

Emergency Relief Program (ERP 2022)

Disaster Recovery Assistance for Commodity and Specialty Crop Producers



Background

On December 29, 2022, President Biden signed into law the Disaster Relief Supplemental Appropriations Act, 2023 (Pub. L. 117-328), which includes over \$3.74 billion in assistance to agricultural producers impacted by wildfires, qualifying droughts, hurricanes, winter storms, and other eligible disasters experienced during calendar year 2022.

Overview

ERP 2022 covers crop production, including certain quality losses, and losses of trees due to qualifying natural disaster events that occurred in calendar year 2022.

For impacted producers, FSA will be administering emergency relief to eligible producers through a two-track process:

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

This two-track 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 — Track 1

Eligible crops and trees included in Track 1, include 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. Qualifying natural disaster events include: wildfires, tornadoes, hurricanes, floods, derechos, excessive heat, winter storms, freeze, smoke exposure, excessive moisture, qualifying drought, and related conditions.

For ERP 2022 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, 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 “qualifying drought”, ERP 2022 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.

A list of 2022 drought counties eligible for ERP 2022 are available on the [emergency relief website](#).

For More Info

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



Eligible Producers

Eligible Producer is an individual or legal entity that is entitled to a share and is at risk in the eligible crop, or would have shared had the eligible crop been produced, and is any of the following:

- ◆ Citizen of the United States;
- ◆ Resident alien, which for purposes of ERP 2022 means “lawful alien” as defined in 7 CFR part 1400;
- ◆ Partnership organized under state law;
- ◆ Corporation, limited liability company, or other organizational structure organized under state law;
- ◆ Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or
- ◆ Foreign person or foreign entity who meets all requirements as described in 7 CFR part 1400.

How to Apply — Track 1

To simplify the delivery of ERP 2022 Track 1 benefits; FSA will send pre-filled application forms (FSA-523) 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 2022 payment information. Receipt of a pre-filled application is not confirmation that a producer is eligible to receive an ERP 2022 Track 1 payment. Producers will need to return completed and signed ERP 2022 Track 1 applications to be processed in their FSA recording 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 2022 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 amount.

- ◆ 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 program year 2022.

How Payments are Calculated — Track 1

RMA and FSA will calculate ERP 2022 Track 1 payments for insured crops based on the data on file with the agencies at the time of calculation. RMA and FSA will calculate each producer’s loss consistent with the loss procedures for the type and level of coverage purchased but using the ERP 2022 program factor in lieu of the coverage level obtained by the producer. This calculated amount would then be adjusted by progressive payment factoring for RMA insured payments, weighted to the crop by the Estimated ERP 2022 Payment (prior to adjustments) to determine if it is specialty and non-specialty.

Additionally, for underserved producers, the producer’s share of premiums and administrative fees are added to the payment, which then equals the Gross ERP 2022 Track 1 payment.

Crop(s) covered under Whole-Farm Revenue Protection/Micro Farm or Whole Farm Unit policies are treated as a single crop for payment calculation purposes.

Producers that receive a Track 1 application including these policies or unit must certify to the percentage of their expected revenue or total liability for the unit, as applicable, from specialty crops. Producers may refer to their Summary of Coverage or Schedule of Insurance to review all crops covered under their policy to make this determination. The “single crop” will be determined specialty or non-specialty based on the producer certified percentage of Expected Revenue or Liability from specialty crops for payment limitation purposes.

PROGRESSIVE FACTORING APPLIED TO RMA INSURED TRACK 1 ERP 2022 PAYMENTS

Payment Range	Progressive Factor (Percentage)
Up to \$2,000	100
\$2,001 to \$4,000	80
\$4,001 to \$6,000	60
\$6,001 to \$8,000	40
\$8,001 to \$10,000	20
Over \$10,000	10

The NAP calculated payment will be achieved by calculating:

- ♦ a recomputed NAP payment using the ERP 2022 factor in lieu of the coverage level, minus
- ♦ actual NAP payment issued for the year, plus
- ♦ service fees and paid premiums for underserved producers.

Progressive factoring does not apply to NAP Track 1 payments.

FSA will apply a final payment factor of 75 percent to all ERP 2022 Track 1 payments. This includes payments for crops covered by crop insurance, NAP, and those issued to underserved producers, to ensure payments do not exceed available funding.

ERP 2022 Track 1 payments are based on the producer certification that the calculated RMA indemnity or NAP payment received was due, in whole or in part, to a crop production loss or tree loss caused by a qualifying disaster event or related condition occurring in calendar year 2022. Additionally, the applicant must agree to purchase crop insurance or NAP coverage, as applicable, for the crop at a 60/100 coverage level or higher for insured crops or at the basic 50/55 (catastrophic) level or higher for NAP crops, for the next 2 available crop years, and complete the linkage requirement by year 2027.

ERP 2022 Factor Tables

ERP 2022 factor tables can be found below.

CROP INSURANCE LEVEL	ERP 2022 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

Because the amount of loss due to a qualifying disaster event in calendar year 2022 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 2022 Track 1 payment will be calculated based on the producer's loss due to all eligible causes of loss.

Underserved Producers

For Track 1, an underserved producer's share of premiums and administrative fees are added to the Estimated ERP 2022 Payment.

To qualify for the higher payment, 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 2022 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 & high value crops and \$125,000 in payment for non-specialty & all other crops under ERP 2022 (for Track 1 and Track 2 combined) for program year 2022, 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.

For Track 1, specialty and non-specialty crops are referenced. For Track 2, specialty, high value crops, and other crops are included. High value crops are not applicable for Track 1.

Trees covered under a crop insurance policy are considered specialty crops for Track 1 for payment limitation purposes.

If at least 75 percent of the person or legal entity's average AGI is farm income (income derived from farming, ranching, and 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 program year 2022 for specialty crops/high-value; and
- ♦ \$250,000 for program year for 2022 for all other crops.

The sale of equipment used to conduct farm, ranch and 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 for program year 2022 are:

- ♦ 2018, 2019, and 2020.

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. If the participant is an entity and files the FSA-510, the payment limitation for the entity may increase, however if the members of the entity do not file FSA-510s, their payment limitation will remain at \$125,000, and the payments for the entity will be reduced accordingly. To learn more, contact your local [FSA service center](#).

Additional Information

Producers who apply for Track 1 may also apply for Track 2 but their Track 1 payment will be reduced from any Track 2 payment.

A Track 2 fact sheet is also available for producers seeking additional guidance on Track 2.

