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Emergency Assistance for Agricultural Land Rehabilitation

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Summary

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 repair 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 allow for support and 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 and the EWP floodplain easement program are 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 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 of high request volume. This irregular funding method has led some to suggest the authorization of permanent mandatory funding similar to what was authorized in the Agricultural Act of 2014 (2014 farm bill, P.L. 113-79) for agricultural disaster assistance programs that support crop and livestock production loss.

Restrictions placed on supplemental appropriations for disaster assistance have changed the way the agricultural land assistance programs allocate funding, potentially assisting fewer natural disasters. Language in the Budget Control Act of 2011 (P.L. 112-25) limits the use of emergency supplemental funding for disaster relief. Specifically, funding used for disaster relief must be used for activities carried out pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288) for FY2012 through FY2021. This means funds appropriated through emergency supplemental acts for disaster relief for these 10 years may apply only to activities with a Stafford Act designation (generally requiring a federal disaster declaration from either the President or a state official). Since emergency agricultural land assistance programs do not normally require a federal disaster declaration, the Stafford Act requirement has become a limiting factor in the way agricultural land assistance programs work, potentially assisting fewer natural disaster events.

Contents

Overview 1
Federal Emergency Assistance for Agricultural and Rural Land 1
Emergency Conservation Program 1
Purpose, Activities, and Authority 1
Eligible Land 2
Eligible Participant 2
Funding and Allocation 2
Emergency Forest Restoration Program (EFRP) 4
Purpose, Activities, and Authority 4
Eligible Land 4
Eligible Participant 4
Funding and Allocation 5
Emergency Watershed Protection (EWP) Program 5
Purpose, Activities, and Authority 5
Eligible Land 6
Eligible Participant 6
Funding and Allocation 6
Emergency Watershed Protection (EWP) Program—Floodplain Easements 8
Purpose, Activities, and Authority 8
Eligible Land 8
Eligible Participants 9
Funding and Allocation 9
Other Programs 9
Emergency Disaster Loans 9
Conservation Programs 10
Issues for Congress 10
Funding Mechanisms 10
Stafford Act Limitations 11
Mitigation 12

Tables

Table 1. Appropriations for the Emergency Conservation Program (ECP), FY2008-FY2018 3
Table 2. Appropriations for Emergency Forest Restoration Program (EFRP), FY2010-FY2018 5
Table 3. Appropriations for the Emergency Watershed Protection (EWP) Program, FY2008-FY2018 6

Contacts

Author Information 12

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 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] 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.

to be a limited-resources producer.[3] Payments are made following completion and inspection of the practice.

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.[4]

Land conservation issues that existed prior to the natural disaster are not eligible for assistance.

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 $200,000 per natural disaster.[5]

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

Funding and Allocation

Funding for ECP varies widely from year to year. Most funding is authorized through supplemental appropriations acts rather than annual appropriations. **Table 1** provides a funding history for ECP.

[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 percent 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.

[4] 16 U.S.C. 2201.

[5] 7 C.F.R. 701.104.

Table 1. Appropriations for the Emergency Conservation Program (ECP), FY2008-FY2018

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2018 (to date)	$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	
2010	$0	
2009	$66.314 million (approximate)	P.L. 111-32, repurposed previously appropriated funding, mostly funds designated for Hurricane Katrina that went unused
2009	$155 million	P.L. 110-329
2008	$89.4 million	P.L. 110-252

Source: CRS, using historical appropriation and supplemental acts, FY2008-FY2018.

a. Funding provided under regular appropriations; therefore the Stafford Act requirement does not apply. Funding total 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).[6] Since ECP does not typically require a Stafford Act declaration, this requirement limits the use of ECP funds to select locations as well as for future disasters. For further discussion, see the "Issues for Congress" section.

[6] For additional information related to emergency declarations pursuant to the Stafford Act, see CRS Report R42702, *Stafford Act Declarations 1953-2016: Trends, Analyses, and Implications for Congress.*

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.[7]

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 may provide up to 75% of the cost of emergency measures that would restore forest health and forest-related resources following a disaster. Individual or cumulative requests for financial assistance of $50,000 or less per person (or legal entity) per disaster are approved by the FSA county committee. Financial assistance requests from $50,001 to $100,000 are approved by the FSA state committee. Financial assistance over $100,000 must be approved by the FSA national office.

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, which occurred on or after January 1, 2010, 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.[8]

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.

Eligible Participant

Eligible recipients include owners of nonindustrial private forest land, defined as rural land that is owned by any nonindustrial private individual, group, association, corporation, or other private legal entity that has definitive decision making authority over the land. A payment limitation of $500,000 per person or legal entity applies per disaster.

[7] 71 FR 70889, Emergency Conservation Program Interim Final Rule, May 26, 2006.

[8] 7 C.F.R. 701.205.

Funding and Allocation

The EFRP was created in the 2008 farm bill. Congress initially appropriated $18 million to the program in an FY2010 supplemental appropriations act. Funds were not obligated, however, until FY2011, when final regulations were published. **Table 2** provides a funding history for EFRP.

Table 2. Appropriations for Emergency Forest Restoration Program (EFRP), FY2010-FY2018

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2018 (to date)	$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	
2010	$18 million	P.L. 111-212, for disasters that occurred on or after January 1, 2010. Additional direction was provided to expedite the program's implementation

Source: CRS, using historical appropriation and supplemental acts, FY2010-FY2018.

a. Funding provided under regular appropriations; therefore the Stafford Act requirement does not apply. Funding total includes the Section 3001 and 3004 rescissions of 2.513%.

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.[9]

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.[10]

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.

Funding and Allocation

Funding for EWP varies widely from year to year (**Table 3**). Most funding is authorized through supplemental appropriations acts rather than annual appropriations.

Table 3. Appropriations for the Emergency Watershed Protection (EWP) Program, FY2008-FY2018

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2018 (to date)	$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

[9] 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)).

[10] 7 C.F.R. 624.6(a).

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
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 disaster 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 disaster in 2011
2011	$0	
2010	$0	
2009	$0	
2008	$100 million	P.L. 110-329
2008	$390.464 million	P.L. 110-252

Source: CRS, using historical appropriation acts, FY2008-FY2018.

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[11] 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;[12]
- sites where there is a serious (but not immediate) threat to human life; and

[11] 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.

[12] 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.

- sites where buildings, utilities, or other important infrastructure components are threatened.[13]

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 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. Prior to this amendment, NRCS had been directed in a 1993 emergency supplemental appropriations act (P.L. 103-75) to use EWP funds for the purchase of floodplain easements under the Wetlands Reserve Program (WRP)—a farm bill program for restoring wetlands through the voluntary purchase of long-term and permanent easements on agricultural land. This became known as the Emergency Wetlands Reserve Program, which purchased floodplain easements on cropland with a history of flooding in the 1993 and 1995 Midwest flooding events. Following the 1996 farm bill amendment, NRCS began an EWP floodplain easement pilot program in 17 states in FY1997.

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 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

[13] 7 C.F.R. 624.8(c)(3).

- 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.[14]

Eligible Participants

EWP participants must have ownership of the land. Unlike the general EWP program, EWP floodplain easements do not require a project sponsor.

Funding and Allocation

The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) provided $290 million to Watershed and Flood Prevention Operations, of which half ($145 million) was to be used for the purchase and restoration of EWP floodplain easements. Per requirements in ARRA, the funding was obligated by FY2011. Additional funding following Hurricane Sandy resulted in two EWP floodplain easement sign-ups, which funded 246 applications on over 1,000 acres of eligible land. Through the end of 2016, NRCS reported enrolling a total of 1,586 easements on 184,911 acres, as well as 1,573 closed and restored easements on 184,423 acres.[15]

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. 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.[16]

[14] 7 C.F.R. 624.10.

[15] 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 *FY2018 President's Budget Request*, congressional justification, pp. 27-69.

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

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. In limited situations, harvesting and grazing may be conducted on CRP land in response to drought or other emergencies (except during primary nesting season for birds). In many cases environmentally sensitive land is ineligible for harvesting and grazing. Emergency harvesting and grazing is authorized by the national FSA office at the request of a county FSA committee.[17]

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. USDA has recently announced a special EQIP sign-up for farmers and ranchers in hurricane-affected areas.[18] 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

[17] To authorize emergency harvesting and grazing, a requesting FSA county committee must document a 40% or greater loss in hay and pasture production due to either (1) precipitation levels at an average of 40% or greater loss of normal precipitation for the four most recent months (i.e., drought conditions); or (2) precipitation levels at an average of 140% or greater increase in normal precipitation during the four most recent consecutive months (i.e., excessive moisture conditions).

[18] USDA, "USDA Brings Key Resources to Individuals and Communities Hit by Recent Hurricanes," press release, October 6, 2017, https://www.usda.gov/media/press-releases/2017/10/06/usda-brings-key-resources-individuals-and-communities-hit-recent.

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.[19] 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 be difficult to achieve in the current fiscal climate.

Stafford Act Limitations

The Budget Control Act of 2011 (BCA, P.L. 112-25) limits emergency supplemental funding for disaster relief. Under Section 251(b)(2)(D) of the BCA, funding used for disaster relief must be used for activities carried out pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288) for FY2012 through FY2021.[20] This means funds appropriated through emergency supplemental acts for disaster relief through FY2021 may apply only to activities with a Stafford Act declaration.[21]

In recent years, agricultural land rehabilitation programs have received funding through annual appropriations. However, it is still considered supplemental in nature and, in some cases, classified as disaster relief. When classified as disaster relief, the funds must be used for a major disaster declared pursuant to the Stafford Act.

Since emergency agricultural land assistance programs do not normally require a federal disaster declaration from either the President or a state official, the Stafford Act requirement has become a limiting factor in the way agricultural land assistance programs work, potentially assisting fewer natural disaster events. For example, droughts are traditionally not declared as major disaster

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

[20] The BCA redefined "disaster relief" as being federal government assistance provided pursuant to a major disaster declared under the Stafford Act. The BCA distinguishes disaster relief spending as separate from emergency spending. Funding designated as disaster relief is outside the regular BCA cap on discretionary spending but is subject to another limit that is allowed for the disaster relief category. This is explained further in CRS Report R43665, *Supplemental Appropriations for Disaster Assistance: Summary Data and Analysis* and CRS Report R42352, *An Examination of Federal Disaster Relief Under the Budget Control Act*.

[21] 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 Major Disasters and Emergencies*.

events under the Stafford Act.[22] However, droughts are one of the eligible natural disasters for land assistance programs—primarily to assist livestock producers to provide water to animals. Since agricultural land assistance program funds are typically available until expended, the Stafford Act requirement also limits what areas may receive future assistance with any remaining funding.

For example, the FY2016 appropriated levels classify only a portion of the funding provided as disaster relief and therefore subject to the requirements of the BCA and the Stafford Act. The remaining funds are not considered disaster relief for budget scoring purposes and are therefore appropriated within the regular limitations of the current budget agreement. These funds are not subject to a Stafford Act declaration and may be used according to the authorities of the program.

Mitigation

Another contentious issue for federal land assistance programs is mitigation. Mitigation actions are steps taken to reduce risk before a natural disaster occurs. Currently only 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 (two 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. However, prohibitions in appropriations acts have limited available funding for the program.

Some have questioned the use of federal restoration funds in areas with a high risk of damage by 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 a federal cost.[23]

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

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

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