

# United States Senate

COMMITTEE ON  
AGRICULTURE, NUTRITION, AND FORESTRY  
WASHINGTON, DC 20510-8000  
202-224-2035

July 22, 2021

The Honorable Tom Vilsack  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, DC 20250

Dear Mr. Secretary,

I am writing to raise my legal, programmatic, and institutional concerns regarding the U.S. Department of Agriculture's (USDA) implementation of the Conservation Reserve Program (CRP). The Farm Service Agency administers the popular and effective CRP authorized by the Food Security Act of 1985. Most recently, the Agricultural Improvement Act of 2018 (2018 Farm Bill), amended the program to include statutory maximum rental rates, specifically "85 percent of the estimated rental rate" for general enrollments and "90 percent of the estimated rental rate" for continuous enrollments. *See* Section 1234(d)(4) of the Food Security Act of 1985 (16 U.S.C. 3834).

Departmental announcements related to CRP sign-up indicated USDA was adjusting the terms of the pending sign-ups for CRP general, continuous, and grasslands programs that exceed the maximum rental rates allowed by law. For example, under both the general and continuous CRP signups, USDA's announced "one-time, 10 percent 'inflationary' adjustment for the life of the contract." Such an adjustment is likely to result in the county average soil rental rate under many of these contracts exceeding the aforementioned statutory maximums. Similarly, USDA announced a CRP grasslands minimum rental rate of \$15 per acre. This is despite the fact that the Department's National Agricultural Statistics Service reports that the national average pastureland cash rental rate for 2020 was \$13 per acre and the estimated pastureland rental rates in more than 650 counties, one-third of the counties with available data, are below \$15 per acre. Such adjustments to rental rate payments pose a number of threats, including that rising farm rents will price beginning and limited resource farmers out of the market for productive farm land.

In light of the impending deadline for CRP sign-up, the Department's modifications to the terms of the CRP payments, outside of the statutory requirements, causes me serious concerns. Not the least of these concerns is the harm that will befall farmers and ranchers who may be party to the currently offered CRP contracts that risk being ruled invalid in the coming weeks or months.

The language of the law and the supporting legislative history in this matter are clear. The 2018 Farm Bill enacted statutory limits on the county average soil rental rates that may be paid under CRP, based on specific percentages of the estimated rental rates. The statute directs the Secretary to consider competing interests in determining the amount of the CRP annual rental payments—encouraging participation in CRP, weighing the impact on local farmland rental markets, and considering other factors. The statute grants the Secretary flexibility in establishing the annual rental payments, up to the statutory maximums. However, the statute does not grant the Secretary any authority to establish county average soil rental payments that exceed these statutory maximums.

Programmatically, I am concerned that USDA is preparing to enter into legally questionable CRP contracts covering millions of acres that will leave the farming and financial plans of thousands of farmers and ranchers in disarray if and when these contracts are ruled out of compliance with the authorizing statute. Litigating the adjustments in courts across the country will only cause more delay, and more harm, to those landowners enrolled in the program. In addition to throwing the lives of these farmers and ranchers into turmoil, this will threaten the legislative sustainability of CRP going forward. As a supporter of CRP, I am alarmed that USDA's actions are likely to precipitate these predictably chaotic results.

Institutionally, I am disappointed that USDA seems to be avoiding its commitment to faithfully execute laws within its jurisdiction. As you are aware, the 2018 Farm Bill is a prime example of bipartisanship. The bill, and specifically the provision at issue, was crafted through diligent and thoughtful input by both Senate and House members on both sides of the aisle. Which is why USDA's proffered justification for ignoring the statutory maximum CRP rental rates is disconcerting and has dangerous implications. The position that laws asking the Secretary to consider certain factors before making a decision can be leveraged to override legal requirements the Administration deems problematic to the implementation of its priorities is not legally supportable. Under such a statutory interpretation, a Secretary of Agriculture could ignore any number of legal requirements in our agriculture, forestry, nutrition and other safety net programs, based on his or her "consideration" that an Administration's policy goals should override certain valid statutory requirements or limitations. If allowed to go unchallenged, this would render the role of the law, and the Congress, irrelevant and leave the Executive Branch free to act as it pleases. Such actions are not consistent with the spirit of bipartisanship championed by this Administration, and that has yielded such well-supported and robust legislation in the past.

In light of these legal, programmatic, and institutional concerns, I request the Department cease and desist from entering into these and any other CRP contracts that are not consistent with the governing statutes. It is prudent to hit "pause" to ensure that the contracts offered and entered into under CRP are consistent with the law and will be in the best interest of America's farmers, ranchers, and conservationists who support and benefit from CRP. It will also avoid legal entanglements and financial disruptions that will befall CRP participants and the related agriculture markets if these contracts are declared invalid.

I have voiced these concerns to the Department. I am disappointed that the Department has been unresponsive to repeated requests to provide a legal opinion supporting its position in this important matter. Regardless, I stand ready to work with you to ensure that contracts offered under CRP are consistent with our governing statutes, and look forward to your prompt reply.

Sincerely,



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John Boozman  
Ranking Member