

Conservation Reserve Program Reform

The Conservation Reserve Program (“CRP”) is a land retirement program that incentivizes landowners to take certain agricultural land out of production and devote it to conservation. Farmers with low-quality land that may not be optimal for farming or ranching can enter into 10-to-15-year CRP contracts in exchange for an annual rental payment from USDA.¹ Land in CRP improves air and water quality and fosters the growth of beneficial trees, shrubs, and grasses for wildlife and pollinators, among many other environmental benefits.

CRP reform can enhance the environmental benefits of the current framework by increasing continuous enrollment, encouraging the transition into more permanent easements, and supporting agroforestry through CRP. These improvements to CRP can be done in ways that benefit farmers by offering higher rental rates, removing marginal land from production while still receiving income (and providing pathways for future income), and helping farmers implement agroforestry systems that can increase resilience, all while protecting or enhancing environmental outcomes.

QUICK SUMMARY

- CRP is one of the largest land conservation programs in the country.
- CRP requires taking land out of production in exchange for rental payments.
- CRP reform is needed to maximize program benefits for farmers and taxpayer investments.

BACKGROUND & CHALLENGES

Administered by USDA’s Farm Service Agency (“FSA”), CRP offers participants an opportunity to retire marginal or environmentally sensitive land in exchange for annual rental payments and planting species that will improve environmental outcomes.² Created in the 1985 Food Security Act (the 1985 Farm Bill) and re-authorized in subsequent farm bills, CRP offers farmers and ranchers the opportunity to retire unproductive land, with the aim of improving water quality, preventing soil erosion, and reducing the loss of wildlife habitat.³

CRP contracts generally last 10-15 years.⁴ Producers can apply for CRP during “general enrollment,” a window in which FSA accepts, ranks, and awards land enrollment offers based on potential environmental benefits to be attained through participation. “Continuous enrollment,” on the other hand, is a special enrollment process that allows certain environmentally sensitive land, such as wetlands and pollinator habitat,

¹ *Conservation Reserve Program*, FARM SERV. AGENCY, <https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/> [https://perma.cc/UB2J-N7ZF].

² FARM SERV. AGENCY, CONSERVATION RESERVE PROGRAM – CONTINUOUS ENROLLMENT PERIOD 1 (May 2022), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/crp-continuous-enrollment-period-factsheet.pdf> [https://perma.cc/FP85-J4Y2].

³ *Id.*

⁴ *Id.*

to be enrolled on an ongoing basis outside of the "general enrollment" application period.⁵ FSA's CLEAR30 Pilot offers extended, 30-year contracts through continuous enrollment for land with eligible conservation practices geared toward water quality (CLEAR denoting Clean Lakes, Estuaries, And Rivers).

CRP relies on participants to voluntarily reenroll in the program after their contract expires. FSA reports that many CRP enrollees leave the program after their first or second contract.⁶ When the price of commodity crops increases, participants generally shift land back into production and the number of acres enrolled in CRP declines.⁷ Between 2007 and 2014, participants withdrew 15.8 million acres from the program⁸ as commodity prices increased.⁹ Of the 8.1 million acres enrolled in CRP contracts that expired during 2013-16, only 36% were subsequently reenrolled in the program.¹⁰ When commodity prices are low, more land tends to remain enrolled in the program.¹¹ These dynamics put CRP's environmental objectives in tension with broader market trends.

The Biden-Harris Administration has recognized the potential for CRP to mitigate the effects of climate change and sequester carbon, which led to a goal of expanding enrollment in CRP by 4 million acres.¹² The additional acreage will assist the United States in responding to climate change and environmental degradation by preserving topsoil, sequestering carbon, and reducing nitrogen runoff, as well as providing healthy, diverse habitat for wildlife. According to USDA, an additional 4 million acres has the potential to mitigate 3 million metric tons of CO₂ equivalent, and prevent 90 million pounds of nitrogen and 33 million tons of sediment from polluting waterways annually.¹³ An increase of 4 million acres would put the program just under the 27 million acre cap that Congress established in the 2018 Farm Bill.¹⁴ In order to

⁵ *Id.*

⁶ FARM SERV. AGENCY, YEARS ENROLLED IN CRP BY STATE 1 (Sep. 2017), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Conservation/PDF/CRP%20Years%20Enrolled%20by%20State%20Sep%202017.pdf> [<https://perma.cc/8EGT-ZET6>].

⁷ Ron Wirtz, *Conservation Reserve Program Seeing Steep Decline*, FED. RSRV. BANK OF MINNEAPOLIS (Aug. 2, 2018), <https://www.minneapolisfed.org/article/2018/conservation-reserve-program-seeing-steep-decline> [<https://perma.cc/3XFR-7F8F>].

⁸ ANNE WEIR SCHECHINGER & CRAIG COX, ENV'T. WORKING GRP., 'RETIRED' SENSITIVE CROPLAND: HERE TODAY, GONE TOMORROW? 3 (2017), https://www.ewg.org/sites/default/files/u352/EWG_ParadiseLostReport_CO3.pdf?_%20ga=2.50975019.347754171.1516926949-371085394.1516926948 [<https://perma.cc/P7RC-JEXN>].

⁹ *Id.*

¹⁰ DANIEL BIGELOW, ET. AL., FARM SERV. AGENCY, THE FATE OF LAND IN EXPIRING CONSERVATION RESERVE PROGRAM CONTRACTS, 2013-16, 5 (Jan. 2020) <https://www.ers.usda.gov/webdocs/publications/95642/eib-215.pdf> [<https://perma.cc/R6CV-39KB>].

¹¹ Ron Wirtz, *Conservation Reserve Program Seeing Steep Decline*, FED. RSRV. BANK OF MINNEAPOLIS (Aug. 2, 2018), <https://www.minneapolisfed.org/article/2018/conservation-reserve-program-seeing-steep-decline> [<https://perma.cc/3XFR-7F8F>].

¹² *USDA Expands and Renews Conservation Reserve Program in Effort to Boost Enrollment and Address Climate Change*, FARM SERV. AGENCY (Apr. 21, 2021), <https://www.fsa.usda.gov/news-room/news-releases/2021/usda-expands-and-renews-conservation-reserve-program-in-effort-to-boost-enrollment-and-address-climate-change> [<https://perma.cc/4Y4Q-ZSUA>].

¹³ *Id.*

¹⁴ 16 U.S.C. § 3831(d)(1)(E).



reach the 4 million acre goal, USDA increased rental rates and incentives for certain practices, and established a minimum rental rate for grasslands enrolled in CRP.¹⁵

While the Administration's efforts to increase land enrollment is laudable, concerns remain regarding whether these enrollments will provide all these advantages in the long term. Currently, most conservation benefits are lost at the end of a contract's term when farmers put their land back into production.¹⁶ Carbon sequestration achieved during the life of the contract may be squandered once the land exits the program. To strengthen CRP's impact, more is needed to encourage participation, retire land from production for the long term, and orient exiting land toward more beneficial uses.

LEVERAGING & IMPROVING CRP

Encourage CRP Participation with Competitive Payments

To remedy the loss of land enrolled in CRP due to rising commodity prices, the program should increase payments to participants to a level that better discourages market reentry. In addition, easing rules around the use of land in CRP that does not negatively impact the environmental benefits (e.g., see "Support Agroforestry through CRP" below) would provide farmers with additional flexibility and, in some cases, the potential for additional income. To ensure the program continues to maximize environmental benefits under future administrations, Congress could codify the increased payments and incentives offered under the Biden-Harris Administration in the 2023 Farm Bill. By adopting these enhancements in the farm bill, Congress can ensure that farmers and ranchers remain incentivized to enroll and keep their land in the program and not put it back into production. Including these financial incentives that can retain and increase acreage in the program supports local and national environmental interests by protecting ecologically sensitive land while allowing farmers and ranchers to continue playing a crucial role in combating climate change and mitigating pollution.

Expand Continuous Enrollment

Because continuous enrollment focuses on the most environmentally sensitive land that can provide the biggest environmental benefits, Congress should focus on expanding continuous enrollment. According to FSA, approximately 34% of the total land in CRP is enrolled through continuous enrollment.¹⁷ This means environmentally sensitive land devoted to certain conservation practices, like vegetative buffers along waterways, is eligible for enrollment in CRP at any time.¹⁸ Unlike the CRP general enrollment process, land enrolled through continuous enrollment does not compete

¹⁵ *USDA Expands and Renews Conservation Reserve Program in Effort to Boost Enrollment and Address Climate Change*, FARM SERV. AGENCY (Apr. 21, 2021) <https://www.fsa.usda.gov/newsroom/news-releases/2021/usda-expands-and-renews-conservation-reserve-program-in-effort-to-boost-enrollment-and-address-climate-change> [<https://perma.cc/4Y4Q-ZSUA>].

¹⁶ ANNE WEIR SCHECHINGER & CRAIG COX, *supra* note 8, at 3.

¹⁷ FARM SERV. AGENCY, CONSERVATION RESERVE PROGRAM MONTHLY SUMMARY - MARCH 2022 1 (2022)

<https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Conservation/PDF/MAR2022CRPMonthly.pdf> [<https://perma.cc/T8UA-29PX>].

¹⁸ FARM SERV. AGENCY, CONSERVATION RESERVE PROGRAM – CONTINUOUS ENROLLMENT PERIOD, *supra* note 2, at 1.

or bid against other land that participants are trying to enroll.¹⁹ Rather, the most environmentally sensitive land can be enrolled at any time without competition.²⁰ Given its targeted scope, continuous enrollment has the potential to turn marginal land into land providing productive environmental benefits. Codifying the increased incentives discussed above would encourage more people to apply for continuous enrollment, as would additional outreach and training on the benefits of enrolling land in CRP.

Promote Long Term Land Retention

Congress should incentivize participants that have previously enrolled in a CRP contract to keep their land out of production by transitioning the land into long-term easements. Conservation easements create long term benefits by establishing certain permanent conservation requirements on the land in exchange for payment commensurate with the change in value of the land due to the new requirements. Easements protect the environmental benefits gained from long term implementation of conservation practices by limiting nonconforming uses which have the potential to negatively impact environmental outcomes. Further, easements provide farmers and ranchers a financial benefit for land that is otherwise not productive. Rather than repeating short-term, 10-15 year contracts currently available through CRP, where reenrollment is not guaranteed, Congress could establish an easement program that allows farmers and ranchers currently participating in CRP to transition their land into an easement. This objective might also be achieved by reorienting or expanding the current Agricultural Conservation Easement Program to transition CRP land for this purpose. Facilitating a turn toward easements would provide farmers and ranchers with financial certainty and ensure that taxpayer funds are not being wasted on fleeting environmental benefits.

LEGISLATIVE HIGHLIGHT

In May 2023, Senators Cory Booker and Chuck Grassley introduced the Conservation Reserve Program Reform Act, S.1509, as a marker bill for the 2023 Farm Bill. The legislation would focus “future CRP enrollment in marginal land” by increasing the rental rates and the minimum acreage for continuous enrollment and by extending the maximum contract lengths to 30 years for continuous enrollment and grasslands, among other changes. These proposals align with the recommendations detailed above and would make CRP an even more impactful program. A one-page summary of the Act, from Senator Booker’s office, can be found [here](#).

Support Agroforestry in CRP

Integrating CRP with agroforestry, which is the intentional planting of trees with crops or livestock,²¹ has the potential to encourage more land to be enrolled in the program and to provide participants with an additional income stream, all while protecting the environmental benefits of the program.

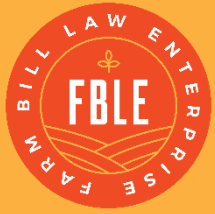
Currently, there is a general prohibition on harvesting crops from trees on land enrolled in CRP.²² Moreover, the tree planting density requirements are often not

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Agroforestry*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/topics/forestry/agroforestry> [<https://perma.cc/3Z27-VMCC>].

²² 7 CFR § 1410.63(a).



conducive to creating a productive agroforestry system.²³ By removing the prohibition on harvesting and directing USDA to alter the tree planting density requirements, Congress could use CRP to encourage adoption of agroforestry systems that provide a multitude of environmental benefits. If a participant chose to harvest from the trees while they had an active CRP contract, there should be a commensurate reduction in rental payments. By using CRP to establish a productive landscape capable of sustaining crops and livestock, participants who choose to exit CRP when their contract expires would no longer need to raze the vegetative cover they established as part of their CRP contract in order to return their land to production. Rather, they could keep the trees and other vegetation compatible with whatever they choose to grow or raise, which would retain many of the environmental benefits established under the CRP contract.

CONCLUSION

CRP plays a critical role in the long term success of American agriculture by transitioning marginal agricultural land to environmentally productive landscapes that promote ecological services like enhanced water quality and pollinator habitat. CRP has been a cornerstone of federal conservation efforts since 1985 and remains a popular program among farmers, ranchers, conservationists, hunters, and fishers. To sustain this broad enthusiasm, Congress should make CRP rental rates more competitive with commodity crop prices, transition CRP to longer term easements, and encourage the adoption of agroforestry systems through CRP.

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²³ James Davis & Gordon Rausser, *Amending conservation programs through expanding choice architecture: A case study of forestry and livestock producers*, 177 *AGRIC. SYS.* 102678 (2020), <https://www.sciencedirect.com/science/article/pii/S0308521X19302124>; see Lingxi Chenyang, Andrew Currie, Hannah Darrin & Nathan Rosenberg, *Farming with Trees: Reforming U.S. Farm Policy to Expand Agroforestry and Mitigate Climate Change*, 48 *ECOLOGY L.Q.* 1, 32 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3717877&download=yes; cf. NAT'L AGROFORESTRY CTR., *IS CONVERTING CRP TO SILVOPASTURE RIGHT FOR YOU? WORKING TREES INFO 1* (2014), <https://www.fs.usda.gov/nac/assets/documents/workingtrees/infosheets/ConvertCRPSilvopastureMarch2014.pdf> [<https://perma.cc/36H4-VHEV>].