

Chesapeake Bay Riparian Forest Buffer and CREP Report: Revisiting the RFB State Task Force Reports and Suggested Recommendations for Today’s Challenges and Opportunities

Executive Summary

The Chesapeake Bay Total Maximum Daily Load (TMDL) addresses nutrient and sediment runoff into the Chesapeake Bay. Each of the six Chesapeake Bay watershed states developed Watershed Implementation Plans (WIPs). Riparian forest buffers (RFBs) are a highly cost effective practice for water quality, stream health and climate resilience. Conservation Reserve Enhancement Programs (CREPs) partner state, federal, and in some cases NGO resources to incentivize farmers to voluntarily restore RFBs and other conservation practices through long-term contracts that provide annual rental payments and cost share assistance. This report focuses heavily on CREPs as they are a powerful tool and were the primary strategy states employed to meet RFB WIP goals. Significant effort was invested in developing the 2015 Riparian Forest Buffer Task Force reports¹ to identify barriers to RFBs and to provide recommendations to address them. Through the leadership of Senator Casey in Pennsylvania and others, CREP provisions were included in the 2018 Farm Bill to help address barriers to RFB enrollment, but implementation of these provisions was largely impeded by discretionary decisions made by the prior administration.

As we near the 2025 WIP deadline, there is both an increased sense of urgency and opportunity. States and NGOs have created RFB incentives and programs, some of which enhance CREP as a tool and others of which complement and work independently of CREP RFB progress. Congress is working on reauthorizing the 2023 Farm Bill. USDA is increasing staffing and for the first time, hired regional CREP coordinators to build capacity and better work with CREP partners. Secretary Vilsack recognizes the significance of CRP for achieving climate mitigation and adaptation goals (“Sometimes the best solutions are right in front of you”) and a heightened emphasis on equity and inclusion to “bring new voices and communities to the table,” remove barriers and provide increased flexibility.

In light of our experience working on CREP and private lands conservation and our work for the Alliance for the Chesapeake Bay with states on the 2015 RFB State Task Force process, Conservation Strategies Consulting LLC² was asked by Chesapeake Bay Program partners to write this report. The full draft report will be available soon; this document provides key background, recommendations and executive summary from the report. This is intended to serve as a helpful resource to states as they work on their new strategic action plan to accelerate RFB implementation that will be finalized by the end of June 2022. Although specifics vary from state to state, we see that in general, it appears worthwhile to pursue RFB goals through state incentives and strategies within the CREP context and also independent strategies that complement CREP and other farm bill conservation programs. Accordingly, key recommendations are:

¹ <https://chesapeakeforestbuffers.net/chesapeake-rfb-initiative-2/>

² Conservation Strategies Consulting LLC was cofounded in 2014 by Mike Linsenbigler, former Deputy Director of USDA FSA CEPD and CREP Manager, and Terry Noto, an environmental attorney with years of public interest experience working on private lands conservation programs, including CREPs.

1. *Invest in CREP RFBs:* CREP was historically the primary strategy to deliver RFBs for good reason given the powerful combination of state and federal resources and the opportunity to provide producers with economically competitive incentives under long-term CRP contracts and, in some cases, state-funded permanent easements. There is still strong logic to this argument and renewed opportunity working with the Biden Administration and in the 2023 Farm Bill. Of course, capitalizing on this is not solely within the power of states and requires the cooperation of USDA to, for example:
 - (a) Streamline and expedite CREP amendments
 - (b) Provide technical and financial assistance for NEPA compliance such as Environmental Assessments
 - (c) Identify and address bottlenecks to expedite CREP enrollment/reenrollment and conservation plan development, such as through increased agency staffing and support for conservation districts, creating CREP RFB teams, increased interagency training, and greater sensitivity to the impact of decisions, like detailing USDA field staff to Headquarters, that can adversely impact momentum in the Chesapeake Bay watershed
2. *Invest in stand-alone RFB programs:* States, foundations and NGO partners are wise to invest in both the state-side of the CREP *and* in complementary stand-alone programs. States are accelerating RFB enrollment through enhanced incentives, such as Maryland's \$1,000 per acre RFB bonus payment, that leverage and make CREP enrollment more attractive to producers as well as stand-alone programs, such as the cost share assistance provided by James River Association to landowners, such as country clubs, universities and prisons, to install riparian forest buffers on lands that do not meet USDA program eligibility requirements. Investment in CREP provides strong leveraging of state and NGO dollars, but stand-alone programs can be more nimble and provide greater state and/or local control. This flexible, multi-pronged investment strategy makes sense and reflects the strong desire of states to see RFB goals met. To optimize this approach we suggest:
 - (a) Work with funders, NGOs, conservation districts, state agencies and others to pursue a holistic approach to RFB programs to avoid duplication, confusion, overlap and competition among programs, identify gaps in existing programs, and also to maximize synergies, so there are options for a wide variety of landowners, producers and riparian lands that reflect conditions and opportunities in that state
 - (b) Work collaboratively with the state WIP leads and the range of RFB programs within the state to enhance consistency of tracking progress, milestones and barriers to ensure full credit is received under the WIP goals for progress and an adaptive management approach is used to expedite any needed changes to boost performance
3. *Collaborate to maximize RFB enrollment across programs:* Maximize RFB enrollment and the benefits of CREP and other RFB enrollment opportunities including stand-alone state or NGO programs by:
 - (a) Developing and distributing easy at a glance comparative charts that provide landowners and farmers with a way to compare all of the options

- (b) Support conservation districts with increased funding and staffing
 - (c) Provide turnkey management service that applies to any RFB regardless of program
4. *Seek supportive changes in 2023 Farm Bill and CRP rules:* Advocate for changes in the 2023 Farm Bill that make CREP less onerous, more workable and provide more power to the states including:
- (a) Allow states to unilaterally opt to include positive new farm bill provisions as addenda to the CREP Agreement without having to go through lengthy CREP amendment negotiations and without adverse impacts to their existing CREP Agreement and budget (i.e., without any quid pro quo of accepting lower federal incentives and waiving the 20% non-federal match requirement)
 - (b) Streamline the CREP amendment process, provide cost-share for NEPA compliance and expedite CREP amendments that are needed for time-sensitive nationally significant environmental goals, like the Chesapeake Bay TMDL.
 - (c) Establish turnkey management pilot for high priority areas, like the Chesapeake Bay, to remove a barrier to participation and success by providing willing landowners with free, turnkey management of riparian buffers and other exceptionally high value environmental practices.

Background

Starting with Maryland, the Chesapeake Bay watershed was the first region of the Nation to embrace the innovative approach of leveraging state and federal investment in conservation through Conservation Reserve Enhancement Programs (CREPs) that offer producers enhanced incentives and focus enrollment on select conservation practices in key target areas to meet the nationally significant goal of restoring water quality in the Chesapeake Bay watershed and the Bay itself. Although each CREP is unique, they all share a commitment to voluntary conservation, state and federal interagency collaboration and improvement of water quality and wildlife habitat. Collectively, these CREPs have a strong track record of success, collectively enrolling hundreds of thousands of acres in the Chesapeake Bay watershed. These programs are a unique opportunity to focus millions of dollars of state and federal conservation funding to enroll significant acreage in key target areas in long-term rental agreements and, in some cases, permanent conservation easements, to further these water quality and wildlife habitat goals.

Since 2010, state Watershed Implementation Plans (WIPs) to implement the Chesapeake Bay TMDL generally prioritize riparian forest buffers as a highly cost-effective, long-lasting and important water quality practice that helps reduce nutrient and sediment loadings to streams, stabilize streambanks, cool stream temperatures, and improve nutrient processing capacity of streams. Understandably, the Chesapeake Bay states relied heavily on the CREPs for RFB and other key practice enrollments as these are such a powerful tool for focused, voluntary, long-term enrollment of large acreages of sensitive lands along rivers, streams and erosion prone areas and restoring them to forested streamside buffers, wetlands, and other practices.

However, although once the national model for CREP and riparian forest buffer enrollments, RFB enrollments declined in many states and generally did not keep pace with state

goals. In June 2014, a watershed-wide effort to reinvigorate programs designed to implement RFBs was convened by USDA Under Secretaries Scuse and Bonnie, including an initial commitment of \$5,000,000 for CREPs. USDA professionals from the Forest Service, Farm Service Agency (FSA), and Natural Resources Conservation Service (NRCS) worked with state agency partners to convene task forces in each of the Chesapeake Bay states to identify barriers to enrollment/reenrollment and put forth recommendations to address the steep drop off in RFB restoration and protection. Dozens of meetings between September 2014 and February 2015 brought together multiple stakeholders and partner agencies in each state. Each state developed a report and a set of recommendations to address barriers to enrollment.

Key 2015 RFB State Task Force recommendations centered on the need for:

- 1) Strong leadership signals and investment in RFBs and CREP at the federal, state and local level, including making it faster and easier to amend CREP agreements. Steps are being taken by leadership at all levels, but experience since 2015 shows this recommendation has grown in significance, particularly given the looming WIP deadlines.
- 2) Increased staffing and interagency training, especially in light of staffing cuts, retirements and loss of institutional memory and working relationships. While there have been trainings and some increases in staffing, this recommendation is, in some respects, even more urgent today given the impact of COVID restrictions and working remotely, retirements, the impact of staff details to DC and staff turnover.
- 3) Increased incentives to enhance economic competitiveness on lands with cropping history and also updated marginal pastureland rental rates. USDA has recently made some helpful changes and some states have increased incentives, but this remains a relevant recommendation.
- 4) Support with managing and maintaining RFBs, including increased maintenance payments, extended establishment periods, and some states called for pooling maintenance/management work and providing turnkey service through crews. A wide array of factors including climate change, invasive species; the elimination of mid-contract management cost share in the 2018 Farm Bill; and busy, aging and/or absentee landowners are increasing the urgency and need for cost share and turnkey assistance.
- 5) Ensure cost share and Practice Incentive Payment (PIP) are based on actual costs in the area and fairly reimburse farmers for establishment costs of RFBs and associated costs, like stream fencing, stream crossings and alternate water.
 - a. States asked for more flexibility at the local and state level to waive cost share limitations, such as New York City CREP's 3-tiered waiver process
 - b. Most states asked FSA to pay the PIP as major components are completed, not after the entire practice is completed which may take several years
 - c. State FSAs have been working to update cost share rates and there may be a greater shift to NRCS flat rates. However, the 2023 Farm Bill and/or CREP Agreements should specify 40-50% PIP as there have been large swings in USDA policy (slashing PIP from 40% to 5% and recently boosting PIP to 50% for continuous non-CREP CRP) which were unprecedented and unforeseen by the RFB State Task Force reports.
- 6) Help states with the cost of any environmental assessments that may be needed for CREP amendments. There is a continuing need to address this barrier, although recently the

Biden Administration has offered cost share assistance for EAs which is a positive development.

- 7) Expand the West Virginia CREP target area to include the remaining portion of the Chesapeake Bay watershed that is not covered by a CREP agreement. This is a continuing need.

In 2018, when Congress reauthorized the Farm Bill, it included significant provisions from Senator Casey's Conservation Reserve Enhancement Program Improvement Act of 2018 to address CREP barriers, particularly for RFBs. Important provisions included:

- Providing cost share based on the current, fair market price of component costs in the area;
- CREP riparian forest buffer management payment that would provide up to 100% of the costs of managing RFB vegetation over the life of the CRP contract;
- Allows payment of the PIP as major components are installed, allowing the farmer to recover out of pocket costs more quickly;
- Allows the USDA Secretary to temporarily waive non-federal CREP match

Unfortunately, not all of the 2018 Farm Bill provisions were favorable; for example, it eliminated 50% cost share FSA paid for mid-contract management, changed signing incentive payments (SIPs) from \$100/acre to 32.5% of the first year CRP rental payment, and reduced CRP rental payments to 90% of rental rates for continuous CRP (although this was waivable for CREP). Fortunately, existing CREP Agreements were grandfathered in as is, but unfortunately, to utilize the 2018 Farm Bill CREP provisions states and FSA needed to agree to amend the CREP agreements. The cuts Congress made to incentives were exacerbated by discretionary cuts made by the Trump administration, such as slashing the PIP from 40% to 5%. Unfortunately, the interpretation by the administration at that time was that any CREP amendments would entail renegotiation of the entire CREP agreement and USDA would seek to reduce federal incentives to the new lower level of federal incentives they were offering for other forms of continuous CRP. States reasonably concluded they had more to lose than to gain from pursuing CREP amendments. Predictably slashing federal incentives had a significant adverse impact on continuous CRP enrollment and on the willingness of states to amend their CREP agreements.

While certain policy decisions in the past administration had a predictable and significant chilling effect on negotiations to amend CREP agreements, there has been important interagency and partner communication and work that deserves recognition and can provide a strong basis for moving forward. States are accelerating RFB enrollment through enhanced incentives, such as Maryland's \$1,000 per acre RFB bonus payment, that leverage and make CREP enrollment more attractive to producers as well as stand-alone programs, such as the cost share assistance provided by James River Association to landowners, such as country clubs, universities and prisons, to install riparian forest buffers on lands that do not meet USDA program eligibility requirements. Investment in CREP provides strong leveraging of state and NGO dollars, but stand-alone programs can be more nimble and provide greater state and/or local control. This flexible, multi-pronged investment strategy by states of investing in RFBs within CREP and outside of CREP makes sense and can offer a sound way to move forward in uncertain and rapidly changing times.

Recommendations

We offer the following suggestions to help states, USDA and partners pursue a flexible strategy to accelerate RFB WIP goal implementation in a fast-changing, dynamic environment:

- 1) *Continued state investment in CREP and in stand-alone RFB programs (states)*
 - a. *Holistic approach to RFB incentive programs within state:* States work with RFB program funders (state agencies, NGOs, etc) to pursue a holistic approach to RFB programs to avoid duplication, confusion, overlap and competition among programs, identify gaps in existing programs, and also to maximize synergies, so there are options for a wide variety of landowners, producers and riparian lands that reflect conditions and opportunities in that state.
 - b. *WIP leads make sure credit for all RFB work within state*
 - c. *Pursue adaptive management approach:* Work collaboratively within the state to track progress, milestones and barriers to make changes and boost performance through adaptive management. Include farmer surveys on RFB options.
 - d. *Consider opportunities to increase state investment in CREP RFBs:* State can increase incentive, like Maryland \$1,000 bonus, or it can seek to amend CREP agreement. Of course, the latter is highly dependent on whether USDA streamlines and expedites the CREP amendment process.
 - e. *Develop outreach materials and website materials on all RFB options within the state including easy to use comparison charts for farmers:* Practical, easy to use materials that offer at a glance comparisons of the relevant CREP and non-CREP RFB options are needed. Hard copies should be given to county NRCS, FSA and conservation districts.
 - f. *Ensure there is adequate support for conservation districts:* Farmers generally know and trust local conservation district staff and they are often the “unsung” heroes of conservation. States should ensure there is sufficient financial, technical and interagency support for soil and water conservation districts.

- 2) *Create RFB interagency teams in Chesapeake watershed starting with highest priority areas to accelerate (federal, state, local):* These teams would primarily focus on CREP RFBs but should also be conversant with non-farm bill RFB incentive programs in the state and provide farmers with comparison charts and contact information.
 - a. CRP Conservation plan development
 - b. CRP enrollment
 - c. Spot checks and certifications of compliance for reenrollment

- 3) *Increased staffing (federal, state, local):*
 - a. Increased staffing and interagency training, especially in light of staffing cuts, retirements and loss of institutional memory and working relationships
 - b. Track turnaround times and quickly implement additional staff, interagency RFB team, and/or contract with qualified NGOs or TSPs to address bottlenecks
 - c. Identify staffing shortfalls and utilize short term strategies (including assigning staff on detail, MOUs with NGOs, etc) and accelerated hiring – particularly in high priority and high workload counties

- d. Outreach providers – recognize the role of conservation districts in outreach and helping farmers through enrollment process, financial status of the districts, and staffing needs
- 4) *Interagency training, networking, peer to peer learning (federal, state, local)*
- a. Annual Chesapeake Bay CREP Forum for networking, peer to peer learning, training and brainstorming how to address barriers
 - b. Regional trainings including in field
 - c. Mentoring new staff and to promote learning from retiring staff
 - d. Interagency training for CREP foresters, NGO staff, etc that helps them establish working relationships with county FSA, NRCS and conservation districts and helps avoid conflicting outreach messages that confuse farmers
- 5) *RFB outreach (federal, state, local)*
- a. Recognize role of conservation districts and ensure have sufficient funding and staff
 - b. Share RFB outreach materials including development of materials for websites and social media posts and videos
 - c. Consider state RFB website, like CREPPA in Pennsylvania
 - d. Provide information regarding all relevant RFB opportunities in the state and easy comparison tables for farmers
 - e. Provide brochures at the counter on all relevant RFB programs including non-farm bill programs
 - f. Bring up RFBs with farmers when discussing other farm conservation issues, like manure storage
 - g. Utilize existing mapping to inform outreach efforts, such as reaching out to landowners who farm down to the stream
- 6) *Update marginal pastureland rental rates (USDA)*
- a. Work collaboratively with local farmers, conservation districts, NGOs and others to update and increase MPL rates
- 7) *Cost share (USDA)*
- a. FSA has been updating cost share payment caps and may be moving to NRCS flat rates; this will be an issue for the 2023 Farm Bill
- 8) *Revise CRP rule to clarify that PIPs are not a form of cost share but rather are an incentive payment (USDA)*
- a. PIPs have always been a form of incentive payment and should not count towards the 100% cap on cost share from all sources. The Trump administration’s CRP rule change on this was not required by the 2018 Farm Bill and is an unwarranted reversal of long-standing USDA policy.
- 9) *Streamline and expedite CREP amendment process (USDA)*. The CREP amendment process should take 6-12 months, depending on complexity, and USDA should prioritize

conservation benefits, particularly for Chesapeake Bay CREPs which are key to meeting TMDL WIP goals:

- a. *USDA provide funds for any NEPA compliance needs*
- b. *Adopt a policy that provides 2:1 cash credit for funds expended by the state that increase the duration, value and extent of conservation benefits.* For example, a state funded permanent easement that covers CREP acres post expiration of the CRP contract and provides cost share for management and/or enhancement of the cover post expiration of the CRP contract
- c. *Amend the WV CREP to include the entire WV Chesapeake Bay CREP watershed*
- d. *Keep PIP at 40% and waive 100% cap on Cost Share as needed.* This is important to avoid penalizing states who opt to amend CREP Agreements (as current agreements have a 40% PIP) and who provide state funded cost share.

10) 2023 Farm Bill provisions:

- a. Clearly provide States may unilaterally accept new Farm Bill incentives, such as RFB CREP Management Payment, by signing an addendum to the CREP Agreement without renegotiating other provisions of the CREP Agreement and waiving any impact on 20% non-federal match
- b. Include pilot for turnkey RFB management and PPA
- c. Increase \$50,000 payment limitation to \$100,000
- d. Codify a policy that provides 2:1 cash credit for funds expended by the state that increase the duration, value and extent of conservation benefits
- e. Create subprogram within ACEP that applies to high value CRP/CREP enrollments, such as riparian forest buffers, wetlands, etc to meet key wildlife, water quality, climate, stream health and erosion prevention goals in high priority areas, including the Chesapeake Bay
- f. ACEP farmland preservation easements should require stream buffers
- g. Specify a 40-50% PIP
- h. Codify 3-tiered waiver process for cost share and PIP

11) Prioritize RFBs as a key part of federal and state climate mitigation and adaptation strategies and farmer participation in carbon credits: In addition to water quality, wildlife and erosion prevention, the Chesapeake Bay CREPs provide highly valuable climate mitigation and adaptation benefits, such as the impact of riparian forest buffers on cooling stream temperatures and providing stream and flood resilience.