

- (iv) See subpart G, section 528.60A(5) of this part, for additional information on the roles and responsibilities of co-holding entities.

528.32 Entity Eligibility Requirements and Responsibilities

A. General.—To be eligible to receive ACEP-ALE funding, an entity must be one of the eligible entity types listed in paragraph B below and must provide NRCS sufficient evidence of their ability to meet the requirements and responsibilities of an eligible entity.

B. **Types of Entities that are Eligible.**—To be eligible, an entity must be one of the following:

- (1) An agency of any State or local government or Indian Tribe (including a farmland protection board or land resource council established under State law).
- (2) A nongovernmental organization that certifies that it is—
 - (i) Organized for and, at all times, since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986 (IRC).
 - (ii) An organization described in section 501(c)(3) of the IRC that is exempt from taxation under section 501(a) of the IRC.
 - (iii) Described in section 509(a)(1) or (2) of the IRC is described in section 509(a)(3) of the IRC and is controlled by an organization described in section 509(a)(2) of the IRC.
 - The clauses under section 170 of the IRC address the following:
 - The preservation of land areas for outdoor recreation by, or the education of, the general public.
 - The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems.
 - The preservation of open space (including farmland and forest land) where such preservation is—
 - For the scenic enjoyment of the general public.
 - Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
 - The preservation of a historically important land area or a certified historic structure.
 - Section 501(c)(3) of the IRC addresses corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
 - Sections 509(a) (1), (2), and (3) of the IRC include churches, educational organization, and medical organizations.

- (3) A Tribal entity is a federally recognized “Indian Tribe” as defined by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. Section 450b(e)), i.e., “federally recognized Tribes.” The Bureau of Indian Affairs (BIA) publishes annually in the Federal Register a list of Indian Tribes that are identified as federally recognized Indian Tribes. Indian Tribes that are not federally recognized may qualify under nongovernmental organization status described above.

C. Entity Eligibility Requirements

- (1) To participate in the ACEP-ALE, the entity applying for such participation must be determined by NRCS to meet the eligible entity requirements. Therefore, entities must provide as part of the application process, sufficient documentation for the State conservationist to make a determination that the entity has—
 - (i) Authority to purchase and hold agricultural conservation easements.
 - (ii) An established agricultural land protection program that purchases conservation easements for the purpose of protecting either of the following:
 - The agriculture use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land; or
 - Grazing uses and related conservation values by restoring or conserving eligible land.
 - (iii) Demonstrated a commitment to the long-term conservation of agricultural lands.
 - (iv) The authority and capability to acquire, manage, and enforce agricultural land easements or their equivalent.
 - (v) Staff capacity (either directly or through formal agreement with other entities) dedicated to monitoring and easement stewardship.
 - (vi) The ability to satisfy the non-Federal share requirements for each parcel proposed for funding (see subpart E, section 528.43 of this part, for specific requirements).
 - (vii) The ability to meet the requirements of the program.
- (2) Entities with existing ACEP-ALE or Farm and Ranch Lands Protection Program (FRPP) agreements or easements that are delinquent or deficient in satisfying the terms of those agreements or easements may be determined ineligible for funding under ACEP-ALE until such time as the deficiencies are addressed. These deficiencies may include, but are not limited to—
 - (i) Failing to conduct monitoring or provide annual monitoring reports to NRCS or providing annual monitoring reports that are insufficient or late.
 - (ii) Existing ACEP-ALE agreements with funds remaining more than 2 years after the attachment execution date without any expenditures or actions towards closings of easements in the third year.
 - (iii) Failing to comply with the terms of the ALE or FRPP agreement.

D. Eligible Entity Responsibilities

- (1) The eligible entity must—
 - (i) Perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements, including such additional actions as required for agricultural land easements acquired through an authorized buy-protect-sell transaction.
 - (ii) Procure and pay all costs related to determinations of value, due diligence, and closing.
 - (iii) Hold title to the agricultural land easements.

- (iv) Meet the requirements of the ALE-agreement and carry out all responsibilities specified in the ALE-agreement, including submitting all required documentation and requests for reimbursements, advances, or extensions by required deadlines.
- (v) Ensure that any required or agreed-to agricultural land easement plans are complete at or prior to closing and updated as necessary pursuant to applicable easement deed terms (see subpart G, section 528.63 of this part, for specific requirements).
- (vi) Provide information to the FSA for entry into SCIMS.
- (vii) Ensure DUNS and SAM registration is maintained for each eligible entity and any co-holding entities.
- (viii) Ensure any legal entities that will be identified in the conservation easement deed as a co-holder (grantee) or as a third-party right holder (not a grantee) meet the requirements applicable to such legal entities as set-forth in the terms of the ALE-agreement and described in subpart G, section 528.60A(5) of this part.
- (ix) Conduct monitoring at least annually and provide the monitoring report to the State conservationist at least annually.
- (x) Enforce the terms of the agricultural land easement.
- (xi) After consultation with and approval by NRCS, an eligible entity may assign another entity to manage and enforce the agricultural land easement. The entity assigned the management and enforcement responsibilities must have the appropriate expertise and capacity to carry out such responsibilities.

528.33 Land Eligibility

A. Land Eligibility Overview.—An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. To be eligible for ACEP-ALE, land must meet each of the following criteria:

- (1) Private or Tribal land that is agricultural land, including land on a farm or ranch.
- (2) Subject to a written pending offer for purchase of an agricultural land easement by an eligible entity, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
- (3) Land that meets at least one of the following criteria:
 - (i) Has prime, unique, or other productive soil;
 - (ii) Contains historical or archaeological resources;
 - (iii) Enrolling the land would protect grazing uses and related conservation values by restoring or conserving eligible land; or
 - (iv) Protecting the land will further a State or local policy consistent with the purposes of ACEP.
- (4) Land that is at least one of the following:
 - (i) Cropland;
 - (ii) Rangeland;
 - (iii) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;
 - (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;
 - (v) Pastureland; or
 - (vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.