

# Creating a Debt for Working Lands Initiative

This document, focusing on the creation of a Debt for Working Lands Initiative within USDA, is one in a five-part series of transition recommendations from [AFT](#) to the Biden Administration. The full set of recommendations can be [found here](#). Please note that these recommendations are not intended to represent the full breadth of policies supported by AFT. Rather, they were chosen because they could be swiftly implemented without congressional action. AFT recognizes that there are many other challenges facing agriculture and we look forward to working with the Biden Administration, Congress, and other stakeholders to achieve lasting solutions.

## SUMMARY

The COVID-19 pandemic has caused market disruptions and significant losses of income within the agricultural sector. Because of this, many producers have had to take on additional debt. As the Biden Administration considers ways to alleviate the pandemic's economic impact, AFT encourages the expansion of the Farm Service Agency's (FSA) Conservation Contract concept to provide additional conservation-focused debt relief and restructuring tools. An expansion of this program – in the form of a “Debt for Working Lands” Initiative – could allow producers to reduce and restructure debt in exchange for a permanent agricultural conservation easement or a shorter-term non-development covenant.

## BACKGROUND

Since 1997, FSA has offered a program that provides voluntary debt relief to FSA customers with real estate pledged as collateral in exchange for taking certain sensitive (e.g., wetlands, flood-prone, highly erodible)<sup>i</sup> lands out of production for 10, 30, or 50 years. Originally known as the *Debt for Nature Program*, this program has been renamed the *Conservation Contract Program* and is authorized under Section 349 of the Consolidated Farm and Rural Development Act (Pub. L. 87-128) (7 U.S.C. 1997).

Under the Conservation Contract Program, all FSA customers who have loans secured by real estate are eligible if they have qualifying land.<sup>1</sup> This includes both customers who are current on their payments as well as those who have fallen behind. A Conservation Contract may also be considered on new loans.

Once the contract goes into effect, the use of the land placed under contract is restricted. Land under contract may not be used for agricultural production or grazing, development on the land

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<sup>i</sup> Land eligible for Conservation Contract enrollment includes: wetlands; highly erodible lands; lands containing aquatic life, endangered species, or wildlife habitat of local, regional, or national importance; lands in 100-year floodplains; areas of high water quality or scenic value; aquifer recharge areas, and several other categories.

is prohibited, and timber harvesting is allowed only if it enhances the conservation values for which the contract was established.<sup>2</sup>

As USDA considers options to help more FSA borrowers manage debt, AFT recommends that this Conservation Contract Program be expanded from its current role of keeping sensitive land *out* of production, to include a new role of keeping valuable land *in* production through perpetual conservation easements or long-term non-development covenants. Such a change could have a double bottom line impact. Current borrowers could significantly reduce their existing debt loads, and future borrowers could finance new land purchases with significantly smaller new farm ownership loans. At the same time, highly productive agricultural land could be protected from non-agricultural development.

Forgiveness on FSA loan debt could help socially disadvantaged farmers as well. FSA is often referred to as the “lender of first opportunity,” due to the availability of credit for borrowers who may not qualify for loans from commercial lenders. According to a recent Government Accountability Office report, socially disadvantaged farmers and ranchers (including women, Black, Indigenous, and People of Color) comprise a higher percentage of total FSA debt (14%) than total private agricultural debt (8%).<sup>3, 4, 5</sup>

## RECOMMENDATIONS

### *Expand the Conservation Contract concept to include working lands protection.*

A Debt for Working Lands Initiative would focus not on environmentally sensitive lands that should be taken out of agricultural production, but on highly productive agricultural lands that would remain in production. Eligible land could be limited to parcels with at least 50% prime, unique, or state important farmland. Alternatively, a new category of “nationally significant” agricultural land could be used that is derived from the NRCS-funded *Farms Under Threat: The State of the States* research and analysis conducted by AFT.<sup>6</sup>

Whereas the Conservation Contract Program has terms of 10, 30, and 50 years, AFT imagines that a Debt for Working Lands Initiative would have a permanent agricultural conservation easement option, and a less-than-permanent easement option of at least 15 years. While in ordinary circumstances, permanent protection would be AFT’s preferred option, we recognize that in these extraordinary times a less-than-permanent easement option might be appropriate.

In the case of a *permanent agricultural conservation easement*, the stipulation from the Conservation Contract Program that borrowers may only retire up to 33% of their loan principal could be eliminated. Instead, the amount of restructure could be based on an appraisal, or potentially an alternative valuation method. The easement could be held by the federal government, a private land trust, or a qualified public Purchase of Agricultural Conservation Easement (PACE) program. The easement holder could determine easement deed terms, or FSA could adopt terms similar to ACEP-ALE’s easement deed statutory requirements. As with the Conservation Contract program, this option for restructuring should be available to both new and existing loans.

In the case of *less-than-permanent term agreements*, AFT recommends a term agreement of at least 15 years. The valuation method for these term agreements would need to be developed. This option could be limited to existing borrowers rather than new borrowers. The term agreement would need to require that a non-development covenant be recorded on the property deed, and that any sale of the property be subject to the covenant. Covenant terms could be developed by FSA with input from NRCS and stakeholders with knowledge of agricultural conservation easements.

American Farmland Trust is the only national organization that takes a holistic approach to agriculture, focusing on the land itself, the agricultural practices used on that land, and the farmers and ranchers who do the work. We look forward to serving as a resource to the Biden Administration. For more information about these and other recommendations, contact AFT Policy Director Tim Fink at [tfink@farmland.org](mailto:tfink@farmland.org).

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<sup>1</sup> USDA FSA, “Conservation Contracts Fact Sheet.” August 2020. <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdaprograms/FactSheets/2019/conservation-contracts-factsheet-19.pdf>

<sup>2</sup> USDA FSA, “Conservation Contracts Fact Sheet.”

<sup>3</sup> US Government Accountability Office, “Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited.” July 2019. <https://www.gao.gov/assets/710/700218.pdf>

<sup>4</sup> USDA FSA, “Farm Loan Programs Socially Disadvantaged Obligations Report.” September 2019. [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdaprograms/Farm-Loan-Programs/pdfs/program-data/FY2019\\_SDA\\_ObligationReport.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdaprograms/Farm-Loan-Programs/pdfs/program-data/FY2019_SDA_ObligationReport.pdf)

<sup>5</sup> USDA FSA, “Farm Loan Programs Obligations Report.” September 2019. [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdaprograms/Farm-Loan-Programs/pdfs/program-data/FY2019\\_Total\\_Obligation\\_Report.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdaprograms/Farm-Loan-Programs/pdfs/program-data/FY2019_Total_Obligation_Report.pdf)

<sup>6</sup> J. Freedgood, M. Hunter, J. Dempsey, and A. Sorensen, “Farms Under Threat: The State of the States.” American Farmland Trust, 2020. <https://farmlandinfo.org/publications/farms-under-threat-the-state-of-the-states>