



**State of New Jersey**  
STATE AGRICULTURE DEVELOPMENT COMMITTEE  
HEALTH/AGRICULTURE BUILDING  
PO BOX 330  
TRENTON NJ 08625-0330

JON S. CORZINE  
*Governor*

DOUGLAS H. FISHER  
*Secretary of Agriculture*

**Susan E. Craft**  
*Executive Director*  
(609) 984-2504  
(609) 292-7988  
(609) 633-2004 ~ FAX

August 3, 2009

**551**

Douglas H. Fisher  
*Chairman*

Jon Glover, Acting Director  
Easement Programs Division  
USDA-NRCS, Farm and Ranch Lands Protection Program Comments  
P.O. Box 2890  
Washington, DC 20013

Dear Mr. Glover:

In response to the corrected Interim Final Rule (IFR), published by the USDA, Natural Resources Conservation Service, Docket Number NRCS-IFR-08013, the New Jersey State Agriculture Development Committee is providing the following comments regarding installment payments for the purchase of a development easement.

**Issue: Use of Debt to Finance Easements**

Comments:

- NRCS published a proposed rule on October 29, 2002 at 7 CFR 1491. In response to Subpart B—Cooperative Agreements and Conservation Easement Deeds, Section 1491.21 Funding, one respondent requested that NRCS provide the option to the entity to issue landowner payments in installments. NRCS concurred with this recommendation, but cited “the complexity of the payment process” as a reason for addressing this issue in its policy manual, CPM part 519.
- NRCS policy manual Part 519, Subpart F—Cooperative Agreements, Section 519.52 Cooperative Agreement Payments, (E) Installment Payments provides that cooperating entities wishing to issue payments in installments for real estate transactions that involve the use of FRPP funds must (1) request payment on a reimbursable basis after a portion of the funds has been disbursed to the landowner in accordance with 519.71 (Where funds are requested, the cooperating entity must disburse to the landowner twice the amount requested of NRCS. . .), (2) disburse the entire easement payment within the life of the cooperative agreement, which cannot exceed 5 years; (3) issue a portion of the entire easement payment on the closing date . . .; (4) ensure that the conservation easement deed has been conveyed in its entirety and without condition to the cooperating entity at the easement closing . . .”

- County and township farmland preservation programs in New Jersey often purchase conservation easements with proceeds of general obligation debt. This debt is frequently issued to a landowner in return for conveyance in its entirety and without condition of a conservation easement deed at the easement closing. The obligation to make payments is a general obligation of the county or township, secured by its full faith, credit and taxing power, and is not secured by an interest in the easement or the land.
- A landowner often requires long-term debt for an easement in order to defer capital gains tax for as long as possible under Section 453 of the Internal Revenue Code. A county or township responding to this requirement is obligated at closing to pay the principal of the debt in a lump sum after as long as 30 years, and to pay interest (in accordance with IRS requirements) on the unpaid principal in the interim. Principal and interest payments are established at closing and cannot be changed without adverse tax implications for the landowner. The obligation is accompanied by an opinion from bond counsel that interest on the unpaid principal is exempt from federal and state income taxes.
- Under New Jersey law, a county or township is required to obtain approval for any non-amortizing principal payment on debt from the Local Finance Board of the N.J. Department of Community Affairs, and to provide for such non-amortizing principal payment by investing funds at closing or annually that will provide for the principal payment at maturity.
- Applying the requirements in NRCS Policy Manual Section 519.52 to general obligation debt provided to landowners in return for their easements may prevent counties and townships from successfully completing such acquisitions using FRPP funding.

NJ SADC recommendation:

- Clarify in the final rule that debt
  - (1) that is legal, valid and binding under state law,
  - (2) that is provided to a landowner in response to a request to meet the requirements of Section 453 of the Internal Revenue Code and
  - (3) whose principal in whole or in part is the entity's share of the easement purchase priceconstitutes a cash contribution as required in NRCS Policy Manual Section 519.52(C) and does not constitute installment payments under NRCS Policy Manual Section 519.52(E).

Jon Glover, Acting Director  
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Thank you for the opportunity to provide comments on the corrected interim final rule. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan E. Craft". The signature is stylized with a large, sweeping initial "S" and a long horizontal stroke at the end.

Susan E. Craft

c: Thomas Drewes, USDA, NRCS State Conservationist