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Emergency Assistance for Agricultural Land Rehabilitation

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SUMMARY

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Emergency Assistance for Agricultural Land Rehabilitation

The U.S. Department of Agriculture (USDA) administers several permanently authorized programs to help producers recover from natural disasters. Most of these programs offer financial assistance to producers for a loss in the production of crops or livestock. In addition to the production assistance programs, USDA also has several permanent disaster assistance programs that help producers restore damaged crop and forest land following natural disasters. These programs offer financial and technical assistance to producers to repair, restore, and mitigate damage on private land. These emergency agricultural land assistance programs include the Emergency Conservation Program (ECP), the Emergency Forest Restoration Program (EFRP), and the Emergency Watershed Protection (EWP) program. In addition to these programs, USDA also has flexibility in administering other programs that assist with the repair of damaged cropland in the event of an emergency.

Both ECP and EFRP are administered by USDA's Farm Service Agency (FSA). ECP assists landowners in restoring agricultural production damaged by natural disasters. Participants are paid a percentage of the cost to restore the land to a productive state. ECP is available only on private land, and eligibility is determined locally. EFRP was created to assist private forestland owners to address damage caused by a natural disaster on nonindustrial private forest land.

The EWP program is administered by USDA's Natural Resources Conservation Service (NRCS) and the U.S. Forest Service (USFS). The EWP program assists sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster. In some cases this can include state and federal land. The EWP floodplain easement program, a subprogram of the EWP program, is a mitigation program that pays for permanent easements on private land meant to safeguard lives and property from future floods, drought, and the consequences of erosion.

Funding for emergency agricultural land assistance varies greatly from year to year. Since most agricultural land assistance programs do not receive the level of attention that triggers a standalone supplemental bill, annual appropriation bills are increasingly seen as a vehicle for funding these programs. The timing of annual appropriation bills may not coincide with natural disasters, thus leaving some programs without funding during times when the volume of requests for assistance is high. This funding method has led some to suggest that Congress authorize permanent mandatory funding similar to other agricultural disaster assistance programs that respond to crop and livestock production losses.

Restrictions placed on supplemental appropriations for disaster assistance can change the way the agricultural land assistance programs allocate funding, potentially assisting with fewer natural disasters. Language restricting funding to specific disaster events, years, or disaster declarations can provide congressional intent for program implementation. Also, since agricultural land assistance program funds are typically available until expended, this restricting language can limit what areas may receive future assistance with any remaining funds. Additionally, emergency agricultural land assistance programs do not normally require a federal disaster declaration, such as those declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. §§5121-5207). Therefore, the requirement of a Stafford Act declaration has become a limiting factor in the way agricultural land assistance programs work, potentially reducing the number of eligible natural disaster events.

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Overview

Natural disasters can have varying effects on the landscape. For agricultural producers, natural disasters are part of the inherent risk of doing business. The federal role for mitigating weather risk is primarily through federal crop insurance and a suite of agricultural disaster assistance programs to address a producer's crop or livestock production loss.[1]

Other, separate U.S. Department of Agriculture (USDA) programs are designed to repair agricultural and forest land following a natural disaster and potentially mitigate future risk. These programs offer financial and technical assistance to producers to repair, restore, and mitigate damage on private land. Agricultural land assistance programs include the Emergency Conservation Program (ECP), the Emergency Forest Restoration Program (EFRP), and the Emergency Watershed Protection (EWP) program. In addition to these programs, USDA also has flexibility in administering other programs that allow for support and repair of damaged cropland in the event of an emergency.

This report describes these emergency agricultural land assistance programs. It presents background on the programs—purpose, activities, authority, eligibility requirements, and authorized program funding levels—as well as current congressional issues.

Federal Emergency Assistance for Agricultural and Rural Land

Agricultural land assistance programs help producers rehabilitate crop and forest land following natural disasters. These programs are described below.

Emergency Conservation Program

Purpose, Activities, and Authority

The Emergency Conservation Program (ECP) assists landowners in restoring land used in agricultural production when damaged by a natural disaster. This can include removing debris, restoring fences and conservation structures, and providing water for livestock in drought situations. Restoration practices are authorized by the Farm Service Agency (FSA) county committee, with approval from state FSA committees, and the FSA national office.[2]

Payments are made to individual producers based on a share of the cost of completing the practice. This can be up to 75% of the cost, or up to 90% of the cost if the producer is considered

[1] Most of the U.S. Department of Agriculture (USDA) disaster assistance programs offer financial assistance to producers for a loss or reduction in production. These programs include federal crop insurance, the Noninsured Crop Disaster Assistance Program (NAP), and emergency disaster loans. The 2014 farm bill (P.L. 113-79) authorized and funded four disaster programs to cover production losses from weather events, beginning in FY2012. These programs typically cover only production losses and not damage to the land or production practices. These programs are not discussed in this report. For additional information, see CRS Report RS21212, *Agricultural Disaster Assistance*; and CRS In Focus IF10565, *Federal Disaster Assistance for Agriculture*.

[2] Farm Service Agency (FSA) county and state committees are composed of locally elected farmers and ranchers who advise FSA on agricultural programs such as commodity price support loans and payments; conservation programs; incentive, indemnity, and disaster payments for some commodities; payment eligibility; and emergency programs. For additional information, see CRS Report R40179, *Farm Service Agency Committees: In Brief*.

to be a limited-resource, socially disadvantaged, or beginning farmer or rancher.[3] Total payments for a single event may not exceed 50% of the agricultural value of the land. Payments are made following completion and inspection of the practice, except in cases of fencing. Producers have the option when repairing or replacing fence under ECP to receive up to 25% of the fair market value of the cost before repairing or replacing the fence. Any funds not used within 60 days must be returned.[4]

The ECP was created under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Sections 2201-2205. The program is permanently authorized, subject to appropriations. Authorized funding is for "such funds as may be necessary," and once appropriated, funds are typically available until expended.

Eligible Land

Land eligibility is determined by the FSA county committee except in the event of a drought, in which case the national FSA office authorizes the use of funds. Following an on-site inspection, the land may be considered eligible if it is determined that the lack of treatment would

- impair or endanger the land;
- materially affect the productive capacity of the land;
- lead to damage that is unusual in character and, except for wind erosion, is not the type that would recur frequently in the same area; and
- be so costly to rehabilitate that future federal assistance is or would be required to return the land to productive agricultural use.[5]

Land conservation issues that existed prior to the natural disaster are not eligible for assistance. Land subject to frequent damage or susceptible to severe damage may also be considered ineligible.[6]

Eligible Participant

An eligible participant is defined as an agricultural producer with an interest in the land affected by the natural disaster. The applicant must be a landowner or user in the area where the disaster occurred and must be a party who will incur the expense that is the subject of the ECP cost-share application. Participants are limited to $500,000 per natural disaster event.[7]

Federal agencies and states, including all agencies and political subdivisions of a state, are ineligible to participate in ECP.

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[3] The definition of a *limited-resource producer* is an applicant with direct or indirect gross farm sales not more than the current indexed value in each of the previous two years who has a total household income at or below the national poverty level for a family of four or less than 50% of county median household income in each of the previous two years. For more information, see USDA's online self-determination tool at https://lrftool.sc.egov.usda.gov/Default.aspx. *Socially disadvantaged* under the Emergency Conservation Program (ECP) is defined under 7 U.S.C. §2279 as someone "subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." This definition does not include gender. A *beginning farmer or rancher* generally is defined as having owned or operated a farm or ranch for less than 10 years.

[4] 16 U.S.C. §2201(b).

[5] 16 U.S.C. §2201.

[6] Frequency and susceptibility are determined by FSA. 7 C.F.R. §701.105(b)(6).

[7] 16 U.S.C. §2202b.

Funding and Allocation

Funding for ECP varies widely from year to year. Funding is provided through supplemental appropriations acts and annual appropriations as emergency spending. **Table 1** provides a funding history for ECP.

Table 1. Appropriations for the Emergency Conservation Program (ECP), FY2011-FY2021

Fiscal Year	Funding	Appropriation and Congressional Direction
2021 (to date)	$0	
2020	$0	
2019	$558 million	P.L. 116-20, for necessary expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters
2018	$400 million	P.L. 115-123, for necessary expenses related to the consequences of Hurricanes Harvey, Irma, and Maria and of wildfires occurring in calendar year 2017 and other natural disasters
2018	$28.7 million	P.L. 115-56, for emergencies not declared a major disaster
2017	$28.7 million	P.L. 115-31, for emergencies not declared a major disaster
2017	$103 million	P.L. 114-254
2016	$108 million	P.L. 114-113, of which $91 million is for major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288)
2015	$9.2 million	P.L. 113-235, for major disasters declared pursuant to the Stafford Act only
2014	$0	
2013	$10.8 million	P.L. 113-6[a]
2013	$15 million	P.L. 113-2, for necessary expenses related to the consequences of Hurricane Sandy and major disasters declared pursuant to the Stafford Act only
2012	$122.7 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act only
2011	$0	

Source: CRS, using historical appropriation and supplemental acts, FY2011-FY2021.

a. Funding provided under regular appropriations and includes the Section 3001 and 3004 rescissions of 2.513%.

Funding is generally appropriated to remain available until expended. In some instances, Congress has required that ECP funding be used for specific disasters, activities, or locations. For example, a portion of funding appropriated in FY2016 is to be used for major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).[8] Since ECP does not typically require a Stafford Act declaration, this requirement limits the use of

[8] For additional information related to emergency declarations pursuant to the Stafford Act, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*.

ECP funds to select locations as well as for future disasters. For further discussion, see the "Issues for Congress" section. A permanent restriction on funding was added in the Agricultural Act of 2018 (2018 farm bill, P.L. 115-334), requiring that 25% of all ECP funding made available in a fiscal year must be set aside until April 1 of that year for repair and replacement of fencing. This set-aside could potentially reserve funding for an activity that may not be a relevant practice for all natural disasters, while other projects may have to wait for the reserved funds to be released.

Once funding is appropriated, the FSA national office generally allocates ECP funds to the FSA state offices. The local FSA county committees will then obligate the funds on a first-come, first-served basis.[9]

Emergency Forest Restoration Program (EFRP)

Purpose, Activities, and Authority

The Emergency Forest Restoration Program (EFRP) provides cost-share assistance to private forestland owners to repair and rehabilitate damage caused by natural disasters on nonindustrial private forest land. Natural disasters include wildfires, hurricanes or excessive winds, drought, ice storms or blizzards, floods, or other resource-impacting events, as determined by USDA. The program is administered by FSA.

FSA provides financial assistance for emergency restoration measures that would restore forest health and related resources following a disaster. Financial assistance is calculated as the lesser of 75% of the participant's actual cost of restoration measures or the FSA-established not-to-exceed rate times the extent of restoration measures performed. The minimum qualifying cost of restoration is generally $1,000 per participant but may be higher in some states.[10]

The EFRP was created under Section 8203 of the Food, Conservation, and Energy Act of 2008 (2008 farm bill, P.L. 110-246), by adding a new Section 407 to Title IV of the Agricultural Credit Act of 1978. It is codified at 16 U.S.C. Section 2206 and is permanently authorized subject to appropriations. Authorized funding is for "such funds as may be necessary," and once appropriated, funds are typically available until expended.

Eligible Land

For land to be eligible for EFRP, it must be nonindustrial private forest land and must

- have existing tree cover or have had tree cover immediately before the natural disaster and be suitable for growing trees;
- have damage to natural resources caused by a natural disaster, that, if not treated, would impair or endanger the natural resources on the land and would materially affect future use of the land; and
- be physically located in a county in which EFRP has been implemented.[11]

Land is ineligible if it is owned or controlled by the federal government, a state, a state agency, or a political subdivision of a state.

[9] U.S. Department of Agriculture, "Emergency Conservation Program Interim Final Rule," 71 *Federal Register* 70889, May 26, 2006.

[10] The minimum qualifying cost of restoration may be waived by the FSA county committee. 7 C.F.R. §701.210.

[11] 7 C.F.R. §701.205.

Eligible Participant

Eligible recipients include owners of nonindustrial private forest land, defined as rural commercial forest land that is owned by an individual, group, association, corporation, Indian Tribe, or other private legal entity.[12] Owners or lessees principally engaged in the primary processing of raw wood products are not eligible. A payment limitation of $500,000 per person or legal entity applies per natural disaster event.

Funding and Allocation

Funding for EFRP varies widely from year to year. Funding is provided through supplemental appropriations acts and annual appropriations as emergency spending. **Table 2** provides a funding history for EFRP.

Table 2. Appropriations for Emergency Forest Restoration Program (EFRP), FY2011-FY2021

Fiscal Year	Funding	Appropriation and Congressional Direction
2021 (to date)	$0	
2020	$0	
2019	$480 million	P.L. 116-20, for necessary expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters
2018	$0	
2017	$0	
2016	$6 million	P.L. 114-113, of which $2 million is for major disasters declared pursuant to the Stafford Act
2015	$3.2 million	P.L. 113-235, for major disasters declared pursuant to the Stafford Act only
2014	$0	
2013	$13.8 million	P.L. 113-6[a]
2013	$23 million	P.L. 113-2, for necessary expenses related to the consequences of Hurricane Sandy and major disasters declared pursuant to the Stafford Act (42 U.S.C. §5121 et seq.) only
2012	$28.4 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act only
2011	$0	

Source: CRS, using historical appropriation and supplemental acts, FY2011-FY2021.

a. Funding provided under regular appropriations and includes the Section 3001 and 3004 rescissions of 2.513%.

[12] Eligible participants may also include someone who receives concurrence from the nonindustrial private forest landowner to make a claim in lieu of the owner. *Commercial forest land* is defined under 7 C.F.R. §701.2 as "forest land with trees intended to be harvested for commercial purposes that has productivity greater than or equal to 20 cubic feet per year or merchantable timber."

Emergency Watershed Protection (EWP) Program

Purpose, Activities, and Authority

The Emergency Watershed Protection (EWP) program assists sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by natural disasters. Eligible activities may include removing debris from stream channels, road culverts, and bridges; reshaping and protecting eroded banks; correcting damaged drainage facilities; establishing cover on critically eroding lands; removing carcasses; and repairing levees and structures.

EWP funds cannot be used to perform operation or maintenance for existing structures or to repair, rebuild, or maintain private or public transportation facilities or public utilities. The EWP is administered by both USDA's Natural Resources Conservation Service (NRCS) and the U.S. Forest Service (USFS).

The federal contribution toward the implementation of emergency measures may not exceed 75% of the construction cost. This can be raised to 90% if the area is considered to be a limited-resource area.[13]

The EWP was created under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Sections 2203-2205. The program is permanently authorized, subject to appropriations. Authorized funding is for "such funds as may be necessary," and once appropriated, funds are typically available until expended.

Eligible Land

Private, state, tribal, and federal lands are eligible for EWP. EWP is administered by NRCS on state, tribal, and private lands and by USFS on National Forest System lands. EWP assistance funded by NRCS may not be provided on any federal lands if the assistance would augment the appropriations of another federal agency.

Eligible Participant

All projects under EWP must have a sponsor. Sponsors must be a state or political subdivision, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.[14]

Sponsors are responsible for

- obtaining necessary land rights and permits to do repair work;
- providing the nonfederal portion of cost-share assistance;
- completing the installation of all emergency measures; and
- carrying out any operation and maintenance responsibilities that may be required.

[13] The definition of a *limited-resource area* is a county where average housing values are less than 75% of the state average, per-capita income is less than 75% of the national per-capita income, and unemployment during the preceding three years is at least twice the U.S. average (7 C.F.R. §624.4(e)(1)).

[14] 7 C.F.R. §624.6(a).

Funding and Allocation

Funding for EWP varies widely from year to year. Most funding is provided through supplemental appropriations acts and annual appropriations as emergency spending. **Table 3** provides a funding history for EWP.

Table 3. Appropriations for the Emergency Watershed Protection (EWP) Program, FY2011-FY2021

Fiscal Year	Funding	Appropriation and Congressional Direction
2021 (to date)	$0	
2020	$0	
2019	$435 million	P.L. 116-20, for necessary expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters
2018	$541 million	P.L. 115-123, for necessary expenses related to the consequences of Hurricanes Harvey, Irma, and Maria and of wildfires occurring in calendar year 2017 and other natural disasters
2017	$103 million	P.L. 114-254
2016	$157 million	P.L. 114-113, of which $37 million is for major disasters declared pursuant to the Stafford Act
2016	$2.4 million	P.L. 114-113, repurposed previously appropriated funding from P.L. 108-199 (2004 California tree mortality), P.L. 109-234 (2005 hurricanes), and P.L. 110-28 (2007 Midwest floods) for disasters in FY2016 and FY2017
2015	$78.6 million	P.L. 113-235, for major disasters declared pursuant to the Stafford Act only
2014	$0	
2013	$63.7 million	P.L. 113-6, $48.2 million must be made available for major disasters declared pursuant to the Stafford Act (42 U.S.C. §5121 et seq.).[a]
2013	$180 million	P.L. 113-2, for necessary expenses related to the consequences of Hurricane Sandy and major disasters declared pursuant to the Stafford Act only
2012	$215.9 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act only
2012	Not to exceed $31 million	P.L. 112-55, repurposed previously appropriated funding from P.L. 108-199 (2004 California tree mortality), P.L. 109-234 (2005 hurricanes), and P.L. 110-28 (2007 Midwest floods) for disasters in 2011
2011	$0	

Source: CRS, using historical appropriation acts, FY2011-FY2021.

a. Funding provided under regular appropriations; therefore the undirected $15.6 million does not require a Stafford Act declaration. Funding total includes the Section 3001 and 3004 rescissions of 2.513%.

NRCS provides assistance based upon a determination by the NRCS state conservationist[15] that the current condition of the land or watershed impairment poses a threat to health, life, or property. Sponsors must submit a formal request to the NRCS state conservationist within 60 days of the natural disaster or 60 days from the date when access to the site becomes available. No later than 60 days from receipt of the request, the state conservationist will investigate the situation and prepare an initial cost estimate to be forwarded to the NRCS national office. Before release of any funds, the project sponsor must sign a cooperative agreement with NRCS that details the responsibilities of the sponsor (e.g., funding, operation, and maintenance). No funding is provided for activities undertaken before the cooperative agreement is signed.

Approval of funding is based on the following rank order:

- exigency situations;[16]
- sites where there is a serious (but not immediate) threat to human life; and
- sites where buildings, utilities, or other important infrastructure components are threatened.[17]

Emergency Watershed Protection (EWP) Program—Floodplain Easements

Purpose, Activities, and Authority

Floodplain easements under EWP are administered separately from the general EWP program. The easements are meant to safeguard lives and property from future floods, drought, and the consequences of erosion through the restoration and preservation of the land's natural values. USDA holds all EWP floodplain easements in perpetuity. Floodplain easements are purchased as an emergency measure and on a voluntary basis. If a landowner offers to sell a permanent conservation easement, then NRCS has the full authority to restore and enhance the floodplain's functions and values. This includes removing all structures, including buildings, within the easement boundaries and providing up to 100% of restoration costs. In exchange, the landowner receives the smallest of the three following values as an easement payment:

1. a geographic area rate cap established by the NRCS state conservationist;
2. the fair-market value based on an area-wide market analysis or an appraisal completed according to the Uniform Standards of Professional Appraisal Practices (USPAP); or
3. the landowner's offer.

Section 382 of the Federal Agricultural Improvement and Reform Act of 1996 (1996 farm bill, P.L. 104-127) amended the EWP authorization to include the purchase of floodplain easements. The Agricultural Act of 2014 (2014 farm bill, P.L. 113-79) amended the floodplain easement section of the EWP program to allow USDA to modify or terminate floodplain easements when the landowner agrees and the change "addresses a compelling public need for which there is no

[15] The NRCS state conservationist is the lead federal official for the agency within a state. NRCS state conservationists are responsible for direction and supervision of all NRCS programs within a state.

[16] Exigency means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damage, or the potential loss of life.

[17] 7 C.F.R. §624.8(c)(3).

practical alternative, and is in the public interest." Modification or termination requires a compensatory arrangement determined by USDA.

Similar to the general EWP program, EWP floodplain easements are authorized under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Sections 2203-2205. The authorization of appropriations is for "such funds as may be necessary" and does not expire.

Eligible Land

Lands are considered eligible for an EWP floodplain easement if they are

- floodplain lands that were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years;
- other lands within the floodplain that would contribute to the restoration of the flood storage and flow, erosion control, or would improve the practical management of the easement; or
- lands that would be inundated or adversely impacted as a result of a dam breach.

Land is considered ineligible if

- restoration practices would be futile due to "on-site" or "off-site" conditions;
- the land is subject to an existing easement or deed restriction that provides sufficient protection or restoration of the floodplain's functions and values; or
- the purchase of an easement would not meet the purposes of the program.[18]

Eligible Participants

EWP participants must have ownership of the land. Unlike the general EWP program, EWP floodplain easements generally do not require a project sponsor if on agricultural or open lands. However, a project sponsor is required for lands primarily used for residential housing. In the case of land with residential housing, NRCS will purchase a floodplain easement only as part of a larger strategy intended to minimize future flood damage. A project sponsor is required to purchase the land after structures are removed.[19]

Funding and Allocation

The FY2019 supplemental appropriations act (P.L. 116-20) provided $435 million to EWP for general EWP activities and the purchase and restoration of EWP floodplain easements. Of this appropriation, NRCS designated $217.5 million for the enrollment of floodplain easements in Arkansas, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, South Dakota, and Wisconsin. In total, these 13 states received 659 applications for possible enrollment of 110,044 acres. Through the end of FY2020, NRCS

[18] 7 C.F.R. §624.10.

[19] In the case of land primarily used for residential housing, NRCS may pay up to the entire easement value and either (1) up to the entire cost of the structure's value if the landowner chooses to have it demolished, or (2) up to the entire cost of relocating the residence to a location outside the floodplain.

reported enrolling a total of 1,682 easements on 189,116 acres, including 1,663 closed easements on 185,480 acres.[20]

Other Programs

Emergency Disaster Loans

Emergency disaster (EM) loans are available through the FSA when a county has been declared a disaster area by either the President or the Secretary of Agriculture.[21] Agricultural producers in the declared county and contiguous to the county may become eligible for low-interest EM loans. EM loan funds may be used to help eligible farmers, ranchers, and aquaculture producers recover from production losses (when the producer suffers a significant loss of an annual crop) or from physical losses (such as repairing or replacing damaged or destroyed structures or equipment or replanting permanent crops such as orchards). A qualified applicant can then borrow up to 100% of actual production or physical losses (not to exceed $500,000) at low interest rates.[22]

Conservation Programs

In addition to the authorized land assistance programs, USDA uses a number of existing conservation programs to assist with rehabilitating land following natural disasters. In many cases this assistance comes through the use of waivers and flexibility provided to the Secretary of Agriculture. The following section discusses programs recently used by USDA to offer assistance.

Conservation Reserve Program (CRP)

The Conservation Reserve Program (CRP) provides annual payments to agricultural producers to take highly erodible and environmentally sensitive land out of production and install resource-conserving practices for 10 or more years. Limited haying and grazing may be conducted on CRP land in response to drought or other emergencies. Emergency haying and grazing generally is authorized due to drought conditions when a county is designated as level D2 (severe) drought intensity or higher according to the U.S. Drought Monitor.[23] Requests for emergency haying and grazing may also be initiated by the county FSA committee.[24] Emergency haying and grazing is allowed—with restrictions—outside of the primary nesting season for birds.[25] During primary nesting season, emergency grazing is allowed with a reduction in carrying capacity. Certain CRP acres are ineligible for emergency haying and grazing, including acres under easements; land

[20] Easements are considered enrolled when they are accepted into the EWP programs but before final completion of closing procedures (e.g., eligibility determinations, surveys, compensation, investigations, and title options). Easements are considered closed when the easement acquisition is complete, all contract documents are filed, and the deed is officially restricted by the easement. See *FY2022 President's Budget Request*, congressional justification, p. 63.

[21] For additional information on the USDA emergency disaster designation and declaration process, see https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Fact Sheets/emergency_disaster_designation_declaration_process-factsheet.pdf.

[22] For additional information on EM loans, see CRS Report RS21212, *Agricultural Disaster Assistance*.

[23] The U.S. Drought Monitor is updated weekly and can be found online at https://droughtmonitor.unl.edu/.

[24] To authorize emergency haying and grazing, a requesting FSA county committee must document a 40% or greater loss in forage production in a county. Approval is subject to review by the state and national FSA offices.

[25] For a map of the primary nesting season restrictions by state, see USDA, FSA, "Primary Nesting Season Dates and Duration," June 16, 2020, at https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Conservation/PDF/Primary%20Nesting%20Season_June_16_2020.pdf.

within 20 feet to a stream or permanent water body; and any acres where haying and grazing would cause long-term damage to the established vegetative cover.

Environmental Quality Incentives Program (EQIP)

The Environmental Quality Incentives Program (EQIP) is a voluntary program that provides financial and technical assistance to agricultural producers to address natural resource concerns on agricultural and forest land. In the past, USDA has announced special EQIP sign-ups for farmers and ranchers in areas affected by natural disasters. EQIP may also be used to proactively mitigate potential damage from natural disasters through the use of conservation practices (e.g., residue management to improve the soil's capacity to be more drought-resilient, or vegetative buffer strips along waterways to reduce erosion and crop damage in the event of a flood).

Issues for Congress

Funding Mechanisms

Historically, the majority of emergency assistance for agriculture was funded through supplemental appropriations or as an add-on to regular annual appropriations. A supplemental appropriation provides additional budget authority during the current fiscal year either to finance activities not funded in the regular appropriation or to provide funds when the regular appropriation is deemed insufficient.

Since most agricultural land assistance programs do not receive the level of attention that triggers a standalone supplemental appropriation bill, annual appropriation bills are increasingly seen as a vehicle for funding these programs. The change in funding mechanism from standalone supplemental appropriations to annual appropriations has presented a challenge for agricultural land assistance programs. The timing of annual appropriations bills may not coincide with natural disasters and the subsequent requests for assistance. This can increase the time between eligible disasters and funding availability. Disaster funds are typically provided to remain available until expended, which has allowed smaller, more localized disasters to be addressed in years without appropriations. However, despite this flexibility, the inconsistent funding has left some agricultural land assistance programs without funding during times of high request volume.

Beginning in the 2008 farm bill, and continued in the 2014 farm bill, Congress authorized a series of permanent disaster assistance programs that receive mandatory funding, rather than relying on supplemental appropriations.[26] These programs assist with crop and livestock production loss and are generally authorized at funding amounts that are "such sums as necessary" and by their mandatory nature are not subject to annual appropriations. For the three agricultural land rehabilitation programs discussed in this report, however, funding remains discretionary and is provided on an ad hoc basis.

The variability of funding for agricultural land rehabilitation has led some to suggest that these programs have been left behind in favor of providing assistance for crop and livestock production loss rather than for land rehabilitation and natural resources degradation. Some have suggested that the use of permanent mandatory funding could be expanded beyond production to include land rehabilitation assistance. Others point out that permanent mandatory funding would likely require offsets under the current budgetary rules.

[26] For additional information on these programs, see CRS Report RS21212, *Agricultural Disaster Assistance*.

Restrictions on Funding

Congress occasionally restricts funding for the agricultural land rehabilitation programs by a named disaster event (e.g., Hurricanes Michael and Florence), disaster event type (e.g., wildfires), year, or disaster declaration. Disaster declarations are frequently limited to major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. §§5121-5207).[27] These restrictions are included to direct USDA fund distribution or are related to budget scorekeeping requirements.[28]

Since emergency agricultural land rehabilitation programs do not normally require a federal disaster declaration from either the President or a state official, the Stafford Act requirement can become a limiting factor in the way agricultural land rehabilitation programs work, potentially limiting assistance to fewer natural disaster events. For example, droughts are traditionally not declared as major disaster events under the Stafford Act.[29] However, droughts are one of the eligible natural disasters for land rehabilitation programs—primarily to assist livestock producers to provide water to animals. Since agricultural land rehabilitation program funds are typically available until expended, the Stafford Act requirement, as well as other event- or year-specific requirements, also limits what areas may receive future assistance with any remaining funding.

For example, the FY2016 appropriated levels for agricultural land rehabilitation programs classify only a portion of the funding provided as disaster relief and therefore limited to major disasters declared pursuant to the Stafford Act. The remaining funds are not subject to a Stafford Act declaration and may be used according to the authorities of the program.

Mitigation

Another potential issue for federal land assistance programs is mitigation. Mitigation actions are steps taken to reduce risk before a natural disaster occurs. Currently, one mitigation program exists for emergency agricultural land assistance—the EWP floodplain easement program (described above). This program purchases floodplain easements on agricultural land that has a history of flooding (2 of the previous 10 years). Under the program, the land is permanently taken out of production and restored to a natural function. This program has been authorized since 1997. Prohibitions in prior year appropriations acts have limited available funding for the program. Initially, most of the purchased floodplain easements were underdeveloped agricultural lands and a small portion that included rural residences or other structures. According to USDA, in recent years, the number of easements on urban and suburban land with residences has significantly increased.[30]

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[27] A declaration of a major disaster or emergency under the authority of the Stafford Act makes state and local governments and certain nonprofit organizations eligible for various forms of federal assistance. The governor of the impacted state requests the types of assistance considered necessary to address the needs of the state. For additional information, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*.

[28] Between FY2012 and FY2021 the Budget Control Act of 2011 (BCA; P.L. 112-25) limited emergency supplemental funding for disaster relief. Under §251(b)(2)(D) of the BCA, funding used for disaster relief must be used for activities carried out pursuant to the Stafford Act. This meant funds appropriated through emergency supplemental acts for disaster relief through FY2021 would apply only to activities with a Stafford Act declaration. This is explained further in CRS Report R42352, *An Examination of Federal Disaster Relief Under the Budget Control Act*.

[29] The last presidential drought or water shortage disaster declared for a state was for New Jersey in 1980.

[30] *FY2022 President's Budget Request*, congressional justification, p. 63.

Some have questioned the use of federal restoration funds in areas with a high risk of damage from natural disasters, arguing that it encourages poor land use decisions. While the alternative of mitigation can potentially reduce the future cost of federal assistance, the initial cost of the permanent easement and restoration is sometimes viewed as too expensive.[31]

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[31] For additional analysis, see CRS Report R45017, *Flood Resilience and Risk Reduction: Federal Assistance and Programs*.