Farm and Ranch Lands Protection Program

The Farm and Ranch Lands Protection Program (FRPP) is a voluntary federal conservation program that provides matching funds to eligible entities to buy conservation easements on farm and ranch land. The USDA Natural Resources Conservation Service (NRCS) may pay up to 50 percent of the appraised fair market value of the easement. The program was originally enacted in the Federal Agriculture Improvement and Reform Act of 1996. It was reauthorized and expanded in the Farm Security and Rural Investment Act of 2002. The Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill P.L.110-234) changed the purpose of the program from protecting topsoil to protecting "…the agricultural use and related conservation values of eligible land by limiting nonagricultural uses…" (16 U.S.C.§3838i). It also expanded the types of eligible entities and categories of eligible land. Most importantly, the 2008 Farm Bill changed the nature of the program from a federal real estate acquisition program to a federal financial assistance program that provides funds to entities for easement acquisitions. Funding for the FRPP comes from the Commodity Credit Corporation, the same federal entity that finances farm income support payments and conservation payments. The NRCS manages the program.

Eligibility

Land

To qualify for the FRPP the land must be part of a privately owned farm or ranch and must:

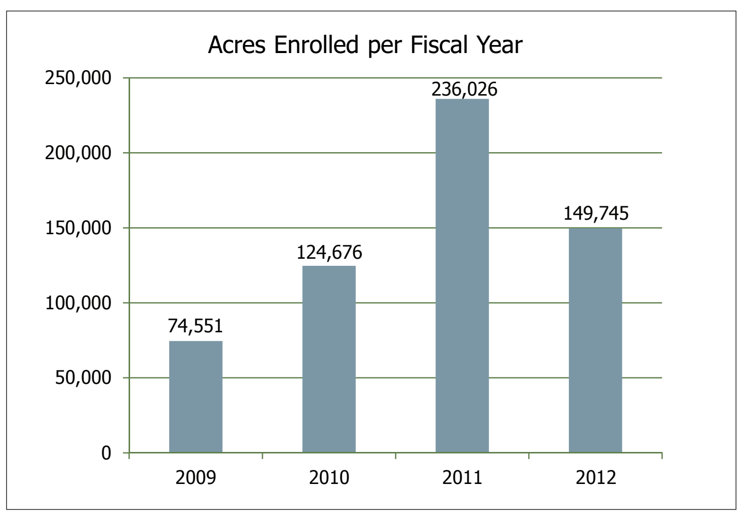
- Contain prime, unique or other productive soil—at least 50 percent unless otherwise determined by the State Conservationist, contain historical or archaeological resources, or support a state or local policy consistent with the purpose of the program;
- Be included in a pending offer from a state, tribal or local government or non-governmental organization's farmland protection program;
- Include cropland, rangeland, grassland, pasture land or forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation from development; and
- Possess onsite and offsite characteristics consistent with the purpose of the program.

Forest land cannot make up more than two-thirds of the acreage submitted in the pending offer. The NRCS requires a forest management plan for forest land in excess of 40 acres or 20 percent of the easement area. Other incidental land may be considered eligible if inclusion is necessary for the efficient administration of a conservation easement.

Landowner

For the purposes of FRPP, landowner means a person, legal entity or Indian Tribe with legal ownership or an agreement to purchase eligible land. In general, eligible entities (see below) are not considered landowners. The correction to the interim final rule published on July 2, 2009, in the *Federal Register*, however, amended the definition giving the agency more flexibility. At the Chief's discretion in limited circumstances, the NRCS may facilitate the placement of a conservation easement on parcels owned by eligible entities. The parcel, however, must be transferred back to private ownership at or before closing on the easement.

Eligible landowners must comply with USDA's conservation requirements for highly erodible land and wetlands. In addition, they must meet the Adjusted Gross Income (AGI) limitations for program eligibility set forth in the 2008 Farm Bill. Landowners that have an average AGI exceeding $1.0 million for the three tax years preceding the year the contract is approved are not eligible to receive program benefits or payments. An exemption is provided in cases where 66 percent of the AGI is derived from farming, ranching or forestry operations.



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Eligible Entities

Federally recognized Indian tribes, states, units of local government or non-governmental organizations that buy agricultural conservation easements for the purpose of protecting agricultural use can apply for FRPP matching funds. "Non-governmental organization" means a tax-exempt organization formed for the conservation purposes set forth in Internal Revenue Code Section 170(h)(4)(A). These purposes include the preservation of land areas for outdoor recreation, natural habitat, open space—including farmland and forest land—and the preservation of historic resources. The 2008 Farm Bill amended the definition of eligible entities to add churches, universities and hospitals.

In addition, eligible entities must demonstrate:

- A commitment to long-term conservation of agricultural lands;
- A capacity to acquire, manage and enforce easements;
- Sufficient staff to monitor and enforce easements; and
- Available funds.

The 2008 Farm Bill established "certified entities" as a special class of eligible entities that have demonstrated a capacity to complete land projects using FRPP funds and an ongoing commitment to monitoring and stewardship. Certified entities can enter into longer cooperative agreements for up to five years.

The final rule, published on January 24, 2011, and final rule amendment, published on February 10, 2012, included more robust certification requirements. Entities submit written requests for certification. State Conservationists then make recommendations to the NRCS Chief. To be certified, eligible entities must:

- Agree to use the Uniform Standards for Professional Appraisal Practice or the Uniform Appraisal Standards for Federal Land Acquisitions in conducting appraisals for FRPP funded projects;
- Hold a minimum of 25 agricultural land conservation easements, unless the entity requests and receives a waiver from the Chief;
- Hold at least five FRPP funded easements;
- Demonstrate ability to complete projects in a timely manner (i.e., on average close half of the projects submitted during the past five years in 18 months or less);
- Have the capacity to enforce the terms of the easements;
- For non-governmental organizations, possess a dedicated fund that is sufficiently capitalized for the management, monitoring and enforcement of easements held by the entity;
- Adjust procedures to ensure the conservation easements meet FRPP purposes and are enforceable; and
- Have a plan for administering easements, as determined by the Chief.

Certification helps streamline the process for more experienced entities. Certified entities may close easements without NRCS review and approval of appraisals, titles and easements. The NRCS will review 10 percent of the transactions submitted by each certified entity to ensure that they are completed in accordance with NRCS procedures. Entities will have 180 days to correct any problems that are identified. State Conservationists may initiate decertification if entities fail to come into compliance. The NRCS also will review certified entities every three years to ensure that they still meet certification criteria.

Application and Ranking Process

The NRCS Chief allocates FRPP funds to the states following Congressional budget approval. Previously, eligible entities submitted applications in response to requests for proposals published in the *Federal Register*. Now, State Conservationists announce one or more project ranking periods each fiscal year at least 30 days prior to the ranking date. Eligible entities may submit applications throughout the fiscal year. All parcels submitted by entities within a given application period are ranked. At the end of the fiscal year, the list of pending unfunded parcels is cancelled unless the eligible entity requests that specific parcels be considered in the next fiscal year.

The NRCS State Conservationist ranks parcels using national and state criteria. National ranking criteria are developed by the Chief in consultation with the national program manager and consider:

- Percent of prime, unique and important farmland;
- Percent of cropland, pastureland, grassland and rangeland;
- Ratio of total acres in the parcel to be protected to average farm size in the county;

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- Decrease in the percentage of acreage of farm and ranch land in the county between the last two USDA Censuses of Agriculture;
- Percent county population growth;
- Population per square mile;
- Proximity to other protected land;
- Proximity to other agricultural operations and infrastructure; and
- Additional criteria as determined by the Chief.

State and local criteria are developed by the State Conservationist with advice from the state technical committee—a technical advisory group of individuals who represent natural resource sciences and occupations from state and federal agencies and the private sector. State and local criteria may include but are not limited to:

- Location in an area zoned for agriculture;
- Entity's experience managing and enforcing easements;
- Additional social, economic, historical and archaeological and environmental benefits;
- Degree to which enrollment may help achieve national, state and regional conservation goals or enhance existing conservation projects;
- Diversity of natural resources to be protected;
- Land Evaluation and Site Assessment score; and
- Existence of a farm or ranch succession plan established to encourage farm viability for future generations.

The State Conservationist must make the national and state ranking criteria available to the general public. To learn more about how the FRPP program is administered in your state, go to: www.nrcs.usda.gov/about/organization/regions.html for a link to the appropriate state office. On the state page, go to "programs" and select the federal Farm and Ranch Lands Protection Program. The program page will provide important information including application deadlines and state ranking criteria.

Fund Allocation

When a proposal from an entity is approved, the NRCS executes a cooperative agreement on behalf of the Commodity Credit Corporation. The cooperative agreement describes the transaction, cost, an estimate of the federal share and responsibilities of each party. The term of cooperative agreements is five years for certified entities and three years for other eligible entities. It includes an attachment listing the parcels selected by the State Conservationist. During their duration, cooperative agreements will be amended each fiscal year to include the list of parcels receiving FRPP funds.

Eligible entities are able to use their own conservation easement deed. The NRCS, however, can establish minimum requirements as a condition of receiving funds. The easement, for instance, must contain a right of enforcement clause for the United States, which empowers the NRCS to inspect and enforce the easement if the eligible entity fails to uphold it. The right of enforcement is considered a "vested property right" and cannot be condemned by state or local governments, but this right has not been acquired by the NRCS. Instead, it is a condition the eligible entity must meet in order to receive FRPP funds. This interpretation means that federal real property acquisition requirements no longer apply.

Land subject to the easement must be managed in accordance with a conservation plan for highly erodible land developed in accordance with the standards in the *NRCS Field Office Technical Guide* and approved by the local conservation district. Conservation easements also must include a limit on impervious surfaces. In general, the NRCS requires a limit of 2 percent of the area subject to the easement. The State Conservationist may grant waivers on a case by case basis not to exceed 10 percent. The NRCS does not consider approved conservation practices, roads and parking areas with soil or gravel surfaces, or temporary greenhouses that cover soil for less than six months to be impervious surfaces.

The State Conservationist determines the NRCS share awarded for a given parcel. The NRCS may pay up to 50 percent of the appraised fair market value of the easement. Entities must provide at least 25 percent of the final negotiated purchase price.

History

The federal government's efforts to stem farmland conversion began with the passage of the Farmland Protection Policy Act (FPPA) in 1981. The FPPA directs federal agencies to evaluate the extent to which federally funded projects lead to the conversion of agricultural land and to consider less harmful alternatives. The regulations were issued in 1994 but have failed to effectively prevent farmland conversion.

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State	1996	1997	1998	2000	2001	2002	2003	2004	2005
Alabama	$0	$0	$0	$0	$0	$0	$1,221,901	$1,063,321	$48,104
Alaska	$0	$0	$0	$0	$0	$0	$0	$7,507	$0
Arizona	$0	$0	$0	$0	$0	$1,750,000	$0	$687,639	$18,492
Arkansas	$0	$0	$0	$0	$0	$0	$0	$0	$1,676
California	$2,080,000	$416,300	$1,042,000	$0	$1,117,400	$2,470,500	$3,213,682	$3,713,015	$5,865,805
Colorado	$1,040,000	$0	$1,042,000	$0	$540,200	$2,099,700	$3,491,161	$3,499,863	$4,527,904
Connecticut	$1,040,000	$0	$1,042,000	$0	$623,500	$2,101,035	$2,034,693	$2,970,308	$3,420,407
Delaware	$1,040,000	$0	$1,385,000	$0	$617,300	$1,956,500	$2,812,604	$4,212,200	$4,100,865
Florida	$453,000	$0	$625,000	$0	$729,600	$1,000,000	$3,230,596	$2,855,047	$4,500,562
Georgia	$0	$0	$0	$0	$0	$1,095,900	$1,136,839	$1,440,697	$1,588,207
Hawaii	$0	$0	$0	$0	$0	$0	$0	$2,406	$2,153,520
Idaho	$0	$0	$0	$0	$212,200	$450,000	$904,958	$370,492	$56,200
Illinois	$0	$0	$0	$0	$520,000	$1,319,430	$1,439,727	$1,767,477	$1,779,871
Indiana	$0	$0	$0	$0	$0	$901,200	$101,402	$7,075	$754
Iowa	$0	$0	$0	$0	$289,100	$766,311	$382,017	$266,660	$1,055,670
Kansas	$0	$0	$0	$0	$0	$165,000	$488,702	$119,420	$76,100
Kentucky	$416,000	$0	$729,000	$0	$635,800	$2,878,500	$3,136,810	$2,862,143	$3,745,262
Louisiana	$0	$0	$0	$0	$0	$0	$21,020	$998	$16,437
Maine	$0	$0	$375,000	$0	$663,800	$972,000	$1,141,447	$1,566,500	$38,769
Maryland	$1,555,000	$104,300	$1,457,997	$0	$718,400	$2,622,400	$5,032,549	$6,658,459	$8,720,347
Massachusetts	$1,040,000	$208,300	$1,250,000	$0	$637,800	$2,304,200	$2,932,471	$4,526,816	$4,746,323
Michigan	$1,040,000	$364,300	$1,094,000	$0	$562,200	$2,238,600	$3,102,026	$2,684,099	$4,163,108
Minnesota	$0	$0	$0	$0	$0	$0	$1,302,625	$1,135,953	$1,593,018
Mississippi	$0	$0	$0	$0	$0	$0	$0	$0	$0
Missouri	$0	$0	$0	$0	$0	$408,000	$1,218,553	$670,130	$628,505
Montana	$0	$0	$0	$0	$103,200	$1,338,400	$2,003,840	$2,287,642	$1,260,781
Nebraska	$0	$0	$0	$0	$0	$0	$0	$539,022	$10,942
Nevada	$0	$0	$0	$0	$0	$0	$0	$566,900	$1,260,437
New Hampshire	$0	$104,300	$234,000	$250,000	$527,900	$1,856,467	$1,954,102	$3,195,205	$3,507,384
New Jersey	$1,040,000	$208,300	$1,458,000	$0	$765,600	$2,300,928	$4,476,298	$5,714,994	$6,439,064
New Mexico	$0	$0	$0	$0	$0	$0	$1,423,893	$434,700	$680,480
New York	$416,000	$104,300	$1,458,000	$0	$440,900	$1,650,782	$2,847,539	$3,301,635	$5,713,403
North Carolina	$159,000	$0	$313,000	$0	$598,100	$2,193,428	$2,168,361	$2,399,224	$3,664,957
North Dakota	$0	$0	$0	$0	$0	$0	$701,100	$446,496	$370,213
Ohio	$0	$0	$0	$0	$0	$1,612,800	$2,428,786	$3,346,079	$3,974,570
Oklahoma	$0	$0	$0	$0	$26,000	$0	$1,199,957	$1,390,598	$861,287
Oregon	$0	$0	$0	$0	$0	$0	$1,188,484	$175,131	$675,783
Pennsylvania	$1,664,000	$281,300	$1,458,000	$0	$665,800	$2,870,316	$5,027,444	$4,244,350	$6,899,419
Rhode Island	$520,000	$0	$703,000	$0	$527,300	$1,328,600	$1,282,460	$2,675,154	$3,506,411
South Carolina	$0	$0	$0	$0	$299,500	$534,950	$1,186,487	$1,666,904	$1,623,621
South Dakota	$0	$0	$0	$0	$0	$0	$0	$0	$271,271
Tennessee	$0	$0	$0	$0	$0	$0	$0	$917,922	$518,522
Texas	$0	$0	$0	$0	$480,500	$0	$1,320,503	$1,559,561	$712,585
Utah	$0	$0	$0	$0	$116,500	$40,500	$1,157,901	$1,201,142	$1,334,346
Vermont	$1,040,000	$104,300	$1,250,000	$0	$3,452,800	$1,859,600	$2,036,124	$3,519,873	$3,553,722
Virginia	$104,000	$0	$0	$0	$521,800	$1,496,131	$921,344	$1,421,900	$1,733,381
Washington	$208,000	$0	$469,000	$0	$588,800	$2,088,422	$1,947,491	$1,716,240	$2,112,853
West Virginia	$0	$0	$0	$0	$0	$400,000	$1,003,992	$1,628,585	$2,052,080
Wisconsin	$145,000	$104,300	$615,000	$0	$518,000	$1,635,200	$1,803,867	$2,088,000	$3,592,567
Wyoming	$0	$0	$0	$0	$0	$0	$809,644	$1,014,288	$1,245,344
Pacific Basin	$0	$0	$0	$0	$0	$0	$0	$0	$0
Puerto Rico	$0	$0	$0	$0	$0	$0	$0	$0	$6,341
Total	$15,000,000	$2,000,000	$17,999,997	$250,000	$17,500,000	$50,705,800	$77,235,400	$90,539,770	$110,427,670

Figures represent funds for easement acquisitions (i.e., financial assistance) and technical assistance.
Historically, technical assistance has represented approximately 3% of funds allocated to the states.
There were no allocations in fiscal year 1999.

Source: USDA Natural Resources Conservation Service Easement Programs Division

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The Farms for the Future Act, adopted as part of the 1990 Farm Bill, set the precedent for federal funding by authorizing the Resources Conservation Demonstration Program. This program provided guaranteed loans and subsidized interest payments to state and local farmland protection programs. A pilot program in Vermont saved the state approximately $10.7 million in interest payments over three years.

The Federal Agriculture Improvement and Reform Act (the 1996 Farm Bill) established a Farmland Protection Program (FPP), which superseded the Farms for the Future Act, to protect farmland from conversion to nonagricultural uses. It authorized up to $35 million in matching funds over six years to state, tribal and local programs for the purchase of agricultural conservation easements and other interests in productive farmland.

The Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) renamed and expanded the FPP to include non-governmental organizations as eligible entities, make farm and ranch land containing historical and archeological sites eligible and allow landowner donations to count as part of the entity's match.

The 2008 Farm Bill changed the purpose of the program from protecting topsoil to protecting agricultural use and the conservation values of agricultural land from nonagricultural development. It expanded the types of eligible entities and categories of eligible land and changed the nature of the program from a federal real estate acquisition program to a program that provides financial assistance to entities for easement purchases. Lastly, the 2008 Farm Bill increased funding for the program. Congress authorized the following funding for each fiscal year:

- Fiscal Year 2008 $97,000,000
- Fiscal Year 2009 $121,000,000
- Fiscal Year 2010 $150,000,000
- Fiscal Year 2011 $175,000,000
- Fiscal Year 2012 $200,000,000
- Fiscal Year 2013 $150,000,000

Functions and Purposes

The FRPP provides financial support to state, local and private farm and ranch land protection efforts. These programs protect agricultural land from residential and commercial development by acquiring agricultural conservation easements on productive farmland. Conservation easements allow farmers to free capital tied up in their land while still maintaining the right to use the land for agriculture. Income from the sale of conservation easements may be used to reinvest in agricultural operations, invest for retirement and/or reduce debt. By removing the speculative value of the land, these programs may also help keep agricultural land affordable for beginning farmers. In addition, the FRPP encourages good stewardship by requiring the implementation of conservation plans on highly erodible cropland.

Benefits

- Provides much-needed financial assistance to state, local and private farmland protection efforts.
- Encourages the development of new farm and ranch land protection programs.
- Encourages good stewardship by requiring the implementation of conservation plans on highly erodible cropland.
- Makes the protection of farm and ranch land from conversion to other uses an NRCS issue.
- Fosters national awareness about farm and ranch land protection.

Drawbacks

- In general, the NRCS will not enroll land previously protected by a permanent conservation easement OR land owned by an eligible entity unless ownership is transferred to a private landowner before the NRCS disburses the full FRPP payment. This has complicated and sometimes precluded preacquisitions by public entities and land trusts.
- FRPP participants and immediate family members cannot serve as voting board members for the land trust or public easement acquisition program that holds their easement. This provision has barred further service from valued board members and will prevent landowners with first-hand experience in selling easements from serving land protection organizations.
- The AGI limitation has prevented individuals and corporations who own key agricultural lands from participating.