

# Emergency Relief Program (ERP)

## Disaster Recovery Assistance for Commodity and Specialty Crop Producers



### Background

On September 30, 2021, President Biden signed into law the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43), which includes \$10 billion in assistance to agricultural producers impacted by wildfires, droughts, hurricanes, winter storms, and other eligible disasters experienced during calendar years 2020 and 2021. The Farm Service Agency (FSA) has also made payments to ranchers impacted by drought and wildfire through the first phase of the **Emergency Livestock Relief Program (ELRP)**. ERP is another relief component of the Act.

### Overview

ERP covers losses to crops, trees, bushes and vines due to a qualifying natural disaster event in calendar years 2020 and 2021.

For impacted producers, FSA will be administering emergency relief to row crop and specialty crop producers through the following two-phased process:

- Phase 1 will leverage existing **Federal Crop Insurance or Noninsured Crop Disaster Assistance Program (NAP)** data as the basis for calculating initial payments.
- Phase 2 will be intended to fill additional assistance gaps and cover eligible producers who did not participate in existing risk management programs.

This two-phased approach enables USDA to streamline the application process to reduce the burden on producers, proactively include underserved producers who have been left out of past relief efforts and encourage participation in existing risk management tools that can help producers handle future extreme weather events.

### Eligibility – Phase 1

Eligible crops include all crops for which federal crop insurance or NAP coverage was available and a crop insurance indemnity or NAP payment was received, except for crops intended for grazing and crops intended for forage or seed that were grazed. Qualifying natural disaster events include wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including apolar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions.

For ERP eligibility, “related conditions” are damaging weather and adverse natural occurrences that occurred concurrently with and as a direct result of a specified qualifying disaster event. They include:

- Excessive wind that occurred as a direct result of a derecho;
- Silt and debris that occurred as a direct result of flooding;
- Excessive wind, storm surges, tornados, tropical storms, and tropical depressions that occurred as a direct result of a hurricane; and
- Excessive wind and blizzards that occurred as a direct result of a winter storm.

For drought, ERP assistance is available if any area within the county in which the loss occurred was rated by the U.S. Drought Monitor as having a drought intensity of:

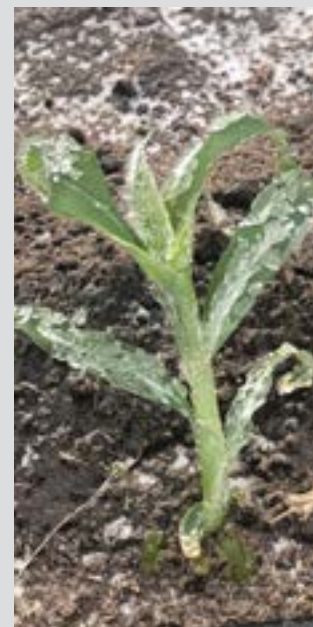
- D2 (severe drought) for eight consecutive weeks; or
- D3 (extreme drought) or higher level of drought intensity.

Lists of 2020 and 2021 drought counties eligible for ERP are available on the **emergency relief website**.

### For More Info

Additional USDA disaster assistance information can be found on [farmers.gov](https://farmers.gov), the **Disaster Assistance Discovery Tool**, **Disaster-at-a-Glance fact sheet**, and **Farm Loan Discovery Tool**.

For FSA and Natural Resources Conservation Service programs, producers should contact their local **USDA Service Center**. For assistance with a crop insurance claim, producers and landowners should contact their **crop insurance agent**.



## How to Apply – Phase 1

To simplify the delivery of ERP Phase 1 benefits; FSA will send pre-filled application forms to producers whose crop insurance and NAP data is already on file because they received a crop insurance indemnity or NAP payment. This form includes eligibility requirements, outlines the application process, and provides ERP payment information. Producers will receive a separate application form for each program year. Receipt of a pre-filled application is not confirmation that a producer is eligible to receive an ERP Phase 1 payment. Producers will need to return completed and signed ERP Phase 1 applications to their local FSA county office.

Producers must also have the following forms on file with FSA within a subsequently announced deadline as determined by the Deputy Administrator for Farm Programs:

- Form AD-2047, Customer Data Worksheet
- Form CCC-902, Farm Operating Plan for an individual or legal entity
- Form CCC-901, Member Information for Legal Entities (if applicable)
- A highly erodible land conservation (sometimes referred to as HELC) and wetland conservation certification (Form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification) for the ERP producer and applicable affiliates.

Most producers, especially those who have previously participated in FSA programs will likely have these required forms on file. However, those who are uncertain or want to confirm should contact their **local FSA county office**.

In addition to the forms listed above, certain producers will also need to submit the following forms to qualify for an increased payment limitation or payment rate.

- Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs.
- Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, for the applicable program year.

## How Payments are Calculated – Phase 1

ERP Phase 1 payments for crops covered by crop insurance will be prorated by 75 percent to ensure that total ERP payments, including payments under ERP Phase 2, do not exceed the available funding. ERP Phase 1 payments for NAP-covered crops will not be prorated due to the significantly smaller NAP portfolio that by its nature only covers smaller acreages and specialty crops that are not covered by crop insurance.

RMA and FSA will calculate ERP Phase 1 payments based on the data on file with the agencies at the time of



calculation. The ERP Phase 1 payment calculation for a crop and unit will depend on the type and level of coverage obtained by the producer. RMA and FSA will calculate each producer's loss consistent with the loss procedures for the type of coverage purchased but using the ERP factor in place of the coverage level. This calculated amount would then be adjusted by subtracting out the net crop insurance indemnity or NAP payment, which is equal to the producer's gross crop insurance indemnity or NAP payment already received for those losses minus service fees and premiums.

## ERP Factor Tables

ERP factor tables can be found below and on the

| Crop Insurance Level                                     | ERP Factor (Percent) |
|----------------------------------------------------------|----------------------|
| Catastrophic coverage                                    | 75                   |
| More than catastrophic coverage but less than 55 percent | 80                   |
| At least 55 percent but less than 60 percent             | 82.5                 |
| At least 60 percent but less than 65 percent             | 85                   |
| At least 65 percent but less than 70 percent             | 87.5                 |
| At least 70 percent but less than 75 percent             | 90                   |
| At least 75 percent but less than 80 percent             | 92.5                 |
| At least 80 percent                                      | 95                   |

| NAP Coverage Level    | ERP Factor (Percent) |
|-----------------------|----------------------|
| Catastrophic coverage | 75                   |
| 50 percent            | 80                   |
| 55 percent            | 85                   |
| 60 percent            | 90                   |
| 65 percent            | 95                   |

#### emergency relief website:

Because the amount of loss due to a qualifying disaster event in calendar years 2020 and 2021 cannot be separated from the amount of loss caused by other eligible causes of loss as defined by the applicable crop insurance or NAP policy, the ERP Phase 1 payment will be calculated based on the producer's loss due to all eligible causes of loss.

## Historically Underserved Producers

The ERP payment percentage for historically underserved producers, including beginning, limited resource, socially disadvantaged and veteran farmers and ranchers will be increased by 15% of the calculated payment.

To qualify for the higher payment percentage, eligible producers must have a **CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification**, form on file with FSA for the applicable program year.

## Payment Limitation and Adjusted Gross Income

The payment limitation for ERP Phase 1 is determined by the person's or legal entity's average adjusted gross farm income (AGI). Average adjusted gross farm income is the average of the person or legal entity's gross income derived from farming, ranching, or forestry operations for three taxable years preceding the most immediately preceding complete taxable year.

A person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments for specialty crops and \$125,000 in payment for all other crops under ERP (for Phase 1 and Phase 2 combined) for a program year if their average adjusted gross farm income is less than 75 percent of their average AGI the three taxable years preceding the most immediately preceding complete tax year.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

If at least 75 percent of the person or legal entity's average AGI is farm income (income derived from farming, ranching, or forestry related activities) the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to:

- \$900,000 for each program year for specialty crops; and
- \$250,000 for each program year for all other crops.

The sale of equipment used to conduct farm, ranch or forestry operations and the provision of production inputs and services to farmers, ranchers, foresters, and farm operations is included in the average adjusted gross farm income, if the average adjusted gross farm income is at least 66.66 percent of the average AGI of the person or legal entity.

The relevant tax years for establishing a producer's AGI and percentage of farm income are:

- 2016, 2017, and 2018 for program year 2020;
- 2017, 2018, and 2019 for program year 2021; and
- 2018, 2019, and 2020 for program year 2022.

For legal entities not required to file a federal income tax return, or for persons and entities with no taxable income in one or more tax years, the average will be the adjusted gross farm income, including losses, averaged for the three taxable years preceding the most immediately preceding complete taxable year.

A new legal entity will have adjusted gross farm income averaged only for the years of the base period for which it was in business. A new legal entity will not be considered "new" to the extent it takes over an existing operation and has any elements of common ownership interest and land with the preceding person or legal entity. If such commonality exists, then the income of the previous person or legal entity will be averaged with that of the new legal entity for the base period.

For a person filing a joint tax return, the certification of average adjusted farm income will be reported as if the person had filed a separate federal tax return and the calculation is consistent with the information supporting the filed joint return.

To request the increased payment limitation, participants must file form FSA-510 certifying their average adjusted gross farm income is at least 75% of their average AGI, accompanied by a certification from a certified public accountant (CPA) or attorney that the participant meets the requirements. For more information, contact your local **FSA service center**.