

# NRCS Wetland Mitigation Banking Program

## Frequently Asked Questions

### Eligibility, application evaluation, and payment

- 1) What is the difference between a commercial mitigation bank versus an agriculture use mitigation bank?

*They can be similar, but the differences are often the extent of restoration, the cost of credits, and the types of wetlands in the bank. Commercial banks can include provisions for stream mitigation. Commercial bank credits are generally more expensive. For the NRCS program, the main difference is that credits can only be sold to producers for use in meeting their USDA conservation compliance requirements.*

- 2) Can applicants that have not yet established a mitigation bank (or never had a bank in the past) be considered for program funding?

*Yes, however NRCS will give priority to applicants with mitigation banking experience. .*

- 3) What size geographic area are you considering? 8 digit HUC? Other?

*NRCS has not established geographic size limitations. However, applicants should clearly indicate the size of their planned Bank Service Area in their proposals.*

- 4) Will NRCS fund applications that propose to establish a bank in an area outside of the states identified as "priority" in the funding announcement?

*Although priority will be given to applications that propose to establish banks in states with high conservation compliance workloads, as identified in the Announcement for Program Funding, NRCS will consider funding proposals in other locations.*

- 5) Can in-lieu fee programs apply as well?

*Banking programs that are strictly In Lieu Fee are not eligible for the NRCS Wetland Mitigation Banking Program.*

- 6) Are Prior Converted wetlands (PC) and/or Farmed Wetlands (FW) eligible for banking?

*Successful applicants will be required to develop a process to evaluate bank credits. Credits can be obtained through wetland restoration, enhancement, or creation. Using this approved functional assessment process, both PC and FW sites can be evaluated to determine the extent of credits. NRCS statute and regulations require that both wetland functions and wetland acres be mitigated.*

- 7) What is the definition of a Farmed Wetland?

*Farmed are wetlands that were drained, dredged, filled, leveled, or otherwise manipulated and used for producing an agricultural commodity before December 23, 1985, but still retain the functional characteristics of a wetland.*

8) Can State Department of Natural Resource employees (DNR) be bank managers?

Yes.

9) Would banks with stream mitigation be considered eligible if the funding is applied only to wetland mitigation within the bank?

*While streams are not eligible, there may be instances in which small depressional wetlands associated with the stream would be eligible for the program.*

10) How will the funding cycle work? Are costs reimbursable only, or will funding be available up-front?

*Successful applicants will develop an agreement with NRCS which will identify how and when funds will be made available. Generally speaking, funding is provided on a reimbursable basis in accordance with the agreement between NRCS and the grantee. Advances are permitted with conditions. Requesting an advanced payment can be accomplished through the use of the [Standard Form 270](#).*

11) Can the award money be used to buy property for the bank?

*No, program funds cannot be used to purchase land nor any interest in land (e.g., conservation easement).*

12) Can a perpetual WRP easement be used as a bank?

*No, because the land is already protected by the easement.*

13) Can you describe the payment mechanisms for credit purchase in a little more detail?

*As wetlands are restored, enhanced, or created by the Bank, a Functional Assessment is used to determine the number of credits available for each banked area. The bank subsequently determines what to charge for each available credit. Banks will make payments directly to producers.*

14) Is there a cost-matching requirement?

*No, there is no cost matching requirement for this program.*

15) Other than land acquisition are there other activities that will not be funded?

*Activities that fall outside of the developed bank instrument would not be eligible for payment. Please review the Announcement for Program Funding for more information on activities covered through the program.*

16) Can a landowner have a bank to use this program for income?

Yes.

17) Can interested persons and entities apply to establish a bank(s) in Puerto Rico?

Yes.

18) Can we as farmers put banks on our own land to service our own wetland mitigation?

*Yes, although the focus of this program is to incentivize the development of wetland banking opportunities for as many agricultural producers as possible. While a proposal describing only the development of an on-site mitigation for a single producer would be eligible, it would not be competitive in the ranking process.*

19) What is the maximum award amount?

*One million dollars per proposal.*

20) Would forested wetland conversion be eligible for mitigation banking?

*No, the purpose of the program is to mitigate small degraded farmed wetlands.*

21) Could these funds be used to create wetlands?

*Yes. The Bank Manager would need to follow the NRCS Standards and Specifications for the [Wetland Creation Conservation Practice Standard](#).*

22) Can a funded Banker make a profit from the federal funds, or do they have to subtract those federal funds first?

*Funds available through this program are intended to incentivize third parties to develop wetland mitigation banking opportunities for agricultural producers. There is nothing to prohibit a bank from realizing a profit from the sale of bank credits.*

23) Does an award recipient have to pay back the USDA grant?

*No, unless there is a violation of the agreement signed with NRCS subsequent to the awarding of program funds.*

24) Will a bank that produces significant income with the bank have to report it?

*Bankers will need to discuss this issue with their professional tax consultant.*

25) May an applicant propose more than one site under the same proposal?

*Yes.*

26) Please clarify again if you would, specifically on what lands are eligible for a mitigation bank.

*Land with suitable soils and hydrology that would be feasible for creating, restoring or enhancing wetlands in order to generate the credits in a wetland mitigation bank.*

27) The Announcement for Program Funding does not reference reimbursement for the restoration activities needed to create the bank sites. Would grant funds pay for these activities?

*Yes, site establishment costs would be reimbursable as long as NRCS practice standards and specifications were used to complete the site restorations, creations, or enhancements.*

28) There may be some banks which adopt more conservative credit release schedules to make sure

they are in fact replacing full functions and values of lost wetlands. Will these banks be at a disadvantage in the ranking process?

*Not necessarily. Priority will be given to applicants who propose to make credits available quickly,*

### **Corps of Engineers/CWA**

- 1) Will the Corps (USACOE) and or state regulatory agencies recognize and honor credits in these banks for Section 404 so producers are in compliance with CWA?

*Credits developed for the NRCS Wetland Mitigation Program are generated to assist agricultural producers with USDA conservation compliance. NRCS does not certify or make assumptions regarding what the USACOE or any state government agency will or will not accept for compensatory mitigation.*

- 2) Does Agricultural mitigation follow the same permitting process as those followed for development?

*No, the NRCS is not a regulatory permitting agency. NRCS implements its Wetlands Compliance responsibilities using the [National Food Security Act](#).*

- 3) Is NRCS going to use a team of Interagency folks to assist in determining approvals for banking instruments, site location, functional assessments, etc. similar to what the USACOE uses for its wetland mitigation banking programs?

*NRCS has an established and experienced group of interagency personnel that will initially be used to screen proposals. Following this screening, qualified NRCS personnel will assist funded Banks with functional assessments and other technical items as needed.*

- 4) If a bank project is selected under this project and the bank can serve both Farm Bill and 404 impacts, how much credit from the bank would need to be reserved for Farm Bill compliance?

*NRCS will need to know in advance how the applicant intends to operate such a bank, and how credits remain available for purchase by agricultural producers who need to meet conservation compliance requirements. Applicants with this scenario should include specific information in their application about how they will manage this arrangement.*

- 5) Do you anticipate a pre-certified/certified credit structure that is often used in 404 during bank establishment?

*Yes, a credit release schedule would be developed as a component of the banking instrument.*

- 6) Is NRCS responsible for approving release of credits for sale by the banks? If not NRCS, who would do this?

*NRCS will work with the Banker to develop a credit release schedule. NRCS will subsequently provide credit schedule oversight to ensure the integrity of the process.*

### **Credits/Functional Assessment**

- 1) Will the mitigation banking program subsidize the costs of credits for USDA participants?

*No, the funding is used to help offset the costs of developing a wetland bank of restored, enhanced, or created wetlands. The costs of purchasing credits is set by the bank and the specific costs of purchasing credits are not subsidized by USDA.*

- 2) How will NRCS handle USDA producer eligibility issues that arise from a bank failure?

*Upon purchasing credits from a bank, the person's eligibility for USDA assistance related to that wetland conversion is secured indefinitely. The Banking Instrument will contain financial assurances. The financial assurances will be used to correct or replace an unsuccessful or failed project. Additionally, all banked land must be protected by a conservation easement.*

- 3) Who sets the cost for the credits?

*The wetland mitigation banker.*

- 4) Is there a framework for how you will determine how many credits a producer has to buy based on their wetland impacts?

*The amount of credits a producer buys depends on the wetland functions, values and acres at the site they plan to convert. An NRCS approved functional assessment procedure will be used to evaluate the wetland that is intended to be impacted and the resulting number of credits needed to offset those impacts.*

- 5) Can existing banks be amended to include agricultural credits or must it be stand alone?

*Yes, existing banks can be modified to meet the needs of this program.*

- 6) Will pre-bank development credits be given and available for sale similar to the Corps?

*Yes, NRCS will work with Banks to develop a credit release schedule that could include advancing a portion of the credits.*

- 7) What is the expectation for the life of a credit, once sold? Is a credit once sold expected to be cared for 1 year, 10 years, perpetuity?

*A wetland bank is protected by financial assurances and an easement, and the replacement functions and values will need to be maintained in perpetuity.*

- 8) If a state does not have a functional assessment tool, can its development be part of the proposal?

*Yes.*

- 9) Would the agricultural mitigation credit need to remain within the same watershed?

*The mitigation credit would need to be sold within the Bank Service Area identified in the Mitigation Banking Instrument.*

- 10) Can credits be purchased from a Minnesota bank to be used in North Dakota but in the same watershed?

NRCS has not established policy on the use of mitigation credits across state lines. The agency is exploring how it may handle this situation.

## Other

- 1) Could this program be used to help establish a nutrient credit trading program?

*No, all program funds are to be used to create wetland mitigation banks for agricultural producers seeking to maintain eligibility for USDA programs.*

- 2) Given that NRCS is not a regulatory agency, what will be the enforcement mechanism to ensure banks are meeting their banking instrument agreements?

*The bank will make use of a recorded easement, and a signed banking instrument to ensure that bank's lands are adequately maintained and protected. Additionally, NRCS will conduct periodic oversight reviews of funded banks.*

- 3) Will this program actually encourage agriculture negative wetland impacts by providing a less expensive alternative?

*This program does not encourage negative impacts to agricultural wetlands, but provides for the offset of those impacts. As established by law, wetland mitigation is an acceptable alternative for producers to achieve their USDA conservation compliance requirements.*

- 4) Please describe the in-lieu fee program for less than 5 ac conversions?

*USDA doesn't have an in-lieu fee program. Congress did establish an In-Lieu Fee provision which applies only to eligibility for Federal crop insurance premium subsidies. The program provides producers a one-time option to mitigate a wetland that is less than five acres by paying NRCS 150 percent of the mitigation cost, as determined by NRCS. This provision is only available to Federal Crop Insurance participants, and is subject to being lost when the participant seeks eligibility for other USDA programs. If the person wishes to gain eligibility for other USDA programs, the original wetland would need to be restored or mitigated.*

- 5) Can the wetlands be used for hay production?

*During the development of a mitigation bank NRCS and the bank sponsor can negotiate how any compatible uses, such as haying, could be part of a long term management plan for a bank site.*

- 6) Can you discuss the standards for banks - performance standards, site protection, long-term management, etc.?

*NRCS will use information developed in the [Federal Guidance for the Establishment, Use and Operation of Mitigation Banks](#) for developing banking instruments which contain provisions for long term management and performance standards. NRCS will also work with the USDA Office of General Council to ensure appropriate legal procedures for the required easements.*

- 7) Will there be additional opportunities for funding either this year or in future years?

*This funding announcement offers the full extent of possible funding provided under the 2014 Farm Bill.*

- 8) Will there be a monitoring period once the bank is built before it is certified. The USACOE has a 5-year monitoring period before a bank is certified.

*Long-term Monitoring will be required by mitigation banks. Please note that the NRCS Mitigation Banking Program is distinctly different from the USACOE. A credit release schedule will be developed by the banker and approved by NRCS rather than using a 5-year certification process.*

- 9) Will the location and documentation associated with these banks be made public?

*Bankers will be required to follow the public notification process found in the [Federal Guidance for the Establishment, Use and Operation of Mitigation Banks](#). Additionally, applicants should make note of the specific reporting requirements that are defined in the Announcement for Program Funding.*

- 10) If the wetland that is being impacted effects an endangered species, will the mitigated wetland bank have to benefit endangered species to offset any the negative impacts?

*In such a case, it is likely that NRCS will undertake a formal consultation with the U.S. Fish and Wildlife Service prior to the development of any bank sites. The bank may be a party to this consultation as well. Any potential impacts to endangered species will need to be mitigated by the bank.*

- 11) When do we expect funding awards to be announced?

*NRCS plans to announce funding awards in summer 2016.*