

The Keith Campbell Foundation for the Environment commissioned an assessment of impediments to agricultural conservation and which actions could address these constraints. Key barriers include cumbersome processes for delivering financial assistance and the lack of qualified and timely conservation technical assistance available to agricultural producers. We make recommendations to streamline and make financial assistance more effective. The Foundation notes three solutions needed to increase technical assistance to America's agricultural producers: 1. Expand NRCS field staff; 2. Increase cooperative agreements with public and private entities; and 3. Reform the Technical Service Provider program. The Foundation strongly supports additional NRCS staff which has been the mainstay provided since the 1930s.

Expanding and Increasing Conservation Technical Assistance to America's Working Lands Producers

"Many farmers — most farmers, and that means millions — need some technical help in making the change to this more efficient, easier, and more productive type of farming, and they need also moral support and encouragement." Hugh Hammond Bennett

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I. What is Technical Assistance?

Technical Assistance (TA) is the art and science of acquiring and placing technically trained personnel in the sciences of agriculture, soils, forestry, ecology, sociology, economics, hydrology, engineering and similar sciences on the ground with farmers, ranchers, and forest stewards to help them understand the capabilities and needs of the natural resources under their care.

Armed with scientific knowledge, practical experience, awareness and both a site-specific and landscape scale understanding, the conservation professional works with the land steward to determine the status and condition of their natural resources and offer alternative conservation practices to address any identified issues or objectives. In all cases, the steward makes the decision on what practices and systems of practices to adopt that are in harmony with his or her economic situation and their agricultural production and conservation goals. TA then extends to assisting the steward in designing and implementing their selected conservation practices and, after adoption, to evaluate, adapt and adjust those practices as needed for improved results. The ultimate goal is to sustain the farming, ranching, or forest operation not only for the producer but for future generations as well.

Since the days of the Dust Bowl in the 1930s, the primary source of conservation technical assistance available to America's agricultural and forest producers has been through USDA's Soil Conservation Service (SCS), its successor the Natural Resources Conservation Service (NRCS), and their traditional partnership with local soil and water conservation districts.

This model of placing a federal agency in a close cooperative relationship with a local conservation district to design and implement conservation practices and systems across the country has served the nation well. And over time, additional and typically more specialized sources of Technical Assistance have been added such as cooperative extension, state wildlife and water quality agencies, non-governmental organizations, and private entities. Most of these non-federal TA providers represent a specific resource focus or area of interest to the owner or operator.

TA is the critical component that guides private lands stewards to effectively implement and maintain conservation practices and systems to protect, enhance, and restore their natural resources. When paired with Financial Assistance (FA), properly executed technical support yields conservation decisions that blend into the fabric of the agriculture operation, producing operational and societal benefits that are environmentally, economically, and socially sustaining.

But today, the range of issues that TA must address goes far beyond the soil and water concerns of focus in the 1930s. Issues such as endangered species, impaired streams, climate change, cultural resources, source water protection, drought, floods, air quality, wildlife habitat, and energy all fall under the TA umbrella in the private lands conservation agriculture and forestry setting.

While the issues (and programs) have increased in scope and complexity, the funding to ensure adequate on-the-ground technical assistance field staff has not. Simply put, NRCS does not have enough trained and experienced personnel to meet all of its TA demands.

Of the funds annually appropriated to NRCS, the Agency provides TA to:

1. Directly assist farmers in conservation planning and implementation;
2. Enter into program delivery agreements with partners to augment direct NRCS assistance;
3. Administer and support programs;
4. Create and maintain soil surveys and interpretive data;
5. Develop water supply forecasts for 11 Western States;
6. Develop conservation plant materials;
7. Plan and implement Watershed projects;
8. Assist with disaster recovery;
9. Acquire, develop, implement, and maintain supporting information technology, including technical tools and supporting databases;
10. Train personnel (both federal and partner);
11. Acquire and maintain equipment;
12. Disseminate natural resource information and educational materials; and
13. Conduct the National Resource Inventory and Conservation Effects Assessment Project.

The focus of this paper is limited to the provision of TA to land owners and operators to plan, design and implement conservation practices on farms, ranches and woodlands.

II. Existing Technical Assistance Laws

Technical Assistance is embedded in every conservation program authority provided to USDA. NRCS operates Conservation Technical Assistance (CTA) and Conservation of Private Grazing Lands (CPGL) as exclusively supporting TA. Other programs operate with a mix of TA and FA with the Farm Bill conservation programs providing the largest amount of funding.

The key programs under which NRCS operates and administers are:

- ❑ Soil Conservation and Domestic Allotment Act, Public Law 74-46 (Appendix A). This is the organic Act which established the SCS/NRCS and is the broadest and most flexible authority for USDA's technical assistance. The Act established the Conservation Technical Assistance Fund as a discretionary appropriation. It is annually appropriated under the broad Congressional designation as Conservation Operations and is divided into four areas: technical assistance, soil survey, snow survey and water supply forecasting, and plant materials. In Fiscal Year 2022, Congress funded Conservation Operations at \$894.7 million¹.
- ❑ Agricultural Credit Act of 1978 - Title IV (Emergency Conservation Program), Section 403, Emergency Watershed Protection. Established the Emergency Conservation Program, Emergency Watershed Protection Program, and the Emergency Forest Restoration Program. NRCS administers the Emergency Watershed Protection Program, while the Farm Services Agency administers the other two. NRCS provides TA to all three emergency programs with State Forestry agencies addressing the forest planning and restoration components.
- ❑ Initiated under the Agriculture Act of 1962, Public Law 87-703, formally constituted under the Agriculture and Food Act of 1981, Public Law 97-98. Established the Resource Conservation and Development (RC&D) program with NRCS providing the administrative and technical support to the regional councils. The program has not received discretionary program funding from Congress since 2009. The program authority still remains but NRCS no longer provides staff or funding to the RC&D councils. Several councils have terminated operations and dissolved.
- ❑ Food Security Act of 1985, Public Law 99-198, as amended, with the most current version being the 2018 Farm Bill (Appendix A). This Act provides for Conservation Compliance (Highly Erodible Lands Conservation and Wetlands Conservation), plus the five main conservation programs in force today: Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), Agricultural Conservation Easement Program (ACEP), and the Regional Conservation Partnership Program (RCPP). NRCS administers all the primary conservation programs except the CRP which is administered by the Farm Service Agency. Other, smaller programs such as the Agriculture Management Assistance and the Voluntary Public Access and Habitat Incentives Program are also authorized by the Farm Bill but require limited TA to administer and implement. The Act was amended in the 2002 Farm Bill with the Delivery of Technical Service provision which established the Technical Service Provider program in NRCS (Appendix A).

Significantly, with respect to delivery of TA, in 2008 Congress authorized the Agriculture Conservation Experienced Services (ACES) Program for NRCS to tap into the knowledge base and experience of retired professionals age 55 and older in support of conservation program technical

❑ ¹ Note: There was an amendment inserted through appropriations language to Sec. 3 (4) allowing the Secretary to charge for conservation planning technical assistance with a limit of up to \$150/per conservation plan. USDA has not implemented this provision.

assistance delivery under most Farm Bill conservation programs. Across the federal government, this authority is more commonly known as the Experienced Services Program (ESP) and was broadened to cover USDA's Research, Education, and Economics Mission Area agencies with the passing of the 2018 Farm Bill. USDA still lacks the authority to use Conservation Technical Assistance Program and Conservation Reserve Program funding for ACES support.

Over the history of the ACES program, retired and highly experienced NRCS employees have comprised almost all of the staffing provided through the program. Funding of these agreements with qualified nonprofit organizations that administer ACES and manage the program enrollees is contributed from the TA funds for the benefiting program at the discretion of NRCS. ACES enrollees do not supplant NRCS federal employees but supplement their capabilities with specialized skills and services, supply knowledge transfer, and provide temporary scale-up capacity to meet priority needs such as for disaster recovery under the Emergency Watershed Protection Program.

Funding for both FA and TA in the five primary programs in the Conservation Title comes from mandatory accounts in the Commodity Credit Corporation. The mandatory funding encompassing both TA and FA for the four NRCS programs in Fiscal Year 2022 was \$1.85 billion for EQIP, \$800 million for CSP, \$450 million for ACEP, and \$300 million for RCPP. Funding for the FSA administered CRP varies according to the enrolled acreage and the actual funding for this program in Fiscal Year 2020 was \$1.853 billion in FA. An additional \$73 million was provided to NRCS to provide the TA to implement the CRP. In addition, the fiscal 2022 appropriation transferred \$60.23 million of CRP, CSP, EQIP and ACEP funding to be merged into the Farm Production and Conservation Business Center's salaries and expenses account to provide administrative support for NRCS and FSA. This practice began with fiscal year 2019 and has continued since.

The Inflation Reduction Act of 2022 significantly boosted the funding available to ACEP, CSP, EQIP, and RCPP in both TA and FA through 2026 and extended the program authorities from ending fiscal year 2023 to fiscal year 2031. In addition, the Act provided a lump-sum infusion of TA funding in 2022 of \$1 billion in technical assistance, \$300 million for quantifying and monitoring greenhouse gas emissions and sequestration using field-based data, and \$100 million to address administrative costs to the agencies. This \$1.4 billion, while provided as a lump sum in 2022, is available to the Agency to be expended through September 30, 2031. As of this writing, it is unclear how the Office of Management and Budget will apportion these funds to NRCS or the performance requirements for staffing, Technical Service Providers, automation improvements, etc., that will be associated with the funding.

NRCS is responsible for delivery of the bulk of the direct TA to agriculture and forestry producers to support Conservation Operations and the Farm Bill programs through their staff, but the Agency does provide significant funding through Cooperative Agreements and Contribution Agreements with a variety of entities to provide additional TA support to producers and leverage some entity resources to broaden the available support staff.

III. Options to Increase Third Party Technical Assistance Funding

The ability for USDA to increase third party TA needs to be viewed from two perspectives:

- 1) Authorities to increase the funding available for third party TA; and

2) Methods to expand the staff and technology associated with delivering third party TA.

Increasing the annual TA discretionary appropriations for NRCS requires direct action by Congress. Generally, increases in NRCS discretionary funding have been consumed by cost-of-living adjustments, increasing information technology costs, the escalation of supporting infrastructure costs, and other administrative costs. Now, with the reappearance of earmarks, much of any funding increases have been directed to specific Congressionally identified projects leaving USDA with limited ability to address third party TA. While the Inflation Reduction Act of 2022 infused a significant amount of one-time funding, there remains a need for incremental and sustained growth in the discretionary technical assistance appropriations.

However, within the context of the mandatory Farm Bill conservation programs (ACEP, EQIP, CRP, and CSP), Congress has provided USDA greater flexibility to address and balance the technical assistance needs of the authorized programs. With the passage of the 2014 Farm Bill, Section 1241(c) of the Food Security Act of 1985 was updated to include the following;

*“TECHNICAL ASSISTANCE.— (1) AVAILABILITY.—Commodity Credit Corporation funds made available for a fiscal year for each of the programs specified in subsection (a)— (A) shall be available for the provision of technical assistance for the programs for which funds are made available as necessary to implement the programs effectively; (B) except for technical assistance for the conservation reserve program under subchapter B of chapter 1 of subtitle D, shall be apportioned for the provision of technical assistance in the amount determined by the Secretary, **at the sole discretion of the Secretary (emphasis added)**; and (C) shall not be available for the provision of technical assistance for conservation programs specified in subsection (a) other than the program for which the funds were made available.”*

This language provides significant flexibility to the Secretary of Agriculture in the division of Farm Bill program funds between TA and FA to ensure the programs have enough TA to effectively implement each program’s FA. It should be noted that RCPP is not a program covered by the language in this section.

Currently, NRCS’s division of farm bill TA funds does not include the early processing steps of the conservation planning, program application, and evaluation work with the customer for EQIP, CSP, ACEP, EWP and RCPP. The TA for the early planning is covered by NRCS’ discretionary CTA account. Refer to the table in Appendix B issued as an attachment to NRCS National Bulletin 190-19-5.

NRCS has a base funding program called Conservation Technical Assistance (CTA) and it is used to support a wide range of agency functions such a personnel and procurement functions. However, CTA is also used to supplement the implementation of Farm Bill programs. This model of allocating (CTA) funding for Farm Bill program delivery was born during the 1996 Farm Bill program which envisioned Financial Assistance funding being used to support a fully developed conservation plan. From 1996 through 2001, FA was a relatively small amount, less than \$300 million a year, and CTA funds were able to cover the needed TA. The model, however, was flawed as it was developed by an inaccurate view of CTA as a salary and expense account by the Office of Management and Budget.

As the Farm Bill has evolved and funding levels for conservation programs increased over 13-fold, the lack of proportional growth in CTA has strained and exacerbated the delivery of TA across all aspects of discretionary and mandatory program implementation. The present situation is untenable for the long-term sustainability of a public/private TA delivery model.

A solution to this issue is that, under the authorities provided the Secretary, NRCS could reconstruct their program delivery models to stop the CTA diversion to Farm Bill program support and properly account for the full TA cost associated with the delivery of each Farm Bill program.

However, to cover the full costs of providing program TA would mean that USDA would have to direct more of the mandatory Farm Bill funding to TA which would result in less funding available for Financial Assistance to producers. This could be perceived adversely by those who do not value technical services to a producer as a direct conservation benefit and carries a high political risk to the Agency. Incrementally increasing the TA portion of Farm Bill program funding represents a much safer, and more palatable course for USDA but will not be able to address the complete issue.

Aside from directly increasing Farm Bill TA at the expense of FA, USDA could increase TA by:

1. Reducing administrative burden and overhead;
2. Streamlining technical and programmatic requirements, processes, and timelines;
3. Improving technology development and acquisition;
4. Expanding use of the program agreement authorities including cooperative agreements, contribution agreements, grants, and procurement contracts (Appendix C);
5. Expanding use of NRCS-acquired and Participant-acquired technical service providers;
6. Adopting mechanisms to have technical service providers move from working on single producer contracts to multiple contracts; and
7. Increasing leveraging through the Regional Conservation Partnership Program to expand direct technical assistance from awardees.

In selecting from the many options available for increasing availability and access to TA, any options selected should meet each of the following:

- Quality of service and/or product should be science-based and be equal to or better than the federal standard;
- Cost should be no greater than the total federal cost for the service provided;
- Assistance should be directed to and support the benefiting conservation program;
- Services must exclude bias by private sector incentives or quotas regarding sales, performance, etc. (i.e., entity membership, seed, fertilizer, chemicals, and equipment);
- Equity in providing service to all agricultural producers and forest stewards must be embraced;
- Efficiency, effectiveness, and timeliness must be embraced in delivering the TA and FA for conservation outcomes; and
- All service and products must conform to program policy and NRCS technical standards.

IV. Options to Improve and Streamline Process for Non-Federal Technical Service Providers

The demand for TA far outstrips NRCS' ability to meet requests. The pressing priorities around climate change, mitigation, resiliency, and other natural resource concerns the Nation faces make increasing available TA to producers an "all hands-on deck" effort. To supplement and expand NRCS' capabilities and capacity, there is a critical need to engage state and local agencies, NGOs, and private sector entities across the board.

In the quest to bring science-based, state-of-the art, and timely conservation TA to America's agriculture and forest producers there are four key areas that must be addressed:

- A. An in-depth look at the existing policies and authorities;
- B. Options for new or modified authorities;
- C. Ways to increase the level of the federal and non-federal workforce to address increased demand and complexity; and
- D. Support for incremental, sustained growth in federal program funding for natural resource conservation authorities beyond the one-time infusion of Inflation Reduction Act funding.

Below are key options for NRCS and Congress:

Natural Resources Conservation Service: In order to more efficiently and effectively use its personnel for field-based delivery and facilitate the use of non-federal technical service providers to support conservation standard conforming technical services, it is recommended that NRCS:

1. Fully embrace integration of automated tools and processing of data supporting and integrated conservation decision making model as opposed to segregated heavy user data input and manual record keeping.
2. Be deliberate in designing and accessing tools that conduct automated analysis and focus conservation delivery at the county/watershed level geographically and on-farm, including the use of machine learning (AI).
3. Allow customers internet access to their records and automated system transactional capabilities to conduct business with NRCS; allow Technical Service Providers to assist and support customers in the conservation planning process. Note: This should not be interpreted to mean granting Technical Service Providers access to a customer's financial assistance documents or administrative actions.
4. Provide mechanisms for agriculture producers and foresters to exchange data between USDA's systems and the proprietary systems they are operating.
5. Provide clear documentation standards and specification requirements that when properly supported and returned to NRCS, will be satisfactory for payment to the Technical Service Provider.
6. Ensure NRCS technical service payment requirements are straightforward and accessible.
7. Make fully transparent the estimated cost scenarios that NRCS uses to pay Technical Service and ensure they fully account for all bona fide TSP costs.
8. Ensure cost scenarios for technical services work accurately reflect estimated costs for the geographic area of service.

These actions include evaluating and incorporating, where appropriate, the technology, methods and applied science of third-party providers into NRCS standards, Statements of Work (SOW) and Statements of Deliverables (SOD).

The current philosophy of adding more staff into the NRCS workforce who are then burdened by tools that are record keeping in nature and do not provide real time analysis of natural resource data will not be sustainable in any federal or private sector model.

Congressional Authorities: There is a clear need to further define the concept of using, simplifying, and leveraging non-federal technical resources in the delivery of conservation services to producers, including:

1. Clarify that non-federal TA must conform to NRCS standards and must directly support USDA's statutorily mandated conservation mission and program delivery.
2. Require USDA to overhaul and simplify the current overly structured and burdensome Technical Service Provider program.
3. Mandate the expansion of non-federal TA to deliver conservation programs for greater efficiency and effectiveness.

Congress has the opportunity to address, clarify and expand the provision of non-federal TA during the development of the 2023 Farm Bill.

V. Encouraging Greater Involvement in Providing Technical Assistance – Non-governmental Organizations, Soil and Water Conservation Districts, State and Local Agencies and Private Sector

One way USDA could vastly improve its current system of third-party TA is to set clear expectations for its staff in acquiring and cultivating non-federal TA. USDA should establish a goal that at least 25% of each States' program allocations of technical assistance funding – both CTA and Farm Bill – be directed to private sector, non-governmental organizations, and state and local governments for direct technical (not administrative) support to agricultural and forest producers.

The means and methods of achieving this goal should be through the use of grants, expanding the agreement and contracting authorities detailed in Appendix C, and using the ACES program.

Ideally, this requirement should be placed on each State Conservationist and not measured by Agency level aggregation. The tendency has been to place the burden and growth of third-party TA on State Conservationists who are effective at partnership building and using third-party services while leaving other State Conservationists to dismiss the requirement or not apply themselves to cultivating and growing the TA support base.

To further reinforce this initiative, the goal should be defined in the Senior Executive Service performance plans as well as each State Conservationist's performance plan. In addition, the performance plan requirement should appropriately cascade to other positions in NRCS at the national, regional, and state levels who play a role in supporting the accomplishment of this goal. Failure to achieve this level will result in the performance element yielding a result not met or results not achieved.

VI. Current NRCS Policies Governing Non-Federal Technical Assistance

What do we mean by "providing Technical Assistance"?

As discussed in Section I, Technical Assistance (TA) is the art and science of acquiring and placing technically trained personnel in the sciences of agriculture, soils, forestry, ecology, sociology, economics, hydrology, engineering and similar sciences on the ground with farmers, ranchers, and forest stewards to help them understand the natural resources under their care and its capabilities and needs.

The provision of TA to the agriculture and forest producer is not to be confused with the authorization and apportionment of Technical Assistance funding to the Agency. NRCS TA funds cover a wide range of costs associated with conducting the business of the Agency. This business includes, but is not limited to: salary and related personnel costs, relocation, travel, training, technology development and acquisition, cost and operation of motor vehicles, equipment, supplies, facilities, utilities, Information Technology and administrative tool purchase and development, administrative and management support, fund transfer to the FPAC Business Center, and USDA assessed shared costs and charges (“Greenbook” and Working Capital Fund).

In the context of this paper, expanding and increasing non-federal technical assistance refers only to the portion of TA funds for the time and products delivered to the producer to facilitate

NRCS Planning Process

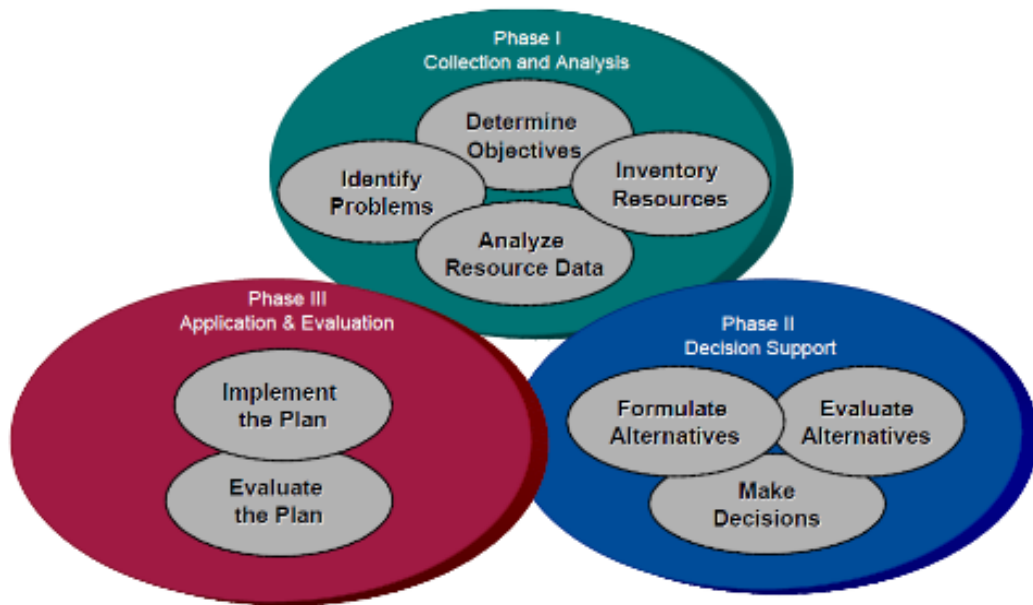


Figure 600-B2: An illustration of the dynamic nature of the planning process conservation planning, design and practice implementation as discussed in Section I, “*What is Technical Assistance?*”. More specifically, the provision of Technical Assistance by NRCS or third-party providers to private landowners and operators to plan, design, implement, and evaluate conservation practices on farms, ranches and woodlands supporting any or all phases of the conservation planning process as diagramed below.

Through a survey of the NRCS policy documents (listed below in “*Does NRCS Policy align with current law?*”), NRCS has clearly articulated the focal point of TA is the producer (decisionmaker)

and the land resources over which they have stewardship. Further, the Agency has quite broadly included the use of Third Party TSPs (NRCS-acquired and producer-acquired) into the technical service delivery model of the conservation programs. Noteworthy, NRCS initiated significant activity prior to and following the 2018 Farm Bill to update and revise its Technical Service Provider policy, instructions, and website. The following highlights some of the Agency's changes.

Significant Changes in Technical Service Provider Policy and Procedures: NRCS Registry.

The new website, called the NRCS Registry replaced TechReg and is located at <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/technical/tsp/>.

At this site existing and prospective TSPs can establish and access their USDA records; producers can search for TSPs by location, practice, or other filters; and the Agency provides a host of additional resources such as certification, civil rights, forms, payment rates, regulations, tools and training.

In developing the new site, the Agency moved the previous TechReg components into a more modern and commercially available programming platform (SalesForce) with a more rational workflow progression for TSPs to apply, modify and maintain their registration.

It further assists the agency in managing workflow through automated workflow "hand-offs" and communication to the appropriate state-level coordinators for addressing the applicant's request. Communication and accountability for the established processing deadlines are managed and reported by the automation thereby reducing the previous errors in "dropped or lost" applications and lack of communication.

The tool is not completely intuitive but represents a significant Agency investment and improvement over the previous TechReg platform. *Noting the historic frustration TSPs have expressed with TechReg, it is of interest the extent to which existing TSPs were involved in the development of the new tool, the feedback loop for it, and the level of outreach to existing, potential, and disenfranchised TSPs.*

Further, the site is highly localized and does not include all conservation practices for which a producer may need a TSP. The TSP provider, payment availability, and compensation rates are driven to the county level within the Registry. The difficulties in querying the registry while aligning the availability of technical providers with a particular planning, implementation or practice payment can be difficult for the producer. In many cases the outcome of the county-based selection process yields a frustratingly unsuccessful outcome.

Payment Rates. Through the years of implementing producer selected TSPs within EQIP, the agency moved from paying for the producer contracted planning assistance (termed Conservation Activity Plans (CAPs)) from technical assistance funding to financial assistance funding. In the early days of ProTracts it proved difficult to manage the mixture of funding types within each contract.

Additionally, agency personnel resisted engaging TSPs because doing so diverted limited technical assistance dollars to sources outside the Agency. Beginning September 2007, the NRCS opted to pay the CAPs and associated practice implementation technical services from FA sources. This served a two-fold purpose of reducing the complexity of two funding types (TA and FA) and allowed the contracts to more freely access the larger financial assistance funding pool. It further

reduced the complication and internal pressure of third-parties pulling from the limited technical assistance funding of the agency.

Unfortunately, the rules of financial assistance cost-share followed this approach to paying for technical services resulting in the payment rate for the producer being reduced to 75% of the calculated full payment rate. The approach to paying for technical services using the program's financial assistance funding has three major downsides;

1. It placed the responsibility to make up the difference in the payment to the TSP with the producer paying the difference or with the TSP forced to discount its rates;
2. The payment is calculated within the overall program contract and payment limitations; and
3. TSPs are disadvantaged in the technical services marketplace when NRCS staff and NRCS-acquired TSPs are available at no cost to the producer.

As a result, most of the participant-acquired TSP assistance is being limited to participants that have the financial means to pay both their share of conservation practice implementation costs as well as a share of the payment to the TSP. Otherwise, the TSP has to discount the value of their services. This introduces a systemic disparity for both the producer and the TSP.

Following passage of the 2018 Farm Bill, the agency continued contracting the TSP services using financial assistance funding for Conservation Activity Plans, with the practice specific TSP payments commonly referred to as 900 series codes being reimbursed using TA funds (See Appendices F and G). The availability and rate of such assistance is established at the state-level. Each State Conservationist maintains all forms of technical service payment rates (TSPRs). The Conservation Programs Manual describes the establishment of TSPRs:

"TSPRs are based on typical size practices and systems or developed for several typical sizes where there is a variation in cost per unit. States use the Payment Tool application located within the TSPR Website to develop TSPRs. STCs must consider available local NRCS cost, market, and procurement data in developing the final TSPR."

TSPRs are found at [Technical Service Payment Rates \(usda.gov\)](https://www.usda.gov/technical-service-payment-rates). These payments are determined as actual cost, not to exceed (NTE) a specified maximum. The new Planning, Implementation, and Evaluation Categories for payments discussed below are then adjusted at the 75% level for most producers and 90% for socially disadvantaged and beginning producers. Producers are required to provide an invoice from the TSP and the payments remain subject to programmatic contract and payment limitations. The NTE rates follow the typical scenario model used in constructing the financial assistance program payment schedules. Allowable cost is focused on the actual labor cost. When comparing the rates with the technical assistance provided by a comparable NRCS employee, it is hard to determine if the hourly rate used for the TSP also reflects the personnel benefits and other costs associated with equipping and placing the federal employee "in-the-field." Failure to include some level of adjustment to hourly rates to place TSPs on par with federal employees results in an inherent bias and places the producer-acquired TSP at a marketplace disadvantage.

New Planning, Implementation, and Evaluation Categories.

As shown in the chart above, NRCS uses a 9-step planning process:

- 1: Identify Problems and Opportunities
- 2: Determine Objectives

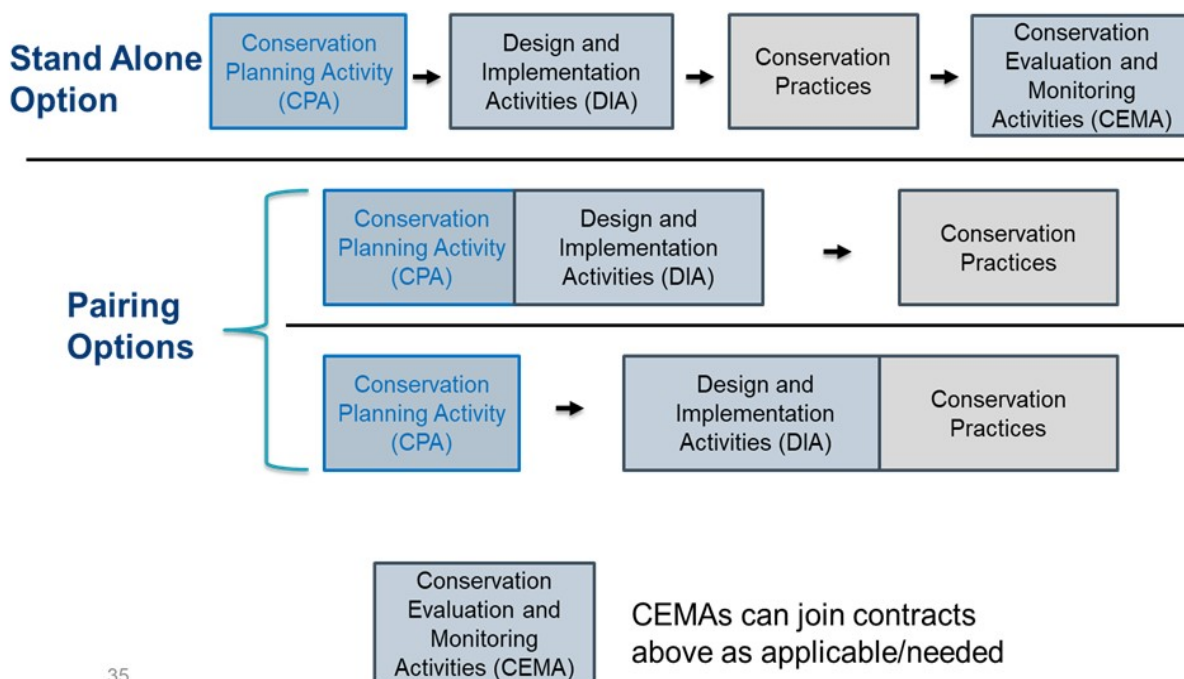
- 3: Inventory Resources
- 4: Analyze Resource Data
- 5: Formulate Alternatives
- 6: Evaluate Alternatives
- 7: Make Decisions
- 8: Implement the Plan
- 9: Evaluate the Plan

Beginning in October 2021 (Fiscal Year 2022), NRCS transitioned from EQIP Conservation Activity Plans (CAPs) to three new categories that better align with the conservation planning process:

- 1: Conservation Planning Activities (CPAs) to align with planning steps 1-7;
- 2: Design and Implementation Activities (DIAs) to align with step 8; and
- 3: Conservation Evaluation and Monitoring Activities (CEMAs) to align with step 9 of the planning process.

It should be noted that DIAs do not include the conservation practice installation, review, and checkout of the specific installed/applied conservation practice. The installation, review and checkout will be paid through a specific conservation “900 series” practice payment rate.

Within a producer’s EQIP contract these options can be stand alone or paired as depicted in NRCS National Instruction 320 and shown below. This new structure creates greater opportunity for TSP engagement and ability to tailor the assistance to the TSPs capabilities and producer needs. These options are relatively new and are now being contracted.



Recommendation: Develop, explore and implement options, administratively or statutorily, to place all technical services to producers at parity by resolving the disparity of payment for services between producer-acquired, NRCS-acquired, and NRCS-provided technical services.

Certification Options and Training Requirements. The agency has designed three paths to NRCS Registry certification for practice and planning options:

- 1) Professional Certification through certifying organizations, as specified for the specific practice or planning activity;
- 2) Education and experience; and
- 3) Experience only.

Previous to the new TSP Registry deployment and certification procedures, the training requirements for TSPs included Agency orientation, and extensive technical and programmatic courses. In some instances, the required training courses were not available or discontinued on the USDA AgLearn training platform.

The Agency has reconciled the training requirements to match available courses and broadly requires only two courses: TSP Orientation and Conservation Planning (NRCS-NEDC-000191); and Introduction to the Field Office Technical Guide (NRCS-NEDC-000149). Further, TSPs must meet the training requirements posted for the practice, planning, or evaluation certification they are requesting to be certified in.

These requirements are uniform across all options and by policy appear to be extended to the recommending entity (Appendix D and F). Essentially, this has the effect of nullifying any streamlining because the recommending entity's procedures must now incorporate the same requirements listed in the Registry.

In addition, there is no policy requirement for the Agency-acquired technical service providers to meet these qualification and training standards. This dual standard once again disadvantages the TSP by having more rigorous standards placed on them than an individual or entity providing services through an Agency agreement. It further places a barrier for non-registered consultants and advisors from supporting producers through free-market access to their services.

Recommendation: Develop a policy that evaluates and accepts the end result (final product and documentation) of TSP-delivered products when they meet the applicable standards, statements of work, or statement of deliverables for the particular plan, practice or evaluation. Ultimately, the TSP's work whether producer-acquired or agency-acquired, must meet these requirements to be accepted regardless of any training or certification of the provider.

Communicating Change. It is apparent that much has changed since the establishment of Third-Party provider language in the 2002 Farm Bill. It is unknown whether the revisions and changes will ease the frustration of TSPs with the overall process of registration and use. Also, it is hard to know how many potential TSPs soured their interest based on experiences with previous policy, procedures, training, and tools.

Recommendation: Make outreach into all professional and certifying organization a priority for the next few years with progress and continual improvement tracked against the TSP baseline registration of 2021 and with use of producer-acquired TSPs in EQIP, CSP and RCPP.

Does NRCS Policy align with current law?

In Section II. Existing Technical Assistance Laws, the statutory authorities under which NRCS delivers technical assistance were reviewed. The most pertinent to this discussion are the Soil Conservation and Domestic Allotment Act – Public Law 74-46 and the Food Security Act of 1985 – Public Law 99-198, as amended (FSA). In this discussion, the focus for increasing technical assistance will be the Food Security Act provisions in Section 1242, Delivery of Technical Assistance (see Appendix A). Key to the statutory provisions is:

- a) Services to producer, landowner, eligible entity, participating in FSA Title XII conservation programs and section 542(b) of the Federal Crop Insurance Act. Note: The statute does not include other non-Farm Bill conservation programs. Funding is derived from the programs described in Sec. 1241 which includes CRP, ACEP, EQIP and CSP. RCPP is not included in this section. Under the subsection on availability of technical services, Congress created a provision allowing the Secretary to enter into a technical service contract specifically for assisting in the planning, design, and installation of an eligible practices for programs other than those listed above.
- b) The purpose of TA is to provide eligible participants with consistent, science-based, site-specific practices designed to achieve conservation objectives on land active in agricultural, forestry, or related uses. The eligible activities described in the law further expand the services to include outreach, education, and services that accelerate program delivery.
- c) Acquisition of the service can be directly by the program participant, through a provider under agreement with NRCS; or through an approved TSP.
- d) Instructional language for the Secretary to establish a certification process for individual TSPs. It requires the Secretary to have an agreement with the TSP for certification with a term not-to-exceed 3 years.
- e) Provides for a non-federal entity approved by the Secretary to perform TSP certification.
- f) Prohibits paying for a service provided by a business that is customarily provided at no cost.
- g) The Secretary shall establish reasonable payment rates for participants.

As required by the statute, the Secretary published Technical Service Provider Assistance Regulations (7 CFR Part 652) and most recently amended it in 2019. (Appendix D). The regulation appears to fully comply with the statute and is focused on the traditional delivery of technical services as previously discussed. The distinction drawn between an Agency-acquired TSP versus the participant-acquired TSP is striking. The regulation states:

“The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a TSP through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B of this part nor identified on the approved list.”

The updated regulation also includes paragraph 652.25 which provides an alternative application process for the Secretary to approve a recommending organization for training, testing, and evaluating a TSP candidate’s competency for certification. While this should streamline the certification process, even within the alternative process NRCS still has 60 days to review each candidate and certify the individual. Note: As of this writing, NRCS has yet to sign any agreement with a non-federal entity to perform the Third-Party certification as introduced in the 2108 Farm Bill.

Recommendation: *Reduce the 60-day NRCS review period for TSPs certified by an approved certifying entity to 10 business days.*

Recommendation: *Engage authoritative, knowledgeable staff to conduct a systematic review of the Agency policy and directive system for all programs and assistance to identify and resolve inconsistencies and discrepancies and to consolidate policy and streamline the TSP processes. Below are the suggested NRCS policy documents relating to Technical Assistance recommended for review:*

- a) General Manual Title 180, Part 409, Conservation Planning Policy, (rev. July 2021)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47570.wba>
- b) General Manual Title 190, Part 402, Nutrient Management Policy, (rev. January 2012)
<https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=16971>
- c) General Manual Title 190, Part 404, Comprehensive Nutrient Management Policy, (rev. May 2021)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=46759.wba>
- d) General Manual Title 190, Part 405, Comprehensive Nutrient Management Policy, (rev. Oct. 2015)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=37785.wba>
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=37786.wba>
- e) National Instruction 440-320-NI, Part 320 – Guidance for Implementing Conservation Planning Activity, Design and Implementation Activity, and Conservation Evaluation and Monitoring Activity
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47333.wba>
- f) National Instruction 440-323-NI, Part 323 – Guidance for Implementing Procedures for Processing TSP and Business Applications for Certification, Modifications, Renewals, and Decertification (Mar 2022)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47993.wba>
- g) Title 440 – Conservation Programs Manual, Part 504 – Technical Service Provider Assistance (440-504-M, 2nd Ed., Amend 1. Nov. 2021)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47486.wba>
- h) Title 440 – Conservation Programs Manual, Part 512 – Conservation Program Contracting (440-512-M, 1st Ed., Amend.123, April 2018)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=42944.wba>
- i) Title 440 – Conservation Programs Manual, Part 530 – Working Lands Conservation Programs Manual (440-530-M, 1st Ed., Amend. 145, Jan 2022)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47743.wba>
- j) National Planning Procedures Handbook
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47643.wba>
- k) Title 300 – Payment Schedule Handbook (300-600-H, 1st Ed., Amend. 1, Jan 2022)
<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=48089.wba>

Do all third-party providers of technical assistance have to be enrolled and listed on the NRCS Registry?

It depends. The agency policy is explicit that producer-acquired TSPs must be certified and listed in the NRCS Registry for the producer to be eligible to receive payment through their programmatic contract for the specifically identified service. This determination is immovable regardless of any professional certifications or licenses the provider may possess.

However, technical services contracted by NRCS and provided to the producer through the NRCS-Provider agreement, grant, or contracting procedures do not require the provider (individual or entity) to be registered in the NRCS Registry. Likewise, providers of Conservation Evaluation and Monitoring Activities (CEMAs) do not have to be registered for either the producer-acquired or NRCS-acquired services.

The eligibility requirements placed on individuals or entities by NRCS for the Registry are substantial with respect to qualifications, training, certifications, and demonstrated abilities. These are largely required for the agency to comply with the statutory instruction. The same does not hold true for Agency-acquired TSPs.

While similar requirements can be articulated or required through the agreement or contracting process, the lack of clear technical connectivity and accountability seems to be preferential to the Agency-acquired individual or entity over the registered TSP.

It is worth noting that when the TSP Certification Agreement (Appendix J) is compared to the NRCS agreement, grant and contracting type documentation, there is similarity in many of the provisions for the conduct of work. It would appear the consistent factor in determining whether a producer-acquired TSP (who must be on the Registry) or an NRCS-acquired TSP (who is not required to be on the Registry) can be paid is the conformance of the work to the technical standards of the agency along with documentation sufficient to support the same.

Recommendation: Eliminate the qualification disparity between producer-acquired TSPs and Agency-acquired TSPs.

Further review of the TSP Certification Agreement and NRCS policy show ample documentation that the agency makes no warranty or representation of the actual TSP's services even when they are placed on the Registry. The agency has the correct position on this issue, however, the appearance on the Registry without reading the "fine print" can be misleading to producers using the Registry to select a TSP.

Without question, there are skilled providers of technical services who are not listed on the NRCS Registry who are providing technical services equal to or exceeding NRCS requirements that could be folded into the conservation technical service delivery platform. However, the onerous and complicated certification process is quite frankly not worth the time for the limited compensation the producer or provider receive for the services received. It is known that this disconnect between the actual service provided and the inability of NRCS to create records around the non-certified technical services is resulting in incomplete modeling of conservation benefits in certain watersheds like the Chesapeake Bay.

Recommendation: Investigate whether the free-marketplace, professional licensing, and/or state regulatory practices provide assurance of technical quality and competency equal to or better than the NRCS process. If so, determine if there is a possibility the statute could be reconstructed to remove the Registry requirement from the Secretary and move towards a model based on services delivered which match NRCS procedures, standards and documentation requirements.

VII. Effectiveness of Current Policies at Increasing Access to Technical Assistance

NRCS uses a full suite of tools to provide additional technical assistance and specific technical skills to agricultural producers. In addition, NRCS provides for payment of producer-acquired technical services from agency approved TSPs for conservation practices in their CSP, EQIP or RCPP contracts. All other Farm Bill and non-Farm Bill conservation programs rely on Agency-acquired technical services.

Each acquisition method listed in the chart below has barriers, limitations or restrictions that may create obstacles to individuals and entities interested in becoming a third-party technical service provider. It would be difficult to overcome all of these, but within the full suite of options most can find a path to success. Examples of a common issues articulated for each method are:

- 1) Cooperative agreements – cumbersome and time-consuming process;
- 2) Contribution agreements – unable to provide a match;
- 3) Grant – requirements exceed entity’s administrative capabilities;
- 4) Procurement contract – arduous solicitation process; and
- 5) Producer-acquired – NRCS Registry is unbearable, difficult to find, and hard to use.

The use of the NRCS Registry across the nation has proven to be highly variable in terms of registrants and the use of those registrants. A deeper dive into the successes and conversely, the limited use of some states will require a data set that is currently unavailable.

Summary of acquisition methods for acquiring technical services across all USDA conservation programs.

Significant Conservation Programs	Method of Acquiring Services				
	Cooperative Agreement	Contribution Agreement	Grant	Procurement Contract	Producer-acquired
Discretionary Programs					
Conservation Technical Assistance (CTA)	X	X	X	X	N/A
Soil Survey	X	X	X	X	N/A
Plant Materials	X	X	X	X	N/A
Snow Survey	X	X	X	X	N/A
Conservation of Private Grazing Lands (CPGL)	X	X	X		N/A
Agriculture Conservation Experienced Services Program (ACES) 1/	X				N/A
Watershed Operations 2/	X	X	X	X	
Watershed Rehabilitation	X	X	X	X	N/A
Mandatory Programs					
Conservation Reserve Program (CRP)	X	X	X	X	
Conservation Stewardship Program (CSP)	X	X	X	X	X
Environmental Quality Incentives Program (EQIP)	X	X	X	X	X
Agricultural Conservation Easement Program (ACEP)					
Agricultural Land Easements (ALE)	X				N/A
Wetlands Reserve Easements (WRE)	X	X	X	X	N/A
Regional Conservation Partnerships Program (RCPP)	X	X	X (AFAs)	X	X
Watershed Rehabilitation	X	X	X	X	N/A
Voluntary Public Access and Incentives Program (VPA-HIP)			X		N/A

1/ Funding is derived from the benefiting program's appropriation.

2/ Watershed land treatment agreements do not offer producer-acquired technical services.

Recommendation: 1. Ensure the NRCS reporting system accurately categorizes the technical assistance payments properly. These include: contract administration, Conservation Planning Activities, Design and Implementation Activities, Conservation Evaluation and Monitoring Activities, and outreach and education. 2. Include monitoring and reporting of TSP use as an indicator of success in the Agency reporting system. 3. Recognize that producers use qualified consultants and ag advisors for nutrient management, pest management, CNMP development, grazing management, forest management, and other practices that qualify for payment from a Farm Bill program but are currently uncompensated. Understanding the breadth and nature of these uncompensated technical services can better inform the Agency and Congress of the appropriate steps to accelerate conservation implementation.

VIII. Issues and Barriers with Current Technical Service Provider Process

The current technical service provider process is centered on providing qualified technical assistance design and implement conservation practices on a program participant's land. NRCS uses a variety of integrated internal tools to ensure compliance such as Conservation Desktop (CD), Conservation Assessment and Ranking Tool Application (CART) and ProTracts. These tools take into account environmental laws and provide the mechanisms to develop program contracts. The following lists some of the issues and barriers within the current process that face TSPs. It should be noted, limitations on internal tool usage are primarily an NRCS Registry issue as many of

the NRCS-acquired service providers, through some very specific agreement conditions, operate with some level of access to the integrated NRCS tools.

- **Payment Rates.** Technical Service Payment Rates are universally derived by the private sector technical service community. Producer-acquired TSP payment rates are paid through Financial Assistance funds which are generally capped at 75-to-90% of the actual costs. This means that producers must pay the difference to the TSP or the producer-acquired TSPs must discount their rates in order to get work. This limitation does not apply to NRCS-acquired TSPs or to work performed by NRCS staff. Further, there is the limitation that the actual construction of the producer-acquired payment rate is limited to the labor charges needed to deliver the required product. This seems to be overly restrictive as the federally provided assistance can include salary, expenses, travel time, vehicles, equipment, etc. Additionally, TSP payment rates vary widely between States; even for the same practice in adjacent States.

Recommendation: Establish a method to ensure the totality of service cost is captured in the established payment rate and ensure consistency in payment rates across states.

- **Environmental Compliance.** When technical assistance is coupled with the expenditure of federal funds there must be compliance with National Environmental Protection Act, National Historic Preservation Act, Highly Erodible Lands Compliance (HELC), Wetlands Compliance (WC) and applicable state and local laws and regulations. HELC and WC are specifically tied to the Food Security Act, Title XII programs. The services provided by the TSP must ensure the appropriate evaluation and certifications with these provisions, but oftentimes the TSP is at a loss as to how to ensure this compliance. Absent access to the Agency tools, the compliance documentation is reduced to a paper exercise which the TSP provides to NRCS which must review and provide approval. This cannot be delegated to the TSP and can cause long delays before any approval of the TSP's technical work.

Recommendation: Provide TSPs with secure access to NRCS tools to streamline environmental compliance.

- **Confidentiality.** Confidentiality of services, assistance records and data remain a prevailing concern of many USDA customers. These protections are codified through a number of laws such as the Freedom of Information Act, Privacy Act, Section 1244(b) of the Food Security Act of 1985, as amended, and Section 1619 of the Food, Conservation and Energy Act of 2008. In the TSP community USDA ensures compliance through specific provisions within the applicable agreement, grants, or contracts. However, there is no protection offered for the producer's information when they directly acquire and receive services from the TSP unless they assert protections in their working arrangement with the TSP. The Registry asserts these individuals as "certified." Only through the reading of the "fine print" do participants have clarity that they are responsible for any protection of their information used and produced by their TSP.

Recommendation: Provide producers who choose a TSP a brief fact sheet and disclaimer on the Confidentiality provision.

- **Data Sharing.** Exchange of USDA information and the use of USDA tools with the non-federally acquired Technical Service Provider, consultant and advisor community is limited at best. While the federally-acquired service provider, through specific arrangements has access to these tools and the overall integration efficiencies, internal validation, and workflow, others outside of this family must develop and provide required output through their own tools, or non-integrated USDA tools and provide “hard copy” paper or electronic outputs to the agency. The information provided, must in turn be entered into the agencies systems for processing. The inefficiency and inability to share the access and information creates significant inefficiencies, complications, and delays in the review and acceptance of the TSP’s work. This disadvantages the producer-acquired TSP through increased costs, inefficient data transfer, and delays in processing.

Recommendation: *Provide a secure Portal for TSPs to access and share necessary data.*

- **Certification.** The current NRCS Registry acknowledges Engineering Licensure and other state laws and/or requirements, as well as professional certifications with their paths to USDA certification. However, the NRCS regulation, policy and procedures layer on many additional requirements to these other systems which are already comprehensive and well managed. Ultimately, any technical work has to conform to NRCS policy, standards, SOWs or SODs. It is unfortunate that qualified providers servicing producers produce work that is equal to or exceed Agency requirements but not recognized as acceptable due to the onus of becoming certified. Many well-qualified individuals and organizations, known for their technical capabilities, remain unrecognized by USDA because they will not pursue the NRCS Registry process whether by personal experience or representation of others.

Recommendation: *Review State and organizational certification programs and for those programs deemed qualified, accept individuals certified by them as TSPs without additional requirements.*

- **Conflicts of Interest.** This represents a difficult issue for all non-federal service providers. Whether producer-acquired or Agency-acquired, NGOs, and private sector providers generally have connection to another business or to their organizational mission or goals, some of which are profit centers for their business or organization. Examples include seed, fertilizer, chemical, fence supplies, feed supplements, irrigation equipment, etc. Federal employees are prohibited from making recommendations pointing producers to specific products. Providing assurances that the TSP is not utilizing their certification or federally funded technical services to enrich their business or organization at the producer’s or agency’s expense is central to the integrity of the federal conservation technical assistance value system.

Recommendation: *Provide producers with a fact sheet outlining Conflict of Interest concerns.*

- **Approval for Use and Payment.** Producer-acquired TSPs must be registered in the NRCS Registry and approved for inclusion in the contract before the producer can be compensated. If the producer or TSP provides documentation or work products not meeting the agency’s requirements, compensation will be withheld until they comply. Further, if the producer provides fully conforming technical products to the agency, but

the TSP was not registered, there will be no payment. The dichotomy of registration and products produced (planning, evaluation, and 900-series) further exasperates producers and TSPs alike.

Recommendation: Recognize that the demarcation of successful, beneficial technical assistance is whether or not the product complies with Agency requirements and make payment when the work products meet NRCS standards.

- **Quality Assurance Activities.** The work of all TSPs is periodically spot checked to ensure they are meeting NRCS standards, however, the timing of the spot check is critical. If the review occurs prior to certification for payment, the producer can be placed in a difficult position relative to the payment demands of the TSP before the producer receives their USDA reimbursement. Alternatively, if the quality assurance is delayed until after the reimbursement payment has been made and is found deficient, the producer is required to return the funds.

Recommendation: Ensure quality assurance spot checks occur before certification of payment.

IX. Summary of Potential Actions

The following summarizes the potential actions that could be taken by the Administration and policymakers to encourage and improve the availability and delivery of technical assistance to America's private lands stewards. These are divided into Administrative and Policy. It is recognized that many organizations interested in the Technical Assistance issue cannot engage directly with Congress and the discussion here and previously is in the context of information only.

Administrative:

1. **Develop payment rates for all forms of technical services providers at parity with comparable NRCS provided technical services.**
2. **Adopt mechanisms to have technical service providers move from working on single producer contracts to multiple contracts.**
3. **Reconstruct the program delivery technical assistance models to stop or minimize the diversion of annually appropriated Conservation Technical Assistance funds to Farm Bill TA program support and properly account for the full TA cost associated with the delivery of each Farm Bill program.**
4. **Reduce program administrative costs through policy, process improvement, and effective automation.**
5. **Improve technology acquisition, training, and adoption in support of conservation planning.**
6. **Create and facilitate producer-approved data and tool sharing with their chosen TSP.**
7. **Provide clear standards or statements of work for participants to use in contracting their TSP for reimbursable work.**
8. **Promote state level accountability systems to ensure NRCS is acquiring, cultivating and expanding the use of non-federal TSPs agency-wide and program-wide by:**
 - a. Ensuring the reporting system accurately categorizes the technical assistance according to the benefitting service and type; i.e., programmatic contract administration, CPA, DIA, CEMA, conservation practices, outreach, education, etc.
 - b. Understanding the breadth and nature of uncompensated technical services to better inform the Agency and Congress of the appropriate steps to accelerate conservation implementation. Producers are using consultants and ag advisors for nutrient management, pest management, CNMP, grazing management, forest management and other practices that receive practice payments but no payment for technical services.
 - c. Establishing transition analysis and reporting using 2020 as the benchmark to evaluate the policy and procedural implications on the use of the NRCS Registry by TSPs and Customers and the trends of use through producer-acquired TSPs.
9. **Establish a goal that at least 25% of each States' program allocations of technical assistance funding be directed to private sector, non-governmental organizations, and state and local governments for direct technical (not administrative) support to agricultural and forest producers.**
10. **Ensure the NRCS reporting system accurately categorizes the technical assistance payments properly.** These include: contract administration, Conservation Planning Activities, Design and Implementation Activities, Conservation Evaluation and Monitoring Activities, and outreach and education. Include monitoring and reporting of TSP use as an indicator of success in the Agency reporting system.

11. **Recognize that producers use and pay for qualified consultants and ag advisors for nutrient management, pest management, CNMP development, grazing management, forest management, and other practices that qualify for payment from a Farm Bill program but are currently uncompensated.**
12. **Increase non-federal TA through the expanded use of cooperative agreements, contribution agreements, and grants.**
13. **Recognize State licensure and other state laws and/or requirements, as well as private sector professional certifications as paths to TSP certification.**
14. **Reduce the 60-day NRCS review period for TSPs certified by an approved certifying entity to 10 business days.**
15. **Involve existing TSPs and certifying organizations in the development and feedback loops for the new Registry tool and procedures to ensure appropriate streamlining and access.**
16. **Accelerate and expand outreach to existing, potential, and disenfranchised TSPs surrounding the tool opportunities.**
17. **To better inform the next Farm Bill, USDA should initiate a comprehensive review and explore alternatives to accelerate availability of technical services.** Setting aside the current statutory requirements and the potential for a payment through a programmatic agreement, what does the Registry actually contribute to a producer receiving reimbursable technical services or assurances? Are there skilled providers of consulting services, not listed within the NRCS Registry providing technical services equal to or exceeding NRCS requirements? Does the free-market place, professional licensing, and state regulatory practices do just as well or better than NRCS? Is there a possibility the statute could be reconstructed to remove the registry requirement from the Secretary and move towards a model based on delivered services meeting NRCS procedures, standards and documentation requirements?
18. **Review and adjust the policy for establishing TSP payment rates to ensure payments for TSPs are equal to other forms of non-federal TA.** When comparing the rates with the technical assistance provided by a comparable NRCS employee, it is hard to determine if the hourly rate used for the TSP also reflects the benefits and other costs associated with equipping and placing the federal employee “in-the-field.” Failure to include some level of adjustment to hourly rates to place TSPs on par results in an inherent bias and places the TSP at a marketplace disadvantage.

Policy:

1. **Require USDA to overhaul and simplify the overly burdensome TSP program by requiring NRCS to eliminate regulation, policy and procedures that impede the use of third-party providers.**
2. **Mandate the expansion of non-federal TA to deliver conservation programs.** One way Congress could vastly improve the current system of third-party TA is to set a clear expectation for USDA in acquiring and cultivating non-federal TA. Congress could establish a goal that at least 25% of each States’ program allocations of technical assistance funding – both CTA and Farm Bill – be directed to private sector, non-governmental organizations, and state and local governments for direct technical (not administrative) support to agricultural and forest producers. The means and methods of achieving this goal could be using grants, expanding the agreement, and contracting authorities and using the ACES program. Ideally to promote uniform implementation across the Nation, this requirement

should be placed on each State Conservationist and not measured by Agency level aggregation.

3. **Build off certification of third-party providers in the 2018 Farm Bill.** USDA should work with the vast network of conservation professionals and recognize professional certification without additional paperwork and regulatory burdens. Many well-qualified individuals and organizations, known for their technical capabilities, remain unrecognized by USDA because they will not pursue the NRCS Registry process whether by personal experience or representation of others. Providing a streamlined process or having them be automatically certified would increase the pool of third-party providers.
4. **Require NRCS to provide market driven payment rates for third-party providers at a level not to exceed the comparable costs to the agency for staff time and support costs.** TSPs are currently paid at a 75% reduced rate. That puts TSPs at a severe disadvantage where either the producer must make up the difference or the TSP is forced to discount their rates. This introduces a systemic disparity for both the producer and the TSP.
5. **Congress needs to send a clear message that the Technical Service Provider Program is broken, and that USDA needs to do a comprehensive review and provide their findings and recommendations to Congress for consideration.** Congress could set goals and basic parameters without being overly prescriptive. Similar language was included in the 2018 Farm Bill on practice standards.
6. **Require USDA to engage in outreach to all professional and certifying organizations.** It is apparent that much has changed since the establishment of Third-Party provider language in the 2002 Farm Bill. USDA needs to communicate the changes that will be made and engage professionals, many who have lost interest based on experiences with previous, policy, procedures, training and tools.

APPENDIX A - Authorities Language Excerpts.

Soil Conservation and Domestic Allotment Act, Public Law 74-46.

SECTION 1. [16 U.S.C. 590a] PURPOSE.

It is hereby recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion to preserve soil, water, and related resources, promote soil and water quality, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion and in order to effectuate this policy is hereby authorized, from time to time—

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water;

(2) To carry out preventive measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land;

(3) To cooperate or enter into agreements with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this Act; and

(4) To acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this Act.

Food Security Act of 1985, Public Law 99-198, as amended.

SEC. 1242. [16 U.S.C. 3842] DELIVERY OF TECHNICAL ASSISTANCE.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE PARTICIPANT.—The term “eligible participant” means a producer, landowner, or entity that is participating in, or seeking to participate in, programs in which the producer, landowner, or entity is otherwise eligible to participate under this title or the agricultural management assistance program under section 524(b) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)).

(2) THIRD-PARTY PROVIDER.—The term “third-party provider” means a commercial entity (including a farmer cooperative, agriculture retailer, or other commercial entity (as defined by the Secretary)), a nonprofit entity, a State or local government (including a conservation district), or a Federal agency, that has expertise in the technical aspect of conservation planning, including nutrient management planning, watershed planning, or environmental engineering.

(b) PURPOSE OF TECHNICAL ASSISTANCE.—The purpose of technical assistance authorized by this section is to provide eligible participants with consistent, science-based, site-specific practices designed to achieve conservation objectives on land active in agricultural, forestry, or related uses.

(c) PROVISION OF TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance under this title to an eligible participant—

(1) directly;

(2) through an agreement with a third-party provider; or

(3) at the option of the eligible participant, through a payment, as determined by the Secretary, to the eligible participant for an approved third-party provider, if available.

(d) NON-FEDERAL ASSISTANCE.—The Secretary may request the services of, and enter into cooperative agreements or contracts with, other agencies within the Department or non-Federal entities to assist the Secretary in providing technical assistance necessary to assist in implementing conservation programs under this title.

(e) CERTIFICATION OF THIRD-PARTY PROVIDERS.—

(1) PURPOSE.—The purpose of the third-party provider program is to increase the availability and range of technical expertise available to eligible participants to plan and implement conservation measures.

(2) REGULATIONS.—Not later than 180 days after the date of the enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall promulgate such regulations as are necessary to carry out this section.

(3) EXPERTISE.—In promulgating such regulations, the Secretary, to the maximum extent practicable, shall—

(A) ensure that persons with expertise in the technical aspects of conservation planning, watershed planning, and environmental engineering, including commercial entities, nonprofit entities, State or local governments or agencies, and other Federal agencies, are eligible to become approved providers of the technical assistance;

(B) provide national criteria for the certification of third-party providers; and

(C) approve any unique certification standards established at the State level.

(4) CERTIFICATION PROCESS.—The Secretary shall certify a third-party provider through—

(A) a certification process administered by the Secretary, acting through the Chief of the Natural Resources Conservation Service; or

(B) a non-Federal entity approved by the Secretary to perform the certification.

(5) STREAMLINED CERTIFICATION.—The Secretary shall provide a streamlined certification process for a third-party provider that has an appropriate specialty certification, including a sustainability certification.

(f) ADMINISTRATION.—

(1) FUNDING.—Effective for fiscal year 2008 and each subsequent fiscal year, funds of the Commodity Credit Corporation made available to carry out technical assistance for each of the programs specified in section 1241 shall be available for the provision of technical assistance from third-party providers under this section.

(2) TERM OF AGREEMENT.—An agreement with a third party provider under this section shall have a term that—

(A) at a minimum, is equal to the period beginning on the date on which the agreement is entered into and ending on the date that is 1 year after the date on which all activities performed pursuant to the agreement have been completed;

(B) does not exceed 3 years; and

(C) can be renewed, as determined by the Secretary.

(3) REVIEW OF CERTIFICATION REQUIREMENTS.—Not later than 1 year after the date of enactment of the Food, Conservation, and Energy Act of 2008, the Secretary shall—

(A) review certification requirements for third-party providers; and

(B) make any adjustments considered necessary by the Secretary to improve participation.

(4) ELIGIBLE ACTIVITIES.—

(A) INCLUSION OF ACTIVITIES.—The Secretary may include as activities eligible for payments to a third-party provider—

(i) technical services provided directly to eligible participants, such as conservation planning, education and outreach, and assistance with design and implementation of conservation practices; and

(ii) related technical assistance services that accelerate conservation program delivery.

(B) EXCLUSIONS.—The Secretary shall not designate as an activity eligible for payments to a third-party provider any service that is provided by a business, or equivalent, in connection with conducting business and that is customarily provided at no cost.

(5) PAYMENT AMOUNTS.—The Secretary shall establish fair and reasonable amounts of payments for technical services provided by third-party providers.

(g) AVAILABILITY OF TECHNICAL SERVICES.—

(1) IN GENERAL.—In carrying out the programs under this title and the agricultural management assistance program under section 524 of the Federal Crop Insurance Act (7 U.S.C. 1524), the Secretary shall make technical services available to all eligible participants who are installing an eligible practice.

(2) TECHNICAL SERVICE CONTRACTS.—In any case in which financial assistance is not provided under a program referred to in paragraph (1), the Secretary may enter into a technical service contract with the eligible participant for the purposes of assisting in the planning, design, or installation of an eligible practice.

(h) REVIEW OF CONSERVATION PRACTICE STANDARDS.—

(1) REVIEW REQUIRED.—The Secretary shall—

(A) not later than 1 year after the date of enactment of the Agriculture Improvement Act of 2018, complete a review of each conservation practice standard, including engineering design specifications, in effect on the day before the date of enactment of that Act;

(B) ensure, to the maximum extent practicable, the completeness and relevance of the standards to local agricultural, forestry, and natural resource needs, including specialty crops, native and managed pollinators, bioenergy crop production, forestry, and such other needs as are determined by the Secretary;

(C) ensure that the standards provide for the optimal balance between meeting site-specific conservation needs and minimizing risks of design failure and associated costs of construction and installation; and

(D) evaluate opportunities to increase flexibility in conservation practice standards in a manner that ensures equivalent natural resource benefits.

(2) CONSULTATION.—In conducting the review under paragraph (1), the Secretary shall consult with eligible participants, State technical committees established under section 1261(a), crop consultants, cooperative extension and land grant universities, nongovernmental organizations, and other qualified entities.

(3) EXPEDITED REVISION OF STANDARDS.—Not later than 1 year after the date of enactment of the Agriculture Improvement Act of 2018, the Secretary shall develop for the programs under this title an administrative process for—

(A) expediting the establishment and revision of conservation practice standards;

(B) considering conservation innovations and scientific and technological advancements with respect to any establishment or revision under subparagraph (A);

(C) allowing local flexibility in the creation of—

(i) interim practice standards and supplements to existing practice standards to address the considerations described in subparagraph (B); and

(ii) partnership-led proposals for new and innovative techniques to facilitate implementing agreements and grants under this title; and

(D) soliciting regular input from State technical committees established under section 1261(a) for recommendations that identify innovations or advancements described in subparagraph (B).

(4) REPORT.—Not later than 2 years after the date of enactment of the Agriculture Improvement Act of 2018, and every 2 years thereafter, the Secretary shall submit to Congress a report on—

(A) the administrative process developed under paragraph (3);

(B) conservation practice standards that were established or revised under that process; and

(C) conservation innovations that were considered under that process.

(i) ADDRESSING CONCERNS OF SPECIALTY CROP, ORGANIC, AND PRECISION AGRICULTURE PRODUCERS.—

(1) IN GENERAL.—The Secretary shall—

(A) to the maximum extent practicable, fully incorporate specialty crop production, organic crop production, and precision agriculture into the conservation practice standards; and

(B) provide for the appropriate range of conservation practices and resource mitigation measures available to producers involved with organic or specialty crop production or precision agriculture.

(2) AVAILABILITY OF ADEQUATE TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—The Secretary shall ensure that adequate technical assistance is available for the implementation of conservation practices by producers involved with organic, specialty crop production, or precision agriculture through Federal conservation programs.

(B) REQUIREMENTS.—In carrying out subparagraph (A), the Secretary shall develop—

(i) programs that meet specific needs of producers involved with organic, specialty crop production or precision agriculture through cooperative agreements with other agencies and nongovernmental organizations; and

(ii) program specifications that allow for innovative approaches to engage local resources in providing technical assistance for planning and implementation of conservation practices.

APPENDIX B – NRCS Program Technical Assistance Matrix.

Attachment A: NB 180-19-5

Step	Planning Steps	Conservation Technical Assistance - CTA	Environmental Quality Incentives Program - EQIP	Conservation Stewardship Program - CSP	Conservation Reserve Program - CRP	Emergency Conservation Program - ECP	Agricultural Conservation Easement - ACEP Agricultural Land Easements - ALE	Agricultural Conservation Easement - ACEP Wetland Reserve Easements - WRE	Emergency Watershed Protection - EWP	Emergency Watershed Protection - EWP Floodplain Easement Program - FPE	Conservation Innovation Grants - CIG	Regional Conservation Partnership Program - RCPP	Watershed Protection and Flood Prevention Program	Watershed Rehabilitation Program (Discretionary)	Watershed Rehabilitation Program (Mandatory)	Wetland Mitigation Banking Program
1	Identify Problems and Opportunities - Identify existing resource problems and concerns and potential opportunities in the planning area.	C	C	C	P	P*	P	C	C	P	P	C	C	C	C	C
2	Determine Objectives - Identify and document the client's objectives.	C	C	C	P	P*	P	C	C	P	P	C	C	C	C	C
3	Inventory Resources - Inventory and document the natural resources and their current onsite and offsite conditions and effects, as well as the economic and social considerations related to the resources.	C	C	P	P	P*	P	C	C	P	P	C	P	P	P	C
4	Analyze Resource Data - Analyze the resource information gathered in Step 3. "Inventory Resources," to clearly define the existing natural resource conditions, along with economic and social issues related to the resources. Information from this step will help to further define and clarify problems, concerns, and opportunities.	C	C	P	P	P*	P	C	C	P	P	C	P	P	P	C
5	Formulate Alternatives - Formulate alternatives that will achieve the client's objectives, solve identified natural resource concerns, and take advantage of opportunities to improve or protect resource conditions, and demonstrate a variety of technical and economic implementation strategies.	C	C	P	P	P*	P	C	C	P	P	C	P	P	P	C
6	Evaluate Alternatives - Evaluate the alternatives to determine their effects in addressing the client's objectives and the identified natural resource concerns and opportunities. Evaluate the projected effects on social, economic, and ecological concerns. Special attention must be given to those ecological values protected by law or Executive Order.	C	C	P	P	P*	P	C	C	P	P	C	P	P	P	C
7	Make Decision - Document Conservation Plan - The client selects their preferred alternatives and works with the planner to schedule the conservation system and practice implementation.	C	C	P	P	P*	P	C	C	P	P	C	P	P	P	C
8	Implement Plan - Design - The client implements the selected alternatives. The planner or technical expert provides the land manager with detailed practice implementation information, including engineered designs.	C	P*	P	P	P*	P	P	P	P	P	P*	P	P	P	P
7	Make Decision - Document Program Contract - The client works with the planner or others to determine program eligibility and develop contracting documents.	NA	P	P	P	P*	P	P*	P	P	P	P	P	P	P	P
8	Implement Plan - Installation - The client implements the selected alternatives. Conservation staff will provide practice layout and construction inspection based on implementation and design documents. Each land manager directs the implementation of each practice.	C	P	P	P	P*	P	P	P	P	P	P	P	P	P	P
8	Implement Plan - Checkout - The client implements the selected alternatives. Conservation staff will provide construction inspection and certification that installed practices meet NRCS standards and specifications.	C	P	P	P	P*	P	P	P	P	P	P	P	P	P	P
9	Evaluate Plan - Evaluate the effectiveness of the plan in solving the resource concerns as it is implemented and work with the client to make adjustments as needed.	C	C	C			P	P	P	P	P	C	P	P	P	P
	NA = This activity does not apply to this program.															
	C = Report as CTA.															
	P = Charge the program for this activity.															
	* May be done through CTA prior to contract application or reimbursement.															
	Note: If not sure how to charge a task, seek guidance from supervisor.															

APPENDIX C – NRCS Agreement Authorities.

Cooperative Agreements – A Proven Vehicle to Grow Private Sector Technical Assistance Capability/Capacity

NRCS Authority to enter into Cooperative agreements is found in the Agriculture Appropriations Act of 2001, Public Law. 106–387

“SEC. 714. Notwithstanding any other provision of law (including provisions of law requiring competition), the Secretary of Agriculture may hereafter enter into cooperative agreements (which may provide for the acquisition of goods or services, including personal services) with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Natural Resources Conservation Service; and (2) all parties will contribute resources to the accomplishment of these objectives: Provided, That Commodity Credit Corporation funds obligated for such purposes shall not exceed the level obligated by the Commodity Credit Corporation for such purposes in fiscal year 1998.”

Specifically called out in the 2001 Appropriation, Congress re-emphasized the authority already provided to the agency in Section 1, paragraph 3 of the Soil Conservation and Domestic Allotment Act, Public Law 74-46 and have further expanded by including agreement authority in subsequent farm bill programs.

What is a Cooperative Agreement?

A cooperative agreement is a legal instrument between the Federal government and any other entity. A cooperative agreement occurs when the Federal government transfers something of value, usually money, to a state agency, municipality, nonprofit organization, private business, or other entity for a public purpose. In a cooperative agreement, substantial interaction goes on between the Federal government and the other party are directly performing or implementing parts of the award program. In a cooperative agreement, then, Federal employees participate more closely in performing certain aspects of the program, working “side-by-side” with the awardee. The specific ways this involvement is integrated varies across programs and agencies.

Cooperative agreements may be funded up to 100 percent for designated project costs by the Federal government. Usually, awards for cooperative agreements are made on a competitive basis. However, there are acceptable exceptions where competition is not required. Non-competitive awards must be in the best interest of the Federal government and necessary to accomplish the goals of the program funding the award. Reasons for considering noncompetitive awards may include, but are not limited to, the following:

- Awards of less than \$75,000,
- Awards to fund continuing work already started under a previous award,
- Awards that cannot be delayed because of an emergency or substantial danger to health and safety,
- Awards where it is impracticable to secure competition,
- Awards to fund unique and innovative unsolicited applications, and
- Nonmonetary awards of property or services.

What is the Difference Between a Cooperative Agreement and a Grant?

The main difference between a grant and a cooperative agreement is that in a grant, not much substantial interaction occurs between the Federal government and the awardee. In a grant, the Federal government more strictly maintains an oversight and monitoring role. In a cooperative agreement, there is significant involvement by the Federal government associated with the stated agreement.

What is the Difference Between a Cooperative Agreement and a Contribution Agreement?

A contribution agreement is a unique non-assistance cooperative agreement type available only to NRCS as established by 7 U.S.C. Section 6962(a) in 2000 where it states: “...(2) *all parties will contribute resources to the accomplishment of these objectives.*” NRCS may enter into contribution agreements, including for the acquisition of goods and services, when the objectives of the agreement will serve a mutual interest of the parties to the agreement in carrying out NRCS conservation programs, and all parties will contribute resources to the accomplishment of these objectives. Contribution agreements do not require competition. Other entity contributions may be through a direct outlay of its funds and/or through in-kind contributions.

What is the Difference Between a Cooperative Agreement and a Procurement Contract?

The essential difference between a procurement contract and a cooperative agreement is that in a cooperative agreement, money is awarded to another entity to carry out a public purpose with the involvement of the Federal government. In a procurement contract, there is a purchase by the Federal government of some product or service from another entity.

APPENDIX D – Technical Service Provider Regulation

7 Code of Federal Regulation (CFR), Chapter VI, Part 652-Technical Service Provider Assistance

<https://www.govinfo.gov/content/pkg/CFR-2021-title7-vol6/pdf/CFR-2021-title7-vol6-part652.pdf>

This content is from the eCFR and is authoritative but unofficial.

Title 7 - Agriculture

Subtitle B - Regulations of the Department of Agriculture

Chapter VI - Natural Resources Conservation Service, Department of Agriculture Subchapter F - Support Activities

Part 652 Technical Service Provider Assistance

Subpart A General Provisions

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7 CFR 652

PART 652 - TECHNICAL SERVICE PROVIDER ASSISTANCE

Authority: 16 U.S.C. 3842.

Source: 69 FR 69472, Nov. 29, 2004, unless otherwise noted.

Subpart A - General Provisions

Source: 75 FR 6845, Feb. 12, 2010, unless otherwise noted.

§ 652.1 Applicability.

- (1) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers (TSPs). The Food Security Act of 1985, requires the Secretary to deliver technical assistance to eligible

participants for implementation of its Title XII Programs and the conservation activities in the Agricultural Management Assistance Program, 7 U.S.C. 1524, directly, through an agreement with a third party provider, or at the option of the producer through payment to the producer for an approved third party provider. This regulation defines how a participant acquires technical service from a third party TSP, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

- (2) TSPs may provide technical services to eligible participants in conservation planning, education and outreach, and assistance with design and implementation of conservation practices applied on private land, Indian land, or where allowed by conservation program rules on public land.
- (3) The Chief may implement this part in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 652.2 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Approved list means the list of individuals, private sector entities, or public agencies certified by the Natural Resources Conservation Service (NRCS) to provide technical services to a participant.

Certification means the action taken by NRCS to approve:

- (1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.
- (2) An entity or public agency having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

Chief means the Chief of NRCS or designee.

Conservation activity plan means the conservation practices associated with plan development as authorized under the Food, Conservation, and Energy Act of 2008 (2008 Act).

Conservation plan means a record of the client's decisions and supporting information for treatment of a land unit or water as a result of the planning process that meets the Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals), and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and takes advantage of opportunities at a conservation management system level. The needs of the client, the resources, and Federal, State, and local requirements will be met.

Conservation practice means a specified treatment, such as a structural or vegetative practice, or a land management practice that is planned and applied according to NRCS standards and specifications.

Contribution agreement means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

Cooperative agreement means the same as defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

Department means the NRCS, the Farm Service Agency, or any other agency or instrumentality of the Department of Agriculture (USDA) that is assigned responsibility for all or a part of a conservation program subject to this part.

Eligible participant means a producer, landowner, or entity that is participating in, or seeking to participate in, a conservation program covered by this rule in which the producer, landowner, or entity is otherwise eligible to participate.

Entity means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

Indian land means all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy, and benefit of certain tribes. The term Indian land also includes land for which the title is held in fee status by Indian tribes and the United States Government-owned land under the Bureau of Indian Affairs jurisdiction.

Procurement contract means the same as the term “contract” means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 et seq.

Program contract means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a program authorized under Title XII of the Food Security Act of 1985, or the Agricultural Management Assistance Program, authorized under 7 U.S.C. 1524.

Public agency means a unit or subdivision of Federal, State, local, or tribal government other than the Department.

Recommending organization means a professional organization, association, licensing board, or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as TSPs for specific technical services.

Secretary means the Secretary of the Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Basin Area.

Technical service means the technical assistance provided by TSPs, including conservation planning; education and outreach; and the design, installation, and check-out of approved conservation practices.

Technical service contract means a document that specifies the rights and obligations of an eligible participant to obtain technical services from a TSP where the eligible participant will not receive financial assistance for the implementation of the practice paid for in the technical service contract through participation in a Title XII conservation program or the Agricultural Management Assistance Program, 7 U.S.C. 1524.

Technical service provider means an individual, entity, Indian Tribe, or public agency either:

- (d) Certified by NRCS and placed on the approved list to provide technical services to participants; or
- (e) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Written agreement means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

§ 652.3 Administration.

- (a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a TSP in accordance with the requirements of this part.

- (b) The Chief of NRCS will direct and supervise the administration of the regulations in this part.
- (c) NRCS will:
 - a. Provide overall leadership and management for the development and administration of a TSP process;
 - b. Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of TSPs and the implementation of technical service;
 - c. Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of TSPs;
 - d. Provide training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such technical expertise. However, any training provided by the Department will be limited to training about Department regulations, policies, procedures, processes, and business and technical tools unique to NRCS; and
 - e. Establish a process for verifying information provided to NRCS under this part.
- (a) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a TSP unless the TSP is certified by NRCS for the services provided and is identified on the approved list.
 - (b) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a TSP in this manner, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B, nor identified on the approved list.
- (c) When a participant acquires technical services from a TSP, the Department is not a party to the agreement between the participant and the TSP. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the TSP must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, TSPs are required to submit copies of all transcripts, licensing, and certification documentation.

§ 652.4 Technical service standards.

- (a) All technical services provided by TSPs must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.
- (b) The Department will only pay a participant for technical services provided in accordance with established NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a TSP initiating technical services for those technologies and practices.
- (c) A TSP must assume responsibility in writing for the particular technical services provided. Technical services provided by the TSP must:
 - (1) Comply with all applicable Federal, State, tribal, and local laws and requirements;
 - (2) Meet applicable Department standards, specifications, and program requirements;

- (3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and
- (4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.
- (d) TSPs are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided.
- (e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.
- (f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a TSP.
- (g) The TSP will report conservation accomplishments associated with the technical services provided to the Department and the participant.
- (h) To the extent allowed under State or tribal law, TSPs may utilize the services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

§ 652.5 Participant acquisition of technical services.

- (a) Participants may obtain technical assistance directly from the Department or, when available, from a TSP.
- (b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.
- (c) To acquire technical services from a TSP, participants must:
 - a Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and
 - b Select a certified TSP from the approved list of TSPs.
- (d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.
- (e) The technical assistance indicated in paragraph (d) may include the development of conservation plans or activity plans suitable for subsequent incorporation into a program contract.
- (f) The Department may make payment to eligible participants who have a technical service contract and utilize it for technical assistance from a TSP.
- (g) The Department will identify in the particular program contract or written agreement the payment provisions for TSPs hired directly by the participant.
- (h) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department

will issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a TSP hired by the participant, or upon receipt of an assignment of payment from the participant, make payment directly to the TSP.

- (i) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific TSPs.
- (j) Payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.
- (k) The Department will not make payment for activities or services that are customarily provided at no cost by a TSP to a participant as determined by the State Conservationist.
- (l) Payment rates for technical services acquired by participants.
 - a. NRCS will calculate TSP payment rates for technical services using national, regional, and locally determined price data.
 - b. Establishing TSP payment rates.
 - (a) NRCS will establish guidelines to analyze the local pricing information using a standardized method.
 - (b) NRCS will establish TSP payment rates for the various categories of technical services. NRCS will determine the rates according to NRCS regional and local cost data, procurement data, and market data.
 - (c) National Headquarters will review and approve State payment rates to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between or within States due to differences in State laws, the cost of doing business, competition, and other variables.
 - (d) National Headquarters and State levels will review payment rates annually or more frequently, as needed, and adjust the rates based upon data from existing procurement contracts, Federal cost rates, and other appropriate sources.
 - (e) NRCS may adjust payment rates, as needed, on a case-by-case basis in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific TSP payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

§ 652.6 Department delivery of technical services.

- (e) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.
- (f) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument with TSPs to provide related technical assistance services that accelerate conservation program delivery. Related technical assistance services may include activities or services that facilitate the development, processing, or implementation of a program contract, such as recording conservation planning decisions and specifications.

- (g) NRCS may enter into agreements with other agencies or with a non-Federal entity to provide technical services to eligible participants.
- (h) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a TSP through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B of this part nor identified on the approved list.
- (a) The Department will implement procurement contracts, contribution agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate. Any contract, contribution agreement, cooperative agreement, or other appropriate instrument entered into under this section will be for a minimum of one year, will not exceed 3 years in duration, and may be renewed upon mutual agreement of the parties.
- (b) A TSP may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.
- (c) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

- (b) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by TSPs. As a requirement of certification, TSPs must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and provide this documentation to NRCS and the participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the TSP, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a TSP under subpart C of this part.
- (c) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the TSP detailing the deficiency and requesting remedial action by the TSP. Failure by the TSP to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. TSPs are solely responsible for providing technical services that meet all NRCS standards and specifications.

Subpart B - Certification

§ 652.21 Certification criteria and requirements.

- (a) To qualify for certification an individual must:
 - a. Have the required technical training, education, and experience to perform the level of technical assistance for which certification is sought;
 - b. Meet any applicable professional or business licensing or similar qualification standards established by State or Tribal law;

- c. Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and
- d. Not be decertified in any State under subpart C of this part at the time of application for certification.
 - (b)
 - o qualify for certification an entity or public agency must be authorized to provide such services in the jurisdiction and have a certified individual providing, in accordance with this part, technical services on its behalf.
- (c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the participant, for the technical services provided or may result in decertification.
- (d) NRCS will certify Technical Service Providers for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years. Decertification and Renewal of Certification is administered in accordance with § 652.26.
- (e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

§ 652.22 Certification process for individuals.

- (a) In order to be considered for certification as a technical service provider, an individual must:
 - (1) Submit an Application for Certification to NRCS in accordance with this section;
 - (2) Request certification through a recommending organization pursuant to § 652.25; or
 - (3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24, as appropriate.
- (b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.
- (c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an individual under paragraph (a)(1) of this section and in accordance with paragraph (a) of § 652.21. If all requirements are met, NRCS will:
 - (1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific practice, category, or categories of technical service;
 - (2) Place the applicant on the list of approved technical service providers when certified; and
 - (3) Make available to the public the list of approved technical service providers by practice or category of technical services.
- (d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

§ 652.23 Certification process for private-sector entities.

- (a) A private sector entity that applies for certification must identify, and provide supporting documentation, that it has the requisite professional and business licensure within the jurisdiction for which it seek certification, and that it employs at least one individual, authorized to act on its behalf that:

- (1) Has received certification on an individual basis in accordance with § 652.22; or
 - (2) Seeks certification on an individual basis as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.
- (1) NRCS will determine pursuant to § 652.22 whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.21 for the specific services the entity wishes to provide.
 - (2) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.
 - (3) The Certification Agreement entered into with the private-sector entity shall:
 - a. Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;
 - b. Require that the entity has, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;
 - c. Require that the entity promptly provide an amended Certification Agreement to NRCS for approval when the list of certified individuals performing technical services under its auspices changes;
 - d. Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual who is authorized to act on the entity's behalf; and
 - e. Require that the entity be legally responsible for the work performed by any individual working under the auspices of its certification.
 - (4) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

§ 652.24 Certification process for public agencies.

- (a) A public agency that applies for certification must identify, and provide supporting documentation, that it has the authority within the jurisdiction within which it seeks to provide technical services and an individual or individuals authorized to act on its behalf:
 - (c) Has been certified as an individual in accordance with § 652.22; or
 - (d) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.
- (1) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.
- (2) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:
 - (1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;
 - (2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

- (3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;
- (4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual that is authorized to act on the public agency's behalf; and
- (5) Require that the public agency be legally responsible for the work performed by any individual working under the auspices of its certification.
- (3) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

§ 652.25 Alternative application process for individual certification.

- (1) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.
- (2) Recommending organizations will, pursuant to an agreement entered into with NRCS:
 - 323 Train, test, and evaluate candidates for competency in the area of technical service delivery;
 - 324 Recommend to NRCS individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific practices or categories of technical services;
 - 325 Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;
 - 326 Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and
 - 327 Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.
- (e) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in § 652.21(a) for specific practices or categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.
- (f) NRCS will, within 60 days, make a determination on the recommendation for certification issued by the recommending organization. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.
- (a) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.
- (b) NRCS may also enter into an agreement with a recommending organization that NRCS determines has an adequate accreditation program to certify individuals as technical service providers for specific practices or categories of technical service in accordance with this part.

- (c) After submission of an Application for Certification under § 652.21, NRCS may certify an individual that has an appropriate specialty certification, including a sustainability specialty certification, as qualified to provide technical services for a specific practice, category, or categories of technical service.
- (d) NRCS will identify, on its website, which recommending organizations or specialty certifications are recognized by NRCS as meeting NRCS quality criteria for certification of individuals under this part.

§ 652.26 Certification renewal.

- (a) NRCS certifications are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years and automatically expire unless they are renewed for an additional time period in accordance with this section.
- (b) A technical service provider may request renewal of an NRCS certification by:
 - (a) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;
 - (b) Providing verification on the renewal form that the requirements of this part are met; and
 - (c) Agreeing to abide by the terms and conditions of a Certification Agreement.
- (c) All certification renewals are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed three years and before expiration, may be renewed for subsequent time period in accordance with this section.

Subpart C - Decertification

§ 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may submit a Notice of Proposed Decertification to the Deputy Chief for Programs recommending decertification of the technical service provider in accordance with these provisions if the technical service provider, or someone acting on behalf of the technical service provider:

- (a) Fails to meet NRCS standards and specifications in the provision of technical services;
- (b) Violates the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified;
- (c) Engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or
- (d) Commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or provide technical services under this part.

§ 652.33 Notice of proposed decertification.

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the Deputy Chief for Programs, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the Deputy Chief for Programs should not decertify, including any mitigating factors as well as any supporting documentation.

§ 652.35 Deputy Chief of Programs decision.

Within 40 calendar days from the date of the notice of proposed decertification, the Deputy Chief for Programs will issue a written determination. If the Deputy Chief for Programs decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the Deputy Chief for Programs decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of the Notice of Proposed Decertification and supporting documents, and if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

§ 652.36 Appeal of decertification decisions.

- (a) Within 20 calendar days from the date of receipt of the Deputy Chief for Program's decertification determination, the technical service provider may appeal in writing to the NRCS Chief. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the Deputy Chief for Programs is final.
- (b) Final decision. Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

§ 652.37 Period of decertification.

The period of decertification will not exceed 3 years in duration and will be decided by the decertifying official, either the Deputy Chief for Programs or the Chief of NRCS, as applicable, based on their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

- (a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;
- (b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

- (c) For a violation of Certification Agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

- (a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.
- (b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the Deputy Chief for Programs, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

- The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;
- The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and
- The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

- (a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure, or otherwise enter into an agreement for, the services of a decertified technical service provider during the period of decertification.
- (b) National decertification list. NRCS shall maintain a current list of decertified technical service providers. NRCS shall remove decertified providers from the list of certified providers. Participants may not hire a decertified technical service provider. It is the participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

APPENDIX E – NRCS Policy on TSP Payment Rates

National Instruction 440-323-NI, Part 323 – Guidance for Implementing Procedures for Processing TSP and Business Applications for Certification, Modifications, Renewals, and Decertification (Mar 2022)

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47993.wba>

Part 323 – Guidance for Implementing Procedures for Processing TSP and Business Applications for Certification, Modifications, Renewals, and Decertification

Subpart A - Purpose, Background, and General Instructions

○ **Purpose**

To provide guidance to NRCS State Conservationists, Directors of the Pacific Islands and Caribbean Areas, National Technology Support Center Directors, and National Headquarters regarding the processing of Technical Service Provider (TSP) applications for certification and procedures for decertification.

○ **References**

Title 440, Conservation Program Manual, Part 504, “Technical Service Provider Assistance.”

○ **Background**

As outlined in this instruction, States are responsible for processing applications and making a recommendation to national TSP Program leaders on the certification, modification, and renewal of TSP and business applications for certification. Applications are to be certified or deferred within **60 calendar days** of completed application receipt. States will make a recommendation and the TSP Team’s Regional Certifier will make the final decision. Also, States are responsible for tracking the work completed by a TSP, reviewing completed work following quality assurance/quality control spot-checking policy, and if the situation arises, proposing decertification. According to policy, many of the steps of these processes are built into the NRCS Registry. This guidance provides an explanation of the Registry workflows, and lines out who will be taking actions within the Registry; directly or through delegating their actions to another individual.

○ **Definitions**

- Administrative Review - A review of the TSP or business application to ensure all the components of the application are present and administratively accurate.
- Technical Review - Evaluation of the TSPs qualifications or business application to ensure the information they provided meets the intent of the certification criteria and requirements.

○ **Application Processing General Instructions**

- **Certification Process** – This is a national certification. The Lead

Verifier is responsible for managing the full TSP application—both single and multi-State.

- **Lead Verifier-Administrative Review** – The Lead Verifier is defined as the State TSP Coordinator who takes the lead on determining whether the application is complete and acts on all tasks as defined in the application verification workflow below.
 - The Resident State TSP Coordinator is the Lead Verifier when the TSP is seeking certification in their resident State for at least one practice or conservation activity in the current application.
 - If the resident State is not named in the current application during the application verification workflow, the Lead Verifier role is randomly assigned by the NRCS Registry to one of the listed States in the Location Selection section of the active application.
 - All States included in the application will be notified by an automatically generated NRCS Registry email, and upon logging into the Registry, will have a task assigned reminding them to review the TSP application.
 - The Resident State is copied on all TSP application letters generated by the NRCS Registry, even if they are not the Lead Verifier.
- **Application Verification-Administrative Review** – This is a new application for a TSP not previously certified.
 - Within **7 calendar days** of receiving a notice of application (assigned task appearing in their NRCS Registry workbasket), the Lead Verifier will perform an administrative review of the application and initiate a technical review as appropriate (States do not need to wait to start the technical review portion of the process). Determine whether the application is complete and if the supporting documentation is administratively accurate and current.

Note: The 60-day review period starts as soon as the application is submitted if no mail-in documents are pending.

- If the TSP selected a mail-in document option, then the **60-day** review period will not start until the State Coordinator/Lead Verifier uploads those documents and marks the upload complete (there is a pop-up message indicating this once they click the “Upload Complete” button in the Registry).
- The administrative review includes verification that all submitted documentation is complete

and meets the requirements.

- Verify if contact information is provided.
- Verify information uploaded in the applicant's profile supports selected national qualification option documentation, which address the requirements identified in the criteria including, but not limited to:
 - Licenses/certifications are entered, and supporting documentation is uploaded, to meet the certification requirement; this step excludes any State-required certifications, as those will be checked by the corresponding State(s).
 - Course completion certificates match the course requirements.
 - Degrees entered match the education requirements.
 - Sample plans or designs match the practices or conservation activities being applied for in their State.

Note: Technical review of these documents may begin at this point, but review results do not need to be completed during the administrative review period.

- Work experience documentation adequately demonstrates experience for applicable practices/activities and meets the length of time requirements.
 - All documentation, including review of samples of work, may be distributed to appropriate State technical leads within the lead State. Any other State named in the application may initiate their own technical review, but are not required to do so.
- If the State determines the TSP has not submitted the correct documentation, or documentation is missing, the Lead Verifier notifies the TSP and provides the following options:
 - Update existing qualifications in the TSP's profile. This action does **not** require the TSP to resubmit their application. The entry may be completed through the applicable tab in the TSP's profile and will not affect the 60-day review period.
 - Add new qualifications to meet criteria. This requires submitting a revised application to ensure the new entry is tied to a practice or activity. Resubmitting the application will reset the 60-day review period.

- Any new or updated entry will be completed within **5 calendar days**, or the State TSP Coordinator will recommend deferring the application. Refer to the Lead Verifier in Section A(2)(ii) below for process steps.

Note: Communicate with the TSP to determine whether the missing documentation is readily available to ensure the documentation may be uploaded within the allotted **5 calendar days**.

- If, upon review, the application is incomplete, or the documentation uploaded does not match the requirement per the NRCS Registry certification option selected and corresponding criteria, the Lead Verifier will notify the TSP of the following:
 - **The TSP has 5 calendar days** to submit missing information needed to complete their application.
 - If requested information to complete the application is not received in the allotted **5 calendar days**, the application will be deferred.
 - Within **5 calendar days** of receiving any missing information requested, the Lead Verifier will perform the second administrative review of the application to determine whether the documentation submitted completes the application.
- If, upon review, the application is complete, the Lead Verifier proceeds with (or continues) their technical review. At that time, the Lead Verifier will also notify the non-lead States to begin their State-specific reviews. These are done to ensure State laws are met, including reviews of State licenses/certifications, and allow for their optional technical review.
- If, upon review, the application is not complete, practices impacted by the missing/inaccurate information will be deferred, and States will proceed with the technical review of the remaining application practices/activities.
- **Application Verification-Technical Review** – This is for all States.
 - Within **15 calendar days** of receiving notice of TSP’s completed application from the NRCS Registry, non-lead States will:
 - Verify the TSP meets State laws for practices and conservation activities the TSP is applying for in their State. They may also complete a review of other credentials and documentation, including samples of work (optional for non-

- lead States), and then provide a recommendation to certify or defer in the NRCS Registry. The Lead Verifier will monitor all other State responses.
 - The NRCS Registry sends task reminders to all reviewers 30, 45, and 55 calendar days into the 60-day window.
 - Within **30 calendar days** of receiving notice of the TSP applicant's completed application from the NRCS Registry, the Lead Verifier will:
 - Verify the TSP meets State laws for their State.
 - Work with State Discipline Lead(s) or designated staff with appropriate job approval authority in their State to review samples of work to make a determination whether or not the samples meet the standard, or criteria, required for the technical service(s) they are applying for in their State. If applicable, they will identify in writing any deficiencies that the TSP needs to address.
 - Reviewers may take feedback from non-lead States into account for their own review.
- When reviewing samples of work not written for their State, reviewers will refer to the national criteria. TSPs are not expected to submit a sample of work for each State they are applying for certification in, but the work does need to adhere to national requirements/standards, as well as State-specific laws, where the work was completed.
 - If there is a disagreement between application States, the Lead Verifier will schedule time for discussion among the State(s) involved to come to a resolution.
 - If no resolution is possible, the Lead Verifier will request a determination by sending an email containing a detailed description of the disagreement, including all supporting documentation, to the National TSP Program Manager and copy the Regional Certifier(s), as appropriate.
 - Within **3 calendar days** of receiving the determination request, the National TSP Program Manager will contact the appropriate National Discipline Lead, or their designee, who will review the documentation, or sample of work, against national criteria. The reviewer will provide a final determination to the

National TSP Program Manager that will apply to all States identified in the application.

- National reviewers will have **15 calendar days** to complete the review and return their determination. If applicable, the determination will include any identified deficiencies and how to address them, in writing.
 - Within **15 calendar days** of receiving all non-lead State recommendations (or the National Discipline Lead’s final determination), and no later than **day 55** of the **60 calendar day** review period, the Lead Verifier will complete their recommendation in the NRCS Registry. The Registry then assigns a task to the Regional Certifier that indicates the application is ready for a final determination.
 - Within **5 calendar days** of receiving the recommendations through the NRCS Registry, the Regional Certifier will make a final determination to certify or defer each technical service (practice or activity) in the NRCS Registry (no later than **day 60** of the review period).
- **Application Resulting in a Modification of an Existing Certification Agreement** – A modification is any application submitted to add or remove technical services or locations during the certified TSP’s 3-year certification period, excluding the renewal period. The renewal period is when **120 calendar days**, or less, remain until the certification agreement expires.
 - If the TSP is just adding a State for a technical service for which they are already certified, the new State is not required to review additional or existing samples of work, but will confirm State laws have been met and that all licenses/certifications specific to their State are current.

Note: The 60-day review period starts as soon as the application is submitted (if no additional mail-in documents are pending).

- Within **7 calendar days** of receiving a notice of a completed application (assigned a task in their workbasket in the NRCS Registry), the Lead Verifier identified in the mod application will perform an administrative review of the application, which includes the following:
 - Reviewing any nationwide license/certification, and those specific to their State as they relate to the current

- application, and verifying they are current.
 - Verifying State law has been met.
 - Submitting a recommendation in the NRCS Registry.
 - Since the TSP is already certified, there is not a requirement to review samples of work. If a technical review is completed based upon the sample already submitted by the TSP for initial certification, the State may not deny certification, but may notify the TSP of any observed deficiencies, requirements needed to meet State law, or changes in the standard/criteria that were adopted since their original certification. The TSP applicant has **15 calendar days** to address all identified deficiencies in their TSP profile, or their application will be deferred.
 - If the TSP is adding new technical services not already certified for any location, then treat this like a new application and follow the procedures identified in the certification process (first bullet of Section A) above.
 - If the TSP is only removing technical services, then there is no need for any technical review. The Lead Verifier will ensure no additional locations or technical services are being applied for before approving the modification.
- **Renewal Process** - Renewal is the period of time leading up to the expiration of an existing TSP certification agreement and the application that is submitted to renew the 3-year certification. Renewal is initiated equal to but no more than **120 calendar days** prior to a current TSP certification agreement expiration date. Any applications submitted more than 120 calendar days prior to the certification agreement expiration are conserved modifications.
 - Renewal decisions are based upon current criteria, any waivers that apply to the technical services they are applying for, State laws being met, track record of the quality of work of each technical service, and any new practices or conservation activities added to their certification.

Note: Do not wait until recertification to deal with an existing history of quality of work issues or other causes for decertification.

- Address quality of work issues as they happen and follow procedures for decertification if improvements are not realized. A TSP who is not consistently producing quality work will be provided documentation of deficiencies and given an opportunity to improve their work. It is up to each State to determine the level of

intervention afforded to each TSP, but States will be consistent with their approach with all TSPs in the same or similar situation. Documentation of the deficiencies, communications, and opportunities to learn and improve will be recorded in the NRCS Registry in the TSP's Profile/Communications section.

- Keep in mind deferring an application for a technical service is a temporary “fix” to a quality of work issue and allows a TSP to reapply at any time. After three unsuccessful reviews of samples of work, the application for that technical service may be deferred for 12 months. We also may not decertify a TSP once their certification agreement expires. The decertification process, as defined by regulation and this directive, takes approximately 3 to 4 months to complete, which further justifies why waiting until renewal is not the time to deal with quality of work issues.
- If the TSP is not adding any new practices or conservation activities and the quality of their work for all States meets our standards, we recertify.
 - Within **7 calendar days** of receiving the notice of a completed application and a recertification task appears in their Registry workbasket, the Lead Verifier will follow the steps for a new application while being sure to:
 - Verify that no new technical services or locations were added.
 - Verify the application is complete (new sample plans are not required unless a major change in the standard occurred since their initial certification and/or the applicant's quality of work is in question).
 - Verify all licenses/certifications used to qualify are applicable and current.
 - Verify all new training requirements are met or waivers have been applied as needed.

Note: The 60-day review period starts as soon as the application is submitted if no mail-in documents are pending.

- Within **15 calendar days**, non-lead States will:
 - Review the application.
 - Determine whether State laws have been met for their State.
 - Verify State-specific licenses/certifications are applicable and current.
 - Submit a recommendation in the NRCS Registry to certify or defer.
- Within **15 calendar days** of notice from non-lead States' recommendations, the Lead Verifier submits

a recommendation to certify or defer in the NRCS Registry to the Regional Certifier.

Note: The Lead Verifier’s recommendation automatically populates any non-lead

States’ entries in the NRCS Registry if a selection has not already been applied by the non-lead State.

- If the TSP is adding any new practices or conservation activities for a State, or the quality of their work is not meeting standards, then follow the same process as a new TSP application described above in Section A.

Note: This includes submitting any needed documentation, including sample plans or samples of work for those practices or conservation activities in question for work performance.

- If the applicant completes all the steps and no decertification activity has occurred, the review will be completed in **60 calendar days**.
- If a State is working on or resolving a work performance issue, they will notify the Lead Verifier and other non-lead States immediately upon receipt of the notice of application.

▪ **Important Notes and Reminders Pertaining to NRCS Registry**

- The NRCS Registry will send reminder emails to the State TSP Coordinator/Lead Verifier and the Regional Certifier if the certification/recertification has not been completed:
 - **30 calendar days** before the decision due date.
 - **15 calendar days** before the decision due date.
 - **5 calendar days** before the decision due date.
- The entire TSP application review process is completed in **60 calendar days**. The State Coordinator/Lead Verifier has **55 calendar days** to provide a recommendation, and the Regional Certifier has **5 calendar days** to make the final decision to certify or defer all technical services included in the TSP application.
 - The **60-day** review period starts as soon as the application is submitted if no mail-in documents are pending.
 - If the TSP selected a mail-in document option, then the **60-day** review period will not start until the State Coordinator/Lead Verifier uploads those documents and marks the upload complete (there is a pop-up message indicating this once they click the “Upload Complete” button).
 - If the State determines the TSP has not submitted the correct documentation/missing documentation, the TSP may submit a revision to include those documents.

- Editing or correcting existing qualification entries will not pause or restart the **60-day** period.
 - Entering new qualifications and linking a new qualification to criteria will require the TSP to resubmit their application and will restart the 60-day period.
 - Applications are monitored and tracked throughout the process, and the Regional Certifier has the authority to complete certification if a State did not meet the procedural timeframes described above, but would only be considering if national criteria has been met. The Regional Certifier will default to selections and verification of documentation the TSP provided for meeting State laws.
- **Decertification Processing General Instruction**
 - **Important Notes and Reminders Pertaining to NRCS Registry**
 - The decertification process and timeline are well defined in 7 CFR Part 652, Technical Service Provider Assistance. The NRCS Registry is designed to automate the steps following the Rule, however, due to salesforce licensing limitations, some tasks that require action within the NRCS Registry must be completed by a salesforce license holder. Decisions and final approvals are always made by the individual responsible as defined in the Rule, but those actions to carry out those decisions are completed in the Registry by a designee, as defined below.
 - The Regional Certifier is the designee for the State Conservationist.
 - The National Administrator is the designee for the TSP Team Lead, Deputy Chief for Programs, Conservation Planning Branch Chief, and the Chief of NRCS.
 - The TSP Team Lead is the National TSP Program Manager.
 - If a business is being proposed for decertification, the employee(s) associated with the business are entitled to a separate decertification process. Employees of a business not engaged in the causes of decertification may be exempt from consideration of decertification.
 - All deadlines for the decertification process are calculated in calendar days.
- **Decertification Process**
 - The State Conservationist will notify the appropriate Regional Certifier, Deputy Chief for Programs, and Conservation Planning Branch Chief of the proposed TSP or

- business decertification.
- The notice must contain the following:
 - The cause(s) for decertification.
 - An administrative record containing all documentation supporting decertification.
- When a TSP or business is certified in multiple States, the State Conservationist will also notify each applicable State Conservationist, where the TSP or business is certified, of the proposed decertification.
 - Within **2 business days** of the notification, the State Conservationist designee (Regional Certifier) identifies the TSP or Official Business Representative (OBR) in the NRCS Registry, selects “Propose to Decertify” within the TSP or business’ application, and completes the following actions:
- Selects the causes for decertification communicated from the State Conservationist.
- Links all NRCS Registry derived administrative records and supporting documentation, or uploads the administrative record and all supporting documentation generated outside of the NRCS Registry.

Note: States will be using the Work Performance and Communications modules as part of their normal workflow/processes and not wait to this point to upload or record supporting documentation. These tasks will be ongoing as part of regular TSP Program administration.
- Supporting documentation may include plan or design review documents, communications with the TSP identifying issues needing to be addressed, examples of deliverables that did not meet qualifications, evidence of any fraud, waste, or abuse, etc.
 - Within **15 calendar days** of notification from the State Conservationist, the Conservation Planning Branch Chief will organize a conference with each State the TSP, or business, is certified in to determine the scope and extent of the decertification.
 - Considerations for this communication include, but are not limited to: The number of NRCS clientele that may be affected by the proposed decertification.
 - Length of decertification.
 - If there is a need for separate decertification processes for other employees of the business, or the business itself.
 - Additional information from other States in support of, or in conflict with, the proposed decertification.
- If the TSP is associated with a certified business or recommending organization, then the Conservation Planning Branch Chief will also set up a meeting with the recommending organization point of contact and/or the applicable OBR of the business with which they are associated.
- The National TSP Program Manager, the National Administrator, or their designees will document in the NRCS Registry the conference calls between the Conservation Planning Branch Chief and the affected State Conservationists

and, if necessary, the associated OBR of the business or recommending organization's point of contact.

- The State Conservationist's designee (Regional Certifier) will prepare a written Notice of Proposed Decertification after consulting with the proposing State Conservationist, Deputy Chief for Programs, and all other previously conferenced parties above (Conservation Planning Branch Chief, other State Conservationists, recommending organizations, and OBR), and send a draft to the National TSP Program Manager's designee (National Administrator) to send out for all to review.
- Suggested edits will be directed back to the National TSP Program Manager and Conservation Planning Branch Chief.
- If needed, the lead State's Regional Certifier makes the recommended edits to the Notice of Proposed Decertification and sends it back to the National Administrator for concurrence by the Conservation Planning Branch Chief. Once the National Administrator has submitted concurrence on the draft proposed decertification letter, the Regional Certifier submits the draft proposed decertification letter template in the NRCS Registry, prints a physical copy for the State Conservationist proposing decertification to sign, and mails the physical copy by USPS Certified Mail (return receipt requested), with all supporting documentation, to the certified TSP with electronic copies of the final letter and supporting documents sent to:
 - Each State Conservationist in whose area the TSP was certified.
 - The private sector entity, business, tribe, or public agency the certified TSP was working under, if applicable.
 - Any recommending organizations the certified TSP is affiliated with, in accordance with the appropriate memorandum of understanding.
 - The Conservation Planning Branch Chief.
 - The Deputy Chief for Programs.
 - The Notice of Proposed Decertification must contain:
 - Causes for decertification.
 - An administrative record that contains documentation that supports decertification.
 - Upon receiving the USPS Certified Mail receipt for the decertification letter, the Regional Certifier uploads the signed letter, supporting documents, a copy of the Certified Mail receipt and tracking information, and a copy of the confirmation of delivery and enters the delivery date on the USPS tracking confirmation document into the required field in the NRCS Registry triggering the **20-day** window the TSP has to contest the decertification proposal.
 - To contest the proposed decertification, the certified TSP must submit their rebuttal in writing by uploading the contest letter and supporting documentation to the NRCS Registry. Submit their contest letter, which will include the reasons why the Deputy Chief for Programs should not decertify them, including any mitigating factors and any supporting documentation, **no**

- later than 5:00 p.m. on the 20th calendar day** from the date they received the proposed decertification notice, as indicated on the USPS delivery confirmation receipt.
- The Deputy Chief for Programs has **40 calendar days** from the date of delivery of the proposed decertification notice to review and provide a written decision (TSP has **20 calendar days** to submit a contest letter, and the Deputy Chief for Programs has an additional **20 calendar days** to review it and provide a written decision, for a total of **40 calendar days** for the Deputy Chief for Programs to make a decision).
 - The decertification determination will be based on the following:
 - The Notice of Proposed Decertification, administrative record, and all supporting documentation.
 - The TSP's written contest response and supporting documentation.
 - If the Deputy Chief for Programs reviews the TSP's contest documentation and decides in their favor to deny the proposal for decertification, then the certified TSP remains certified, and a determination letter containing the Deputy Chief for Program's decision is sent to the TSP by Certified Mail with delivery confirmation, with copies sent electronically to the affected State Conservationists where the TSP or business is certified, any recommending organization or private sector entity, business, tribe, or public agency the TSP is working with, and the Conservation Planning Branch Chief.
 - The National Administrator will also upload the signed determination letter, supporting documentation, Certified Mail receipt, and delivery confirmation information to the NRCS Registry.
 - The Deputy Chief for Program's designee (National Administrator) will prepare a written determination letter.
 - The draft determination letter will be provided to the Deputy Chief for Programs for review, edits, or concurrence.
 - The Deputy Chief for Programs will provide edits to the National Administrator or concurrence on a final draft.
 - The National Administrator completes the edits to the draft letter template in the NRCS Registry, prints a physical copy of the determination letter for the Deputy Chief for Programs to sign, and mails the physical copy by USPS Certified Mail (including tracking and delivery confirmation) with all supporting documentation to the certified TSP. Electronic copies of the final letter and supporting documents will be sent to:
 - Each State Conservationist in whose area the TSP is certified.
 - The private sector entity, tribe, or public agency under which the certified TSP was working.
 - Any recommending organizations the certified TSP is affiliated with, in accordance with the appropriate business agreement or memorandum of understanding, respectively.
 - The Conservation Planning Branch Chief.
 - The Deputy Chief for Programs.
 - If the Deputy Chief for Programs supports decertification, then

the determination letter, consisting of the Deputy Chief for Programs' decision, and the administrative record will be sent to the TSP by USPS Certified Mail (including tracking and delivery confirmation) using the same process described in Section B(8) above. The final determination letter is sent to the TSP, with copies sent to the affected State Conservationists where they are certified, any recommending organization or private sector entity, business, tribe, or public agency the TSP is working with, and the Conservation Planning Branch Chief. The National Administrator will also upload the signed determination letter, supporting documentation, Certified Mail receipt, and delivery confirmation information to the NRCS Registry.

- The determination letter will include the reasons for the decertification, the period of decertification, and the scope of decertification, as well as a copy of the administrative record.
- Once the Deputy Chief for Programs has decided to decertify, the TSP's profile is removed from the NRCS Registry's public site. However, the Regional Certifier will not change the TSP's certification status in the Registry to decertified until a final determination is made by the Chief of NRCS in the event of an appeal, or until the time allowed for the TSP to submit an appeal has elapsed.
- Upon receiving the Certified Mail delivery confirmation information for the determination letter when the decision is to decertify, the National Administrator uploads the receipt and delivery confirmation information, including entering the date the TSP received the letter, to the NRCS Registry triggering the **20-day** window the TSP has to appeal the decertification decision.
- The TSP has **20 calendar days** from the date of receipt of their decertification decision to appeal it through the NRCS Registry.
Note: The appeal will state the reasons and provide any documentation in support of those reasons.
 - If the TSP fails to appeal the decertification decision within **20 calendar days** of the date of receipt of the decertification determination letter, the determination of the Deputy Chief for Programs is final.
- The TSP's certification agreement will be terminated, and the TSP's certification status is changed to decertified.
- The TSP's name will be added to the national TSP decertification list.
 - If the TSP uploads the appeals documents into the NRCS Registry **by 5:00 p.m. on the 20th day**, then the Chief of NRCS will have **30 calendar days** to issue a final determination decision to either cancel or proceed with the decertification.
- The Chief's designee (National Administrator) will prepare a written final determination letter.
 - The draft determination letter will be provided to the Chief for review, edits, or concurrence. The Chief, or their designee (National Administrator), will draft the final decertification letter stating the

reasons for decertification or for overturning a decertification determination. It will also state the period and scope of the decertification (the period of decertification will be decided by the decertifying official, not to exceed 3 years, based on all relevant facts and reasons for decertification, including any mitigating factors submitted by the TSP).

- The Chief will concur with, or provide edits on, the National Administrator's final draft.
- The National Administrator completes the edits to the draft letter template in the NRCS Registry, prints a physical copy of the final determination letter for the Chief to sign, and mails the physical copy by USPS Certified Mail (including tracking and delivery confirmation) with all supporting documentation to the certified TSP, with electronic copies of the final letter and supporting documents sent to:
 - Each State Conservationist in whose area the TSP was certified.
 - The private sector entity, business, tribe, or public agency under which the certified TSP was working.
 - Any recommending organizations the certified TSP is affiliated with, in accordance with the appropriate memorandum of understanding.
 - The Conservation Planning Branch Chief.
 - The Deputy Chief for Programs.
- The National Administrator will also upload the final determination letter and all supporting documents to the NRCS Registry, including the Certified Mail receipt, tracking information, and delivery date.
 - The Regional Certifier will set the duration of decertification and finalize the decertification of the TSP prior to the final decertification due date, but after the appeal decision due date, if **20 calendar days** has passed without contestation. The decertification process ends following the appeal period (**20 calendar days**) with no TSP appeal, or following the appeal period upon which the Chief makes a final determination (not to exceed **30 additional calendar days** following the receipt of appeal documentation).
- The TSP or business' certification agreement will be terminated, and their certification status is changed to decertified.
- The TSP or business' name will be added to the national TSP decertification list.
- The TSP or business' profile will continue to be accessible during the period of decertification, but the TSP or business will be prohibited from creating or updating an application for certification until the period of decertification passes.
 - In cases where a TSP (specific individual) is decertified only, the business entity or public agency they are affiliated with must file an amended certification agreement removing the decertified individual(s) from the certification agreement within **10 calendar days**.

Note: The business entity or public agency must also demonstrate to the satisfaction of the Deputy Chief for Programs that they have taken action to ensure that the circumstances resulting in decertification have been addressed.

▪ **Recertification Following Decertification**

- Once the period of decertification has passed, the TSP must submit in writing, by uploading to the NRCS Registry, a letter of intent to reapply. This letter will include an explanation of what the TSP has done to address the causes of decertification.
- Upon receipt and review of the intent to reapply letter and documentation, the National TSP Program Manager will make a determination to release the TSP's profile/application for updating and submitting a new application. The National Administrator will release the TSP's profile for use by the TSP to update and complete an application.
- The TSP may not use the renewal process for recertification.
- The TSP will be considered a new applicant and must meet all of the criteria current at that time for each technical service they want to be certified for, including any required training and submission of sample plans.

APPENDIX F – NRCS Policy on TSP Payment Rates

Title 300 – Payment Schedule Handbook (300-600-H, 1st Ed., Amend. 1, Jan 2022)

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=48089.wba>

600.12 Conservation Activity Plans (CAPs), Conservation Evaluation and Monitoring Activities (CEMAs), Conservation Planning Activities (CPAs), and Design and Implementation Activities (DIAs)

A. Labor is the only authorized cost basis when developing payment schedules for CAPs, CEMAs, CPAs, and DIAs.

(1) The following cost categories may not be used:

- (i) Materials
- (ii) Equipment for installation
- (iii) Acquisition of technical knowledge
- (iv) Mobilization
- (v) FI

(2) Applicable program-specific payment percentages will be established through the national process. State conservationists may not establish program-specific payment percentages for CAPs, CEMAs, CPAs, or DIAs.

(3) Payment schedules may not include costs associated with travel expenses (hotel, mileage, etc.) for technical service provider services or reimbursement of time or labor contributed by the contract participant.

B. Payment schedules to support CAP, CEMA, CPA and DIA payment rates will reflect estimated incurred costs based upon a national or regional geographic area.

Note: NRCS has replaced CAPs with CEMAs, CPAs, and DIAs beginning in fiscal year 2022; however, CAPs remain in the payment schedules for prior fiscal years.

600.23 Cost Category Guidance

F. Acquisition of Technical Knowledge

(1) Acquisition of technical knowledge includes the costs for services from other than technical assistance (TA) provided by NRCS or a technical service provider (TSP).

(2) Expenses must be directly tied to the requirements of the practice standard or design criteria and necessary to properly implement, operate or maintain the practice.

Note: This category does not include the cost of labor to implement, operate, or maintain the practice.

(3) Acquisition of technical knowledge may include the cost associated with—

(i) Course or workshop the participant must attend to gain the knowledge or training to implement the practice.

(ii) Service providers providing training or activities directly needed to help implement a practice (e.g., cost of a consultant to prepare or provide guidance for application of pesticides or irrigation scheduling information, etc.).

Note: Conservation activity plans, conservation program applications, design and implementation activities, conservation evaluation and monitoring activities, and TA services using 100 and 900 series practice codes in program contracts must be completed by a certified TSP.

(4) Acquisition of technical knowledge may not include costs associated with—

(i) Self-taught courses such as DVDs, software, books, reading trade materials, etc.

- (ii) Costs associated with “how to plan.”
 - (iii) Expenses associated with record keeping, scouting, etc., are considered labor costs.
 - (iv) TSP costs associated with TA payments.
 - (v) Travel-related expenses (vehicle rental, transportation costs, meals, etc.).
- (5) Costs associated with expense for training the participant, services from TSPs, or consultants are recorded in the “acquisition of technical knowledge” cost category of the payment schedule.

APPENDIX G – NRCS Policy on Use of TSPs in Farm Bill Programs

Title 440 – Conservation Programs Manual, Part 512 – Conservation Program Contracting (440-512-M, 1st Ed., Amend.123, April 2018)

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=42944.wba>

512.0 General

G. Legal Contracting Responsibilities

(1) CPCs (*Conservation Program Contracts- emphasis added*) are legally binding agreements that define the terms and conditions of program participation, including the responsibilities of the participants, NRCS, and technical service providers (TSPs), as well as the consequences of violating these terms and conditions. (Note: A TSP is not a party to a CPC. TSP responsibilities are derived from the TSP regulations at 7 CFR Part 652, the TSP certification agreement for use of and payment for assistance from a TSP, and the arrangement between the TSP and the program participants). A CPC requires participants to establish or implement conservation practices or activities with their own resources or through a contractor. However, conservation program rules may require that specific assistance be provided by NRCS to ensure that the participants is able to comply with the CPC's terms and conditions.....

H. Technical Assistance for Contracts

NRCS, based upon available funding, must provide technical assistance within a reasonable period of time when requested to develop plans and to provide designs, standards, and specifications needed to install scheduled conservation practices and activities. Failure to provide the assistance requested in a reasonable period of time can result in a breach of the terms and conditions of the contract by NRCS. Participants may use assistance available from other Federal and State agencies and private sources, including TSPs that are properly registered through TechReg (*now NRCS Registry – emphasis added*). It remains the responsibility of the participants to request technical assistance in a timely manner to allow for scheduling of the assistance and application of the practice within CPC parameters.

512.23 Submitting Applications

C. Starting Practices or Activities Included in the CPC

(1) Practices started or completed before CPC approval are not eligible for payments, in accordance with the applicable program regulation and the CPC appendix. Starting a practice or engaging the services of a technical service provider (TSP) before the contract is approved by NRCS renders an applicant ineligible for payment....

(4) Denial of Waiver Requests

(i) Waivers are not allowed for—

- Services provided by a TSP (including but not limited to development of conservation activity plans)....

512.30 Methods of Making Conservation Program Payments

A. Payment Methods

(1) Payments for conservation program contracts (CPCs) obligated through ProTracts after September 30, 2007, will be based on the following:

- (i) Payment rate (PR) documented in approved payment schedules will be used for most payments using financial assistance (FA) funds. PR is based upon estimated incurred costs and income foregone associated with practice implementation.
- (ii) Actual cost, not to exceed a specified maximum (AM), will be used for technical service provider (TSP) payments (Code 900 series practices for services of conservation planning, design, construction layout, and construction checkout for a program funded practice) using technical assistance (TA) funds....

512.63 Technical Assistance Payments

A. Availability to CPC Participants

A program participant may elect to use a TSP in lieu of NRCS for technical assistance. NRCS may provide funding for technical assistance provided by a TSP through a CPC.

B. Modification Requirements

(1) Before beginning any technical assistance through a TSP, the participant must locate a certified TSP through TechReg (*now NRCS Registry – emphasis added*), NRCS’s online TSP registry (<http://techreg.usda.gov>) (*now <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/technical/tsp/> - emphasis added*), who is willing to perform the services needed. If technical assistance (TA) funds were not obligated when the contract was signed, the participant must request a modification of his or her CPC, to include funding for the services. This modification must be signed and dated by the participant and electronically signed and dated as technically adequate and signed by the NRCS approving official, and funds obligated, before the participant is authorized to receive payment for TSP services. A subsequent modification must be approved to obligate funds prior to starting the TA item.

(2) Technical assistance dollars come from current year funds. Future-year technical assistance items may be funded from current year TA.

C. Payment Application

When a TSP has completed the work, the participant supplies NRCS the required supporting documentation, including invoices from the TSP, and initiates a payment application using Form NRCS-CPA-1245, “Practice Approval and Payment Application.” One participant signature is required. An assignment of payment using Form NRCS-CPA-1236 may be used by the participant for technical assistance payments.

D. Payment Processing

The designated conservationist or farm bill specialist processes a TSP-related payment application in a manner similar to any other practice or component included in the CPC, with payment being authorized by a second-level reviewing official.

APPENDIX H – NRCS Policy on Incorporating TSPs in CSP, EQIP and RCPP Producer Contracts

Title 440 – Conservation Programs Manual, Part 530 – Working Lands Conservation Programs Manual (440-530-M, 1st Ed., Amend. 145, Jan 2022)

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=47743.wba>

530.11 Fund Spending Limits and Management

B. In distributing fiscal year funds in the business tools for obligation in conservation program contracts, State conservationists must—

- (1) Establish State-level procedure for managing the State spending plan based on State-designated ranking pools and any desired spending plan categories.
- (2) Develop, at a minimum, a spending plan for each program.
- (3) Distribute funds to all spending plans and spending plan categories.

Note: By establishing spending plan categories, States can subdivide funds within a larger spending plan without creating separate ranking pools for each category.

- (4) Establish protocols for distributing 900-Series technical assistance (TA) funds for participant-acquired technical service provider (TSP) contract items. The TA for this should be accounted for in the applicable business tool...

530.31 Planning

F. Technical Service Providers (TSPs)

Program participants may elect to use a TSP in lieu of NRCS for technical assistance to help with developing plans, completing designs, and other actions. See subpart E, section 530.40C, “Technical Assistance for Contracts,” of this manual for additional guidance related to TSP assistance. Further guidance can be found in 440-CPM-504....

530.40 General

C. Technical Assistance for Contracts

- (1) Based upon available funding, NRCS must provide technical assistance to a contract participant for development of implementation requirements, designs, operation and maintenance plans, and conservation practice or activity layout as requested by the participant. NRCS is responsible for reviewing and certifying all conservation practices and activities after the participant completes them.
 - (i) By entering into a contract, the participant agrees to implement scheduled conservation practices or activities regardless of who provides necessary technical assistance.
 - (ii) At the option of the participants, technical assistance may be obtained from other Federal and State agencies or private sources, including technical service providers (TSPs), for conservation planning, design, and checkout. NRCS may provide a payment for technical assistance according to section 530.40C (2), below.
 - (iii) If NRCS fails to provide required technical assistance, this is considered a circumstance beyond the participant’s control and NRCS will not consider the participant to be in violation of the contract. Refer to subpart I, section 530.82, “Addressing Noncompliance and Violations,” of this manual for guidance on modifying or cancelling the contract.
- (2) TSPs are not considered participants on a financial assistance program contract.

(i) TSP responsibilities are outlined in 7 CFR Part 652, "Technical Service Provider Assistance," and in Title 440, Conservation Programs Manual (CPM), Part 504, Subpart B, "Roles and Responsibilities."

(ii) Participants interested in receiving a payment for use of a TSP must secure the services of a TSP certified for the services being requested. Participants can find certified TSPs registered through the TSP website located at <https://techreg.sc.egov.usda.gov/CustLocateTSP.aspx>. (now at <https://nrcc-sites.secure.force.com/FindaTSP> - emphasis added.)

(iii) NRCS may schedule a technical assistance (TA) contract item using the appropriate 900-series code as part of the original contract or modify the contract to add the applicable TA items after obligation. Refer to subpart G, "Modifications," of this manual for guidance.

(iv) NRCS must fund TA items with current-year funds. NRCS may fund future-year TA items in subsequent years, subject to available funds.

530.50 Payment Requirements

E. Payment Limitations

(3) Technical assistance (TA) payments for technical service providers (TSPs) do not count against programmatic payment limitations or the contract limitations.

530.51 Processing Payment Applications

A. Once the participant notifies NRCS of the completion of a conservation practice or activity, NRCS will take the following actions:...

(3) Obtain the participant's signature on Form NRCS-CPA-1245 including payments for participant-acquired TSP services included in the contract.

Note: When a TSP completes technical assistance, the participant must provide NRCS with required supporting documentation including invoices from the TSP to receive payment for contracted TA items.

Note: Prior to approving payment for TSP TA items, NRCS must confirm that the TSP was certified and registered in accordance with subpart E, section 530.40C of this manual, at the time the TSP provided the technical assistance.

B. Receipts

(2) NRCS requires receipts for TSP 900-series TA items.

530.52 Payment Types

F. Technical Assistance Payments

Participants may be eligible to receive payments for using a TSP for the design, installation, or checkout of contracted conservation practices or activities. Refer to subpart E, section 530.40C, of this manual for additional information about using a TSP for technical assistance.

530.54 Payments not Authorized

B. Participants will be notified in writing, and payments will not be authorized for any of the following:

(3) Conservation practice or activity started before the contract was modified to add the new or substitute conservation practice or activity, including services of a TSP.

530.60 Contract Modifications

D. Modification Reasons

(1) Adding a Contract Item

(i) A new contract item may be added to substitute a conservation practice or activity when the originally scheduled item is infeasible in order to address the original resource concerns or maintain performance levels as determined at the time of obligation.

(ii) A new contract item may be added to correct an error made at the time of obligation.

(iii) A new contract item may be added to authorize the participants to use the services of a technical service provider (TSP) prior to beginning any work. Refer to subpart E, section 530.40C of this manual for additional guidance related to using TSPs

530.303 CSP Planning

B. Conservation Activities

(6) Comprehensive Conservation Plan

(i) A comprehensive conservation plan is a conservation plan that meets or exceeds the stewardship threshold for each priority resource concern category identified by NRCS across all land uses included in the operation.

(ii) Comprehensive conservation plans, like conservation activity plans (CAPs), require the participant to use a certified technical service provider (TSP) to develop the plan.

530.403 EQIP Planning

A. Eligible Conservation Practices and Activities

(iii) As a result of the Conservation Activity Plan (CAP) transition initiated in fiscal year 2022, NRCS now offers three options for producers to apply for financial assistance funds to develop the following types of conservation plans and activities:

- Conservation Planning Activities (CPA)
- Design and Implementation Activities (DIA)
- Conservation Evaluation and Monitoring Activities (CEMA)

NRCS requires contract participants receiving financial assistance funds for the above activities to use a certified technical service provider (TSP) to develop the plan and design activities. Refer to 440-CPM, Part 502, "Terms and Abbreviations Common to All Programs," for definitions of these three conservation activities. Refer to subpart D, section 530.31F and subpart E, section 530.40C of this manual for additional information related to TSP assistance using either financial or technical assistance funds.

Note: Existing EQIP contracts obligated in fiscal year 2021 and earlier may still contain CAPs.

530.503 RCPP Planning

D. Technical service provider (TSP).—When consistent with an approved PPA, TA to producers with LMR contracts may be provided by a qualified TSP. Refer to subparts D and E of this manual and 440-CPM-531-F for additional guidance.

APPENDIX I – Farm Service Agency Policy References for Use of TSPs in CRP.

Agricultural Resource Conservation Program, 2-CRP (Revision 6), Amendment 7, 1-26-22
https://www.fsa.usda.gov/Internet/FSA_File/2-crp_r06_a07.pdf

Part 2 - Responsibilities

Section 1 - Agency Responsibilities, Paragraph 18

C NRCS and TSP Responsibilities

NRCS and TSP will:

- develop an approved conservation plan
- assist participants to ensure that practice specifications are met, including using Suitability and Feasibility Determination Worksheets for continuous CRP signup only for land not currently enrolled in CRP
- provide FSA with the following:
 - *--certification of practice completion on FSA-848B, according to paragraphs 507 and 508
 - copy of all completed status reviews--*
- through State Foresters:
 - develop the tree planting plan for inclusion in the approved conservation plan
 - provide technical assistance for the tree planting practices
 - monitor and certify practice completions
 - develop landowner stewardship plans for converted CRP-1's.

Part 11 - Conservation Plans and Contract Support Documents

Paragraph 367, Conservation Planning

G Other Technical Assistance Sources

Participants may use conservation planning, practice implementation, and certification services of certified persons other than NRCS, such as:

- private businesses or consultants
- other organizations
- TSP's
- Federal, State, and local government agencies, such as:
 - State wildlife agencies
 - State forestry agencies
 - State water quality agencies.

Note: See 440 Programs Manual, Part 504 Technical Provider Assistance for information regarding third party vendors.

The NRCS designated conservationist may accept conservation plans previously developed by conservation partners or consultants provided the plan meets CRP requirements and NRCS technical requirements.

Exhibit 2 - Definitions of Terms Used in This Handbook

Technical Service Provider (TSP)

TSP is an individual certified to provide technical assistance on behalf of USDA. Technical assistance includes conservation planning and design, layout, installation, and checkout of approved conservation practices.

Technical Service Provider Certification Agreement

By signing this Certification Agreement, I, [First Name Last Name] (TSP), agree to the terms set forth below, which are required for certification as a Technical Service Provider. I understand that certification by the USDA qualifies me to provide technical services to Title XII of the Food Security Act of 1985 program participants and the USDA. Certification does not constitute federal employment or any other legal relationship with the federal government nor does it entitle me to any special benefits or rights. Further, I understand that I am not a certified Technical Service Provider until the Natural Resources Conservation Service (NRCS): (1) determines that my certification application meets the requirements for certification set forth in 7 CFR Part 652, (2) signs this Certification Agreement, and (3) includes my name on the approved list of Technical Service Providers

I. Certification Terms

A. USDA Standards and Specifications

I am familiar with and agree to meet all applicable USDA standards, specifications, and program requirements as set forth in USDA guides, handbooks, and manuals for the technical services I provide.

B. Compliance with Applicable Laws and Regulations

I agree to comply with all applicable Federal, State, Tribal and local laws and requirements for the technical services I provide, including but not limited to, 7 CFR part 652. I further agree that I must be familiar with any unique criteria required at the county level for particular conservation practices or technical services before providing technical services in a particular county. I acknowledge that I must be aware of these local criteria and agree to familiarize myself with any such criteria by contacting the appropriate NRCS State official before providing technical services.

C. Work Quality

I agree to represent in writing on each plan or other technical service document submitted to USDA or the program participant that the technical services rendered: (1) comply with all applicable Federal, State, Tribal, and local laws and requirements, (2) meet applicable USDA standards, specifications, and program requirements, (3) are consistent with and meet the particular conservation program goals and objectives for which the program agreement or contract was entered into by the program participant or USDA, respectively, and (4) incorporate, where appropriate, low-cost alternatives that address the resource issues.

D. Liability

I assume all legal responsibility for the technical services I provide, and I understand that the USDA shall have no responsibility or liability for the technical services I provide.

E. Quality Assurance

I agree to submit to quality assurance reviews by the USDA or its agents of the technical services I provide, including providing any documentation requested by the USDA related to my provision of technical services.

F. Reporting and Documentation

I will develop and maintain documentation of the technical services I provide, including invoices, in accordance with USDA manuals, handbooks, and technical guidance and furnish this documentation to the local USDA Service Center office and the program participant when the particular technical service is completed. I will report technical service accomplishments following the policy outlined in the TSP Manual 440, Part 504.61 Reporting System.

G. Licensing Requirements

I will maintain, for the period of this certification, any licensing or similar qualification standards established by Federal, State, Tribal or local laws that I identified in my Application for Certification and/or that are required for the type of technical services I provide.

Self-certification Statement selected by Jack Kelly (TSP) on 10/06/21:

I hereby certify that I possess and will keep current all the licensing, certifications, and registrations required under applicable Federal, State, Tribal, or local law for in order to provide lawfully the specific technical services for which I seek certification

H. Duration of Certification, Cessation of Services, and Renewal Requirements

I acknowledge that my certification as a Technical Service Provider is for a term of three (3) years from the date NRCS first signs this Certification Agreement. I will cease providing services as a Technical Service Provider immediately upon the expiration of the NRCS certification, the lapse of any applicable licensing or similar qualifications standards, or the effective date of being decertified. If I wish to renew my certification as a Technical Service Provider, I will submit an application for certification renewal within 60 days prior to the expiration of this certification.

I. Civil Rights

I agree that, in providing technical services, I have read, reviewed, and acknowledge the following USDA and Farm Production and Conservation (FPAC) policies relating to Civil Rights Responsibilities:

- A. **USDA Civil Rights Policy Statement** - Secretary of Agriculture's statement affirming USDA's commitment to equality and Civil Rights for program delivery and employment. The Statement emphasizes that USDA has zero tolerance for any form of discrimination or reprisal, and applies to all USDA employees.
- B. **Anti-Harassment Policy Statement** - Secretary of Agriculture's statement affirming USDA's commitment to equality and Civil Rights for program delivery and employment. The Statement emphasizes that USDA has zero tolerance for any form of discrimination or reprisal, and applies to all USDA employees.
- C. **FPAC Limited English Proficiency (LEP) Poster** - affirming that NRCS will meet the mandates required by law, and provides assurance that NRCS will provide LEP individuals meaningful access to its financial assistance, services, programs and activities at no cost.
- D. **"And Justice For All" Poster(s)** - Prohibits discrimination, in all its forms, with regard to all USDA programs, activities and services; provides complete contact information to file a program discrimination complaint; and provides the contact information for alternative formats (e.g., Braille or hearing impaired) and for additional information.)

- E. **Form AD-2106** - Document used to record demographic information (i.e., race, ethnicity and gender) for myself and of persons who participate in USDA Programs.
- F. **USDA Non-Discrimination Statement** - Full and shortened versions.
- G. **TSP Participant Civil Rights Acknowledgement** - TSPs who work with USDA programs are required to guarantee fairness and equal treatment to all customers eligible to receive USDA/NRCS programs and services regardless of race, color, religion, sex, national origin, or disability.

J. Safeguarding Personally Identifiable Information (PII)

The United States Department of Agriculture (USDA) has made a risk management decision to exclude Information Security Awareness (ISA) training for technical service providers (TSP) who are applying for certification or being certified through the NRCS TSP Program. USDA has determined that TSP users do not have access to USDA systems, network, or sensitive data and therefore do not require ISA training for their limited access to the TSP Program registry platform or receiving training through AgLearn.

This fact sheet provides guidance to help TSPs safeguard Personally Identifiable Information (PII) in paper or electronic form during your everyday work activities with producers participating in USDA programs.

What is PII?

PII is ANY information that permits the identity of an individual to be directly or indirectly inferred, including any information which is linked or linkable to an individual. Some PII is not sensitive, such as information found on a business card or official email signature block. This type of information does not require special handling. There is also PII, which if lost, compromised, or inappropriately disclosed, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Examples include: Social Security numbers (SSNs), financial account numbers, date of birth, and biometric identifiers (e.g., fingerprints and facial images). Other data elements such as citizenship or immigration status, account passwords, and medical information, in conjunction with the identity of an individual, are also considered PII. The context of the PII should be considered to determine potential risk impacts. Note that even when an individual's name is not present it may still be PII if it can be used to identify or be linked to an individual, and PII can also be created when information about an individual is made available or combined with other information.

Requirements for Protecting PII

- (a) PII information in USDA records, whether in hard copy or electronic format, is protected from disclosure by Federal, USDA, and National Institute of Standards and Technology (NIST) Special Publication 800-122 requirements.
- (b) The Privacy Act of 1974 protects individuals' sensitive information. This is the primary legislation that protects PII today.
- (c) The e-Government Act of 2002, as amended, provides requirements for protecting Federal information, including privacy information.
- (d) Section 1619 of the Food, Conservation, and Energy Act of 2008 protects confidential information provided to USDA by its participants.
- (e) The Office of Management and Budget (OMB) provides guidance to the agencies of the Executive Branch of the Federal Government on how to implement laws on protecting privacy information.

(f) Key OMB guidance regarding Federal agency responsibilities for maintaining records about individuals and protecting PII includes Circular A-130 and Memorandum M-17-12.

USDA Directives Supporting the Privacy Act

USDA implements the Privacy Act through guidance in the “USDA Privacy Program,” as contained in several Departmental Manuals (or DMs) and Memoranda.

The USDA Privacy Program affirms that the privacy of an individual is a personal and fundamental right that should be respected and protected. USDA’s privacy policy is located at <https://www.usda.gov/privacy>.

Breach Notification

A breach includes the loss of control, compromise, unauthorized disclosure, acquisition, or access by someone who is not allowed access to that PII. OMB defines a breach as the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where: a person other than an authorized user accesses or potentially accesses PII, or an authorized user accesses or potentially accesses PII for an other than authorized purpose.

Reporting a PII Incident

Please immediately report any suspected or confirmed PII incidents to the PII hotline at (877) PII-2-YOU, or (877) 744-2968. The hotline is operational twenty-four hours a day, seven days a week. You can also e-mail cyber.incidents@ocio.usda.gov or contact the ASOC Hotline at (866) 905-6890.

By signing the TSP Certification Agreement, I acknowledge receipt of the Safeguarding Personally Identifiable Information (PII) Information and I understand that pursuant to my role as a TSP to a client participating in a USDA program that I may be authorized by my client to have access to PII information in USDA records. I understand my responsibilities and will comply with my responsibilities to protect PII.

K. Disclosure of On-Line Information

I agree that the personal information (excluding private information like Social Security Number) I enter into my application for certification will be available online for public access. I understand that program participants seeking the services of a Technical Service Provider will have access to this information as well as other members of the public that access the Technical Service Provider Website, TechReg.

This agreement is entered into under the authority of 16 U.S.C. 3842.

I am signing this agreement as an Individual.

Document Digest:

Document Id

QD-0000000038

QD-0000000039

QD-0000000040

QD-0000001050

QD-0000000762

Document Type

Education

Education

License/Certification

License/Certification

License/Certification

QD-0000000344	License/Certification
QD-0000000343	License/Certification
QD-0000000390	License/Certification
QD-0000000312	License/Certification
QD-0000000043	License/Certification
QD-0000000041	Sample of Work
QD-0000000042	Sample of Work
QD-0000000046	Training
QD-0000001014	Training

_____	_____
Technical Service Provider	Date
TSP Name [First Name Last Name] (TSP)	
TSP Number TSP-xx-xxxxx	
Mailing Address [Address, City, State, Zip Code]	
Phone Number (xxx) xxx-xxxx	
E-Mail Address [Email Address]	

_____	_____
National TSP Team Regional Certifier	Date

Regional Certifier Name: **[First Name Last Name] (Regional Certifier)**
 Title: **[Region] Region Regional Certifier**
 Mailing Address: [Address, City, State, Zip Code]

For specific State Technical Service Provider information, contact the NRCS State Technical Service Provider Coordinator listed on the TSP website.

Based on the above signature, this agreement will expire three years from the time NRCS certifies this agreement. [Expiration Date]

Modified Practices:

<u>Name</u>	<u>Date</u>	<u>Certification Category and States</u>
[First Name Last Name] (TSP)	xx/xx/xx	[Practice/Activity Name], [Code], [State]

Current Practices: Certification Category and States

State and Counties:

<u>State</u>	<u>Counties Selected</u>
[State] [All Counties or Selected Counties]	