

May 11, 2020

Matthew Lohr, Chief
Natural Resources Conservation Service
U.S. Department of Agriculture
1400 Independence Avenue SW, Room 5105-S
Washington, DC 20250



Robert Stephenson, Executive Vice President
Commodity Credit Corporation
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

**Comments of the Izaak Walton League of America on the
Regional Conservation Partnership Program Interim Rule**

Federal Register, 13 February, 2020, RIN 0578-AA70, Docket ID NRCS-2019-0012

Dear NRCS Chief Lohr and CCC Executive Vice President Stephenson,

The following are the comments of the Izaak Walton League of America on the Regional Conservation Partnership Program Interim Rule.

Izaak Walton League of America

The Izaak Walton League of America is one of our nation's oldest national conservation organizations, and has been working to defend our soil, air, woods, waters, and wildlife since 1922. Our 40,000 members hunt, fish, hike, camp, canoe, conserve, and appreciate and enjoy the great outdoors. Our work on agricultural policy dates back at least to the 1930's, when the League argued for better soil conservation to address the ravages of the Dust Bowl. In that decade the League also proposed a national program to protect fragile fields and streams in high mountain valleys by converting cropland back to grassland. In the 1950's, the League's Walton Soil Plan presaged the federal Soil Bank program of the 1950's and 1960's. Over the decades, the League has supported better farm and ranch stewardship through voluntary conservation programs and common sense provisions like Sodbuster, Swampbuster, and SodSaver that require that farmers who accept federal government assistance follow basic soil conservation and wetland protection practices.

I. Soil Health

Soil health strategies can contribute to almost every conservation purpose of the Regional Conservation Partnership Program (RCPP): "To further the conservation, protection, restoration, and sustainable use of soil, water (including sources of drinking water and groundwater), wildlife, agricultural land, and related natural resources on eligible land on a regional or watershed scale."¹ Soil health strategies conserve soil and improve soil quality. Healthier soils benefit water quality because they absorb more precipitation,

¹ Section 1271 of the 2018 Farm Bill, 16 USC 3871.

acting like a sponge to soak in rainfall and snowmelt which reduces runoff polluted by sediment, nutrients, and manure. Soil health practices like cover crops provide wildlife habitat on otherwise barren soils over the winter, and integrated pest management reduces the impact of pesticides on wildlife. Healthier soils are less prone to wind erosion, protecting air quality. Healthier soils require smaller applications of nutrients, and since healthier soils absorb precipitation better they reduce runoff of nutrient-laden waters into nearby streams. Soil health practices like integrated pest management and conservation crop rotations reduce the need for pesticides, and healthier soils help plants better resist pest and disease pressure. Healthier soils have greater water-holding capacity, which can reduce the need for irrigation water and allow water to slowly percolate and recharge aquifers rather than running off. Healthy soil practices like no till and conservation tillage require less fuel, and by reducing the need for chemical nutrient applications healthy soils can reduce fossil fuel use and related emissions of greenhouse gases as well as reduce N₂O emissions from the use of nitrogen fertilizers on the soil.

In short, because of the positive impacts on so many natural resources and the resulting benefits for farmers, soil health should be a fundamental strategy woven throughout USDA's RCPP implementation. Promoting and supporting partnerships that provide outreach, technical assistance, and financial assistance to help farmers and ranchers adopt soil health strategies and suites of soil health practices should be a core priority for RCPP funds.

Congress provided clear direction for USDA to manage the Conservation Stewardship Program to enhance soil health, and by extension made soil health a priority for RCPP. Congress added soil health planning, drought resiliency measures, and adapting to and mitigating against increasing weather volatility to the purposes of EQIP, and by extension RCPP -- soil health strategies are vital to both drought resiliency and weather volatility adaptation and mitigation. Rebuilding healthy soils results in living soils with higher levels of organic matter, and together those provide increased resiliency to drought and flooding. Soil health strategies boost soil organic matter, which helps plants take carbon out of the air (through photosynthesis) and store it in the ground, helping mitigate climate change that is driving weather volatility. Healthier soils provide added resilience to combat new pest and disease pressures related to changes in the climate.

Soil health strategies also help farmers and ranchers adapt to our changing weather patterns because healthier soils can hold more of the heavier but less frequent precipitation being experienced in many parts of the country. For example, typical central Illinois soils degraded to just 1% to 2% soil organic matter might hold just 0.6" to 1.2" of precipitation before the surface is saturated and sealed and additional rainfall runs off into local streams, carrying sediment, nutrients, and often manure with it. When restored to 5% soil organic matter through soil health practices, that same soil could hold nearly 3" of rain before becoming saturated. Restored to well-managed grassland with 8% organic matter, that soil could hold a 5.5" rain. For drought resilience, reducing downstream flooding, water quality, and other resources, soil health can be a game-changer. In fact, there is probably no resource strategy that would do more than soil health to help farmers and ranchers increase resiliency to drought, mitigate against a changing climate, and adapt to the ongoing changes in the climate.

Prioritize soil health planning, testing, and bundles

The Regional Conservation Partnership Program provides an ideal platform for evaluating and assessing different techniques and management approaches to promoting more widespread adoption of soil health

systems. Section 1464.5(e)(2) of the Interim Rule, which we support, provides that NRCS can approve interim conservation standards or activities that provide a high potential for optimizing conservation benefits, where paired with work to evaluate and assess the new standard or activity. NRCS has a number of planning protocols for natural resources, (including, for example, comprehensive nutrient management, integrated pest management, and grazing management plans), but our understanding is it does not yet have a soil health planning protocol for farmers or ranchers who want to craft a plan to boost the biological health of their soils. As farmers, ranchers, and landowners learn about soil health, we think increasingly they will ask for a soil health planning process, and NRCS and its partners and Technical Service Providers would benefit from having a planning protocol that reflects the latest soil health science. NRCS has also been working to identify appropriate protocols for measuring and testing soil health, and it is important to have USDA-approved test protocols, both simple in-field tests farmers and ranchers can easily carry out and laboratory tests that provide information on, for example, interpretation of the balance of the bacteria, fungi, and other microbes present.

In addition, a growing body of science and on-farm experience is showing us that efforts to restore soil health work best and fastest when multiple practices are layered using combinations of these practices on the same land. The RCPP provides another mechanism for promoting the adoption of suites of soil health practices, paired with testing protocols to evaluate their effectiveness in different soils, climates, and agricultural systems.

In announcing requests for proposals under the RCPP, NRCS should specifically ask for and prioritize proposals that deliver soil health benefits, and that use the authorities under the program to implement and evaluate soil health planning, testing, and multi-practice bundles. NRCS should also consider making annual soil health testing an automatic part of every contract it writes related to soil health and related practices, so farmers and ranchers can track the outcomes of these practices and suites of practices on the health of their soils. The test results should be shared with NRCS as part of the contract to help the agency evaluate the success of soil health practices and strategies in different soils, climates, and agricultural systems.

Soil Health in Critical Conservation Areas

The eight currently designated Critical Conservation Areas are now, thanks to the 2018 Farm Bill, earmarked for 50% of RCPP funding each year². Soil health can directly address key current resource concern priorities in the Chesapeake Bay (excess sediment in surface water, excess nutrients in surface and ground waters); Great Lakes (excess nutrients and pesticides in surface and ground water, excess sediment in surface water); Mississippi River (excess nutrients and pesticides in surface and ground water, excess sediment in surface water, inefficient use of irrigation water); Colorado River Basin (excessive salts in surface and ground waters, inefficient use of irrigation water, concentration of salts and other chemicals in soils); Longleaf Pine Range (undesirable plant productivity and health, excessive plant pest pressure, excess nutrients and pesticides in surface and ground waters, excess sediment in surface water); Columbia River Basin (inefficient use of irrigation water, excess sediment in surface water, excess nutrients and pesticides in surface and groundwater); Prairie Grasslands (inefficient use of irrigation water, excess water runoff, flooding or ponding, excessive plant pest pressure); and California Bay Delta

² 2018 Farm Bill Section 1271D, 16 USC 3871d(c) allocates 50% of the \$300 million in RCPP annual funding to Critical Conservation Areas.

(excess nutrients and pesticides in surface and ground water, excess sediment in surface water, inefficient use of irrigation water).

In addition, soil health practices like cover crops and managed rotational grazing can help address fish and wildlife habitat degradation, a resource concern priority in each of the eight Critical Conservation Areas. Unfortunately, the only one of the eight areas that includes soil quality degradation as a priority resource concern is the Colorado River Basin, due to the concentration of salts and other chemicals.

In enumerating priority resource concerns in statute, Congress did not directly include soil health but it did provide for the inclusion of “other natural resource improvements as determined by the Chief, within the critical conservation area.”³ The case for adding soil health to the list of priority resource concerns is powerful, especially given that so many of the identified resource concerns across all eight critical conservation areas could be effectively addressed through soil health strategies.

NRCS should amend Sec. 1464.3 (Definitions) of the rule, so subsection (4) of the “priority resource concern” definition reads: “(4) Other natural resource improvements, including restoration of soil health, as determined by the Chief, within the critical conservation area.” Further, NRCS should explicitly include soil health degradation as a priority resource concern in each of the eight Critical Conservation Areas to ensure that RCPP proposals focused on soil health are encouraged. Because of the multiple resource benefits of soil health strategies, NRCS should prioritize proposals focused on soil health in the selection of RCPP proposals.

II. Partnership Agreements, Roles, and Responsibilities

We agree with the stated purpose in the explanatory language in the rule, that it “includes outreach provisions for historically underserved producers and for eligible partners and producers in designated CCAs,” although we think provisions should apply for all RCPP projects, not just those in critical conservation areas. *However, we do not find any such language in the rule itself.* The supplemental language for Sec. 1464.5(c)(4) applies to verification of the applicant’s status, not outreach efforts to underserved farmers and ranchers in general. Other USDA conservation programs include provisions to ensure that historically underserved farmers and ranchers are better served by the agency, and in many cases that includes higher cost-share or special outreach. That includes beginning farmers and ranchers, socially disadvantaged producers (racial or ethnic discrimination), limited resource farmers and ranchers, and veteran farmers and ranchers. The broad flexibility of RCPP provides partners with an opportunity, but not a responsibility, to ensure that the RCPP adequately serves these producers as well. We think that responsibility should be enshrined in the selection process and in implementation of RCPP projects.

We urge NRCS to add to Sec. 1464.21(b) (providing priority to certain proposals), a new subparagraph: “(3) Make strong efforts to involve historically underserved farmers and ranchers.” (and renumber remaining provisions). We urge NRCS to amend Sec. 1464.22(d) (requirements of partnership agreements) paragraph (2): “(2) Identify the outreach and education to producers for potential participation in the project, including outreach and education to historically underserved farmers and ranchers.”

³ 2018 Farm Bill Section 1271F, 16 USC 3871f.

We appreciate the language included in the rule (Sec. 1464.22 and 1464.23) which clarifies the differences between a partnership agreement, supplemental agreements, and alternative funding arrangements. We support the potential for NRCS to use supplemental agreements to provide support for organizations or agencies carrying out RCPP projects. We also support language in Sec. 1464.22(d)(4) which requires the lead partner to “identify the significant contribution to the project costs by the lead partner”, in that it does not require an arbitrary minimum contribution. The contribution is important, but it should be considered as one factor among others in evaluating RCPP proposals and not be subject to an arbitrary minimum. The contributions of non-lead partners should be included in the agreement as well because the lead partner presumably has some responsibility for ensuring they are honored.

We suggest that the language in Sec. 1464.22(d)(4) be changed to read “(4) Identify the significant contribution to the project costs by the lead and other partners” since those other partner contributions can be important.

We believe the partnership agreement between NRCS and a lead partner should include provision outlining practice payment rate limits, and participant payment limits for categories of practices that are consistent with other USDA conservation programs. For example, the Environmental Quality Incentives Program has a statutory \$450,000 limit on the benefits an entity can obtain over the course of the 2018 Farm Bill. Our intent is not to impair the value of the flexibility built into the RCPP, but to ensure that the program is not used as an end-run around payment limits established to ensure that conservation benefits are spread broadly through the agriculture community. For example, RCPP should not be used to allow large confined livestock feeding operations to obtain financial assistance for facilities that exceeds what they would be eligible for under the Environmental Quality Incentives Program, to allow a participant who has maxed out on their EQIP or CSP payment limit to obtain additional funds under RCPP for similar activities, or to allow farmers to obtain far more in NRCS dollars for a practice under RCPP than they would for the same practice under other USDA conservation programs.

We urge USDA to change Sec. 1464.22(d)(1)(ii) (requirements for partnership agreements) to read: “The eligible activities on eligible land to be conducted under the project to achieve conservation benefits, and the payment limits per participant, and NRCS payments that will be made for applicable activities.”

We appreciate the language in Sec. 1464.22(d) spelling out the requirements for including in the partnership agreement responsibilities of the lead partner. We note that NRCS will also have responsibilities under the partnership agreement and those should also be enumerated in this section of the rules, specifically the requirements under 16 USC 3871b(d).

We urge NRCS to revise Sec. 1464.22(d)(1)(iii) as follows: “(iii) The implementation timeline for carrying out the project, including any interim milestones related to partner and NRCS activities and obligations, and including a semiannual report describing the status of each pending and obligated contract under the project and an annual report describing how NRCS used the amounts reserved for technical assistance;”⁴

⁴ The semiannual and annual report as required under 16 USC 3871b(d)(4)(A) and (B).

The partnership agreement should also be clear to spell out how NRCS will determine the success or failure of the project, which is especially important because the provisions allowing for an expedited non-competitive renewal of the agreement depend on whether the project met or exceeded project objectives.

We urge NRCS to revise Sec. 1464.22(d)(5) to read: “(5) Define the conservation benefits and other outcomes to be achieved by the project including the impact to any priority or project resource concern, and identify the key metrics NRCS will use to evaluate success in meeting project objectives;”⁵

In partner and NRCS tracking and evaluation of project objectives, we urge NRCS to require the use of metrics and measures that reflect improvements in the designated resources of concern, such as improvements in soil health measurements, reductions in surface water pollution, and increases in quality wildlife habitat available, not just the acres placed in a certain practice or the dollars expended. In providing guidance to partners for the assessment of conservation benefits (required under 16 USC 3871b(d)(3)), NRCS should encourage the use of actual in-field and in-watershed measurement and evaluation, along with estimated benefits from models based on best available science, to provide a more accurate assessment of conservation benefits delivered.

We agree with the intent expressed in the Interim Rule’s explanatory language: “To ensure that only the most successful of projects qualify for renewal on a non-competitive basis, NRCS has identified in this rule that a partner must meet or exceed the objectives of the original project in order to be considered for renewal.” In its notice, NRCS also asked for comments on project renewal criteria. We recognize there is investment in creating and maintaining RCPP partnerships that should be recognized, but balanced against the potential for obtaining even greater benefits through a competitive process. As we noted above, the rule should be amended to provide both NRCS and the partners with clear metrics for how NRCS will judge whether a project has met or exceeded goals and objectives. In considering whether to renew an agreement, NRCS should first be sure that the project will address the *current* priority resource concerns of the area, which may have changed since the project was conceived. NRCS should also consider the expedited non-competitive renewal in the context of the level of benefits typically provided through new competitive project applications, and the option a RCPP partnership has to submit an application for a new award through the competitive process if not awarded a non-competitive renewal.

We suggest NRCS revise Sec. 1464.22(2)(f) by adding “(iii) NRCS determines that the project would address the current priority resource concern of the project area, and is likely to provide conservation benefits at least equivalent to the level of benefits provided by other RCPP projects.”

The Interim Rule provisions with respect to alternative funding arrangements or grants (Sec. 1464.25) are fine as far as they go in identifying selection criteria, but they lack specificity and appropriate protections for taxpayers. NRCS could conceivably be ceding important responsibilities to partners in the selection and awarding of contracts, ensuring that applicants meet adjusted gross income limits, that practices are

⁵ This new language is intended to identify metrics in part to provide clear notice of how NRCS will evaluate whether a project has “met or exceeded project objectives” warranting a renewal under the rule’s Sec. 1464.22(f)(2)(ii)), and to meet NRCS obligations under 16 USC 3871b(d)(5) to ensure that “any eligible activity effectively achieves the conservation benefits identified in the partnership agreement.”

appropriate and land is eligible, that needed conservation plans are carried out to NRCS specifications, that Sodbuster and Swampbuster provisions are complied with, that non-discrimination provisions are honored, that privacy laws are obeyed, that participants are not ‘double-dipping’ by obtaining assistance that exceeds established payment limits, and likely other requirements that apply to USDA conservation contracts that we are not aware of. It would be bad policy, and possibly a violation of federal law, to allow an RCPP agreement to circumvent those requirements that apply to all other RCPP or Title II programs.

Every alternative funding arrangement should come with a set of standard provisions to ensure that projects are not used to circumvent federal requirements and NRCS provisions designed to ensure fairness and protect taxpayer funds. The partner agreements should spell out who will be responsible for compliance (e.g., will the partners or USDA be responsible for Sodbuster and Swampbuster compliance, for confirming the applicant meets adjusted gross income limits, and for certifying that the land is eligible -- and if USDA is to carry out those duties will the agency charge an administrative or technical assistance fee for those services?). It should also spell out which anti-discrimination, privacy laws, and other provisions the partner must comply with, how that compliance will be ensured and enforced, and what repercussions will be available if needed.

We believe NRCS is in a better position to determine just which provisions should be addressed, but we offer the following as a new subsection to be inserted after 1464.25(c):
“(d) In addition to the provisions of § 1464.22, the partnership agreement for an alternative funding arrangement or grant agreement will include provisions identifying the responsibility of the lead partner and NRCS for ensuring compliance with all applicable requirements of federal law, including highly erodible land and wetland protection, adjusted gross income limits, eligibility of the land and practices, non-discrimination, and other applicable provisions.”

III. Program Contracts

Land Rental Authority

NRCS asked for input on how to incorporate land rental authorities into RCPP implementation. NRCS indicated in the narrative accompanying the Interim Rule that the use of land rental agreements would generally follow Conservation Reserve Program contracts and NRCS land management contracts, and that it would generally emulate standard NRCS ranking tools and contracting processes, and we generally support that approach. NRCS also indicated that it expects the use of this authority to be focused on short-term targeted rental needs in the context of a larger RCPP project, such as foregone income during a transition in production systems, but “not landscape-scale erosion protection.” However, NRCS did not include that type of restriction in the body of the Interim Rule, and we strongly support that decision to leave such language out of the rule and give NRCS flexibility to adjust this focus in the future.

The Conservation Reserve Program (CRP) statutory purpose – and by extension, the purpose of the CRP authorities granted to USDA under the RCPP – are clear: “to assist owners and operators of land ... to conserve and improve the soil, water, and wildlife resources of such land and to address issues raised by

State, regional, and national conservation initiatives.”⁶ The co-equal priorities of the CRP are clear: soil conservation, water quality, and wildlife habitat. The duration of contracts under the program is also clear: “For the purposes of carrying out this subpart, the Secretary shall enter into contracts of not less than 10, nor more than 15, years.”⁷ USDA does have authority under other programs, including the Conservation Stewardship Program and Environmental Quality Incentives Program, which it can use for shorter contracts.

We think the innovative use of the Conservation Reserve Program to deliver water quality benefits through targeted use of buffer strips and wetland restoration and protection, to deliver wildlife benefits through targeted use of habitat restoration, and to deliver the protection of rare native prairie through grassland agreements has provided huge conservation benefits. Unfortunately, decisions by Congress and USDA to sharply reduce CRP rental rates and incentive payments and to curtail the use of continuous signup for many practices that benefit wildlife has made the CRP much less attractive to landowners and thus less useful as a means of addressing soil erosion, water quality, and wildlife needs. We believe the flexibility built into RCPP, if properly used, could provide substantial conservation benefits. Providing for 10-15 year RCPP contracts using CRP authority would ensure longer lasting conservation benefits.

We urge NRCS to leave limitations on the use of CRP authority out of the language of the rule, to carefully consider the potential conservation benefits from the innovative use of this new authority, and to not pre-judge how RCPP partners should ask to use this authority in a proposal.

Pollinator-Friendly Seed Mixes and Native Vegetation

USDA has an opportunity to provide benefits for the many species of pollinators that are in jeopardy or in decline through the conservation practices put in place across the suite of USDA conservation programs encompassed by RCPP. NRCS can ensure that RCPP contracts that include planted vegetation, such as cover crops, wildlife or other cover, buffer strips and filter strips, or restored grasslands or wetlands, provide some benefits for pollinators. NRCS can do this by requiring that seed mixes that receive financial assistance under RCPP contracts include at least one forb that provides benefits for pollinators (such as the genus *asclepias* which benefit monarch and other butterflies as well as bees). By ensuring pollinator-friendly plants in every RCPP contract that includes planted vegetation, NRCS could provide widespread benefits for pollinators on millions of acres of land. Where appropriate, high-diversity pollinator seed mixes are still a good choice and should be encouraged as an RCPP wildlife practice, but NRCS should also ensure that every RCPP acre planted with cover crops or some conservation cover provide some minimum benefit for pollinators by including at least one pollinator-friendly plant species.

We urge USDA to require that RCPP seed mixes for cover crops, conservation cover, restoration, or other purposes include at least one forb that provides benefits for pollinators. At a minimum, USDA should better prioritize the inclusion of pollinator-friendly seeds in such plantings through RCPP scoring and the Field Office Technical Guide.

⁶ 16 USC 3831(a)

⁷ 16 USC 3831(e)(1). In very limited circumstances the statute allows for 30 year contracts for a CLEAR 30 contract (16 USC 3831c(a)(4), or a 3-5 year contract under the Soil Health and Income Protection Pilot Program which contracts are limited to a total of 50,000 acres in the Prairie Pothole Region (16 USC 3831c(b)).

Native plants provide equal or better benefits for soil conservation, water quality, carbon sequestration, ecosystem function, and livestock forage than introduced species, while also providing excellent habitat for wildlife and pollinators. Native plants are well adapted to the local climate and often easier to establish. Congressional agriculture committee leaders recognized the importance of native plants while writing the 2018 Farm Bill, and included strong language in the 2018 Farm Bill Conference Report directing USDA to encourage the adoption of native vegetation seed blends:

“The Managers recognize the benefits of native vegetation to improve water and air quality and enhance soil health. By encouraging the adoption of native vegetation seed blends, USDA programs are supporting habitat restoration for the northern bobwhite, lesser prairie-chicken, greater sage-grouse, other upland game birds, songbirds, monarch butterflies and pollinators. The Managers encourage the use of native vegetation where practicable.”

We urge USDA to prioritize the use of native vegetation for all new RCPP contracts for wildlife habitat, grassland or wetland restoration, buffer of filter strips, or other conservation cover plantings. NRCS should make native seeds, trees, and shrubs the default choice except in cases where NRCS determines that non-native species provide habitat or other ecological advantages over native species. At a minimum, USDA should better prioritize the use of native vegetation in scoring and in negotiating the details of RCPP agreements, and through RCPP application scoring and in the Field Office Technical Guide.

With respect to the rule, we urge NRCS to amend the language in Sec. 1464.30 by adding a new paragraph (a)(6): “(6) In selecting RCPP applications, NRCS may give priority to applications that protect native vegetation, use native plants in planting or restoration, or include pollinator-friendly species.”

IV. Program Requirements and Administration

Eligible Land

We support the language included in Sec. 1464.5(d), which provides that eligible land includes publicly owned agricultural land or associated land under specific circumstances. There are circumstances where it would not be appropriate to use RCPP practices, including conservation easements on land already publicly owned. There are also opportunities to help farmers adopt conservation practices on public agricultural land such as state school trust land or land owned by state and local fish and wildlife agencies that is rented for agricultural purposes.

We support the explanation in the summary with respect to U.S.-held conservation easements and entity-held conservation easements under RCPP, indicating that either kind of easement would be available to any kind of agricultural land (cropland, wetland, grassland, or riparian areas buffering agricultural lands). In some states where grassland easements are needed to provide permanent protection to native grasslands under threat of conversion, there are not enough eligible entities available to hold easements. Providing an option for a USDA-held easement will ensure broader access to this important conservation tool.

NRCS has developed procedures for valuation, ranking, and acquisition of easements under the Agricultural Conservation Easement Program and we think, in general, those procedures should be adequate for most RCPP easements. We would echo the comments we made on the Agricultural Conservation Easement Program Interim Rule that in evaluating and scoring potential easements under RCPP, priority should be given to the protection of predominantly native (over non-native) grasslands, wetlands, and woodlands, and priority should be given to lands that provide (or will provide, after restoration activities) habitat for pollinators.

We also repeat comments we made with respect to the Agricultural Conservation Easement Program Interim Rule, that conservation easements have the strongest likelihood of protecting the conservation values of the easement long-term when they include a requirement for conservation plans. That topic is not covered in the RCPP Interim Rule. Nor is the questions of coordination with the U.S. Fish and Wildlife Service at the local level with regard to the prioritization of easements and the development of operating plans. We think both of these topics should be addressed in the RCPP Interim Rule.

We urge NRCS to revise Sec. 1464.22(d) Partnership Agreements by inserting a new subsection (6) (and renumber remaining subsections): “(6) Provide for coordination with the Fish and Wildlife Service at the local level in assessing the wildlife value of conservation easements and developing appropriate easement operating plans with respect to wildlife benefits.”

We urge NRCS to revise Sec. 1464.30(a) Evaluation Guidelines by inserting a new subsection (7) (following the new subsection (6) we propose above): “(7) In selecting applications for conservation easements, NRCS may require or give priority to applications which include a commitment to maintain a conservation plan designed to preserve the conservation values of the easement.”

Sec. 1464.42 deals with NRCS access to an agricultural operation for purposes of determining eligibility, ranking and due diligence, and for ascertaining the accuracy related to an agreement or contract performance. We believe the notice provision falls short of honoring the property rights of an applicant and ensuring the most accurate result of an on-site visit.

We urge NRCS to revise the last sentence of Sec. 1464.42 as follows: “The NRCS representative will attempt to contact the applicant, participant, or landowner at least seven days prior to entering an agricultural operation or tract of land, and will provide the applicant, participant, landowner, or their designee the opportunity to accompany the NRCS representative while on site. Refusal to provide reasonable and necessary access may be grounds for denying an application, or for NRCS to determine that a participant is in violation of a program contract.”

Adjusted Gross Income Limit

The Interim Rule Sec. 1464.2(d) proposes a waiver provision which could make it too easy to obtain a waiver from the already high adjusted gross income (AGI) limit of \$900,000 for a producer. We understand the need for a waiver, but believe it should be exercised in very limited circumstances, and only where the waiver is needed for a particular piece of property necessary

to achieve a conservation benefit that cannot be obtained another way. It should not be exercised in a routine manner, for the convenience of a partner or applicant, nor should RCPP proposals be premised on an assumption that a waiver or waivers will be granted. The adjusted gross income limitation is in place for good policy reasons, to ensure that these taxpayer funds benefit farmers and ranchers who have the least means available to invest in conservation systems and do not unnecessarily subsidize wealthy farmers and ranchers.

For other USDA conservation programs, the limit on payments under Title II of the 2018 Farm Bill may only be waived by the Secretary, “on a case-by-case basis, if the Secretary determines that environmentally sensitive land of special significance would be protected as a result of such waiver.” For the RCPP, the statute provides that “the Secretary may waive the applicability of the limitation ... for producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.” We believe that the authority to waive the AGI limit should rest with the Secretary, and that more clear waiver criteria should be included in the rule. If NRCS uses an alternative funding arrangement or grant agreement under Sec. 1464.25 for a RCPP project, the authority for granting a waiver should remain with USDA and the criteria should remain the same.

We urge NRCS to change Sec. 1464.2(d) to read: “(d) To assist in the implementation of the program, the Secretary may waive the applicability of the limitation in section 1001D of the Food Security Act of 1985 for producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program because (1) a participant was eligible under the limitation when the contract was approved but their income subsequently exceeded the limitation, (2) environmentally sensitive land of special significance would be protected as a result of such waiver, or (3) the waiver is necessary to fulfill the objectives of the project that cannot reasonably be met through contracts with other eligible producers. Section 1001D of the Food Security Act of 1985 does not apply to eligible partners.”

Access to USDA Rulemaking

We note that USDA has, once again, provided only one pathway in the Interim Rule notice to provide comments, which is through the Regulations.gov online portal. Many farmers, and many rural areas, have no easy access to the internet or have poor internet service which might preclude them from providing comments through Regulations.gov.

We once again urge USDA in the Final Rule and in future rulemaking proceedings to also provide a physical address so Americans who do not have internet access can also participate by using the U.S. Postal Service or delivering comments on paper to USDA.

Insufficiency of Environmental Assessment

As we noted in our comments dated March 16, 2020, on the Draft Programmatic Environmental Assessment of the Regional Conservation Partnership Program, we believe the USDA's environmental assessment falls short of the requirements of the National Environmental Policy Act, fails to identify and assess a range of alternatives to implement the changes made to the Regional Conservation Partnership Program in the 2018 Farm Bill, and fails to provide transparency and an adequate opportunity for public comment on those alternatives. We believe therefore that the Finding of No Significant Impact based on that flawed assessment is invalid and unwarranted.

Thank you for the opportunity to provide comments on the Interim Rule, and we would be glad to respond to questions about these comments.

Duane Hovorka, Agriculture Program Director
Izaak Walton League of America
707 Conservation Lane, Suite 222
Gaithersburg, MD 20878