



United States Department of Agriculture



OFFICE OF INSPECTOR GENERAL



NRCS Regional Conservation Partnership Program Controls

Interim Report 10601-0004-31(1)

OBJECTIVE

This interim report focuses on NRCS' interpretation and actions regarding 2014 Farm Bill funding provisions for RCPP. This report is issued as part of an ongoing audit with the objective of assessing NRCS' RCPP proposal review process. We are also determining the adequacy of NRCS' controls over RCPP partner adherence to RCPP provisions, including the reimbursement of RCPP partner expenses.

REVIEWED

We reviewed applicable laws, regulations, and procedures concerning the administration of RCPP and interviewed NRCS and Office of the General Counsel (OGC) officials.

RECOMMENDS

We recommended that NRCS obtain an OGC legal opinion on the RCPP funding provisions and, based on the OGC opinion, review the covered program funds obligated and/or expended to date under RCPP for any Anti-Deficiency Act violations.

OIG reviewed NRCS' interpretation and actions regarding 2014 Farm Bill funding provisions for RCPP.

WHAT OIG FOUND

The Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) is responsible for working in close relation with farmers, ranchers, and private forest landowners. The 2014 Farm Bill created the Regional Conservation Partnership Program (RCPP), which provides partner-driven opportunities with producers to address natural resource objectives such as restoration and sustainable use.

The Office of the Inspector General (OIG) reviewed NRCS' interpretation and actions regarding the funding provisions for RCPP and found that NRCS may have misapplied the provisions. This occurred because the agency did not seek formal legal guidance clarifying the requirements of the legislation. As a result, NRCS may be in violation of the 2014 Farm Bill and the Anti-Deficiency Act.

NRCS officials concurred with our finding and recommendations, and we accepted management decision on both recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: June 8, 2017

AUDIT
NUMBER: 10601-0004-31(1)

TO: Leonard Jordan
Acting Chief
Natural Resources Conservation Service

ATTN: Leon Brooks
Director
Compliance Division

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: NRCS Regional Conservation Partnership Program Controls – Interim Report

This report presents the interim results of the subject audit. Your written response to the official draft interim report, dated May 9, 2017, is included, in its entirety, at the end of this report. Excerpts from your response and the Office of Inspector General's position are incorporated into the relevant sections of the report. Based on your written response, we are accepting management decision for both audit recommendations, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) works with farmers, ranchers, and private forest landowners nationwide to identify and address natural resource objectives in balance with operational goals to benefit soil, water, wildlife, and related natural resources locally, regionally, and nationally.

The 2014 Farm Bill created the Regional Conservation Partnership Program (RCPP), which is a partner-driven, locally-led approach to conservation.¹ Through RCPP, NRCS co-invests with partners such as conservation organizations or other entities to benefit farming, ranching, and forest operations. RCPP partners develop project proposals to address specific natural resource objectives in a particular area or region.² Upon selection and approval of a submitted project proposal, NRCS negotiates and develops a partnership agreement with the lead partner for the project.³ The partnership agreements address items that include outlining the responsibilities of RCPP partners, providing a significant portion of the overall costs of the projects, and assisting producers and landowners with applicable requirements.

NRCS delivers RCPP assistance through the authorities of four "covered programs": the Environmental Quality Incentives Program, the Conservation Stewardship Program, the Agricultural Conservation Easement Program, and the Healthy Forests Reserve Program. In certain geographic areas, RCPP assistance can also be delivered through the Watershed Protection and Flood Prevention Program. NRCS provides financial and technical assistance to project participants in accordance with the authorities and rules of the covered programs. NRCS and its partners implement RCPP projects by working with agricultural producers and owners of agricultural and forest land. Individual producers and landowners may apply directly to NRCS for programmatic assistance for eligible projects, or they may work with partners to participate in projects.

To implement RCPP, the 2014 Farm Bill authorizes \$100 million in annual funding and also reserves an additional 7 percent of the funds and acres made available under the covered programs. For fiscal years 2014 through 2016, NRCS offered more than \$570 million in funding for RCPP projects. The RCPP funding is allocated across three competitive fund pools: Critical Conservation Areas, National, and State.

¹ Agricultural Act of 2014, Pub. L. No. 113-79, § 2401, 128 Stat. 649, 744-51 (2014 Farm Bill).

² Resource concerns to be addressed by RCPP projects include water quality degradation, inadequate habitat for fish and wildlife, and air quality.

³ The lead partner serves as the primary contact with NRCS for all discussions regarding the RCPP project, final authority for negotiations and signing of the partnership agreement, and lead for coordinating all partner(s) activities for the overall project.

Objectives

This interim report focuses on NRCS' interpretation and actions regarding 2014 Farm Bill funding provisions for RCPP. This report is issued as part of an ongoing audit with the objective of assessing NRCS' RCPP proposal review process. We are also determining the adequacy of NRCS' controls over RCPP partner adherence to RCPP provisions, including the reimbursement of RCPP partner expenses.

Finding 1: NRCS Needs Clarification of Farm Bill Provisions

NRCS may have inappropriately combined fiscal year funds and misapplied the funding provisions of the 2014 Farm Bill. This occurred because the agency did not seek formal legal guidance clarifying the requirements of the legislation. As a result, NRCS may be in violation of the 2014 Farm Bill and the Anti-Deficiency Act,⁴ which prohibits government employees from making or authorizing an expenditure or obligation exceeding the amount available for the expenditure or obligation.

The 2014 Farm Bill, enacted on February 7, 2014, states that any funds or acres reserved from a covered program not committed under RCPP by April 1st of the applicable fiscal year shall be returned for use under the covered program.⁵

Concerns with Combining Fiscal Year Funding for RCPP Proposals

According to NRCS officials, the February enactment date of the 2014 Farm Bill did not provide the agency with adequate time to request, review, and approve RCPP proposals prior to April 1, 2014. As a result, the agency opted to combine the announcements for program funding for fiscal years 2014 and 2015. Agency officials stated that, as a result, they applied the April 1, 2015, deadline to both fiscal years. However, the language of the 2014 Farm Bill applies the April 1st deadline for commitment of the 7 percent reserved funds to the fiscal year in which the covered program funds originated, causing us to question the agency's ability to combine the fiscal year funds and apply April 1, 2015, as the commitment deadline for both years.

Agency officials stated that the decision to combine the funding announcements was discussed with the Office of Management and Budget and, possibly, the USDA Office of the General Counsel (OGC). However, despite several requests, we have not been provided with any documentation of these discussions.

NRCS Has Conflicting Interpretations of the Term "Committed"

The 2014 Farm Bill does not define the meaning of the term "committed." During our initial interviews of agency officials, we received conflicting information on when NRCS considered funds to be "committed." RCPP program officials stated that funds were committed on the date that the NRCS Chief signed the decision memorandum⁶ identifying the RCPP projects with which NRCS will establish partnership agreements. Although the 2014 Farm Bill provides an April 1st deadline, the decision memorandum for fiscal year 2014 funds was not approved until March 3, 2015, and the decision

⁴ See 31 U.S.C. § 1341(a)(1).

⁵ 16 U.S.C. § 3871d(c)(2). This requirement only applies to the seven percent of funds and acres reserved in accordance with 16 U.S.C. § 3871d(c)(1). It does not apply to the \$100 million of Commodity Credit Corporation annual funds that were made available under 16 U.S.C. § 3871d(a), which are available until expended. *Id.* § 3871d(b).

⁶ The decision memorandum states an overall funding level for the fiscal year as well as a list of individual approved RCPP project proposals and the associated funding amounts offered for each proposal.

memorandum for fiscal year 2016 funds was not approved until June 2, 2016. However, NRCS Financial Management officials stated that funds were committed once the agency determined there was more than enough interest in the program to use all the funds, as evidenced by the overall amount of funding requested by project proposals the agency received in response to the agency's funding announcements.

When we attempted to clarify this discrepancy, NRCS national office officials stated that both definitions were acceptable forms of commitment. We were then provided additional perspectives on what actions could be considered a commitment of funds before ultimately being informed that in relation to the Farm Bill's April 1st commitment requirement, NRCS believed that funds were committed when received by the agency because NRCS was committed to carrying out the program.

We requested that NRCS provide us with any documentation of internal agency discussions or communication with OGC regarding the appropriate interpretation of the term "committed" within the 2014 Farm Bill. However, we have not been provided any documentation in response. We spoke to OGC officials and they could not confirm any discussions with NRCS on this subject.

Given the lack of clarity on these issues, we are concerned that NRCS may have violated the funding provisions of the 2014 Farm Bill and the Anti-Deficiency Act. For example, if the agency cannot combine fiscal year funds (specifically, the 7 percent reserved funds), and the date of the decision memo is considered to be the date of commitment, then the agency did not meet the Farm Bill's deadline for fiscal years 2014 and 2016. Accordingly, per the provisions of the Farm Bill, the reserved funds and acres should have been returned to the applicable covered programs on April 1st of those fiscal years. The funds then would have been available for use through the normal operations of the covered programs. However, according to NRCS officials, the reserved funds were not returned to the covered programs and were reportedly obligated and potentially expended as part of RCPP.

Due to the lack of supporting documentation provided by the agency, the significance of the agency's ability to combine fiscal year funds, and NRCS' different interpretations of the term "committed," we believe that NRCS should obtain a formal OGC legal opinion. The legal opinion should address the appropriateness of combining 7 percent reserved funds from different fiscal years, the effect that combining fiscal year funds has on the commitment deadline, and the interpretation of the 2014 Farm Bill's use of the term "committed." Based on that legal opinion, the agency should take any appropriate legal and administrative actions.

Recommendation 1

Obtain a formal Office of the General Counsel (OGC) legal opinion on NRCS' interpretation and actions regarding the 2014 Farm Bill's requirement that reserved covered program funds be committed by April 1st of the applicable fiscal year. In particular, obtain an opinion on NRCS' ability to combine the 7 percent reserved funds from different fiscal years, the effect of

combining fiscal year funds on the commitment deadline, and the action that constitutes the commitment of reserved covered program funds.

Agency Response

In its May 9, 2017, response, NRCS concurred with our recommendation. NRCS agreed to seek an OGC legal opinion on the RCPP funding provisions with respect to covered program funds. NRCS estimates the corrective action will be completed by September 30, 2017.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Based on the OGC legal opinion, review the covered program funds obligated and/or expended to date under the Regional Conservation Partnership Program (RCPP) for any Anti-Deficiency Act violations. If any violations are identified, take appropriate legal and administrative action.

Agency Response

In its May 9, 2017, response, NRCS concurred with our recommendation. Based on the OGC legal opinion, NRCS agreed, if necessary, to review covered program funds and acres obligated and/or expended under RCPP to comply with the law, including identifying if there has been any violation of the Anti-Deficiency Act. NRCS estimates the corrective action will be completed by September 30, 2017.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

The audit team conducted fieldwork at the NRCS National Office located in Washington, D.C. This is an interim report and our work is ongoing.

Our audit covers RCPP activity for fiscal years 2014 through 2016. According to NRCS' website, the agency has offered approximately \$570,690,000 to RCPP projects during this time period.

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

- Reviewed applicable laws, regulations, and agency procedures concerning the administration of RCPP; specifically, the provisions pertaining to the submission, review, and approval of RCPP proposals;
- Interviewed NRCS RCPP officials in Washington, D.C., to gain an understanding of the RCPP proposal process;
- Interviewed NRCS Budget and Financial Management officials to gain an understanding of the RCPP funding and payment processes;
- Interviewed NRCS national office personnel to clarify the agency's interpretation of the 2014 Farm Bill; and
- Interviewed OGC personnel to determine the existence of any formal legal opinions requested by NRCS regarding the interpretation of the RCPP provisions of the 2014 Farm Bill.

We conducted fieldwork between October 2016 and February 2017.

We did not verify information in any USDA electronic information system in connection with the contents of this report, and we make no representation regarding the adequacy of any agency computer systems, or information generated by them.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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.

Abbreviations

NRCS	Natural Resources Conservation Service
OGC	Office of the General Counsel
OIG	Office of Inspector General
RCPP.....	Regional Conservation Partnership Program
USDA.....	Department of Agriculture

**USDA'S
NATURAL RESOURCES CONSERVATION
SERVICE
RESPONSE TO AUDIT REPORT**



United States Department of Agriculture

May 9, 2017

SUBJECT: SPA - Response to the Office of the Inspector General Interim Report 10601-0004-31(1) NRCS Regional Conservation Partnership Program Controls

TO: Gil H. Harden File Code: 340-12-11
Assistant Inspector General for Audit
Office of Inspector General (OIG)

This memorandum is in response to the Office of Inspector General (OIG) memorandum of April 21, 2017, transmitting OIG's Interim Report for Audit #10601-0004-31(1), NRCS Regional Conservation Partnership Program Controls. Attached are NRCS' responses to the recommendations raised in OIG's interim report.

In summary, NRCS will seek a legal opinion from the Office of the General Counsel (OGC) on the funding provisions, under covered program funds, and acres that are obligated and/or expended, to date, under RCPP for Anti-Deficiency Act violations. NRCS also will obtain an opinion on meeting the Farm Bill's requirement that reserved covered program funds be committed by April 1 of the applicable fiscal year.

If you require additional information, please contact Lesia Reed, Deputy Chief for Strategic Planning and Accountability, at (301) 504-0056.

/s/

Leonard Jordan
Acting Chief

Attachment

Attachment

**Agency Response to the Office of Inspector General (OIG) Audit Report 10601-0004-31(1) (Interim Report)
NRCS Regional Conservation Partnership Program (RCPP) Controls**

During the review of RCPP, the auditors noted that:

Finding 1: NRCS Needs Clarification of Farm Bill Provisions Determinations:

- A. NRCS combined Fiscal Year Funding for RCPP proposals and has conflicting interpretations of the Term “Committed”.

Recommendation 1:

Obtain a formal OGC legal opinion on NRCS’s interpretation and actions regarding the 2014 Farm Bill’s requirement that reserved covered program funds be committed by April 1st of the applicable fiscal year. In particular, obtain an opinion on NRCS’s ability to combine the 7 percent reserved funds from different fiscal years, the effect of combining fiscal year funds on the commitment deadline, and the action that constitutes the commitment of reserved covered program funds.

Agency Responses:

NRCS will seek an OGC legal opinion on the RCPP funding provisions with respect to covered program funds Based on the OGC opinion, if necessary, review covered program funds and acres obligated and/or expended to comply with the law, including identifying if there has been any violation of the Anti-Deficiency Act. NRCS notes that OGC reviewed and cleared for legal sufficiency the Announcement of Program Funding (APF) identifying the availability of funds, including the availability of funds donated by covered programs which would have needed to be returned to covered programs if they had not already been committed to RCPP purposes at the time of APF clearance.

Estimated Completion Date: September 30, 2017

OIG POSITION: [Note: OIG will provide after NRCS submits agency response.]

Recommendation 2:

Based on the OGC legal opinion, review the covered program funds and acres obligated and/or expended to date under RCPP for any Anti-Deficiency Act violations. If any violations are identified, take appropriate legal and administrative action.

NRCS Response:

NRCS will seek an OGC legal opinion on the RCPP funding provisions and Based on the OGC opinion, if necessary, review covered program funds and acres obligated and/or expended under RCPP to comply with the law, including identifying if there has been any violation of the Anti-

Deficiency Act. NRCS notes that OGC reviewed and cleared for legal sufficiency the Announcement of Program Funding identifying the availability of funds, including the

availability of funds donated by covered programs which would have needed to be returned to covered programs if they had not already been committed to RCPP purposes.

Estimated Completion Date: September 30, 2017

OIG POSITION: [Note: OIG will provide after NRCS submits agency response.]

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