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Western Region

Audit Report

Natural Resources Conservation Service
Farm and Ranch Lands Protection Program
Review of Non-Governmental Organizations

Report No. 10099-6-SF
July 2009

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250

DATE: July 6, 2009

REPLY TO
ATTN OF: 10099-06-SF

TO: Dave White
Chief
Natural Resources Conservation Service

ATTN: Letitia Toomer
Acting Director
Operations Management and Oversight Division

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Farm and Ranch Lands Protection Program (FRPP)
Review of Non-Governmental Organizations

This report presents the results of the subject audit. Your written response to the official draft report is included as exhibit F. Excerpts from your response and the Office of Inspector General's position have been incorporated into the relevant sections of the report. Based on the information in your written response, we have accepted your management decision on all of the recommendations except for Recommendation 3. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

The information needed to reach management decision on Recommendation 3 is set forth in the OIG Position section after this recommendation. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days showing the actual or planned timeframe for implementing this recommendation. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance, and final action to be taken within 1 year of each management decision.

We appreciate the courtesies and cooperation extended to us the auditors during the audit.

Executive Summary

Results in Brief

In June 2005, the Natural Resources Conservation Service (NRCS) asked the Office of Inspector General (OIG) to review complaints that an Alabama non-Governmental organization (NGO) was abusing the Farm and Ranch Lands Protection Program (FRPP). Under FRPP, NRCS works with cooperating entities (including State, local, or tribal governments and NGOs) to purchase conservation easements from landowners who must then relinquish in perpetuity their right to develop the land. We concluded that the NGO had engaged in a scheme or device to circumvent program regulations by using landowners' funds for its share of the purchase price. Based on our audit report (Audit 10099-5-SF), NRCS terminated its agreement with the NGO. In the current audit, to assess whether the problem was more widespread, we expanded our review to include four other States and nine other NGOs. Specifically, we evaluated NRCS' controls to ensure that participating NGOs (1) paid their required share, and (2) had the financial capability to acquire the easements. We also evaluated whether easement appraisals were conducted in conformance with appraisal standards relating to technical reviews.

Our review covered the period of fiscal years (FY) 2003-2006. During this period, NRCS obligated $340 million in FRPP funds to preserve 379,000 acres of farm and ranch lands. Of this amount, $110 million was obligated for 168,000 acres to be acquired by NGOs.[1] In the four States we reviewed, NRCS obligated $17 million for NGOs to acquire 35,000 acres.

Overall, we found that NRCS has not implemented an effective management control system to monitor NGOs' compliance with program rules and to ensure that landowners are treated equitably (Finding 1). In general, NRCS presumed participating NGOs followed the rules instead of taking steps (such as performing reviews of NGO operations) to ensure that NGOs did.

Previous independent reviews have brought the weakness of FRPP's internal controls to NRCS' attention. Since 2002, FRPP reviews by both OIG and NRCS have noted weaknesses in NRCS' management control of the program. Our current audit confirms that NRCS' inadequate oversight is an ongoing concern as demonstrated by the following issues.

[1] Data for NGOs is as of August 6, 2006, and so may not include any cooperative agreements signed for the remainder of FY 2006 (August 7 through September 30, 2006).

Improper Use of Landowner Funds to Purchase Easements

In our current review, we found that one of the nine NGOs we reviewed used landowner funds to pay its share of the purchase price for its four FRPP easements, in violation of program regulations (Finding 2). The NGO misrepresented the source of its funds by certifying that it had not obtained the money from landowners when it had. As a result, NRCS overpaid $716,563 for the easements.[2]

NRCS instituted a self-certification requirement in April 2004 in response to the Alabama NGO's violations. The process requires NGOs to report the amounts being contributed by themselves, the landowner, and NRCS. However, after the requirement was in place, NRCS received complaints from landowners in 2004 and 2005 that the NGO was pressuring them to pay its share, and our prior audit confirmed that this had occurred. Our current audit found the practice continues, as we identified a Wisconsin NGO that was similarly misusing landowner funds. In effect, NRCS and landowners split four easements' purchase price while the NGO paid little or nothing to acquire them. Based on the conditions identified, we referred the NGO to OIG Investigations to determine if its misrepresentations were criminal violations. We also recommend that NRCS strengthen the self-certification process by verifying the landowner contributions reported by NGOs.

Lack of Standards to Prevent Inequitable Treatment

In many cases, NGOs solicit donations from landowners for costs associated with procuring and maintaining easements (such as stewardship or appraisal costs). FRPP regulations do not prohibit this practice, but NRCS lacks policies and procedures to govern the amounts and types of such payments. As a result, some landowners effectively realized significantly less from selling their easements under FRPP than others. Further, NRCS lacks assurance that the landowners' payments were reasonable and used for intended purposes.

Our review of 16 easements found wide variation in both the types and amounts of costs landowners were asked to pay. Some landowners paid for acquisition costs, some for stewardship, some for both, and some for neither. While some landowners paid nothing, one paid over $150,000. In our sample, we found that the amounts paid ranged from zero to 16.4 percent of the easement's purchase price. Since many landowners were required to pay these costs (which in effect reduced their sale proceeds), NRCS should establish standards for the types and amounts of acquisition/stewardship costs NGOs can pass on to landowners.

[2] NRCS' total cost share for the 16 sampled easements was $5.4 million.

We did not identify any reportable issues relating to NGOs' financial capability to acquire easements or whether easement appraisals were conducted in conformance with appraisal standards relating to technical reviews. However, the issues above demonstrate the need for NRCS to take a proactive approach to implementing strong management controls—such as monitoring NGOs' compliance and performing program-specific State office reviews—rather than relying on NGOs to comply.

Recommendations In Brief

We recommend that the Chief of NRCS:

- After consulting with OIG Investigations, coordinate with the agency's Chief Financial Officer and the Office of the General Counsel and collect $716,563 from the NGO that failed to pay its required share of easement purchases.
- After consulting with OIG Investigations, coordinate with the Office of the General Counsel and refer the NGO to the agency's suspension and debarment official.
- Establish policies and procedures to improve monitoring of NGOs' compliance with program regulations, including periodic reviews of State offices' administration of FRPP and NGOs' operations.
- Require State offices to contact landowners to verify that NGOs have accurately reported the amount of landowner donations on the self-certification forms.
- Establish and issue standards regarding acceptable ranges and types of easement acquisition and stewardship costs that may be paid by landowners.

Agency Response

NRCS agreed with the report's nine recommendations. We have incorporated NRCS' response in the Findings and Recommendations section of the report, along with the OIG position. NRCS' response is included as exhibit F.

OIG Position

Based on NRCS' response, we were able to reach management decision on eight of the report's nine recommendations. We were not able to reach management decision on Recommendation 3. NRCS will need to provide the additional information outlined in the OIG Position section of the report in order to reach management decision on this recommendation.

Abbreviations Used in This Report

C.F.R.	*Code of Federal Regulations*
CPM	*Conservation Programs Manual*
FRPP	Farm and Ranch Lands Protection Program
FR	*Federal Register*
FY	Fiscal Year
NGO	Non-Governmental Organization
NRCS	Natural Resources Conservation Service
OGC	Office of the General Counsel
OIG	Office of Inspector General
U.S.C.	*United States Code*
USDA	Department of Agriculture

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Background and Objectives

Background

The Farm and Ranch Lands Protection Program (FRPP) was established in 2002 to protect agricultural and other valuable lands from being developed (e.g., subdivided for housing).[3] The program is administered by the Natural Resources Conservation Service (NRCS) through 51 State offices.[4] Under FRPP, NRCS enters into signed agreements (cooperative agreements) with cooperating entities, such as State, local or tribal governments and NGOs, to share the cost of acquiring conservation easements.[5] NRCS funds up to half of the easement's purchase price, and cooperating entities are required to match NRCS' share. The entities purchase and hold title to the easements and accept the responsibility for maintaining them in perpetuity. In return for program payments received, landowners relinquish the right to develop their property for non-agricultural uses. Between fiscal years (FY) 2003-2006, NRCS obligated $340 million in FRPP funding to protect 379,000 acres nationwide. Of this amount, $110 million (32 percent) was obligated to protect 168,000 acres under NGO-acquired easements. [6]

The FRPP statute has two basic rules for funding the purchase of an easement.[7] First, NRCS' contribution cannot exceed half of the easement's fair market value (value). Second, an NGO may include, as part of its share of the easement purchase price, a charitable donation by the landowner of up to 25 percent of the easement's value. A charitable donation occurs when the landowner sells the easement for less than its full value. To illustrate, if a landowner sells an easement valued at $1 million for $750,000, the landowner has made a charitable donation of $250,000. The NGO can consider the full amount of the landowner's donation (since it does not exceed 25 percent of value) to be part of its own matching share, so the NGO only needs to provide $250,000 in cash, while NRCS pays the remaining $500,000. Regulations give additional rules governing the amounts NGOs are required to contribute which are discussed in more detail in Finding 2.[8]

Cooperative agreements specify the responsibilities of NRCS and the NGO. NRCS must ensure that a conservation plan and easement deed are in place and that they contain the terms necessary to ensure the purpose of the easement is achieved (such as to preserve the land's agricultural viability).

[3] FRPP was authorized by the *Farm Security and Rural Investment Act* (May 13, 2002). It replaced the Farmland Protection Program, authorized by the *Federal Agriculture Improvement and Reform Act* (1996 Farm Bill).
[4] Includes Puerto Rico.
[5] Because our review was limited to NGOs, we generally use that term in this report, although the criteria refers to the broader category of entities that can purchase easements under FRPP, such as State, local, and tribal Governments.
[6] Data for NGOs is as of August 6, 2006, and so may not include any cooperative agreements signed for the remainder of FY 2006 (August 7 through September 30, 2006).
[7] 16 U.S.C. §3838i (c)(2), May 13, 2002.
[8] 7 Code of Federal Regulations (C.F.R.) §1491.21 (initially published at 68 Federal Register (FR) 26461, May 16, 2003).

The NGO agrees to submit easement purchase proposals to NRCS, make an offer to the landowner, hold title to the easement, and, once acquired, monitor and manage the easement.

In June 2005, NRCS asked OIG to review an Alabama NGO's FRPP easement acquisitions because the agency had received complaints from landowners that they had been pressured to pay the NGO for the NGO's share of the purchase price. In our September 2006 audit report, we concluded that the NGO had circumvented FRPP's matching fund requirements by requiring landowners to reimburse the NGO for the amounts it had paid (Audit 10099-5-SF). Based on our recommendation, NRCS terminated its cooperative agreement with the NGO. To determine if the problem was more widespread, we expanded our review in this audit to four States and nine NGOs.

Objectives

The objectives of our review were to: (1) evaluate the adequacy of NRCS' controls to ensure NGOs complied with the program's matching fund requirements, (2) assess the controls that NRCS had in place to verify NGOs' financial capability to acquire easements, and (3) determine whether easement appraisals were technically reviewed in accordance with appraisal standards.

Findings and Recommendations

Section 1. Management Controls

Finding 1

NRCS Needs To Improve Management Oversight of FRPP and Monitoring of NGOs' Compliance with Program Regulations

Since 1996, through FRPP, NRCS has helped protect over a half-million acres of agricultural land under more than 2,700 easements.[9] Although NRCS required NGOs to certify that they had not used landowners' funds to buy easements, the agency did not verify the certified information (e.g., funding sources), which allowed some to circumvent the rule without being detected. This occurred because the agency had not implemented an effective management control system to monitor NGOs' compliance with program requirements and to ensure that landowners are treated fairly. The program's weaknesses developed from NRCS' reliance on NGOs to administer the program. NRCS did not adequately oversee the NGOs or take steps—such as periodic reviews of NGOs' operations—to ensure that they complied with FRPP's requirements. As a result of these weaknesses in NRCS' oversight, NGOs were not deterred from abusing the program by using landowners' cash to purchase easements and by charging them inequitably for acquisition costs.

Agencies are responsible both for implementing programs and for establishing controls sufficient to ensure that programs and participants comply with regulations.[10] The success or failure of an agency's control activities rests with it meeting several standards including: (1) committing to a strong control environment, (2) identifying and mitigating risks to the program, and (3) periodically reviewing the controls to ensure they are working effectively.[11] When an agency discovers deficiencies, it is responsible for taking timely action to correct them.[12]

Since 2002, FRPP reviews by both OIG and NRCS have noted weaknesses in NRCS' management control of FRPP. Although the agency has taken some action to strengthen its management of the program (as discussed below), it has not reviewed or monitored FRPP activities to ensure that the new controls are effective. In addition, NRCS' continuing reliance on NGOs to administer FRPP has prevented the agency from identifying risks to the program's integrity, such as NGOs' violations and potential inequities in landowners' payments for easement costs.

[9] Includes acres enrolled under FRPP's predecessor program, the Farmland Protection Program.
[10] Office of Management and Budget (OMB) Circ. A-123 I (2004).
[11] OMB Circ. A-123 II (2004).
[12] OMB Circ. A-123 V (2004).

We discuss these issues in more detail below.

<u>Identified Control Deficiencies Not Timely Corrected</u>

In August 2002, OIG's review of FRPP determined that NRCS did not have adequate controls over easement purchases (Audit 10601-5-Te). In November 2003, due to the audit, NRCS' own internal review group, Oversight and Evaluation, also examined NRCS' controls over FRPP and concluded that they were inadequate to ensure that entities complied with regulations. The review specifically found that NRCS lacked a process to monitor program compliance controls to ensure cooperative agreements contained all required provisions.

In response to these audits, NRCS took some steps to improve its management control over FRPP. For example, the agency held a national workshop for program managers that, among other topics, discussed implementing internal controls. NRCS also required its State offices to verify NGOs had met the terms of their cooperative agreement with NRCS before they were paid. However, the agency did not conduct program-specific reviews to ascertain whether the enhanced internal controls were effective. While NRCS does State-level management reviews, these do not target a particular program and therefore may not detect problems specific to FRPP. As of May 2008, Oversight and Evaluation had not reviewed the program since its 2003 review. As a result, NRCS has not detected NGOs' continued noncompliance with easement purchase requirements.

Under FRPP, an NGO's minimum required cash contribution towards an easement's purchase cannot come from landowners. Until 2004, NRCS relied on NGOs to comply with this rule and had not established any internal controls to ensure that they did.[13] In February 2004, an NRCS State official in Alabama attended an easement closing and noticed that the NGO paid nothing for an easement but instead used the landowner's contribution to cover its share of the purchase price. In March 2004, the official notified NRCS' national office, which investigated the issue. NGO officials maintained that they had misunderstood FRPP's rules and NRCS concluded that the NGO's violation was inadvertent. In April 2004, NRCS attempted to prevent the problem from recurring by requiring all NGOs to sign a self-certification form (NRCS form CPA-230) through which they affirm that their share of easements' purchase prices does not come from landowners.

[13] Contribution requirements are discussed in detail in Finding 2.

However, NRCS did not institute any procedures to verify the self-certified statements—essentially presuming NGOs were complying instead of confirming that they were. As a result, NRCS did not detect that some NGOs were still using landowners' funds to buy easements while certifying that they were not doing so. NRCS first learned the issue was continuing when two landowners notified NRCS separately in September 2004 and February 2005 that they were being pressured to pay the Alabama NGO's portion of their respective easements' purchase price. In June 2005, NRCS requested that OIG review the matter, and, in the interim, continued to rely on NGOs' self-certification.

In the audit of the Alabama NGO (Audit 10099-5-SF), we selected four easements acquired by the NGO that had closed over FYs 2004-2005.[14] The NGO had certified for each easement that it had paid its minimum required cash share of the purchase price without using landowners' funds. We determined that the NGO had in fact obtained these funds from the landowners. Based on our findings, NRCS terminated all easement purchase agreements with the NGO. The NGO's actions demonstrated that self-certification alone is not adequate to ensure compliance.

To discover the extent of the problem and to evaluate NRCS' management controls, we expanded our review to four additional States in the current audit. We determined that over 4 fiscal years (2003-2006), a Wisconsin NGO also misrepresented that it had not used landowners' funds to pay for its four FRPP easements. Unbeknownst to NRCS, in most cases the NGO told the landowners that they were required to make cash donations equal to 25 percent of their easements' fair market value (value) to the trust. These cash donations were in addition to the non-cash donations by the landowners; thereby, lowering the easement purchase prices and overstating NRCS' share of the easements. This action resulted in NRCS overpaying for its portion of the easements by over $700,000 (see Finding 2). We referred the NGO to OIG Investigations to determine if its misrepresentations were criminal violations.

Together, the two audits demonstrate that relying on NGOs without maintaining oversight is not an effective approach to ensuring program compliance.

<u>Program Risks Not Identified</u>

According to FRPP regulations, NRCS' funds can be used to pay for purchasing easements but not associated costs (e.g., appraisals). NRCS

[14] We also reviewed one additional easement that closed before the self-certification requirement was in place.

was not responsible for the costs and so left NGOs to handle them as they saw fit. We found that NGOs turned to landowners for funds to cover costs including surveys, appraisals, legal fees, stewardship, staff and other administrative costs (see Finding 3).

In our review of 9 NGOs in 4 States (that had purchased 16 easements), we found wide variation in both the types and the amounts of costs paid by landowners. For example, two landowners paid $2,500 and $60,000, respectively, for the NGOs' stewardship costs, while five paid nothing. Overall, landowners' payments to NGOs ranged from zero to over 16 percent of their easement's purchase price. In effect, some landowners received considerably less for their easements than others. Despite such wide variation in landowner proceeds from FRPP easement sales, NRCS has not established standards for costs to ensure that landowners are treated equitably.

As discussed, previous independent reviews have brought the weakness of FRPP's internal controls to NRCS' attention. Our audit confirms that this is an ongoing issue and that NRCS needs to take a more proactive approach to overseeing the program. To strengthen its management control of FRPP, NRCS should monitor compliance through reviews of both State offices' program administration and participating NGOs' program operations. (In the findings that follow, we present specific recommendations for the issues discussed above.)

Recommendation 1

Implement policies and procedures to strengthen internal controls by establishing a requirement to periodically monitor and review State offices' administration of FRPP.

Agency Response.

The draft 2008 Farm Bill FRPP manual establishes periodic, annual oversight reviews of program implementation at the State, area, or field offices, as applicable. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Recommendation 2

Establish a compliance program that includes reviews of NGOs' administration and management of FRPP.

Agency Response.

Current policy is in place to require quarterly progress reports from NGOs on the acquisitions and annual monitoring reports. The 2008 Farm Bill FRPP manual will establish a compliance program that reinforces quarterly reports, and reviews NGOs' administration and management of FRPP using a standardized set of criteria. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Under FRPP, NRCS works with cooperating entities (including State, local, or tribal governments and NGOs) to purchase conservation easements from the owners of threatened agricultural land. In return, the landowners must relinquish in perpetuity their right to develop the land. We identified an NGO that failed to contribute the required cash amount towards easement purchases without NRCS identifying and correcting the violation (see Finding 2). In addition, NRCS did not implement controls to ensure costs paid by landowners related to easement acquisition were equitable, potentially undermining public confidence in the program (see Finding 3). Together, the specific instances of noncompliance demonstrate the general need for NRCS to improve its management of the program.

Finding 2 NRCS Needs To Verify that NGOs Do Not Use Landowner Funds To Pay for Their Share of Easements' Purchase Price

An NGO in Wisconsin misrepresented the source of the funds it used to purchase four FRPP easements by certifying that it had not obtained the funds from the landowners when it had. This occurred because NRCS' controls were inadequate to ensure compliance with program regulations. By soliciting these funds, in addition to the non-cash donations, from the landowners, the NGO overstated its costs to purchase the easements and NRCS' share of these costs. As a result, NRCS overpaid $716,563 for the four easements. If NRCS does not strengthen its program management, the agency will not be able to detect NGOs that misrepresent the source of their easement purchase funds.

NRCS and NGOs share the cost of buying FRPP easements. The basic rule is that each pays half of the easement's fair market value (value); i.e., NRCS matches the NGO's payment. However, in some cases, NGOs can pay less than NRCS. When a landowner makes a donation, such as by selling the easement for less than its full value, the NGO can count the landowner donation (of up to 25 percent of the easement's value) as part of its matching share, in effect reducing the amount of cash the NGO must contribute by a like amount.[15] For example, if an easement is valued at and sold for $4 million, then the NGO and NRCS will each pay $2 million. If the landowner instead sells it for $3 million (a landowner donation of

[15] 16 U.S.C. §3838i (c)(2) (May 13, 2002) prohibits NRCS from contributing more than half an FRPP easement's fair market value, and allows an NGO to include a charitable donation by the landowner of up to 25 percent of the easement's value as part of its share of the purchase price. 7 C.F.R. §1491.21 (initially published at 68 FR 26461, May 16, 2003) requires NGOs to contribute, at a minimum, a cash payment of either (1) 25 percent of the easement's fair market value or (2) 50 percent of the purchase price. The NGO may select whichever option it prefers; but if the second option is chosen, NRCS' contribution cannot exceed the NGO's contribution.

$1 million, or 25 percent), then the NGO's cash payment will drop to $1 million (25 percent) and NRCS will still pay the remaining $2 million (50 percent). If the landowner donation exceeds 25 percent of value, the NGO may not use the portion of the donation exceeding 25 percent for its minimum required cash contribution.

In February 2004, an NRCS State office official in Alabama attended an easement closing and found that, in effect, the NGO paid nothing in the transaction. The landowner donated 25 percent of the easement's value ($287,000), the NGO solicited an "easement fee" of 25 percent ($287,000) from the landowner, and NRCS paid the remaining 50 percent ($574,000). So, in effect, the landowner paid 50 percent, NRCS paid 50 percent, and the NGO paid nothing to purchase the easement.

In March 2004, the State official communicated the issue to NRCS' national office, which notified the NGO that it had violated FRPP regulations. To prevent the problem from recurring, in April 2004 NRCS imposed a new requirement that NGOs certify (on the newly-developed NRCS form CPA-230) that their minimum required matching funds did not come from landowners.[16] Afterwards, in September 2004 and February 2005, NRCS received complaints from landowners that the same Alabama NGO was continuing to solicit funds from landowners to repay the matching share it had spent to purchase the easements. In response, NRCS asked OIG to examine the NGO's transactions.

Our review in 2006 of five easement purchases confirmed the complaints (Audit 10099-5-SF). We concluded that in four cases, the NGO had falsely certified to NRCS that it would not use landowner funds to pay its required share (certification was not required for the one of the five easements). We also found that, for four of the purchases, the NGO had in fact obtained funds from the landowners for its share of the purchase price (the NGO also asked the fifth landowner for a donation; the landowner initially agreed but later refused after learning that FRPP regulations prohibited the practice). In effect, for four of the five easements, only NRCS and the landowners significantly contributed to the purchase while the NGO contributed little or nothing.

The prior audit demonstrated that the self-certification requirement was inadequate to ensure NGOs complied with FRPP regulations. NRCS decided to wait for the results of our current review before taking any actions to strengthen the control. In the current audit, we reviewed 16 easements purchased by 9 NGOs in 4 States and found another NGO that was using landowners' funds to pay its required share while certifying that it was not.

[16] *Conservation Programs Manual* (CPM)-519.52 B (Apr. 2004).

In Wisconsin, NGO I acquired four FRPP easements under FY 2003-2006 cooperative agreements with NRCS. For three of the easements, the NGO used various means (loans or donations from landowners) to recoup the funds it was required to contribute so that it ultimately paid nothing. With the fourth easement, the NGO certified that it paid more than it actually did (considering the amount recouped from the landowner). In total, the NGO's misrepresentations led NRCS to overpay $716,563 for the four easements (see exhibit A). We referred NGO I to OIG Investigations to determine if its misrepresentations were criminal violations. NGO I's transactions are discussed in detail below.

<u>NGO I's Share of Three FRPP Easements' Purchase Prices Equaled Zero</u>

We reviewed the four FRPP easements acquired by NGO I. For three of the four, the NGO effectively contributed no cash towards the purchases. In two of these cases (easements 13 and 14), the landowners donated 25 percent of each easement's fair market value (value), and based on this, NRCS paid the remaining 50 percent. In the third case (easement 15), the NGO reported a landowner donation of 26.2 percent and its share as 25 percent, which left NRCS to pay the remaining 48.8 percent. According to the landowners we interviewed, they donated funds to NGO I because it required the donations as a condition of purchase. Although NGO I certified that the funds it used for its required share of the purchase (equal to 25 percent of value) did not come from the landowners;[17] in fact, it used various means (loans or donations from landowners) to recoup its share in each case. (See exhibit D for more details on OIG's calculation of NRCS' potential overpayment on the four easements.)

- Although NGO I certified to NRCS that landowner 13 donated 25 percent of the easement's value, the NGO entered into an "installment purchase agreement" with the landowner about 5 months before the easement closed. The agreement required the landowner to loan the NGO an amount of cash equal to the NGO's share of the purchase price (25 percent of the easement's value). The landowner obtained a loan from his credit union about a week before closing, and gave the funds to the NGO. The NGO used the landowner's donation (25 percent), the loan from the landowner (25 percent), and NRCS' payment (50 percent) to purchase the easement and contributed nothing. At easement closing, the credit union loan was paid off with funds from the easement sale that otherwise would have gone to the landowner; thereby reducing the

[17] NGO I made this certification for the two easements (14 and 15) requiring certification. Although the third easement was acquired in 2003, before NRCS' certification requirement, FRPP regulations still prohibited the NGO from paying its share with landowner contributions.

amount realized by the landowner by one-third (from 75 percent to 50 percent of the easement's value), resulting in an overpayment in NRCS' share totaling $268,500. See table below (and exhibit D) for OIG's calculation of the overpayment.

		A	B	C	(B - C)
EASEMENT NO. (VALUE)	PARTICIPANT	CONTRIBUTIONS AS REPORTED BY NGO (% OF VALUE)	ACTUAL CONTRIBUTIONS (% OF VALUE)	REQUIRED CONTRIBUTIONS PER AUDIT (% OF VALUE)	OVER-PAYMENT BY NRCS
13 ($1,074,000)	Landowner	$268,500 (25%)	$537,000 (50%)	n/a	
	NGO	$268,500 (25%)	$0 (0%)	$268,500 (25%)	
	NRCS	$537,000 (50%)	$537,000 (50%)	$268,500 (25%)	$268,500

- The NGO also certified to NRCS that landowner 14 donated 25 percent but it entered into a similar "installment purchase agreement" that made the landowner responsible for paying the NGO another 25 percent. At closing, the landowner donated 25 percent, the trust paid 25 percent, and NRCS paid 50 percent. Immediately after closing, the landowner wrote a check to the NGO for another 25 percent (plus additional amounts, see Finding 3), which effectively reduced the NGO's payment to zero.

- Similarly, NGO I certified to NRCS that it did not use landowner 15's funds to purchase an easement, but in fact required the landowner to pay the NGO's share (25 percent) after closing in addition to the landowner's 26.2 percent donation. Accordingly, about 2 weeks after the easement purchase closed, the landowner wrote a check to the NGO for the amount it had paid at closing.

If the NGO had represented the actual amount of the landowners' contributions for the three easements, the purchase price would have been reduced by 50 percent instead of 25 percent.[18] As discussed above, when there is a landowner donation, NGOs can reduce their required match by up to 25 percent of value (the limitation results from a requirement that NGOs contribute a minimum of 25 percent of fair market value). If a landowner donation exceeds 25 percent of value, the amount over 25 percent reduces NRCS' share. Therefore, with a landowner donation of 50 percent or more (as in the 3 cases cited), the NGO and NRCS would each pay half of the remaining amount.[19] Thus, as a result of the NGO's misrepresentation, NRCS overpaid a total $691,563 for these easements (see exhibit D).

[18] 51.2 percent and 26.2 percent, respectively, in one case.
[19] 48.8 percent in one case.

NGO I Underpaid $25,000

> To close the fourth easement, landowner 16 donated 48.6 percent of the easement's value, which resulted in NRCS and the NGO paying the remaining 51.4 percent (25.7 percent each). However, in response to NGO I's request, the landowner paid the NGO an additional $50,000 after closing, which brought the landowner's actual donation up to 53.3 percent. Accordingly, NRCS and the NGO should have split the remaining 46.7 percent—23.4 percent each[20]—but the NGO only paid 21.1 percent. Thus, NRCS overpaid $25,000 (see exhibit D).

In total, for the four easements, the NGO reported on its self-certification forms that landowners donated $1,240,100 and that it paid $977,375. Based on the reported contributions, NRCS paid $1,663,125. However, landowners actually donated $1,987,475 while the NGO paid $230,000. Based on the actual amounts, NRCS should have paid $946,562. Therefore, NRCS overpaid a total $716,563 for the easements (see exhibit D).

NGO I's violations in Wisconsin and our prior audit in Alabama demonstrate that self-certification by itself is not adequate to ensure NGOs comply with FRPP regulations. NRCS needs to strengthen its management controls by ensuring landowners are aware that NGOs are not allowed to obtain easement acquisition funds from landowners, and contacting landowners prior to easement closing to verify the accuracy of NGO-certified donation information.

Further, we believe that NGO I's actions warrant consideration by NRCS' suspension and debarment official to suspend or debar the NGO. Suspension and debarment are Governmentwide procedures established to protect the public interest by excluding from Federal programs persons who are not responsible.[21] Federal regulations give several reasons that entities can be suspended or debarred, including:

> the violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as . . . a willful failure to perform in accordance with the terms of one or more public agreements or transactions; . . . a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or

[20] Regulations allow an NGO the option of paying half of the purchase price in lieu of paying 25 percent of the easement's value (7 C.F.R. §1491.21 (d), initially published at 68 FR 26461: May 16, 2003). When a landowner's donation exceeds 50 percent of the easement's value, as in this case, this option results in a lower required payment for the NGO. For example, on an easement valued at $1 million but sold for $250,000, the purchase price would be split by the NGO and NRCS, with each paying $125,000.

[21] Debarment is a final determination that excludes a person for a specified period of time; suspension is a temporary measure excluding a person pending completion of an investigation or legal proceedings (7 C.F.R. §3017.605, Jan. 2006).

> transaction; . . . [or] any other cause of so serious or compelling a nature that it affects [the person's] present responsibility.[22]

Current FRPP procedures do not require State offices to inform landowners that program rules prohibit NGOs from obtaining funds to pay their required minimum share of the easement purchase price. We believe that NRCS should make landowners aware of this requirement in order to reduce the potential for such program violations by NGOs.

Recommendation 3

After consulting with OIG Investigations, coordinate with the agency's Chief Financial Officer and the Office of the General Counsel (OGC) and collect $716,563 from NGO I.

Agency Response.

NRCS has consulted with OIG, OGC and the NRCS CFO. The investigation disclosed that NGO I knowingly submitted false claims and caused overpayments by NRCS. OIG has forwarded the investigative report to the U.S. Attorney's Office to expedite any criminal and/or civil prosecution that may be required. Therefore, NRCS will hold all administrative actions, including recovery of overpayments, until OIG notifies NRCS of the actual dollar amount of the debt owed, and all criminal and other legal matters are final.

OIG Position.

Although we agree with NRCS' proposed corrective action for this recommendation, we are not able to accept its management decision. In order to accept NRCS' management decision, we need NRCS' final administrative determination whether to collect the questioned amount from NGO I, to include its justification for not collecting the questioned amount or a copy of the bill for collection for amounts owed to the Government and support that the amounts have been entered as a receivable in the agency's accounting records or evidence of collection.

Recommendation 4

After consulting with OIG Investigations, coordinate with OGC and refer NGO I to the agency's suspension and debarment official to determine if the NGO should be debarred or suspended.

[22] 7 C.F.R. 3017.

Agency Response.

NRCS consulted with OIG and OGC regarding suspension and debarment. Debarment or suspension action for the FRPP real estate transactions under the 2002 Farm Bill is not an option because the Department of Agriculture regulations exempted conservation real estate transactions from the non-procurement debarment and suspension regulations. However, under the 2008 Farm Bill, debarment or suspension action for FRPP transactions will be an option, because the program was revised from an acquisition program to a financial assistance program and, therefore, transactions will not be exempted from the non-procurement debarment and suspension regulations. In addition, NRCS has discretion under FRPP to determine whether NGO I meets basic eligibility criteria for participating in FRPP, including their financial and administrative capacity. Based upon documented poor performance under FRPP, NRCS shall decline to enter into a new FRPP cooperating agreement funding the applicant. NRCS will hold all administrative actions, until OIG notifies NRCS that all criminal and other legal matters are final.

OIG Position.

OIG accepts NRCS' management decision.

Recommendation 5

Require State offices to inform landowners of program regulations relating to landowner donations before obligating funds (specifically notify landowners that NGOs are prohibited from obtaining cash from the landowner to pay the NGO's minimum required cash contribution towards the purchase), and require landowners to provide a signed statement acknowledging that they have been informed of these requirements.

Agency Response.

The draft 2008 Farm Bill FRPP manual requires NRCS State office staff to visit every FRPP parcel, interview every landowner, inform them of FRPP regulations, and confirm the estimated easement value, Federal contribution, entity contribution, landowner donation, and recommended contribution to stewardship funds, before a cooperative agreement is signed. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Recommendation 6

Require State offices, prior to easement closing, to contact the landowner to verify the accuracy of the amount of any landowner donation reported by the NGO on its self-certification form.

Agency Response.

The draft 2008 Farm Bill FRPP manual requires NRCS State office staff to visit every FRPP parcel, interview every landowner, and confirm the appraised easement value, Federal contribution, entity contribution, landowner donation, and recommended contribution to stewardship funds before a closing occurs. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Finding 3

NRCS Should Establish Standards over NGOs' Obtaining Funds from Landowners for Easement-Related Costs

We reviewed 16 FRPP easements purchased by nine NGOs in four States and found wide variation in both the types and amounts of easement-related costs paid by landowners—ranging between zero and 16.4 percent of the easement's purchase price. This occurred because NRCS did not establish standards to govern the amounts and types of easement acquisition and stewardship costs that NGOs can obtain from landowners. NGOs typically cover these costs through donations, which in many cases come from landowners. As a result, some landowners effectively realized significantly less from their easement sale under FRPP than others.

FRPP regulations prohibit NRCS from paying for costs associated with acquiring and maintaining easements, such as surveys, appraisals, and stewardship.[23] However, the regulations are silent about the practice of landowners paying for NGOs' easement costs. In many cases, NGOs turn to landowners to pay these costs.

In the absence of NRCS guidance, our review of 16 easements found wide variation in both the types of costs landowners paid (acquisition and/or stewardship costs) and the amounts they paid (see exhibit E). For example, several landowners in our sample paid nothing, while one paid over $150,000.

In light of such wide variation, NRCS should establish standards relating to acceptable NGO practices for obtaining funds from landowners for easement-related costs. To ensure that NGOs comply with the new standards, NRCS should require NGOs to disclose all arrangements pertaining to landowners' payments for NGOs' costs prior to easement closing. Further, NRCS should inform participating landowners of the standards it develops.

Recommendation 7

Establish standards relating to acceptable ranges and types of easement acquisition and stewardship costs that may be paid by landowners. Incorporate these requirements into FRPP's policies and procedures and standard cooperative agreement language.

[23] 7 C.F.R. §1491.21(e) (initially published at 68 FR 26461: May 16, 2003). An exception is that program funds may be used to purchase a title insurance policy to protect the Government's interest.

Agency Response.

The draft 2008 Farm Bill FRPP manual limits donations of stewardship funds to 2 percent of the appraised fair market value of the easement, not to exceed $20,000. Donations for appraisals, surveys, title searches, and closing costs cannot exceed the actual costs of those items. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Recommendation 8

Require NGOs to include, in their application packages, information about the NGO's general policies relating to landowner payments of, and donations for, easement acquisition and stewardship costs. Also, require that all arrangements relating to landowners' payments of NGOs' acquisition and stewardship costs be disclosed to State offices before easement closing. The disclosures should specify the purposes and amounts of the landowners' payments.

Agency Response.

The draft 2008 Farm Bill FRPP manual requires NGOs to include, in their application packages information about the NGO's general policies relating to landowner payments of donations for easement acquisition and stewardship costs. State offices will obtain a signed statement acknowledging the landowner's donation, the appraised fair market value of the conservation easement, easement acquisition and stewardship costs, the conservation easement purchase price, and the contributions by NRCS and cooperating entity, to confirm the amount of matching funds provided. This statement must be signed by the landowner and the cooperating entity and delivered to NRCS prior to FRPP fund disbursement and NRCS accepting the conservation easement deed on behalf of the Commodity Credit Corporation. In addition, the draft 2008 Farm Bill FRPP manual requires NRCS State office staff to visit every FRPP parcel and interview every landowner to confirm the estimated easement value, federal contribution, entity contribution, landowner donation, and recommended contribution to stewardship funds. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Recommendation 9

Require State offices, before accepting an NGO's offer, to inform landowners of requirements relating to landowner payment of costs associated with easement acquisition and stewardship, and require landowners to provide a signed statement acknowledging that they have been informed of these requirements.

Agency Response.

The draft 2008 Farm Bill FRPP manual requires State offices, before accepting an NGO's offer, to obtain a signed statement acknowledging the landowner's donation, the appraised fair market value of the conservation easement, easement acquisition and stewardship costs, the conservation easement purchase price, and the contributions by NRCS and cooperating entity to confirm the amount of matching funds provided. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

OIG Position.

OIG accepts NRCS' management decision.

Scope and Methodology

We conducted a nationwide review of NGOs participating in the FRPP under FY 2003 to 2006 cooperative agreements with NRCS.[24] During the review period, NRCS obligated $340 million for participating entities to purchase 1,857 FRPP easements protecting 379,000 acres. Of this amount, NRCS obligated $110 million for NGOs to acquire 485 easements protecting 168,000 acres.[25]

We performed fieldwork at the NRCS' national office in Washington, D.C., and four NRCS State offices. To ensure nationwide coverage, we included in our sample at least one State office in each of NRCS' three regions (East, Central, and West). Our sample comprised Montana, Wisconsin, Idaho, and New Hampshire. NRCS obligated $17 million to NGOs in the four States in our review to acquire easements protecting 35,000 acres. We judgmentally selected these States for review based on various factors, including:

- The amount of Federal funds obligated to the State during the review period;
- Concerns raised by NRCS' national office;
- The lack of a State-run program participating in FRPP; and
- The number of NGOs and easements in the State.

At the State offices, we generally selected for review the NGOs with the largest number of closed easements acquired under FY 2003-2006 cooperative agreements and/or the largest dollar amounts contributed by NRCS. At the nine NGOs in our sample, we reviewed 21 easements that had been or were to be acquired under the agreements. We selected more easements that had been acquired (16) than were pending (5) in order to focus on previously identified issues related to NGOs' paying their share of easements' purchase prices with landowners' funds (Audit 10099-5-SF). We selected easements primarily based on the dollar amount of the Federal contribution, but also considered the status of the easement (acquired or pending) and the location of the parcel (see exhibit B for audit sites). NRCS obligated $6.7 million for the 21 easements to protect 13,000 acres (see exhibit C).

[24] We expanded our scope to include FY 2007 easements for one segment of our review, relating to appraisal reviews. See Finding 4.
[25] Data for NGOs is as of August 6, 2006, and so may not include any cooperative agreements signed for the remainder of fiscal year 2006 (August 7 through September 30, 2006).

To accomplish our audit objectives, we performed the following procedures.

- Obtained and reviewed applicable laws, regulations, updated policies and procedures, and reviewed prior audits to become familiar with the program.

- Interviewed NRCS' national FRPP manager to obtain concerns regarding the program and recommendations for audit coverage.

- Interviewed an OGC attorney about various issues we identified during the audit.

- Interviewed NRCS State office personnel to determine how the program operated in the States.

- Obtained and reviewed State office FRPP files to select easements for review and to obtain information about the easements.

- Interviewed management for the nine NGOs we reviewed, and examined their files to determine how they operated the program.

- Interviewed 20 landowners to verify information obtained from the State offices and NGOs on their easements.

- Reviewed appraisal reports obtained from State offices and NGOs to evaluate compliance with technical review standards.

Audit fieldwork was conducted between May 2007 and July 2008.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Exhibit A – Summary of Monetary Results

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
2	3	NGO I did not make required contributions towards easement purchases.	$716,563	Questioned Costs Recovery Recommended
TOTAL MONETARY RESULTS			**$716,563**	

Exhibit B – Sites Reviewed and Landowners Contacted

ORGANIZATION/LANDOWNER	LOCATION
NRCS National Office	Washington, DC
NRCS State Offices	
Idaho State Office	Boise, Idaho
Montana State Office	Bozeman, Montana
New Hampshire State Office	Durham, New Hampshire
Wisconsin State Office	Madison, Wisconsin
Entities	
NGO A	Idaho
NGO B	Idaho
NGO C	Montana
NGO D	Montana
NGO E	Montana
NGO F	New Hampshire
NGO G	New Hampshire
NGO H	New Hampshire
NGO I	Wisconsin
Landowners Contacted	
Landowner 1	Idaho
Landowner 2	Idaho
Landowner 3 *	Idaho
Landowner 4	Montana
Landowner 5	Montana
Landowner 6	Montana
Landowner 7	Montana
Landowner 8	Alaska
Landowner 9	Montana
Landowner 10	New Hampshire
Landowner 11	New Hampshire
Landowner 12	New Hampshire
Landowner 13	Wisconsin
Landowner 14	Wisconsin
Landowner 15	Wisconsin
Landowner 16	Wisconsin
Landowner 17	Idaho
Landowner 18	Idaho
Landowner 19	Montana
Landowner 20	New Hampshire

* The landowner has two FRPP easements: one was acquired, and another one was pending acquisition.

Exhibit C – NRCS' Share of Reviewed Easements' Purchase Price

LANDOWNER NUMBER	EASEMENT NUMBER	PURCHASE PRICE	NRCS' SHARE
Acquired Easements			
1	1	$603,750	$402,500
2	2	365,090	220,350
3	3	447,300	223,650
4	4	315,000	157,000
5	5	1,075,000	537,500
6	6	2,250,000	1,000,000
7	7	1,500,000	160,000
8	8	675,000	325,000
9	9	800,000	400,000
10	10	149,250	97,500
11	11	262,500	173,100
12	12	103,500	69,000
13	13	805,500	537,000
14	14	555,000	370,000
15	15	720,000	476,125
16	16	560,000	280,000
Subtotal		$11,186,890	$5,428,725
Pending Easements			
17	17	$313,750	$156,875
18	18	166,050	73,750
3	19	582,711	245,661
19	20	1,850,000	820,000
20	21	93,750	57,000
Subtotal		$3,006,261	$1,353,286
Total		**$14,193,151**	**$6,782,011**

Exhibit D – NGO I - Easement Funding

		A	B	C	(B - C)
EASEMENT (VALUE)	PARTICIPANTS	CONTRIBUTIONS AS REPORTED BY NGO (% OF VALUE)	ACTUAL CONTRIBUTIONS (% OF VALUE)	REQUIRED CONTRIBUTIONS PER AUDIT * (% OF VALUE)	OVER-PAYMENT BY NRCS
13 ($1,074,000)	Landowner	$268,500 (25%)	$537,000 (50%)	n/a	
	NGO	$268,500 (25%)	$0 (0%)	$268,500 (25%)	
	NRCS	$537,000 (50%)	$537,000 (50%)	$268,500 (25%)	$268,500
14 ($740,000)	Landowner	$185,000 (25%)	$370,000 (50%)	n/a	
	NGO	$185,000 (25%)	$0 (0%)	$185,000 (25%)	
	NRCS	$370,000 (50%)	$370,000 (50%)	$185,000 (25%)	$185,000
15 ($975,500)	Landowner	$255,500 (26.2%)	$499,375 (51.2%)	n/a	
	NGO	$243,875 (25%)	$0 (0%)	$238,063 (24.4%)	
	NRCS	$476,125 (48.8%)	$476,125 (48.8%)	$238,062 (24.4%)	$238,063
Subtotal of NRCS overpayment for easements 13, 14, and 15					$691,563
16 ($1,091,100)	Landowner	$531,100 (48.6%)	$581,100 (53.3%)	n/a	
	NGO	$280,000 (25.7%)	$230,000 (21.1%)	$255,000 (23.4%)	
	NRCS	$280,000 (25.7%)	$280,000 (25.7%)	$255,000 (23.4%)	$25,000
TOTAL ($3,880,600)	Landowners	$1,240,100 (32%)	$1,987,475 (51.2%)	n/a	
	NGO	$977,375 (25.2%)	$230,000 (5.9%)	$946,563 (24.4%)	
	NRCS	$1,663,125 (42.9%)	$1,663,125 (42.9%)	$946,562 (24.4%)	$716,563

* Law (16 U.S.C. 3831 (c)(2); May 13, 2002) and regulations (7 C.F.R. 1491.21; initially published at 68 Federal Register 26461; May 16, 2003) specify maximum amounts that NRCS may pay (50 percent of value) and minimum amounts that the NGO must pay (at the NGO's option, either (1) 25 percent of value or (2) 50 percent of purchase price). Regulations and program guidance neither require nor limit landowners' donations (i.e., selling the easement for less than its full value). If a landowner makes a donation, the regulation allows the NGO to reduce its required contribution by a like amount, up to a maximum of 25 percent of value.

In our calculations, we assumed the minimum allowable NGO payment. In each case, the lowest amount was 50 percent of the purchase price (this was less than 25 percent of value). Therefore, NRCS and the NGO equally split the purchase cost.

Exhibit E – Costs Paid by Landowners

NGO	LAND-OWNER	ACQUISITION COSTS	STEWARDSHIP COSTS †	TOTAL	PURCHASE PRICE	% OF PURCHASE PRICE
A	1	$13,364	-	$13,364	$603,750	2.2%
B	2	-	$60,000	$60,000	$365,090	16.4%
B	3	-	-	-	$447,300	0.0%
C	4	$1,149	$40,000	$41,149	$315,000	13.1%
C	5	*	$107,500	$107,500	$1,075,000	10.0%*
C	6	*	*	-	$2,250,000	*
C	7	$3,319	$150,000	$153,319	$1,500,000	10.2%
C	8	$1,899	$67,500	$69,399	$675,000	10.3%
C	9	$2,163	$80,000	$82,163	$800,000	10.3%
F	10	$10,662	$2,500	$13,162	$149,250	8.8%
G	11	-	-	-	$262,500	0.0%
H	12	$1,800	-	$1,800	$103,500	1.7%
I	13	$3,000	$15,000	$18,000	$805,500	2.2%
I	14	$5,000	$15,000	$20,000	$555,000	3.6%
I	15	-	-	-	$720,000	0.0%
I	16	-	$3,146	$3,146	$560,000	0.6%
TOTAL		**$42,356**	**$540,646**	**$583,002**	**$11,186,890**	**5.2%**

† Stewardship costs may also include administrative costs.

* Landowner 5 declined to provide us the documentation needed to determine if they had paid any acquisition costs, or the amount of any such payments. We were also unable to obtain this information from Landowner 6 for either acquisition or stewardship costs.

United States Department of Agriculture

NRCS

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

JUN 1 6 2009

SUBJECT: NRCS Response to the Revised Official Draft OIG Report 10099-6-SF, Natural Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program (FRPP) Review of Non-Governmental Organizations

TO: Robert W. Young
Assistant Inspector General for Audit
Office of Inspector General

Attached are the written responses to the draft report 10099-6-SF, NRCS and FRPP. NRCS addressed the proposed action for each recommendation. Unless stated in the response, all recommendations are scheduled for implementation upon the release of a final FRPP policy manual.

If you require additional information, please contact Letitia Toomer, Acting Director, Operations Management and Oversight Division, at (202) 720-1864.

Virginia L Murphy for

Dave White
Chief

Attachment

cc:
Virginia (Ginger) L. Murphy, Associate Chief, NRCS, Washington, D.C.
Lincoln E. Burton, Acting Deputy Chief for Programs, NRCS Washington, D.C.
Lesia A. Reed, Acting Deputy Chief, Strategic Planning and Accountability, NRCS, Washington, D.C.
John Glover, Acting Director, Easement Programs Division, NRCS, Washington, D.C.
Melvin Womack, Branch Chief, Programs Management Division, NRCS, Washington, D.C.
Letitia Toomer, Acting Director, Operations Management and Oversight Division, NRCS Washington, D.C.
Leroy Hall, Acting Compliance Team Leader, Operations Management and Oversight Division, NRCS, Washington, D.C.

Helping People Help the Land

NRCS' Response to the Revised Official Draft OIG Report 10099-6-SF, Natural Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program (FRPP) Review of Non-Governmental Organizations (NGO)

Recommendation 1
Implement policies and procedures to strengthen internal controls by establishing a requirement to periodically monitor and review State offices' administration of FRPP.

Agency Response
The draft 2008 Farm Bill FRPP manual establishes periodic annual oversight reviews of program implementation at the State, area, or field offices, as applicable. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the fiscal year (FY) 2009 FRPP final rule in the Federal Register scheduled for October 2009.

Recommendation 2
Establish a compliance program that includes reviews of NGOs administration and management of FRPP.

Agency Response
Current policy is in place to require quarterly progress reports from NGOs on the acquisitions and annual monitoring reports. The 2008 Farm Bill FRPP manual will establish a compliance program that reinforces quarterly reports, and reviews NGO's administration and management of FRPP using a standardized set of criteria. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

Recommendation 3
After consulting with OIG Investigations, coordinate with the Agency's Chief Financial Officer (CFO) and the Office of the General Counsel (OGC) and collect $716,563 from NGO I.

Agency Response
NRCS consulted with OIG, OGC, and the NRCS CFO. The investigation disclosed that NGO I knowingly submitted false claims and caused overpayments by NRCS. OIG has forwarded the investigative report to the U.S. Attorney's office to expedite any criminal and/or civil prosecution that may be required. Therefore, NRCS will hold all administrative actions, including recovery of overpayments, until OIG notifies NRCS of the actual dollar amount of the debt owed, and all criminal and other legal matters are final.

Recommendation 4
After consulting with OIG Investigations, coordinate with OGC and refer NGO I to the Agency's suspension and debarment official to determine if the NGO should be debarred or suspended.

Agency Response
NRCS consulted with OIG and OGC regarding suspension and debarment. Debarment or suspension action for the FRPP real estate transactions under the 2002 Farm Bill is not an option because the Department of Agriculture regulations exempted conservation real estate transactions from the non-procurement debarment and suspension regulations. However, under the 2008 Farm Bill, debarment or suspension action for FRPP transactions will be an option because the program was revised from an acquisition program to a financial assistance program and therefore, transactions will not be exempted from the non-procurement debarment and suspension regulations. In addition, NRCS has discretion under FRPP to determine whether NOO I meets basic eligibility criteria for participating in FRPP, including their financial and administrative capacity. Based upon documented poor performance under FRPP, NRCS shall decline to enter into a new FRPP cooperating agreement funding the applicant. NRCS will hold all administrative actions, until OIG notifies the Agency that all criminal and other legal matters are final.

Recommendation 5
Require State offices to inform landowners of program regulations relating to landowner donations before obligating funds (specifically notify landowners that NGOs are prohibited from obtaining cash from the landowner to pay the NGO's minimum required cash contribution towards the purchase), and require landowners to provide a signed statement acknowledging that they have been informed of these requirements.

Agency Response
The draft 2008 Farm Bill FRPP manual requires NRCS State office staff to visit every FRPP parcel, interview every landowner, inform them of FRPP regulations, and confirm the estimated easement value, Federal contribution, entity contribution, landowner donation, and recommended contribution to stewardship funds, before a cooperative agreement is signed. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

Recommendation 6
Require State offices, prior to easement closing, to contact the landowner to verify the accuracy of the amount of any landowner donation reported by the NGO on its self-certification form.

Agency Response
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Recommendation 7
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Agency Response
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Recommendation 8
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Agency Response
The draft 2008 Farm Bill FRPP manual requires NGOs to include in their application packages information about the NGO's general policies relating to landowner payments of donations for easement acquisition and stewardship costs. State offices will obtain a signed statement acknowledging the landowner's donation, the appraised fair market value of the conservation easement, easement acquisition and stewardship costs, the conservation easement purchase price, and the contributions by NRCS and cooperating entity, to confirm the amount of matching funds provided. This statement must be signed by the landowner and the cooperating entity and delivered to NRCS prior to FRPP fund disbursement, and NRCS accepting the conservation easement deed on behalf of the Commodity Credit Corporation. In addition, the draft 2008 Farm Bill FRPP manual requires NRCS State office staff to visit every FRPP parcel and interview every landowner to confirm the estimated easement value, Federal contribution, entity contribution, landowner donation, and recommended contribution to stewardship funds. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

Recommendation 9
Require State offices, before accepting an NGO's offer, to inform landowners of requirements relating to landowner payment of costs associated with easement acquisition and stewardship, and require landowners to provide a signed statement acknowledging that they have been informed of these requirements.

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The draft 2008 Farm Bill FRPP manual requires State offices, before accepting an NGO's offer, to obtain a signed statement acknowledging the landowner's donation, the appraised fair market value of the conservation easement, easement acquisition and stewardship costs, the conservation easement purchase price, and the contributions by NRCS and cooperating entity to confirm the amount of matching funds provided. The 2008 Farm Bill FRPP manual will be in effect upon the publishing of the FY 2009 FRPP final rule in the Federal Register scheduled for October 2009.

Informational copies of this report have been distributed to:

Chief, NRCS	
Attn: Director, OMOD	(5)
Office of the Chief Financial Officer	
Attn: Director, Planning and Accountability Division	(1)
Government Accountability Office	(1)
Office of Management and Budget	(1)