation Requirements for Section 22 of the Water Resources Development Act of 1974, as amended, and Non-Federal Interests, a nonprofit entity is required to provide a letter from the applicable State or local government consenting to the provision of Section 22 assistance to the nonprofit entity, respective to Comprehensive Plans or Technical Assistance. This letter requirement remains if a nonprofit entity were to request assistance on behalf of an EDC(s) and would need to be enclosed with the LOI.

**6. Is there an expectation that additional public involvement will occur when a PAS study is conducted with the fee waiver?**

The district PAS team can discuss inclusion of public involvement as a task for the PAS study. It will not be a requirement for all PAS studies but should be considered and discussed with the partner during scoping of the PAS study. The EDC(s) receiving benefits of the PAS study should be consulted during the scoping of the PAS study.

**7. Will the policy for budgeting be amended in consideration of the Section 8119 fee waiver?**

At present, budgeting will remain the same and PAS studies providing benefit to EDC(s) will be prioritized amongst other Administration priorities. Depending on future budgets for the PAS Program, more stringent criteria for ranking projects and a project proposal period may be implemented.

**8. Resources for engaging EDC(s)**

- See the USACE Environmental Justice website: <https://www.usace.army.mil/Missions/Environmental-Justice/>
- Collaboration PCX resources: <https://usace.dps.mil/sites/KMP-CPP>
- Planning Toolbox – Outreach Resources: <https://planning.erc.dren.mil/toolbox/processes.cfm?Id=228&Option=Public%20Outreach%20and%20Engagement>
- FRM Portal: [https://team.usace.army.mil/sites/HQ-CO/PDT/FRMP/USACE Flood Risk Mgmt Portal/FRM%20Mission%20Portal.aspx](https://team.usace.army.mil/sites/HQ-CO/PDT/FRMP/USACE_Flood_Risk_Mgmt_Portal/FRM%20Mission%20Portal.aspx)