United States Department of Agriculture

NRCS

Natural Resources Conservation Service
P.O. Box 2890
Washington, D C 20013

EMERGENCY WATERSHED PROTECTION PROGRAM MANUAL (EWPPM)
390 – EWPPM
Circular No. 2

SUBJECT: PDM – Implementation of Emergency Watershed Protection Program Floodplain Easement (EWPP-FPE) Enrollment

Purpose. To rescind all prior guidance on implementation of EWPP-FPE enrollments including Circular 1, dated November 5, 2008, and to issue new implementation guidance on enrollment of new EWPP-FPE's.

Effective Date. This Circular is effective immediately

Background. Initial guidance for implementation of the Floodplain Easement component of the Emergency Watershed Protection Program was issued as Circular 4 to the National Watersheds Manual (NWM) dated June 20, 1997. The policy was revised with a memorandum from Warren Lee dated June 29, 1998.

Because there have been significant changes in the WRP business model and processes since the EWPP-FPE guidance was last issued, policy was further updated by Circular 1 to the National EWPP Manual, dated November 5, 2008, to bring the EWPP-FPE business model and processes in line with WRP to the extent practicable and allowable by statute.

The policy in Circular 1 placed significant restrictions on the level of restoration that was to be allowed on floodplain easements enrolled in EWPP. This policy has been reconsidered and adjusted to restore the floodplain to its natural state, as practical.

Cancel. Circular Number 1, dated November 5, 2008. All prior policy issued by letter, bulletin, Circular or memorandum that was rescinded by Circular 1 remains cancelled.

Revised Policy. The current WRP business process, as issued by Circular 50, Title 440, Conservation Programs, will be followed for enrollment of floodplain easements in the EWPP, unless otherwise changed by this Circular. Once it is deployed, EWPP floodplain easements will be managed in the new Easement Management Business Tool. Long term management, maintenance, and enforcement of easements enrolled in EWPP-FPE will follow existing WRP policy.

The current Interim Easements Data Entry tool will be revised to allow for the entry of new EWPP-FPE applications. All States shall utilize this tool to manage and track applications.

A. Applications

Landowners may only enroll land in EWPP-FPE through a permanent easement. Landowners must apply for the EWPP-FPE using the Application for Long-Term Contracted Assistance (Form AD-1153). Applications for enrollment of land in a EWPP floodplain easement will be accepted during an announced sign-up period when funds are made available by Congress.

Each State must develop and utilize an application checklist to ensure that all required information for the applicant is provided before the application is considered for funding. Evaluation of the applications will involve three primary steps:

(1) Gathering landowner information and preliminary investigations.
(2) Onsite land eligibility determination, environmental ranking, and developing preliminary plan information.
(3) Selecting applications for funding.

STEP 1

The items that must be completed before moving the application forward in the process are:

a. Determine landowner eligibility:
   (1) Landowner must provide a copy of the vesting deed to the land.
   (2) If the landowner is an entity:
      (a) The entity must provide to the Farm Service Agency (FSA) a list of the individuals that comprise the entity including the percent of ownership for each individual.
      (b) The entity must provide documents to FSA and the Natural Resources Conservation Service (NRCS) that show the entity to be a legal and valid entity in the State and which member(s) has the authority to sign contractual documents on behalf of the entity.
      (c) The EWPP is not a Farm Bill conservation program and applicants are not required to meet the Adjusted Gross Income, Highly Erodible Land or Wetland Conservation requirements of the Farm Bill.
      (d) The 7 year ownership provisions in the WRP statute do not apply to EWPP Floodplain easements.
b. Conduct a preliminary title search to determine if there are title issues that would preclude or delay enrolling the land in EWPP-FPE
c Conduct a preliminary records search as part of Environmental Due Diligence/All Appropriate Inquiry (AAI) to ensure there are no potential hazardous substance issues that would preclude or delay enrollment of the land in EWPP-FPE or affect the easement value.

NOTE: Generally, NRCS will secure preliminary title search and preliminary record search services from a non-NRCS vendor. These services will be procured using an appropriate method, and funds will be obligated directly to that contract

STEP 2

After all items required in Step 1 have been completed and the application is cleared to continue forward in the enrollment process, then begin Step 2 activities. An on site investigation will be conducted to:

a. Determine land eligibility.
b. Conduct preliminary planning activities.
c. Complete the environmental ranking.

To be eligible for enrollment in EWPP-FPE the land must:

a. Be located within the watershed that is designated as eligible for participation. A minimum of 65 percent of the acreage proposed for enrollment must be located within the authorized watershed; and
b. Have been damaged by flooding at least twice within the previous 10 years or at least once in the last twelve months; and
c. Be other lands within the floodplain that are functionally dependent on acres eligible under Step 1, b. above, or that would improve the practical management of the easement. No more than one acre of other land may be enrolled for each acre of land eligible under Step 1, b above;
d. Lands that would be inundated or adversely impacted as a result of a dam breach; and
e. Be privately owned, or owned by State or local units of government. Federally owned lands are not eligible for enrollment.

If the land is determined to be eligible for enrollment, the site will be evaluated and the ranking worksheet completed. The Hazardous Substance Checklist, Preliminary Certificate of Inspection and Possession, National Historic Preservation Act Assessment, National Environmental Policy Act Environmental Assessment, and an Endangered Species Act Assessment must also be completed.

A preliminary restoration plan will be developed during the on-site visit. The purpose of the preliminary plan is to document that the proposed restoration meets the objectives of the landowner and the requirements of the EWPP-FPE as determined by NRCS. The landowner will sign the preliminary restoration plan to document that they are in concurrence with the proposed restoration. The plan will also include an estimate of restoration costs which will be used for ranking purposes only. This plan will not be used to estimate costs for restoration fund obligation because it is only preliminary and not generally accurate enough for this purpose. **CRITICAL:** Restoration on floodplain easements will include all necessary conservation practices, measures and activities required to restore the floodplain functions and values to the natural conditions to the greatest extent practicable. Detailed restoration policy is provided with this circular.

STEP 3

Step 3 of the application process involves selecting the applications that will be offered tentative funding approval. The State Conservationist (STC) will list all applications received during the announced sign-up period in rank order, beginning with the highest ranked easement first.

Once applications are listed in rank order, the STC will select the number of applications that can be funded based on the guidance provided in the Allowance letter.

Compensation for easements will utilize the values created for WRP compensation as described below.

A letter of tentative selection will be provided to each selected application (See Attachment 1 – Sample Letter of Tentative Acceptance). The letter will be sent using certified mail with a return receipt. The letter will clearly explain that this tentative selection does not bind the NRCS or the United States, to enroll the proposed project in the EWPP-FPE, nor does it bind the landowner to continue with enrollment in the program.

The letter will clearly indicate that the application has been tentatively selected for enrollment and that NRCS is making an offer to purchases the easement at the compensation amount indicated on the Option Agreement to Purchase (OATP) (Form AD-1157) that will be attached to the letter.

The letter will also indicate that continuing the enrollment process is contingent upon the return of the OATP by the landowner with all appropriate signatures within the time period specified in the letter. If the form is not returned within the required time period, the application will be cancelled. Generally, the landowner is allowed 15 calendar days to sign and return the document. This deadline can be adjusted by the STC as necessary. Once the OATP is returned and signed by the STC, the property is considered enrolled in WRP and funds will be obligated for the easement acquisition only.

NOTE: In some cases it may be more cost effective for the landowner to secure the legal boundary survey. If this option is used, the landowner must secure a written bid for the survey from a state certified and licensed professional surveyor that is based on the Land Survey Specifications for Natural Resources Conservation Service Easement Programs (Attachment 5). The bid is to be provided to NRCS prior to NRCS signing the OATP. The funds for the survey will be obligated to the landowner at the same time as the obligation of funds for the easement compensation.
The OATP has an effective period of 12 months from the date of the STC signature. The effective period may be extended when necessary using the OATP Amendment 1 (Form AD-1157A). The STC may delegate, in writing, the authority to sign the OATP (and Amendments). No further delegation of this authority is allowed.

B. Acquisition

1. Compensation

When the landowner indicates a desire to continue the enrollment process, an OATP (Form AD-1157) will be prepared to offer the landowner the lowest of:

a. an area-wide market analysis or survey;
b. the amount corresponding to a geographical area rate cap (GARC), as determined by the Secretary in regulations; or
c. the offer made by the landowner.

The current market survey/analysis and GARC that has been developed and approved for WRP for the counties that are eligible to participate in EWPP-FPE will be used to determine the values for a. and b. above.

CRITICAL: Appraisals will not be allowed for EWPP-FPE enrollment. If a State did not conduct a market survey/analysis for WRP then one must be conducted according to the guidance detailed in National Bulletin 300-9-4, dated November 3, 2008.

The Form AD-1157 should be sent with a cover letter, by certified mail, with a return receipt. The Form AD-1157 can be hand delivered to speed up the process. When the Form AD-1157 is hand delivered, the applicant will sign a note indicating receipt of the form and the date it was received. The applicant will be given a specified time frame to return the Form AD-1157. This is generally 15 days, but can be less depending on program obligation deadlines.

When the OATP has been signed by the applicant and the STC the acres will be considered enrolled in the program. At this time, the funds will be obligated to the landowner as the vendor for the easement purchase cost only. The landowner may choose to assign all or a portion of the easement acquisition payment to the closing agent through a properly executed assignment of payment provided to NRCS along with the signed OATP.

After the OATP has been signed, a legal boundary survey will be ordered. Legal boundary surveys will be conducted on all easements that have reached this stage of the process. The funds for the survey will not be obligated to each individual application. The surveys will be obtained using an appropriate procurement method, and funds will be obligated to the procurement document for the surveys. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as surveys are ordered through a task order process. Surveys must be conducted by a state certified and licensed professional surveyor in accordance with the Land Survey Specifications for Natural Resources Conservation Service Easement Programs (Attachment 5). When the survey has been completed and accepted as properly completed and accurate, an OATP Amendment 1 (Form AD-1157A) will be necessary to reflect the correct acres indicated by the survey. Once the OATP Amendment 1 is signed by the landowner and the STC, the obligation will be adjusted as necessary. The application now moves on to the closing process.

2. Closing

Funds for the closing services will not be obligated to each individual application. Closing services will be secured through an appropriate procurement method, and funds will be obligated directly to that procurement document. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as closing services are ordered through a task order process. The obligation for closing services does not include the easement acquisition funds. The closing process will follow the WRP closing process. All new floodplain easements will be formally accepted, in writing, by an NRCS employee with the appropriate delegation of authority and will be recorded as part of the warranty easement deed utilizing an Office of General Counsel (OGC) approved acceptance document. Due to the variation of Uniform Conservation Easement Act requirements among the States, this acceptance document will be developed in coordination with the appropriate regional OGC

NOTE: All easements will be recorded on the NRCS-LTP-20, Emergency Watersheds Protection Program Floodplain Warranty Easement Deed, dated August 2005.

C. Restoration

Once the landowner has signed the OATP, and the application has moved towards the closing process, the final restoration plan should be developed, including all necessary field surveys and engineering designs that the STC determines are needed to ensure that there is an accurate estimate of restoration costs. Restoration on floodplain easements will include all necessary conservation practices, measures and activities required to restore the floodplain functions and values to the natural conditions to the greatest extent practicable. Any restoration of wetlands should be restricted to the wetland type(s) that were present in the natural conditions, if any. Removal of structures including buildings that are an impediment to the proper functioning of the floodplain may be cost shared. This would include removing dikes to allow flood waters to access the historic floodplain.

When the final restoration plan has been developed and necessary final engineering designs have been completed, a decision will be made, with agreement from the landowner, as to how the restoration will be completed. If restoration will be completed through a long term contract with the landowner, the Long-Term Agreement (Form AD-1154), the Conservation Plan Schedule of Operations (Form AD-1155), and other appropriate documents will be prepared. After these documents have been signed by the STC, funds will be obligated for the restoration.

If restoration will be completed using some other appropriate procurement method, the appropriate documents will be prepared. When these documents have been signed by the STC or designee, the funds will be obligated directly to that procurement document, not to the individual easement. It is possible that the restoration funds will not be obligated in the same fiscal year that easement purchase funds are obligated. Regardless of the method to be used for completing the restoration, the final restoration plan will be signed by both NRCS and the landowner.

Removal of existing structures, including fences and incidental farm buildings, is an allowable restoration practice, if necessary to provide for ability of the floodplain to properly function during flood events. Restoration will not be implemented when the primary purpose is wetland restoration or maximizing wildlife habitat benefits. Cost-share for restoration will be 100 percent of the actual cost of installing restoration practices.

D. Management, Monitoring and Enforcement

Management, monitoring and enforcement on land enrolled in EWPP-FPE will follow current WRP policy and procedures.

Thomas W. Christensen

THOMAS W. CHRISTENSEN
Deputy Chief for Programs

Attachment 1 - Sample Letter of Tentative Acceptance
Attachment 2 - Business Process Flow Chart
Attachment 3 - Business Process Flow Chart – Action Details

Attachment 4 – Emergency Watershed Protection Program Floodplain Warranty Easement Deed

Attachment 5 – Land Survey Specification for Natural Resources Conservation Service Easement Programs

Attachment 1 – Sample Letter of Tentative Acceptance

Dear Landowner,

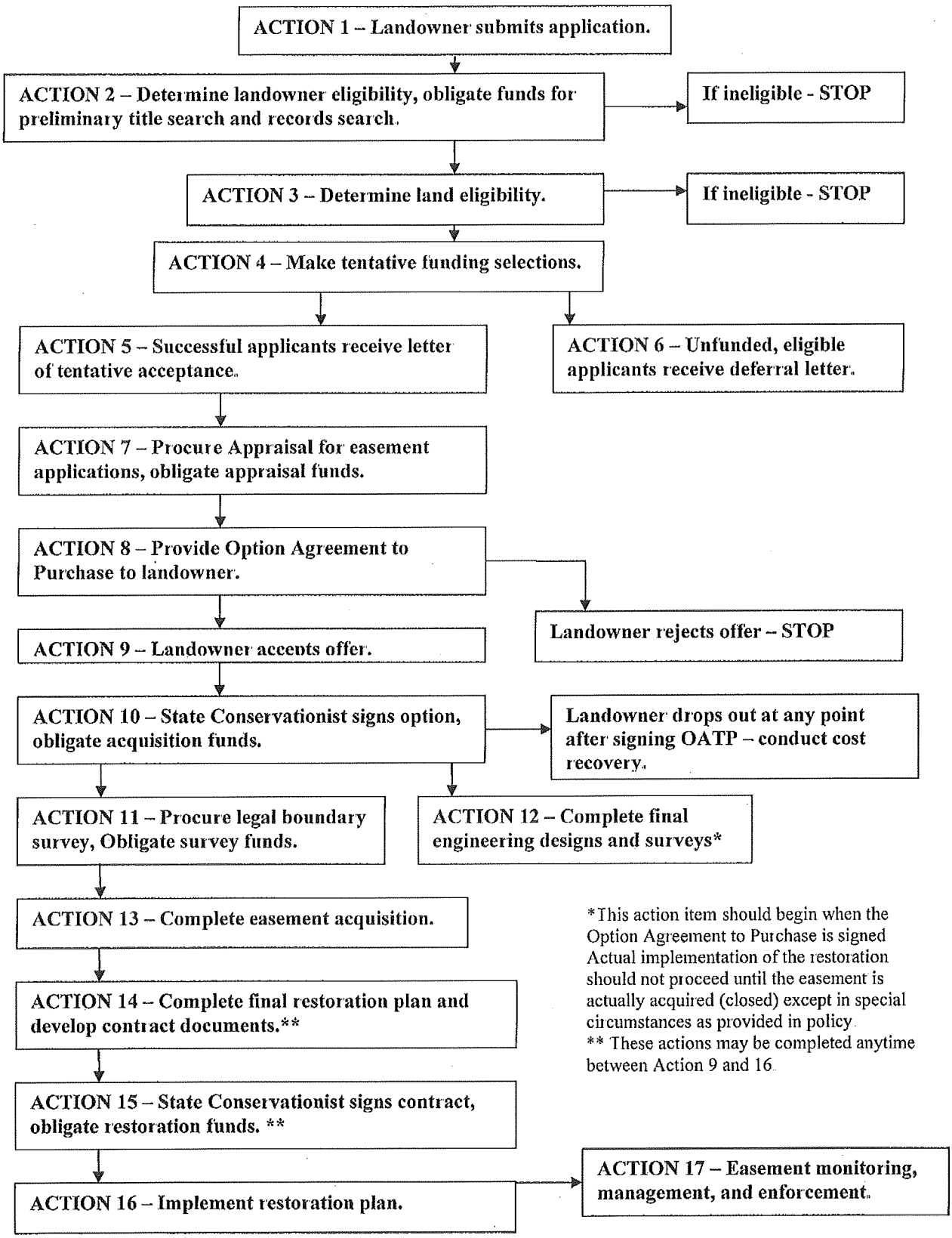
This letter is being sent to inform you that your application for the Emergency Watershed Protection Program Floodplain Easement (EWPP-FPE) enrollment has been tentatively selected for funding by the Natural Resources Conservation Service (NRCS).

The NRCS is making an offer to purchase the easement at the compensation amount indicated on the attached Option Agreement to Purchase (OATP) (Form AD-1157). This offer is contingent upon the return of the OATP to this office, with all appropriate signatures within _____ days. Once the OATP is returned and signed by the State Conservationist the property is considered enrolled in the EWPP-FPE and funds will be obligated for easement acquisition.

If you no longer wish to be considered for the EWPP-FPE enrollment, please send a letter to the address listed above or call _____, State EWPP-FPE Coordinator, and inform NRCS of your decision.

(Name)
NRCS Authorized Designee

Attachment 2 – Business Process Flow Chart



*This action item should begin when the Option Agreement to Purchase is signed Actual implementation of the restoration should not proceed until the easement is actually acquired (closed) except in special circumstances as provided in policy.
** These actions may be completed anytime between Action 9 and 16.

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Attachment 3 – Business Process Flow Chart – Action Details

The following are the details for the list of action items, in the order that they are to be completed, from the Business Process Flow Chart.

Action 1 – Landowner submits application.
NRCS provides the landowner with a list of items that must be provided in order for the application to move forward. (See Action 2.)

Action 2 – Determine landowner eligibility, obligate funds for preliminary title search and records search.

1. Landowner provides the necessary information for NRCS to determine if the landowner is eligible to participate including:
   a. Copy of the deed.
   b. If an entity –
      - Proof that entity is a legal and valid entity in the State, usually a certificate of good standing from the Secretary of State.
      - Documents indicating who has the authority to sign contractual arrangements for the entity.
      - Proof the Farm Service Agency (FSA) has been provided a list of entity members and membership shares.
2. Conduct a preliminary title search to identify any title issues that could potentially delay or prevent closing the easement. Funds are obligated for this activity directly to an appropriate procurement document, not to the individual easement.
3. Conduct a records search to identify any potential hazardous substance issues that may exist that could potentially delay or prevent closing the easement. Funds are obligated for this activity directly to an appropriate procurement document, not to the individual easement.

Action 3 – Determine land eligibility.
This action item is conducted through an on site investigation by the appropriate team of NRCS and partner specialists. Items that will be completed during the on site investigation will include the following:

1. Determine if the land meets one or more of the requirements to be eligible for enrollment as listed in the EWPP statute, rule, and EWPP FPE circular 2.
2. Determine if there is any on site or off site issues that would make the land ineligible for enrollment
3. Complete the environmental ranking worksheet.
4. Complete preliminary planning activities such that a cost estimate can be derived for the ranking and to ensure that the landowner agrees with the proposed restoration.
5. Complete the Hazardous Substance Checklist.

6. Complete the National Environmental Policy Act Environmental Assessment, Endangered Species Act (ESA), National Historic Preservation Act Assessment (NHPA), and consultation with the U.S. Fish and Wildlife Service.
7. Complete the Preliminary Certificate of Inspection and Possession.

Action 4 – Make tentative funding selections.
Select for tentative approval the applications that would be funded given the State's allocation levels.

Action 5 – Successful applicants receive a letter of tentative acceptance.
A letter of tentative selection will be provided to each selected application. The letter will indicate that this tentative selection does not bind the NRCS or the United States to enroll the proposed project in the EWPP-FPE, nor does it bind the landowner to continue with enrollment in the program. It allows NRCS to determine if a landowner remains interested before any additional funds and time are expended.

Action 6 – Unfunded, eligible applicants receive deferral letter.
All eligible applicants not selected for funding will be deferred. It is possible, depending on the acceptance rate of selected applicants, that some of these could be selected for funding later.

Action 7 – Procure appraisal for easement applications, obligates appraisal funds.
Determine the value of the compensation to be offered to the landowner for the easement based on the lowest of –

a. An area-wide market analysis or survey;
b. the amount corresponding to a geographical area rate cap, as determined by the Secretary in regulations; or
c. the offer made by the landowner.

Action 8 – Provide Option Agreement to Purchase (OATP) (Form AD-1157) to landowner.
The OATP (Form AD-1157) is sent with a cover letter by certified mail with return receipt, to the landowner.

Action 9 – Landowner accepts offer.
If the landowner signs and returns the OATP (Form AD-1157) accepting the NRCS offer, proceed to Action 10. If the landowner rejects the offer, stop the acquisition process.

Action 10 – State Conservationist (STC) signs option, obligate acquisition funds.
If funds are available, the State Conservationist signs the AD-1157. At this point, the acres are considered enrolled in the EWPP-FPE, and acquisition funds are obligated based on the Option Agreement to Purchase, with the landowner as the vendor. The landowner may provide a properly executed assignment of payment to NRCS to assign all or a portion of the proceeds to the closing agent.

If the landowner chooses to drop out of the program at any point after the State Conservationist signs the AD-1157, but before closing, NRCS stops the acquisition process and initiates cost recovery.

Action 11 – Procure legal boundary survey, Obligate survey funds.
A legal boundary survey must be secured on all easements. Funds are obligated for this activity directly to the agreement used to procure the services, not to the individual easement.

1. Provide the surveyor with the following information:
   a. National scope of services that includes requiring a digital copy of the survey that can be directly uploaded to the national shape file.
   b. Map of the easement area.
   c. Title and other ownership information.
2. Conduct an on-site visit with the landowner and surveyor to ensure that the proper area proposed for enrollment is identified for the surveyor.
3. When the survey is completed, NRCS will review the survey to ensure accuracy and acceptability.

Action 12 – Complete final engineering designs and surveys.
This action item should begin when the OATP is signed. Actual implementation of the restoration should not proceed until the easement is actually acquired (closed), as Action 14 is being completed.

Action 13 – Complete easement acquisition.

1. Obtain and review the title commitment.
2. Prepare the Certificate of Use and Consent.
3. Obtain preliminary title opinion from the Office of the General Counsel (OGC), sending any information required by your local OGC attorney advisor, including:
   a. Copy of preliminary title commitment
   b. Copy of the survey
   c. Copy of hazardous substance record search and checklist
   d. Copy of water rights information
   e. Copy of Preliminary Certificate of Inspection and Possession
   f. Copy of Certificate of Use and Consent
4. Provide closing instructions to closing agent. Funds are obligated for this activity directly to the agreement used to procure the services, not to the individual easement.
5. Conduct easement closing.
6. NRCS signs the deed to accept the easement, and, in states where it is legal, payment is made directly to the landowner, not to the closing agent. The landowner, through a properly executed assignment of payment, may assign all or a portion of the proceeds to the closing agent. The closing agent is paid for closing services.
7. NRCS completes the Final Certificate of Inspection and Possession.
8. Secure the final title opinion from OGC and have the closing agent record the deed.

Action 14 – Complete final restoration plan and develop contract documents.
This action is completed concurrently with Action 9 and 15. The final restoration plan is completed using the amounts and components resulting from the final engineering plans and designs. The final restoration plan must be signed by both NRCS and the landowner.

The decision is made on the method which will be utilized to implement the restoration. The appropriate contract documents are developed.

Action 15 – State Conservationist signs contract, obligate restoration funds.
The State Conservationist approves the appropriate contract documents, and funds for the restoration are obligated directly to that agreement, not to the individual easement.

Action 16 – Implement restoration plan.
The following activities are included in this action:

1. Practice layout, installation, checkout, and certification.
2. Practice payment.
3. Conduct on site complex NHPA and ESA activities as required.

Action 17 – Easement monitoring, management, and enforcement.
This action actually begins once the easement closing occurs, and is conducted during restoration as well as after. This will be implemented according to WRP policy and procedures.

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

NRCS-LTP-20
rev. 08-2005

Emergency Watersheds Protection Program Floodplain Warranty Easement Deed

1. AGREEMENT NO. _____

THIS WARRANTY EASEMENT DEED is made by and between

2. _____ of

3 Landowner address:

(hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA,** by and through the Natural Resources Conservation Service (hereafter referred to as the "United States"), Grantee The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of floodplains, wetlands, riparian areas, and other lands; and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education; and to safeguard lives and property from floods, drought, and the products of erosion. It is the intent of United States to give the Landowner the opportunity to participate in the restoration and management activities on the easement area

Authority. This easement deed acquisition is authorized by 16 U.S.C. 2203, as amended, and 7 U.S.C. 428a.

NOW THEREFORE, for and in consideration of the sum of
(4.) _____ Dollars, (4 a.) ($ _____), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, forever, all rights, title and interest in the lands comprising the easement are described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved This easement shall constitute a servitude upon the land so encumbered; shall run with the land **in perpetuity;** and shall bind the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person
claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed

PART II. Reservation in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, the Landowner reserves:

A. **Title.** Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.

B. **Quiet Enjoyment.** The right of quiet enjoyment of the rights reserved on the easement area.

C. **Control of Access.** The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.

D **Recreation Uses.** The right to undeveloped and recreation uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.

E. **Subsurface Resources.** The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

A. **Prohibitions.** Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited of the Landowner on the easement area:

1. haying, mowing, or seed harvesting for any reason;

2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
3. dumping refuse, wastes, sewage, or other debris;
4. harvesting wood products;
5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
6 diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means;
7. building or placing buildings or structures on the easement area;
8. planting or harvesting any crop;
9. grazing or allowing livestock on the easement area; and
10. disturbing or interfering with the nesting or brood-rearing activities of migratory birds.
11. receiving any disaster assistance form the Secretary of Agriculture.

B **Noxious Plants and Pests.** The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the United States prior to implementation by the Landowner

C. **Fences.** Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner

D. **Taxes.** The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.

E. **Reporting.** The Landowner shall report to the United States any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

PART IV. Allowance of compatible Uses by the Landowner.

A. **General.** The United States may authorize, in writing and subject to such terms and conditions the United States may prescribe at its discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.

B. **Limitations.** Compatible use authorization will only be made if, upon a determination by the United States in the exercise of its discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the

floodplain, riparian, the wetland and other natural values of the easement area. The United States shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

A. **Management Activities.** The Unites States shall have the right to enter unto the easement area to undertake, at its own expense or on a cost-share basis with the Landowner or other entity, any activities (including removal of levees or other hydrologic alteration) to restore, protect, manage, maintain, enhance, and monitor the floodplain and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters on the easement area in order to maintain or improve wetland and other natural values

B. **Access.** The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.

C **Easement Management.** The United States may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the United States determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or Federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement.

D. **Violations and Remedies - Enforcement.** The Parties agree that this easement deed may be introduced in any enforcement proceeding as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:

1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to floodplain or other natural values; and,

2. To access all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

A. **Successors in Interest.** The rights granted to the United States shall accrue to any of its agents, successors, or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms

B. **Rules of Construction and Special Provisions.** All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the floodplain, wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Emergency Watersheds Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

5. Dated this _____ day of _____, 2 _____

6 Landowners (s): _____
(Signature)

_____
(Signature)

ACKNOWLEDGEMENT

(This section is completed by Notary Public)

STATE OF: _____

COUNTY OF: _____

On this _____ day of _____, 2 _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, know or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and years first above written

_____

Notary Public for the State of _____
Residing at _____
My Commission Expires _____

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C 20250-1400.

OMB DISCLOSURE STATEMENT

According to the Paper work Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578- 0013. The time required to complete this information collection is estimated to average 0.69 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

Emergency Watershed Protection Program Manual
390 – EWPPM
Circular No. 2

Attachment 5 - Land Survey Specifications for Natural Resources Conservation Service Easement Programs

1. SCOPE
A professional land surveyor (Surveyor) licensed and registered in the state where the survey is to take place shall complete all boundary surveys for the Natural Resources Conservation Service (NRCS) Easement Programs. The survey work shall consist of performing all surveys, measurements, computations, drawings, and descriptions required by this specification.

2. QUALITY OF WORK
The easement boundary description shall be clear, accurate, complete, and meet the NRCS's intent.

All work shall follow recognized professional practice and meet the accuracy specifications and positional tolerances as set forth in the regulations of the state where the survey is to take place Longitude and latitude will be provided for each property corner. Access shall be surveyed, but no monumentation of the access route is required. The Surveyor will show both the easement and the ingress/egress route to a publicly dedicated right-of-way. The work and data presented shall be in accordance with appropriate state minimum standards for the practice of rural land surveying

All notes, sketches, computations, and other data shall be complete, legible, and organized in a manner that will allow reproduction of copies. The Surveyor shall record and provide to the contracting officer the type, name, model of survey equipment used and any computer software identification, vendor's name, and other pertinent data used in performing the work

3. NOTIFICATION OF INTENT TO SURVEY
Prior to the start of survey field work the NRCS will schedule a pre-survey site visit. Attending will be the Surveyor, the NRCS Program Manager or the local District Conservationist (DC) and the landowner or the landowner's representative. During the pre-survey site visit the proposed easement boundaries will be reviewed, as will the easement access route (if the easement is not adjacent to a publicly dedicated right-of-way).

The NRCS Program Manager or the DC will provide the Surveyor with a preliminary title search and location map or aerial photograph of the proposed WRP easement area. The map will include the area to be surveyed, the ingress/egress route(s) or point of access and any other descriptive information as may be available.

Before fieldwork for surveying begins, the Surveyor shall notify the DC and the landowner the date and time for conducting the survey. Notification shall be a minimum of 72 hours prior to beginning work. If the work is not started on the planned date, the surveyor shall notify the DC and landowner of the revised date and time that work will begin.

4. SURVEY AREA

The area to be surveyed will be marked by wooden stakes or flags. Only boundary angle points should be staked or flagged. For identification purposes, angle points are to be identified by number on the photograph and on the corresponding wooden stakes or flags. Any significant (more than 5 percent) variation in the acres surveyed should be reported to the contracting officer's representative (COR) immediately. The surveyor will not modify the easement area surveyed at the direction of the landowner. The boundary of the easement area must not be changed from what is indicated. Only the NRCS contracting office may authorize a modification to the easement area boundary. Any variations in the number of acres surveyed should be reported to the Contracting Officer (CO) immediately. Any questions regarding the easement area should be directed to the CO. The CO may appoint an official COR to represent them in the field

The surveyor shall locate the boundary angle points and record the description using bearings and distances as referenced to the National Spatial Reference System. The boundary survey shall be a complete traverse of the area tied to a corner of a Public Land Survey or a corner of a recorded property. A latitude and longitude coordinate shall be collected for each of the points using North American Datum 1983 (NAD 83) with a $\pm$ 1 meter accuracy.

Monuments and witness posts with signs shall be installed by the Surveyor at the time the survey is completed. Monuments and witness posts with signs shall be installed at each corner, angle point, road crossing, intersection of property lines and approximately every 500 feet along a tangent. All monuments must be thoroughly described and specifically identified as set or found, whenever shown on maps or referred to in documents prepared by the Surveyor. Descriptions of monuments must be sufficient in detail to readily facilitate future recovery by other Surveyors and to enable positive identification.

An acceptable monument will be a 5/8" steel rebar rod. The minimum length for the monument will be 24 inches long. The monument shall be driven just below the ground surface. Caps (approved by NRCS) shall be placed on each marker.

The Surveyor shall provide witness posts. Witness posts shall be a steel "U" channel post at least seventy-eight (78) inches in length and have a minimum weight of 1.25 lbs per foot. Posts shall be of a natural color, preferably green NRCS will provide the signs. The Surveyor will be required to pick up the signs at the local NRCS office. The Contractor is required to attach a NRCS boundary sign, to the top of each witness post using a galvanized nut and bolt A wire attachment is not acceptable. The NRCS easement signs have two 3/8 inch drilled holes

Upon completion, the Contractor will contact the local NRCS DC to certify the work has been completed in accordance with the NRCS Statement of Work This certification will be made prior to any reimbursement to the Contractor.

Some easement boundaries may be a river, creek, bayou, or lake. In those cases, the easement boundary will be determined on a case by case basis An on-site clarification of this boundary shall be determined by the surveyor, DC, and landowner. A description point shall be included

for the boundary intersection points. An offset point may need to be established on each boundary line intersecting river, creek, bayou, or lake boundary. The offset point shall have a permanent marker, whereas the river, creek, bayou, or lake boundary intersection point may not. The offset and the permanent markers allow for a visual marker on the ground for use in maintaining the boundary integrity. Visibility and potential stream encroachment shall be factors in locating the offset. The offset distance shall be in whole feet

Excluded areas within the main boundary area shall be surveyed as described above. All private/ public roads (and associated roadway easement) should be excluded from the main WRP boundary area. The net WRP easement area shall be reported by the surveyor and computed by subtracting the excluded areas from the main boundary area. The net WRP easement area shall be computed to the nearest tenth of an acre

The boundary description shall include a delineated route of ingress/egress. The ingress/egress route to the WRP easement area will be described in the survey, shown on the survey plat, and recorded with the Warranty Easement Deed.

When the boundary survey is complete, the DC and the landowner will ensure that: (1) the area delineated with permanent markers was the area that the landowner intended to place under easement and (2) permanent markers have been installed as required. If a discrepancy is identified, the surveyor will be required to meet with the DC and landowner to reconcile the difference.

5. PRESENTATION OF SURVEY

The Surveyor shall prepare an appropriately scaled drawing of the survey. The Surveyor shall provide an original and three 11 X 17 copies of the survey plat (and attachments which include the legal description and access description) to the COR. The Surveyor is not to provide a copy of the plat without the approval of the CO

The survey drawing shall, at a minimum, include the following items:

- The surveyor's seal shall be affixed to the drawing, and shall be signed and dated by the surveyor in blue ink across the seal;
- Latitude and longitude for the point of beginning;
- The record description of the property or the reference to the source of the recorded description on the property of which the easement is located on;
- The survey description of the easement area as Attachment A to the survey;
- The survey description of the route of ingress/egress to the subject property as Attachment B to the survey and shown on the survey plat;
- North arrow;
- Scale;
- Bearings, azimuth or angles, and the distances for all courses;
- The central angle, length of curve and radius and the length and bearing of chord from the beginning to the end of curve for each common boundary line or individual boundary line;
- Basis of bearings or azimuth;
- Monuments identified as set or found along with a description of the monument;

- Area of the surveyed easement;
- Observed evidence of possession or use by others in the parcel or across any perimeter lines of the property;
- Sufficient data to indicate the theory of location applied in formulating the opinions as to the probable location of the boundaries and corners of the property;
- Name, registration number, address and phone number of the Surveyor;
- Client name;
- Date survey completed;
- NRCS Contract number (in the legend of the survey plat);
- NRCS Property application number;
- Certification- The following statement must be include on each survey:
  "THIS IS TO CERTIFY THAT THIS SURVEY, DONE BY THE UNDERSIGNED, WAS DONE ON THE GROUND IN ACCORDANCE WITH THE MOST RECENT MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS- AS SET FORTH BY THE (insert name of state agency responsible for licensing surveyors). THE ACCURACY AND POSITION TOLERANCE ARE ALSO IN ACCORDANCE WITH RURAL SURVEYS.

The following shall be included in the legal description (as Attachment A to the survey plat) of the property:

- A clear statement of the relationship between the described property and the survey control or the basis of the unique location;
- The basis of bearings when bearings are used;
- Metes and bounds shall include bearings or angles and distances in order to allow for the computation of mathematical closure;
- Citations to the recording information or other identifying documentation for any maps, plats or other documents referenced;
- Detailed description of any natural or artificial monument referenced

6 DELIVERABLES

Survey contractor will deliver to the CO within 45 days of issuance of the task order the following:

- Original completed survey (34" x 24") with required seal and signature
- Three copies (11" x 17") of survey plat for completed survey.
- One electronic (digital) copy of the easement survey – The contractor shall provide a CD or DVD containing the digital files in dwg format compatible with AutoCad 2000. The .dwg file will be referenced to the appropriate State Plane Coordinate System, North American Datum 1983, local zone, U.S. Survey Feet and basis of bearing to grid north. The perimeter of the easement should be attributed as a separate and extractable polyline layer or polygon feature component of the drawing for conversion to a geographic information system (GIS).
  The electronic copy of the easement survey shall include:
  - Documentation regarding registration of the survey to a standard coordinate system based on measurements referenced to the National Spatial Reference System

infrastructure with a minimum of two (2) tie points to the United States Public Land Survey System within the parcel's section.

- Documentation identifying which coordinate system is used (for example: MO Coordinate System of 1983, West Zone, NAD 83 horizontal datum, survey units – U.S. Survey Foot).

All polygons should be labeled as indicated below:

- Each polygon should contain four attributes
  - NRCS assigned agreement number
  - Easement Acres (value to the tenth of an acre)
  - The length of the contract in years
  - The method of data capture
- Each polygon should have the following Metadata:
  - Date generated
  - GIS specialist contact information
  - Software and version used to generate file
  - Brief description of process used to generate files
- Format. Provide ESRI ARC Info export/Info export (.e00) or shapefile (.shp, .dbf, .shx)
- Projection must be clearly defined. If not geographic projection, the following is required:
  - Projection (NAD 83)
  - Units
  - Datum
  - Speroid
  - Xshift
  - Yshift
  - Central meridian
  - 1st standard parallel
  - 2nd standard parallel
  - Latitude of projection
  - False easting
  - False northing
- Geospatial/Data joining. Identify the data fields required to join the spatial data to the database.

7. CONFLICT OF INTEREST

A Surveyor will not survey a NRCS easement property for a spouse, child(ren), partner(s), or business associate(s), nor have a financial interest in the property to be covered by the proposed easement

8 NON-DISCLOSURE

Work performance required by this SOW will involve access to potentially sensitive information about governmental and landowner issues. All Contractor personnel must comply with the terms of the AGAR 452.224-70, Confidentiality of Information, as well as provisions of the Privacy Act of 1974, 5 U.S.C. 552a. Additionally, the Contractor's employees shall comply with privacy

of personal information relating to NRCS programs in accordance with Section 1244 Title II of the Farm Security and Rural Investment Act of 2002 (P.L. 1078-171).

9. CIVIL RIGHTS AND PROGRAM DELIVERY

The Contractor will ensure that personnel prohibit discrimination in all aspects of programs and activities related to the Contract on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status.