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August 31, 2023

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Elizabeth M. Webster
Analyst in Emergency Management and Disaster Recovery

Audrey Singer
Specialist in Immigration Policy

SUMMARY

In FY2022, the U.S. Department of Homeland Security (DHS) had a record high number of enforcement encounters at the U.S.-Mexico border: 2.4 million individuals who either arrived at a port of entry and were determined to be inadmissible, or who entered the United States unlawfully between ports of entry. These migrants were either expelled under Title 42 of the *U.S. Code* (public health) or placed into removal proceedings under Title 8 of the *U.S. Code* (immigration). The public health emergency for the Coronavirus Disease 2019 (COVID-19) pandemic ended on May 11, 2023, and expulsions by U.S. Customs and Border Protection (CBP) ceased. Overall encounters by CBP along the southwest border have been lower in FY2023 (through July), relative to the previous fiscal year. New policies on border enforcement following the end of the Title 42 policy are designed to reduce the absolute volume of encounters by U.S. Border Patrol. It is too soon to know the impact that the entire package of policy changes will have over the longer term.

CBP has the discretion to release certain migrants processed for removal under Title 8 instead of detaining them while they await removal (deportation) proceedings in immigration court. Once released, many migrants move to other parts of the country. Other migrants may lack the information or resources necessary to immediately travel, and may seek assistance from local organizations close to the border where they are released or when they arrive at their destination point.

Congress has recognized that local governments and nonprofit organizations often bear the financial and social burden resulting from an influx of migrants. In FY2019, Congress first enacted legislation authorizing the Federal Emergency Management Agency (FEMA) to provide grants to supplement the humanitarian relief efforts of local government and nonprofit organizations assisting migrants encountered by DHS at the southern border, including through the provision of food, shelter, basic medical care, and transportation. These grants to support migrants were provided through FEMA's Emergency Food and Shelter Program (EFSP)-Humanitarian or EFSP-H.

In FY2023, Congress directed CBP and FEMA to establish a new Shelter and Services Program (SSP) to replace the EFSP-H. The EFSP-H continued to operate while FEMA and CBP worked to establish the new SSP. FEMA and CBP have stated that the plan is to phase out the EFSP-H. DHS/FEMA made the first tranche of SSP funding available in June 2023 and made the second tranche of SSP funding available in August 2023.

This report describes current immigration enforcement issues and migration trends at the southern border, as well as recent federal immigration policies. This context provides the backdrop to understanding the circumstances that resulted in the need for increased migrant support, and considerations to address the immigration-related challenges that have arisen since 2019. The focus of this report is the history and function of the EFSP-H and FEMA's support and oversight of the program. Consideration is also given to the funding and implementation of the SSP.

In sum, human migration patterns may shift in direct response to U.S. border policy changes, or political instability or the effects of climate change in migrants' home countries. Fluctuations in the number of migrants arriving to the southern border seeking asylum could increase or decrease the level of support needed by local government and social service organizations. To that end, Congress is likely to face continuous monitoring of the flexibility and sufficiency of federal programs to meet the needs of newly arrived migrants.

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Introduction

U.S. Customs and Border Protection (CBP) is the component within the U.S. Department of Homeland Security (DHS) that is responsible for immigration enforcement at or near the international border, and its functions include the inspection and processing of *aliens*[1] seeking to enter the United States.[2] In FY2022, CBP encountered 2.4 million individuals at the U.S.-Mexico border who lacked valid entry documents or otherwise entered the United States unlawfully—the highest number ever recorded; in the first 10 months of FY2023 nearly 2 million were encountered.[3] This number refers to encounters with foreign nationals (aliens) who entered the United States illegally or who arrived in the United States at a port of entry and were deemed inadmissible and either placed into the removal (deportation) process or expelled from the United States under the Title 42 policy (see, "Southwest Border Context"). DHS has the discretion to release certain migrants instead of detaining them while they await removal proceedings in immigration court.[4] DHS works in coordination with local government and nongovernmental organizations (NGOs) to provide support for shelter, food, transportation, and other basic services to released migrants.[5]

Congress has recognized that the financial and social burden resulting from an influx of migrants is often borne by the local governments and nonprofit organizations that provide social services to assist such newly arrived individuals, to include meeting their needs for shelter, food, basic necessities, and transportation.[6] Thus, on multiple occasions since FY2019, Congress has directed the Federal Emergency Management Agency's (FEMA's) Emergency Food and Shelter Program (EFSP) to provide grants to such entities to support their humanitarian migrant assistance programs (this assistance is referred to as the EFSP-H). In FY2023, Congress authorized the creation of a new Shelter and Services Program (SSP), funded through CBP and managed by

[1] The term *alien* refers to a person who is not a U.S. citizen or a U.S. national, as defined in 8 U.S.C. §1101(a)(3). The definition includes persons both legally and not legally present in the United States. This report uses alien, foreign national, and migrant interchangeably. The term migrant is not defined in statute. In this report, migrant refers to a person who has temporarily or permanently crossed an international border illegally, is no longer residing in their country of origin or habitual residence, and is not recognized as a refugee. Migrants may include asylum seekers.

[2] For more information, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*, by Hillel R. Smith.

[3] U.S. Customs and Border Protection (CBP), "Southwest Land Border Encounters," https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters. For an overview of recent trends in enforcement encounters at the southwest border, see CRS Report R47556, *U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet*, by Audrey Singer and Sylvia L. Bryan.

[4] For additional information on immigration detention, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*, by Hillel R. Smith.

[5] The Federal Emergency Management Agency's (FEMA's) Emergency Food and Shelter Program (EFSP) funds a National Board, which awards funding to local government, nonprofit, and faith-based organizations providing such assistance to migrants for humanitarian relief. See FEMA's "Emergency Food and Shelter Program" webpage, available at https://www.fema.gov/grants/emergency-food-and-shelter-program. Congressional Research Service (CRS) correspondence with U.S. Customs and Border Protection (CBP), August 3, 2021.

[6] For example, as Senator Kyrsten Sinema said in her opening statement during a 2021 congressional hearing on the southwest border as justification for her working to provide EFSP-H funding, "[n]on-government organizations play a critically important role in managing the ongoing influx. Their efforts to provide migrants with basic assistance, including food, shelter, and travel aid, is a key link in the ongoing effort to ensure migrants are treated fairly and our communities can successfully manage this crisis. Without these NGO's, Arizona, our border States, our nations, and the migrants themselves would be worse off" (U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Governmental Operations and Border Management, *The Non-Governmental Organization Perspective on the Southwest Border*, 117th Cong., 1st sess., April 28, 2021, S.Hrg. 117-37 (Washington: GPO, 2021), p. 2, https://www.govinfo.gov/content/pkg/CHRG-117shrg45044/pdf/CHRG-117shrg45044.pdf (hereinafter HSGAC, *NGO Perspective on the Border*)).

FEMA, to accomplish the same ends. FEMA and CBP stated that they are phasing out the EFSP-H.[7] DHS/FEMA made SSP funding available through two funding tranches in FY2023.[8]

This report begins with an overview of immigration enforcement policies and trends at the U.S-Mexico border, focusing on the period from FY2019 through July of FY2023. The focus of this report is on FEMA's role at the border supporting and overseeing the EFSP, and the humanitarian relief FEMA provides to migrants through organizations that are eligible for EFSP-H funds. It also discusses the transition to the SSP.

This report reflects a snapshot in time. As this is an evolving issue, immigration policies, programs implemented to provide support to migrants, challenges, and considerations are subject to change.[9]

Federal Entities (other than FEMA) with a Role at the Southern Border

DHS Components:

- **Customs and Border Protection (CBP)**: CBP facilitates the flow of lawful travelers and trade, while providing security against inadmissible persons and illicit goods. CBP is responsible for border security at land, sea, and air ports of entry (POEs), and also between POEs at U.S. land borders. At POEs, the Office of Field Operations (OFO) provides inspections of travelers and determines those who are admissible and those who are inadmissible. Between POEs, the U.S. Border Patrol (USBP) is responsible for security against unauthorized entries of persons and contraband. Air and Marine Operations (AMO) agents patrol the border from the air and sea.
- **Immigration and Customs Enforcement (ICE)**: ICE is responsible for immigration enforcement within the interior of the United States; it also plays a role in enforcement at the border. ICE's Enforcement and Removal Operations (ERO) is primarily responsible for detention, alternatives to detention, and removal operations, including the removal of individuals who have been encountered at the border and referred by CBP to ICE.
- **U.S. Citizenship and Immigration Services (USCIS)**: USCIS adjudicates immigration applications, including, refugee, humanitarian parole, and certain asylum applications. At the border, USCIS asylum officers conduct *credible fear* interviews of migrants placed into expedited removal. If the asylum officer determines the migrant has a credible fear, the individual is moved out of expedited removal and placed into formal removal in immigration courts (see DOJ's Executive Office for Immigration Review (EOIR), below).

Other Federal Agencies:

- **Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR)**: ORR's Unaccompanied Alien Children Program provides for custody and care of unaccompanied minors who have been encountered by CBP, ICE, or other federal agencies and referred to ORR. CBP processes and temporarily holds unaccompanied children when they are encountered at U.S. borders. ICE physically transports unaccompanied children referred to ORR from CBP to ORR custody. ORR is responsible for sheltering unaccompanied children while they await immigration hearings.

[7] FEMA, United Way Worldwide, "Emergency Food and Shelter Program Humanitarian Relief: Applicant Webinar March 2023," last accessed March 27, 2023, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Webinar%20Presentation.pdf (see slide 4 of the PDF, "2023 EFSP-H Funding Amounts"). For additional information on the transition to the Shelter and Services Program (SSP), see CRS Insight IN12132, *FEMA's Emergency Food and Shelter Program-Humanitarian Relief (EFSP-H) and the New Shelter and Services Program (SSP),* by Elizabeth M. Webster.

[8] Department of Homeland Security (DHS), "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

[9] For a broad overview of policy changes, see DHS, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration*, May 1, 2023, https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration.

- **Department of Justice (DOJ), Executive Office for Immigration Review (EOIR)**: EOIR administers the immigration court system and adjudicates DHS cases where a foreign national has violated immigration laws. EOIR decides whether the individual is removable, and if so, whether they may qualify for relief from removal.

Southwest Border Context

The public health emergency declared by the U.S. Department of Health and Human Services (HHS) in response to the Coronavirus Disease 2019 (COVID-19) pandemic temporarily changed land border policies.[10] In general, individuals encountered during an enforcement action by CBP are inspected and processed under Title 8 of the *U.S. Code*, which confers DHS with statutory authority to place inadmissible or unlawfully present foreign nationals into removal proceedings, but allows those individuals to apply for asylum or other potential forms of relief from removal for which they may be eligible.[11] However, during the public health emergency, the Centers for Disease Control and Prevention (CDC) invoked authority under Title 42 of the *U.S. Code* to limit entry of certain foreign nationals, including those intending to apply for asylum and other humanitarian protections, to reduce the risk of the spread of COVID-19.[12] CBP implemented the policy as a public health measure, which allowed them to expel certain migrants encountered at land borders back to the country from which they entered the United States,[13] thereby limiting time spent in congregate settings.[14] CBP made exceptions to Title 42 expulsions for certain individuals considered vulnerable (e.g., age- or health-related conditions); those aliens[15] were placed into Title 8 removal proceedings.[16]

Between March 21, 2020, and May 11, 2023, both Title 42 and Title 8 were enforced at the border. At the end of the public health emergency on May 11, 2023, expulsions under Title 42

[10] U.S. Department of Health and Human Services (HHS), "COVID-19 Public Health Emergency (PHE)," press release, March 2, 2023, https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html.

[11] 8 U.S.C. §§1158(a)(1), 1182(a), 1226(a), 1227(a), 1229a(a), 1229a(c)(4); 8 C.F.R. §1240.11.

[12] The Centers for Disease Control and Prevention (CDC) reassessed and extended the initial March 2020 order several times. The August 5, 2021, order superseded prior Title 42 orders. See "Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists," 86 *Federal Register* 42829, 42830, August 5, 2021 ("CDC has determined that an Order under 42 U.S.C. § 265 remains necessary to protect U.S. citizens, U.S. nationals, lawful permanent residents, personnel and noncitizens at the ports of entry [POEs] and U.S. Border Patrol [USBP] stations, and destination communities in the United States during the COVID-19 public health emergency" (hereinafter, "CDC Order August 2021")).

[13] Historically the vast majority of CBP enforcement encounters at land borders have occurred at the U.S.-Mexico border; in FY2022, more than 95% of encounters occurred at the southwest border, while less than 5% occurred at the U.S.-Canada border. CBP, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

[14] See "CDC Order August 2021." Mexico had agreed to take back nationals from only certain countries; those agreements changed over time. At the conclusion of the enforcement of Title 42 at the border, that list included nationals from Cuba, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, and Venezuela. By agreement with Canada, DHS also expelled certain migrants back to Canada on the northern border.

[15] Foreign national (*alien*) refers to a person who is not a U.S. citizen or a U.S. national, as defined in 8 U.S.C. §1101(a)(3). The definition includes persons both legally and not legally present in the United States. This report uses foreign national, alien, and migrant interchangeably.

[16] See DHS, *Privacy Impact Assessment for CBP One*, DHS Reference No. DHS/CBP/PIA-068, February 19, 2021, https://www.dhs.gov/sites/default/files/2023-05/privacy-pia-cbp068-cbpmobileapplication-may2023.pdf (hereinafter, "CBP Privacy Impact Assessment for CBP One"). See Appendix A of the "CBP Privacy Impact Assessment for CBP One" for an updated section regarding the use of the CBP One app for information on processing of individuals during the period that the Title 42 order was in effect and after it ended. The list of vulnerability criteria are as follows: physical or mental illness; disability; pregnancy; no access to safe housing or shelter in Mexico; under the age of 21; over the age of 70; or have been threatened or harmed while in Mexico (p. 18).

concluded. As of that date, migrants are once again exclusively processed under Title 8 procedures.

CBP's enforcement actions at the border require initial vetting of migrants, including health screenings and background checks for information that could lead to detention by U.S. Immigration and Customs Enforcement (ICE). This takes place within the constraints of existing facility capacity, legal restrictions on holding certain migrants, including children, and other limited resources, such as personnel.[17]

After CBP has processed encountered migrants, ICE is responsible for detention and removal operations. Immigration law requires certain migrants to be detained by ICE.[18] In other cases, DHS has the discretion to release certain migrants, who are considered to be a low flight risk, from their custody into the United States on a case-by-case basis to await their immigration court proceedings. In addition, when migrants are removed, they must be returned to their home country. In cases where the home country is unlikely to accept such returns, such migrants are released into the United States. Certain released migrants may be monitored under ICE's Alternatives to Detention (ATD) programs.[19]

Starting in FY2021, amid a historic increase in enforcement encounters at the southwest border, several factors led DHS to release more encountered migrants into the United States than had been typical.[20]

- First among these factors was the sheer volume of encounters; in FY2022, there were 2.4 million encounters and in FY2023 (through July 2023) there have been nearly 2 million. During times when the number of migrants exceeds available resources (e.g., holding facilities), CBP may choose to release certain migrants after conducting brief investigations, including collection of biometrics and conducting criminal and immigration background checks.[21] Further, CBP's holding capacity for encountered migrants is limited, and during the pandemic CBP initiated restrictions related to holding migrants in custody, in order to reduce the spread of COVID-19.[22] The majority of migrants disperse from the border and travel by bus or plane to other areas typically away from their entry point. Those areas bear the responsibility for providing assistance to new arrivals, often straining local resources.
- Second, the demographic composition of encounters with migrants had been shifting since the late 2010s from one primarily composed of single adults to

[17] For example, U.S. policy restricts how long DHS can detain families with children due to the Flores Settlement Agreement. See CRS Report R43599, *Unaccompanied Alien Children: An Overview*, by William A. Kandel.

[18] For more information on migrant detention, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*, by Hillel R. Smith.

[19] For additional information on U.S. Immigration and Customs Enforcement's (ICE's) Alternatives to Detention (ATD) programs, see CRS Report R45804, *Immigration: Alternatives to Detention (ATD) Programs*, by Audrey Singer.

[20] In FY2022, CBP encountered 2.4 million individuals at the U.S.-Mexico border who lacked valid entry documents or otherwise entered the United States unlawfully—the highest number ever recorded (CBP, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters). For a broad overview of recent southwest border enforcement encounter trends, see "CRS Southwest Border Encounters Factsheet."

[21] See U.S. Government Accountability Office (GAO), *Southwest Border: Challenges and Efforts Implementing New Processes for Noncitizen Families*, GAO-22-105456, September 2022.

[22] DHS, "Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42," press release, December 13, 2022, https://www.dhs.gov/sites/default/files/2022-12/22_1213_plcy_update-sw-border-security-preparedness.pdf.

greater numbers of family members traveling together, as well as more unaccompanied children. After an overall dip in migration in 2020 (associated with the COVID-19 pandemic), this trend continued. Recently, released migrants have typically been members of family units or others with particular vulnerabilities (e.g., health- or age-related vulnerabilities).[23]

- Third, increases in the number of encounters of migrants from countries of origin other than Mexico, El Salvador, Guatemala, and Honduras has presented more challenging removal processes.

The significant influx of migrants since 2019 has necessitated support from both federal and sub-federal organizations to meet migrants' needs, including for food, shelter, and supportive services, upon arriving in the United States.

References to "Southwest Border" and "Southern Border"

This report references both the "southwest border" and "southern border." These terms are *not* used interchangeably.

The distinction is generally included in the program guidance for each of the EFSP-H funding phases; the guidance varies by phase (each EFSP appropriation has a corresponding program phase). The enacted language (see **Table 2** for the EFSP-H legislative text) and EFSP-H Notice of Funding Opportunities (NOFOs) explain that the purpose of the funding is to provide humanitarian relief to migrants encountered by DHS. However, the EFSP-H NOFOs do not all specify that this means migrants at the "southwest border" or "southern border."

The EFSP-H guidance for some phases referred to the "southwest border" and were less expansive (i.e., they did not include the maritime borders). The EFSP-H guidance for FY2023, however, specifically refers to the "southern border" and defines the term as being inclusive of both the land and maritime borders. (See **Appendix C** for the text from the EFSP-H NOFOs and program guidance for each EFSP-H funding phase.) Additionally, the SSP focuses on migrants encountered and released by DHS, defined in the SSP NOFO as "an apprehension by a U.S. Border Patrol (Title 8) Agent or a determination of inadmissibility by a CBP Officer at a Port of Entry (Title 8)."[24]

Thus, for purposes of this report, unless otherwise stated or defined,

- references to the *southwest border* are referring to the land border between the United States and Mexico (i.e., the U.S.-Mexico border);
- references to the *southern border* are inclusive of the southwest land border between the United States and Mexico, as well as the maritime borders of Texas, Louisiana, Mississippi, Alabama, and Florida.

The Roles of Government and Nonprofit Organizations in Supporting Released Migrants

This section describes FEMA's role at the southern border and assistance provided by other nonfederal entities to support released migrants.

FEMA's Role at the Southern Border

FEMA's role is not limited only to disaster response. The National Response Framework (NRF), a planning document that identifies the roles and responsibilities of federal agencies and departments, generally guides domestic incident response.[25] The NRF may be applied during a

[23] See note 16 for the list of vulnerability criteria.

[24] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99.

[25] President George W. Bush, "Homeland Security Presidential Directive/HSPD–5—Management of Domestic Incidents," February 28, 2003, https://www.govinfo.gov/content/pkg/PPP-2003-book1/pdf/PPP-2003-book1-doc-
(continued...)

non-Stafford Act response—"When directed by the President or requested by an agency head, FEMA's incident management capabilities may be used."[26]

Emergencies, Major Disasters, and Movements of People

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.) authorizes the President to declare an incident an "emergency" or a "major disaster."[27] Stafford Act declarations are typically, but not exclusively, authorized for natural hazards that result in tangible, physical damages, such as hurricanes. Notably, two Presidents—Jimmy Carter and George W. Bush—have issued Stafford Act emergency declarations specifically for the costs of hosting migrants and disaster evacuees. In 1980, President Carter declared an emergency in the State of Florida "due to the large numbers of undocumented aliens" (the incident is known as the "Mariel Boatlift—Cuban Refugees"). In 2005, President George W. Bush issued emergency declarations for 44 states and the District of Columbia following Hurricane Katrina to reimburse host states for up to 100% of the costs of transporting, sheltering, schooling, and feeding survivors.[28]

At the time of these declarations, some Members of Congress expressed concern. The Stafford Act's current "major disaster" definition reflects changes made in response to these instances (i.e., the definition was narrowed to include only "natural" catastrophes, and fires, floods, or explosions, regardless of cause); the "emergency" definition, however, remained broad.[29]

In April 2022, Secretary Mayorkas issued a memorandum detailing DHS's "Plan for Southwest Border Security and Preparedness," comprised of six "pillars" describing the actions DHS and its component agencies were taking to prepare for and manage an increased number of migrant encounters.[30] FEMA has a direct role supporting DHS "Border Security Pillar 4," which addresses

> bolstering the capacity of non-governmental organizations (NGOs) to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration removal proceedings. And ... coordination with and support for state, local, and community leaders to help mitigate increased impacts to their communities.[31]

FEMA has been funding grants to the local government and nonprofit organizations providing food, shelter, and supportive services to migrants crossing the southwest border and encountered by DHS through its Emergency Food and Shelter Program—specifically the funding for

pg229.pdf; FEMA, "National Incident Management System," https://www.fema.gov/emergency-managers/nims; DHS, *National Response Framework*, 4th ed., October 28, 2019, https://www.fema.gov/sites/default/files/2020-04/NRF_FINALApproved_2011028.pdf (hereinafter DHS, *NRF*).

[26] DHS, *NRF*, p. 47.

[27] The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.), defines *emergencies* and *major disasters* (42 U.S.C. §5122(1) and (2), respectively). Stafford Act declarations of emergency and major disaster generally respond to rapid-onset events that cause a measurable amount of damage in a particular geographic area over a defined period of time, such as a hurricane or wildfire. However, some incidents that, arguably, may not meet the Stafford Act emergency or major disaster definitions have received Stafford Act declarations, such as the Coronavirus Disease 2019 (COVID-19) pandemic (see FEMA, "Declared Disasters," https://www.fema.gov/disaster/declarations).

[28] See FEMA, "Florida Undocumented Aliens from Cuba 'Mariel Boatlift,'" EM-3079-FL, https://www.fema.gov/disaster/3079; GAO, *Requests for Federal Disaster Assistance Need Better Evaluation*, CED-82-4, December 7, 1981, https://www.gao.gov/products/ced-82-4; see also DHS/FEMA, "Amendment to Notices of Emergency Declarations," 71 *Federal Register* 60554, October 13, 2006, https://www.govinfo.gov/content/pkg/FR-2006-10-13/pdf/E6-17027.pdf (relating to the emergency declarations for the influx of evacuees from areas affected by Hurricane Katrina).

[29] For additional information on presidential Stafford Act declarations supporting migrants and evacuees, see CRS Insight IN12163, *Potential Stafford Act Assistance for Migration Activity*, by Erica A. Lee and Elizabeth M. Webster.

[30] Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, "DHS Plan for Southwest Border Security and Preparedness," memorandum, April 26, 2022, https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf (hereinafter Memo from DHS Secretary Mayorkas, "DHS Plan for Southwest Border").

[31] Memo from DHS Secretary Mayorkas, "DHS Plan for Southwest Border," pp. 2-3.

humanitarian relief (EFSP-H).[32] The EFSP is an existing grant program with a 40-year history of funding local government and nonprofit organizations.[33] EFSP-H is the only DHS/FEMA grant program that has provided funding to nonprofits assisting migrants released from DHS custody.[34]

Congress has appropriated funding to FEMA to implement the EFSP-H several times since 2019. Notably, unlike some forms of FEMA assistance, the provision of EFSP funding does not require a presidential emergency or major disaster declaration.[35]

Other Assistance Available to Support Migrants

Many sub-federal entities, including state, local, tribal, and territorial governments, and private nonprofit organizations provide assistance to migrants. In some cases, such assistance may be federally funded (e.g., through the EFSP-H, which is described in the following section). Funding to support migrants may also include other sources, such as private donations. Migrants may also be eligible for certain federal programs, but eligibility varies by program.[36]

FEMA EFSP and SSP for Humanitarian Relief

Federal support for migrants is limited, and the provision of food, shelter, and other supportive social services is not generally considered a federal responsibility.[37] Still, a federal program has been used to fund these services for some migrants. Congress has directed FEMA to supplement the humanitarian relief efforts of local governmental, nonprofit, and faith-based organizations providing food, shelter, and supportive services to migrants encountered by DHS at the southern (and southwest) border (see above shaded text box on "References to 'Southwest Border' and 'Southern Border'"). FEMA has done so through a program derivative: EFSP-Humanitarian, or "EFSP-H."

[32] FEMA's role at the border, as described by FEMA Administrator Deanne Criswell, is a coordinating role with regard to migrant crossings, and is in support of CBP and ICE (U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Recovery, *Investing in the Future: A Review of the Fiscal Year 2023 Budget Request for the Federal Emergency Management Agency*, 117th Cong., 2nd sess., June 14, 2022, Serial No. 117-60 (Washington: GPO, 2022), pp. 15-16, https://www.govinfo.gov/content/pkg/CHRG-117hhrg48678/pdf/CHRG-117hhrg48678.pdf (hereinafter House Homeland, *Investing in the Future*) (see the questions from Ranking Member Cammack and responses from FEMA Administrator Deanne Criswell); see also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *DHS Actions to Address Unaccompanied Minors at the Southern Border*, 117th Cong., 1st sess., May 13, 2021, S. Hrg. 117-426 (Washington: GPO, 2022), pp. 7, 54, and 66. A brief overview of the Emergency Food and Shelter Program (EFSP) can be found in CRS In Focus IF12026, *FEMA's Emergency Food and Shelter Program (EFSP)*, by Elizabeth M. Webster.

[33] National Board, "About the Emergency Food and Shelter Program," last visited December 14, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/index.cfm?template=about.cfm.

[34] See GAO, *Southwest Border: DHS Coordinates with and Funds Nonprofits Serving Noncitizens: Report to the Chairman, Committee on Homeland Security, House of Representatives*, GAO-23-106147, April 19, 2023, p. 1, https://www.gao.gov/assets/gao-23-106147.pdf (hereinafter GAO, *Southwest Border: DHS Coordinates with and Funds Nonprofits*).

[35] National Board, *Phase 35 Responsibilities and Requirements Manual*, p. 8, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/EFSPManual/Phase_35_Manual.pdf (hereinafter National Board, *Phase 35 Manual*).

[36] Additional information on federal programs to support migrants can be found in CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*, coordinated by Abigail F. Kolker.

[37] Illustrating this, during President Donald J. Trump's Administration, the Administration proposed eliminating the EFSP, including "because emergency food and shelter is primarily a State and local responsibility" (DHS, *Federal Emergency Management Agency Budget Overview: Fiscal Year 2018 Congressional Justification*, p. FEMA-FA-13, https://www.dhs.gov/sites/default/files/publications/FEMA%20FY18%20Budget.pdf).

Background

The EFSP was established in 1983 through the Temporary Emergency Food Assistance Act of 1983 (Title I of P.L. 98-8)—referred to as the "Job Stimulus Bill"[38] and later authorized under the Stewart B. McKinney Homeless Assistance Act of 1987 (Title III of P.L. 100-77), renamed the McKinney-Vento Homeless Assistance Act in 2000.[39] The EFSP is codified at 42 U.S.C. §§11331 et seq.

In 2019, Congress first appropriated funding to the EFSP specifically for aiding migrants. While no funding was provided to the EFSP for this specific purpose in FY2020, Congress has authorized FEMA to supplement the humanitarian relief efforts of local nonprofit, faith-based, and governmental organizations aiding migrants encountered by DHS from FY2021 through FY2023.

In this period, the EFSP has effectively functioned on two tracks:

- **Track 1: EFSP**, which funds the primary mission of assisting individuals and families experiencing or at risk of experiencing homelessness and/or hunger, regardless of their immigration status; and
- **Track 2: EFSP-H**, which provides funding to assist migrants encountered by DHS at the southern border.[40]

The EFSP-H has operated with funding provided by the enacted appropriations language, which has leveraged the existing EFSP for its structure, guidance, and network of public-private partnerships, and has been administered in accordance with Title III of the McKinney-Vento Homeless Assistance Act.

The EFSP is typically funded by annual appropriations provided in the DHS Appropriations Act, as has been the case since FY1995.[41] It has also periodically been funded through supplemental appropriations. On several occasions beginning in FY2019—corresponding with the significant influx of migrants—Congress has appropriated funding to supplement humanitarian relief efforts to provide food, shelter, and supportive services to migrants encountered by DHS. **Table 1** lists the funding made available for the SSP, EFSP-H, and EFSP for FY2017-FY2023 by fiscal year, including funding provided through the annual appropriation process (numbered Phases) and supplemental funding (acronym named Phases). It also links to the funding measures, and notes the amounts of funding allocated in millions pursuant to the Notices of Funding Opportunity (NOFOs) released by DHS/FEMA (as of the date of publication).

[38] DHS/FEMA credits the establishment of the EFSP to Congress's reaction to "demands from charitable organizations across the country to help supplement the local food and shelter providers dealing with increasing demand for their services" (DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program—Humanitarian Relief," NOFO Number: DHS-23-DAD-024-00-03, p. 6).

[39] The McKinney-Vento Homeless Assistance Act (P.L. 106-400) renamed the act. The act has also been amended and reauthorized, including through the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100-628).

[40] The Emergency Food and Shelter Program for humanitarian relief (EFSP-H) may also be referred to as the EFSP-HR program.

[41] 42 U.S.C. §11352 addressed the authorization of EFSP appropriations from 1987 through 1994, via a series of amendments. However, since FY1995, the program has been authorized through the de facto authorization provided by appropriations being approved by Congress for EFSP's particular activities.

Table 1. EFSP and SSP Funding

FY2017-FY2023

Fiscal Year	Allocation Phase/ Funding Opportunity	Funding Measure	Announced Funding Allocation (millions)[a]
FY2023	SSP	P.L. 117-328 (Div. F, Title II)	$364[b]
FY2023	Phase HR23	P.L. 117-328 (Div. F, Title II)	$350[c]
FY2023	Phase 41	P.L. 117-328 (Div. F, Title III)	$130
FY2023	Phase HR FY23 CR[d]	P.L. 117-180 (Div. A; referencing Div. F of P.L. 117-103); and P.L. 117-328 (Div. F, Title II)[e]	$75
FY2022	Phase 40	P.L. 117-103 (Div. F, Title III)	$130
FY2022	Phase HR22	P.L. 117-103 (Div. F, Title V)	$150
FY2021	Phase ARPA-R[f]	P.L. 117-2 (Title IV)	$400
FY2021	Phase ARPA[g]	P.L. 117-2 (Title IV)	$110
FY2021	Phase 39	P.L. 116-260 (Div. F, Title III)	$130
FY2020	Phase CARES	P.L. 116-136 (Div. B, Title VI)	$200
FY2020	Phase 38	P.L. 116-93 (Div. D, Title III)	$125
FY2019	Phase SAHA	P.L. 116-26 (Title III)	$30
FY2019	Phase 37	P.L. 116-6 (Div. A, Title III)	$120
FY2018	Phase 36	P.L. 115-141 (Div. F, Title III)	$120
FY2017	Phase 35	P.L. 115-31 (Div. F, Title III)	$120

Sources: CRS Appropriations Status Table; National Board website.

Notes: Acronyms used in this table are as follows—SSP: Shelter and Services Program; HR23: Humanitarian Relief for FY2023; HR FY23 CR: FY2023 EFSP-H funding made available through the continuing resolution (CR); HR22: Humanitarian Relief for FY2022; ARPA-R: American Rescue Plan Act of 2021-Regular funding made available for the EFSP; ARPA: American Rescue Plan Act of 2021 funding made available for the EFSP-H; CARES: Coronavirus Aid, Relief, and Economic Security Act (or CARES Act); and SAHA: Supplemental Appropriations for Humanitarian Assistance.

a. "Announced Funding Allocations" refers to the total amount of funding made available, in millions, through a Notice of Funding Opportunity (NOFO) issued by the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) for the specified funding opportunity, pursuant to the specified funding measure.

b. A total of $363.8 million is being made available for the SSP in FY2023 in two tranches: (1) the first tranche made available $291 million; (2) the second tranche made available $77.3 million (DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification). See also **Figure 1**.

c. The DHS Appropriations Act of 2023 made up to $785 million available for FEMA to implement the EFSP-H while the SSP was established. A total of $425 million was used for this purpose (one funding phase—referred to as Phase HR23—provided $350 million, and another—referred to herein as HR FY23 CR—provided $75 million (see table note e)). See also **Figure 1**.

d. The $75 million is referred to herein as "Phase HR FY23 CR" to avoid confusion with the other funding that was subsequently provided in FY2023 through P.L. 117-328; however, in the program guidance, this phase is referred to as Phase HR23. See also **Figure 1**.

e. Div. F, Title II of P.L. 117-328 is the permanent source of budget authority for Phase HR FY23 CR.

f. Phase ARPA-R funding was appropriated for the EFSP (i.e., not humanitarian relief), designated by the "-R" (for regular).

g. Phase ARPA funding was appropriated to provide "humanitarian relief to families and individuals encountered by [DHS]."

The EFSP-H directive language from FY2019-FY2023 can be found in **Table 2**, which lists the authorizing bills and EFSP-H phases, and excerpted text.

Table 2. EFSP-H Enacted Language

Authorization/Phase	Text
Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (Title III of P.L. 116-26) Phase SAHA	For an additional amount for "Federal Assistance," $30,000,000, to remain available until September 30, 2020, for the emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11331 et seq.) for the purposes of providing assistance to aliens released from the custody of the Department of Homeland Security: *Provided*, That notwithstanding sections 315 and 316(b) of such Act, funds made available under this section shall be disbursed by the Emergency Food and Shelter Program National Board not later than 30 days after the date on which such funds become available: *Provided further*, That the Emergency Food and Shelter Program National Board shall distribute such funds only to jurisdictions or local recipient organizations serving communities that have experienced a significant influx of such aliens: *Provided further*, That such funds may be used to reimburse such jurisdictions or local recipient organizations for costs incurred in providing services to such aliens on or after January 1, 2019: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.
Section 4008 of the American Rescue Plan Act of 2021 (Title IV of P.L. 117-2) Phase ARPA	In addition to amounts otherwise made available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $110,000,000, to remain available until September 30, 2025, for the emergency food and shelter program for the purposes of providing humanitarian relief to families and individuals encountered by the Department of Homeland Security.
Section 543(a)(3) of the Department of Homeland Security Appropriations Act, 2022 (Div. F of P.L. 117-103) Phase HR22	SEC. 543. (a) For an additional amount for the accounts, in the amounts, and for the purposes specified, in addition to amounts otherwise made available for such purposes— (3) "Federal Emergency Management Agency—Federal Assistance," $150,000,000, to be available for the emergency food and shelter program for the purposes of providing shelter and other services to families and individuals encountered by the Department of Homeland Security.

Authorization/Phase	Text
Section 211 of the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328)	That $800,000,000 shall be transferred to "Federal Emergency Management Agency—Federal Assistance" to support sheltering and related activities provided by non-Federal entities, including facility improvements and construction, in support of relieving overcrowding in short-term holding facilities of U.S. Customs and Border Protection, of which not to exceed $11,200,000 shall be for the administrative costs of the Federal Emergency Management Agency....
Phase HR23 and Phase HR FY23 CR	SEC. 211. (a) Of the amounts transferred from "U.S. Customs and Border Protection—Operations and Support" to "Federal Emergency Management Agency—Federal Assistance" in this Act, up to $785,000,000 may be made available for the emergency food and shelter program under title II of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11331) for the purposes of providing shelter and other services to families and individuals encountered by the Department of Homeland Security. (b) Notwithstanding sections 313(a) and 316 of such Act, up to $50,000,000 of any amounts made available to the emergency food and shelter program under subsection (a) may be used for the construction and expansion of shelter facilities. (c) Notwithstanding section 311 of such Act, funds made available for the purposes described in subsection (b) may be awarded to the Emergency Food and Shelter Program National Board up to 6 months after the date of enactment of this Act. (d) Notwithstanding sections 315 and 316(b) of such Act, funds made available under subsection (b) may be disbursed by the Emergency Food and Shelter Program National Board up to 24 months after the date on which such funds become available. (e) Amounts made available under subsection (a) may be available for the reimbursement of costs incurred after June 30, 2022. (f) The real property disposition requirements at 2 CFR 200.311(c) shall not apply to grants funded by the amounts transferred from "U.S. Customs and Border Protection—Operations and Support" to "Federal Emergency Management Agency—Federal Assistance" in this Act.

Sources: CRS Appropriations Status Table, and the Emergency Food and Shelter National Board Program website.

EFSP-H Funding History

In early 2019, concerns related to overcrowded shelters and the conditions experienced by migrants, including children, reinvigorated the conversation about providing support to the federal and sub-federal entities supporting migrants at the southwest border.[42] The first funding measure that appropriated specifically-targeted EFSP-H funding was the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (Title III, P.L. 116-26), enacted on July 1, 2019. The funding for EFSP Humanitarian Relief was one component of the bill, which sought to address numerous humanitarian concerns related to the surge of migrants.[43]

Senator Richard Shelby sponsored S. 1900, introduced on June 19, 2019, which included $30 million for EFSP Humanitarian Relief. Representative Nita Lowey sponsored H.R. 3401,

[42] On January 8, 2019, President Trump addressed the nation from the Oval Office to discuss the "humanitarian and security crisis" at the southwest border. The White House, "President Donald J. Trump's Address to the Nation on the Crisis at the Border," remarks, January 8, 2019, https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trumps-address-nation-crisis-border/; see also, DHS, "Humanitarian and Security Crisis at Southern Border Reaches 'Breaking Point,'" archived release, March 6, 2019, https://www.dhs.gov/news/2019/03/06/humanitarian-and-security-crisis-southern-border-reaches-breaking-point.

[43] CQ Roll Call Staff, "Trump Signs $4.59B Border Aid Package," *CQ News*, July 1, 2019.

introduced on June 21, 2019, which included $60 million for EFSP Humanitarian Relief when introduced. The Senate passed H.R. 3401, with amendments, including the reduction in the funding amount appropriated for the EFSP-H to $30 million, and the House took up the Senate-passed bill.[44] There was bipartisan support for the bill.[45]

Subsequently, Congress authorized FEMA to provide assistance through the EFSP-H in FY2021, FY2022, and FY2023. The funding level appropriated for EFSP Humanitarian Relief has fluctuated—ranging from $30 million in FY2019, to $110 million in FY2021, to $150 million in FY2022. For FY2023, the Biden Administration initially proposed $24 million for the EFSP-H,[46] but ultimately Congress provided $800 million to establish the new Shelter and Services Program (SSP) grant program, and authorized up to $785 million of that $800 million to be used to provide shelter and supportive services to migrants encountered by DHS through the EFSP-H while the SSP was established.[47]

Figure 1 depicts the funding made available for the EFSP-H and SSP, including funding that FEMA has awarded to the National Board for implementation of the EFSP-H, and the funding that has been allocated for the SSP in FY2023.

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[44] Sen. Richard Shelby, "SA 901," Amendments Proposed to H.R. 3401, *Congressional Record*, vol. 165, part 108 (June 26, 2019), p. S4581; Rep. Diana DeGette (Speaker pro tempore), "Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019," House Debate on H.R. 3401, *Congressional Record*, vol. 165, part 107 (June 25, 2019), pp. H5147, H5151, H5153; Engrossed Amendment Senate No: 116-26 (June 26, 2019); CQ Roll Call Staff, "Trump Signs $4.59B Border Aid Package," *CQ News*, July 1, 2019.

[45] For example, Senators John Cornyn and Dianne Feinstein separately wrote to the Appropriations Committee requesting that EFSP-H relief be included in the border supplemental (Letter from Senator John Cornyn, to Senator Richard Shelby, Chairman, Senate Committee on Appropriations et al., June 18, 2019, https://www.cornyn.senate.gov/sites/default/files/SJC%20Letter%20to%20SAC%206.18.19%20Border%20Supp_0.pdf; Letter from Senator Dianne Feinstein, to Senator Richard Shelby, Chairman, and Senator Patrick Leahy, Vice Chairman, Senate Committee on Appropriations, June 12, 2019, https://www.feinstein.senate.gov/public/_cache/files/7/5/7519ca59-0909-4c7f-8ea5-fc5783404de9/D459B14337529B6A136032B69B5D592B.feinstein-letter-re-fy20-border-supp-local-govt-06122019.pdf). The day the Senate bill was introduced, then-Senate Majority Leader Mitch McConnell indicated the supplemental legislation's likely passage, reportedly stating, "We're talking about money for non-controversial purposes, mostly humanitarian efforts" (Tanvi Misra, "Compromise Border Spending Bill Goes to Senate Floor," *CQ News*, June 19, 2019).

[46] DHS, *FY 2023 Budget in Brief*, p. 72, https://www.dhs.gov/sites/default/files/2022-03/22-%201835%20-%20FY%202023%20Budget%20in%20Brief%20FINAL%20with%20Cover_Remediated.pdf; DHS, *Federal Emergency Management Agency Budget Overview: Fiscal Year 2023 Congressional Justification*, pp. FEMA-FA-15, https://www.dhs.gov/sites/default/files/2022-03/Federal%20Emergency%20Management%20Agency_Remediated.pdf (hereinafter DHS, *FEMA FY2023 Congressional Budget Justification*). Most recently, the Biden Administration's initial request for FY2023 EFSP-H funding was for $24 million, stating as justification that "[t]he EFSP provides critical resources to communities providing humanitarian relief to thousands of families and individuals encountered by DHS at our nations [sic] southern border. Communities in California, Arizona, New Mexico, and Texas, and as far reaching as Portland, Maine, are providing food, shelter, transportation, COVID-19 testing, and care associated with recommended quarantining and isolation of this population and incurring the cost of this relief.

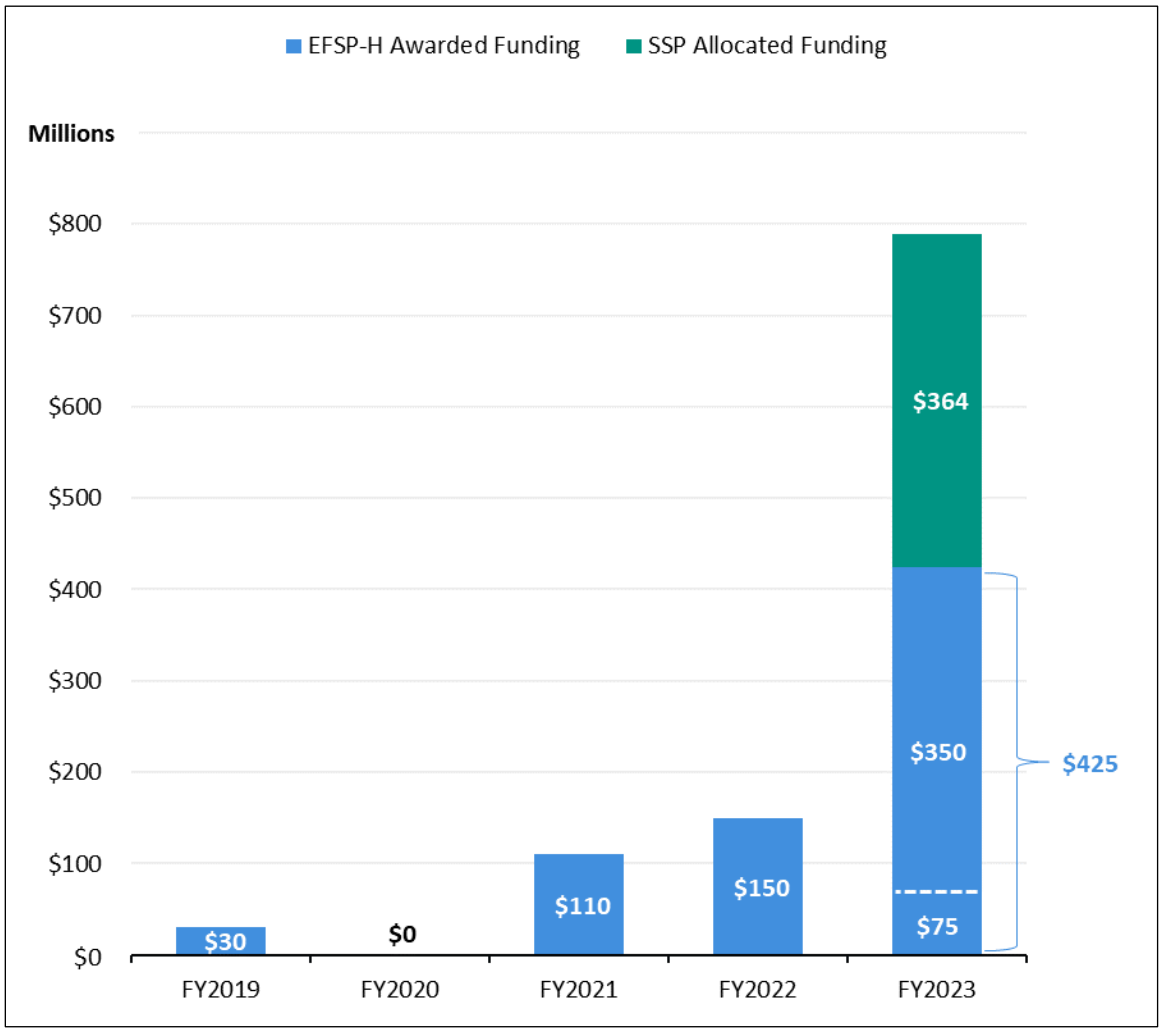
Since 2019, services to migrants provided by NGOs and local jurisdictions have significantly increased and in many cases quadrupled. ...

In addition, as migrant numbers increase, there is also a rise in agencies outside of the immediate border, in localities such as Los Angeles, Dallas, Austin, New York City, and Portland, ME that are beginning to provide humanitarian services to migrants, before they reach a sponsor. The additional jurisdictions also require an increased availability of EFSP funds for humanitarian relief" (DHS, *FEMA FY2023 Congressional Budget Justification*, pp. FEMA-FA-15—FEMA-FA-16). CRS was unable to find references to the EFSP Humanitarian Relief program in the FY2022 budget request.

[47] Section 211 of the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328).

Figure 1. Funding Made Available for the EFSP-H and SSP (FY2019-FY2023)

(in millions)



Sources: Created by CRS based on the CRS Appropriations Status Table, the EFSP National Board website, information provided by FEMA's Office of External Affairs, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99, and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

Notes: See **Table 1** for SSP and EFSP-H funding information by fiscal year. With regard to the FY2023 funding, prior to the enactment of the FY2023 annual appropriations measure, FEMA provided $75 million in partial year funds pursuant to the Continuing Appropriations Act, 2023 (P.L. 117-180, Div. A). Subsequently, the Department of Homeland Security Appropriations Act, 2023 (P.L. 117-328, Div. F) directed CBP to transfer $800 million of its FY2023 appropriation to FEMA, of which FEMA could use up to $785 million to implement the EFSP-H. FEMA awarded $75 million and $350 million to the National Board for the EFSP-H for FY2023. Additionally, DHS/FEMA allocated $363.8 million for the SSP in FY2023. Further, FEMA was permitted to use up to $11.2 million for its administrative costs. These amounts—the $75 million and $350 million provided for the EFSP-H in FY2023, the $363.8 million provided for the SSP in FY2023, and the $11.2 million for FEMA's administrative costs—total $800 million.

Implementing the EFSP-H

According to the EFSP National Board, Congress selected the EFSP as the vehicle for disbursing supplemental funding for humanitarian relief through the EFSP-H

> because of the program's established mission in supplementing and expanding the ongoing work of local social service organizations, both non-profit and governmental, to provide shelter, food, and supportive services to those who are, or who are at risk of becoming, homeless and/or hungry. The program's existing grant fund delivery structure and public-private partnership made it a viable means for providing funds quickly to organizations providing humanitarian relief to families and individuals encountered by DHS.[48]

The following sections describe unique aspects of the EFSP-H's implementation, including information on eligible clients, eligible costs and services, and the funding award process, which distinguishes key EFSP-H and EFSP program differences. (Additional information on how the EFSP program operates can be found in **Appendix B**.)

Emergency Food and Shelter Program (EFSP) Terms

- **Emergency Food and Shelter Program (EFSP) and Emergency Food and Shelter Program Humanitarian (EFSP-H)**: The EFSP is a FEMA-funded grant program that addresses hunger and homelessness. It has also been used to support migrants encountered by DHS (EFSP-H). The availability of EFSP funding is not associated with presidential Stafford Act declarations.
- **National Board (EFSP Recipient)**: The EFSP is governed by a National Board, comprised of representatives of (1) the American Red Cross, (2) Catholic Charities U.S.A., (3) the Council of Jewish Federations, Inc., (4) the National Council of Churches of Christ in the U.S.A., (5) the Salvation Army, and (6) the United Way of America (also referred to as United Way Worldwide). United Way Worldwide serves as the National Board's Secretariat and Fiscal Agent and administers the program day to day. The National Board is responsible for establishing program policies, procedures, and guidelines, and disbursing the funding as smaller grants. For the EFSP-H, the National Board reviews the applications, makes the final award determinations, and disburses funding directly to awarded organizations.
- **Director**: The National Board is chaired by the Director, who is the FEMA Administrator, by statute.
- **Local Board (EFSP Subrecipient)**: Each jurisdiction (i.e., county or city, or combination) designated for EFSP funding must establish a Local Board, which mirrors the composition of the National Board and is the local EFSP governing body. Each Local Board is responsible for advertising funding availability, setting funding priorities, determining community needs, establishing client eligibility, selecting grant recipients, monitoring recipients' program compliance, and grant reporting. For the EFSP-H, Local Boards review funding applications from potential Local Recipient Organizations (defined below) for eligibility and completeness, and submit the applications to the National Board.
- **State Set-Aside Committee (SSA) (EFSP Subrecipient)**: SSAs also mirror the composition of the National Board. They act as Local Boards, but represent statewide interests. As such, SSAs can help direct funding to areas of need regardless of whether an area was formula-qualified for EFSP funding, and can ensure

[48] National Board, *Humanitarian Relief Funding Guidance Fiscal Year 2023 (Department of Homeland Security Appropriations Act, 2023—$350 Million)*, last accessed March 16, 2023, p. 4, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Fiscal%20Year%202023%20Humanitarian%20Relief%20Funding%20Guidance.pdf (hereinafter National Board, *Phase HR23 Guidance*). Such statement is also reflected in the EFSP Humanitarian Relief guidance—see, for example, National Board, "Supplemental Funding Information Details," available from the Internet Archive as of July 18, 2022, at https://web.archive.org/web/20220718130108/https://www.efsp.unitedway.org/efsp/website/websiteContents/index.cfm?template=suppFundingInfoDetails.cfm. Such statement is also reflected in the EFSP Humanitarian Relief guidance. See also DHS Office of Inspector General (OIG), *FEMA Should Increase Oversight to Prevent Misuse of Humanitarian Relief Funds*, OIG-23-20, March 28, 2023, p. 1, https://www.oig.dhs.gov/sites/default/files/assets/2023-03/OIG-23-20-Mar23.pdf (hereinafter DHS OIG, *FEMA Should Increase Oversight*). DHS/FEMA has further stated that the "success of the program lies with the speed with which these emergency funds are awarded to the National Board and then made available to the local social service agencies … that are serving our country's most vulnerable populations." (DHS, "Notice of Funding Opportunity (NOFO) Emergency Food and Shelter National Board Program," NOFO Number: DHS-17-DAD-024-00-01, p. 3.)

state interests are represented in the context of the EFSP-H. As with Local Boards, SSAs review EFSP-H funding applications from potential LROs for eligibility and completeness, and submit the applications to the National Board.

- **Local Recipient Organization (LRO) (EFSP Subrecipient)**: LROs are EFSP grant recipients, which can be local government, nonprofit, or faith-based organizations.
- **Fiscal Agent**: Fiscal Agents are agencies that must meet all LRO requirements and be approved by the Local Board and the National Board's Secretariat and Fiscal Agent (i.e., United Way Worldwide). Fiscal Agents are responsible for receiving and disbursing funding to vendors, and maintaining financial records and documentation on behalf of another LRO. For the EFSP-H, Fiscal Agents must meet all LRO requirements, be a member of the Local Board, and be approved by the National Board's Secretariat and Fiscal Agent. Fiscal Agents are responsible for preparing EFSP-H advanced funding requests on behalf of LROs, the receipt and disbursement of funds to LROs and vendors, maintaining funding documentation, and verification of subrecipients' eligibility to receive funds. Fiscal Agents are responsible for EFSP-H program compliance and there can be one per community.
- **Phase**: Each EFSP appropriation has a corresponding program phase. Funding provided through the annual appropriations process is referred to by numbered phases (e.g., the EFSP FY2023 funding is referred to as Phase 41). Funding provided through supplemental appropriations is referred to by named phases (e.g., the EFSP Humanitarian Relief FY2019 funding provided through the Border Supplemental is referred to as Phase SAHA, which stands for Supplemental Appropriations for Humanitarian Assistance).
- **Humanitarian Advanced Funding Requests (HAFRs)**: The EFSP-H implementation permits requests for prospective or advanced funding, which are submitted via HAFRs (referred to in earlier EFSP-H Phases as Special Funding Requests [SFRs]) to the National Board. (For more, see the "EFSP-H Application for Prospective or Advanced Funding" shaded textbox, below.)
- **Migrants Encountered by DHS**: According to the program guidance for the FY2023 EFSP-H funding authorized pursuant to the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328), "encountered by the Department of Homeland Security" is defined "as interaction with DHS that results in a non-citizen receiving an Alien Identification Number" (also referred to as an "A number").[49]
- **Shelter and Services Program (SSP)**: The SSP is a new grant program that Congress established through the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328). Congress authorized FEMA to use a portion of the funding provided for the SSP to implement the EFSP-H while the SSP was established.

Comparing Eligible Clients

Both the EFSP and EFSP-H may fund supportive services that local government, nonprofit, and faith-based organizations provide to migrants. The EFSP permits Local Recipient Organizations (LROs) to serve clients—including migrants—who are experiencing or at risk of experiencing homelessness and/or hunger (regardless of their immigration status).[50] The text of the enacted EFSP-H legislation has more narrowly identified the specific migrant clients that can be served with EFSP-H funding.[51]

[49] According to the answers to the frequently asked questions provided regarding the FY2023 EFSP-Humanitarian Relief guidance, if there is no "A number," there was no DHS encounter. Emergency Food and Shelter National Board Program, "Emergency Food and Shelter Program Humanitarian Funding Frequently Asked Questions," last accessed March 27, 2023, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Webinar%20FAQ.pdf (hereinafter National Board, "EFSP-H FAQs"). FEMA confirmed that entities can be reimbursed *only* for assistance provided to people with "A numbers" (i.e., Alien Identification Numbers)—"under the FY 2023 EFSP-Humanitarian program entities can only be reimbursed for assistance provided to individuals and families encountered by DHS at the southern border. The 'encounter' would be documented by the 'Alien Identification Number' or 'A' number" (email from FEMA Office of External Affairs staff, April 20, 2023).

[50] National Board, *Phase 35 Manual*, p. 18. The *Phase 35 Manual* states, "In providing assistance under the EFSP, verification of proof of citizenship or qualified alien status of any applicant for assistance is not required."

[51] According to FEMA, the National Board's guidance has been consistent with the appropriations language (email from FEMA Office of External Affairs staff, April 20, 2023).

Initially, EFSP-H funding was intended to support "aliens released from the custody of the Department of Homeland Security."[52] Subsequent EFSP-H appropriations language referred to "families and individuals encountered by the Department of Homeland Security" (see the legislative text excerpts of the enacted legislation in **Table 2**). However, "DHS encounter" was not specifically defined in the program guidance until the release of the *Phase HR23 Guidance*, which defined it as

> Interaction with DHS that results in a noncitizen receiving an Alien Identification Number.[53]

Additionally, the *Phase HR23 Guidance* specified that such assistance may be provided to migrants from the "southern border." Previous EFSP-H program guidance referred to the "southwest border" and were less expansive (i.e., they referred only to the U.S.-Mexico border and did not reference the maritime borders). The *Phase HR23 Guidance* defines "southern border" as

> The entire southern international border of the United States (California, Arizona, New Mexico, Texas) to include maritime borders of Texas, Louisiana, Mississippi, Alabama, and Florida.[54]

Comparing Eligible Costs

The National Board establishes the EFSP and EFSP-H guidelines for each phase, including detailing the eligible expenses.[55] Funding for newly established programs is not available through the EFSP or the EFSP-H because the EFSP-H operates under the same statutory authority and is subject to the same restrictions as the EFSP.[56]

EFSP-H-eligible expenditures generally include "[s]helter, food, transportation, basic health and first aid, COVID-19 testing and associated medical care needed during quarantine and isolation,

[52] See the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (Title III of P.L. 116-26).

[53] National Board, *Phase HR23 Guidance*, pp. 5, 57. The funding for this phase was made available pursuant to Section 211 of the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328). According to the answers to the frequently asked questions provided regarding the *Phase HR23 Guidance*, "Any encounter with DHS will result in an individual receiving an Alien Identification Number ("A number"). If the individual(s) does not have an "A" number, then there was no encounter with DHS" (National Board, "EFSP-H FAQs").

[54] National Board, *Phase HR23 Guidance*, p. 5.

[55] 42 U.S.C. §11346(a)(3). The National Board is not subject to the procedural rulemaking requirements of the Administrative Procedure Act; the EFSP guidelines must be published in the *Federal Register* annually and whenever they are modified (42 U.S.C. §11346(b)) (CRS was only able to find National Board plans for carrying out the EFSP in the *Federal Register* for FY1994, FY1995, FY1997, FY1998, and FY1999 (searching with the terms "National Board" and "Federal Emergency Management Agency").

[56] 42 U.S.C. §11343(a); FEMA, "Emergency Food and Shelter Program," last updated August 8, 2022, https://www.fema.gov/grants/emergency-food-and-shelter-program (hereinafter FEMA, "Emergency Food and Shelter Program"); National Board, *Phase 35 Manual*, pp. 28, 39 (see "Use of Funds" section). CRS clarified with FEMA that while the EFSP-H authorizing language and program guidance do not reference limitations on the establishment of new programs, and the EFSP National Board's webpage states that "Any nonprofit, faith-based or government agency that can document expenditures made to migrants encountered by DHS at the southern border may be considered to receive funds for eligible services provided," the EFSP-H does not fund new programs because the EFSP-H leverages the EFSP (email from FEMA Office of External Affairs staff, April 20, 2023). Of note, one exception for the EFSP-H in FY2023 is that up to $50 million of the funding potentially available in FY2023 "may be used for the construction and expansion of shelter facilities" pursuant to Section 211(b) of Div. F, Title II of P.L. 117-328—notwithstanding the eligible activities established in the EFSP's statutory text or program guidance.

and other supportive services" that are provided in the United States.[57] Over the course of three rounds of funding from the initial FY2019 appropriation, the program guidance developed five categories of funding that all EFSP-H eligible expenditures must fall within:[58]

1. **Primary** (food and shelter);
2. **Secondary** (health/medical/other supportive services);
3. **Administrative** (e.g., staff time and postage);
4. **Equipment and Assets** (purchases/leases/necessary renovations); and
5. **Transportation** (local/long-distance domestic travel).

Priority is given to Primary services.[59] Details and examples of the types of expenditures that qualify for each of these categories can be found in the program guidance and in **Appendix A**.[60]

[57] Per the EFSP-H guidance, expenditures made and services provided to migrants outside the United States are ineligible for reimbursement—"Services are intended to assist migrants with their initial emergency needs upon entering the United States." See Emergency Food and Shelter National Board Program (National Board), National Board, *Humanitarian Relief Funding Guidance Fiscal Year 2023 (Continuing Resolution $75 Million) Application and Funding Guidance*, last accessed December 9, 2022, p. 10 (hereinafter National Board, *Phase HR FY23 CR Guidance*); National Board, *Phase HR23 Guidance*, p. 23.

[58] National Board, *Supplemental Appropriations for Humanitarian Assistance Funding Supplemental Funding Guidance*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Supplemental%20Funding%20Guidance.pdf (hereinafter National Board, *Phase SAHA Guidance (Round 1)*); National Board, *Supplemental Appropriations for Humanitarian Assistance Funding: Supplemental Funding Guidance Round 2 Application Period*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Supplemental%20Funding%20Guidance%20-%20Round%202.pdf (hereinafter National Board, *Phase SAHA Guidance (Round 2)*); National Board, *Supplemental Appropriations for Humanitarian Assistance (SAHA) Funding Special Funding Request Guidance for the Round 3 Application Period*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/SAHA%20Round%203%20Guidance.pdf (hereinafter National Board, *Phase SAHA Guidance (Round 3)*); National Board, *American Rescue Plan Act of 2021 Humanitarian Relief Funding and Application Guidance*, last accessed December 8, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/American%20Rescue%20Plan%20Act%20Guidance.pdf (hereinafter National Board, *Phase ARPA Guidance*); National Board, *Humanitarian Relief Funding Guidance Fiscal Year 2022 Application and Funding Guidance*, last accessed December 9, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/HumanitarianGuidance.pdf (hereinafter National Board, *Phase HR22 Guidance*); National Board, *Phase HR FY23 CR Guidance*; National Board, *Phase HR23 Guidance*.

[59] National Board, *Phase HR23 Guidance*, p. 12; National Board, "Emergency Food and Shelter Program: FY 2022 Humanitarian Relief Funding Frequently Asked Questions," May 5, 2022, p. 3, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Frequently%20Asked%20Questions.pdf (hereinafter National Board, "EFSP FY22 Humanitarian Relief FAQs").

[60] National Board, *Phase SAHA Guidance (Round 1)*; National Board, *Phase SAHA Guidance (Round 2)*; National Board, *Phase SAHA Guidance (Round 3)*; National Board, *Phase ARPA Guidance*; National Board, *Phase HR22 Guidance*; National Board, *Phase HR FY23 CR Guidance*; National Board, *Phase HR23 Guidance*.

Interstate Migrant Busing and EFSP-H Guidance Update to Coordinate Transport

In April 2022, Texas Governor Greg Abbott began busing migrants released from DHS custody in Texas to Washington, DC, the first of many chartered buses to arrive in cities far from the southwest border, without providing advance notice to the local governments and NGOs that would receive them.[61] Since then, there have been numerous bus arrivals of migrants transported from the southwest border to locations around the United States by various state and municipal officials. Such actions have prompted different responses in different places.[62] Other migrants released at the southwest border have traveled by plane or bus to areas away from the border using their own resources, some assisted by nonprofits and local governments, who provide supportive services.[63]

These actions have generated attention and awareness within communities far from the border of the need for the federal government to support local governments and nonprofit organizations engaged in supporting migrants. For example, in summer 2023, the Mayor of New York City called for assistance from federal and state officials to help with housing migrants who have overwhelmed the City's shelter system.[64]

In response to the humanitarian challenges arising due to the interstate busing of migrants in 2022, the EFSP National Board issued an addendum to the *Phase HR22 Guidance* requiring coordination between the sending and receiving jurisdictions as a condition of eligibility for interstate charter busing. This coordination requirement for interstate bus chartering also applies in Phase HR FY23 CR and Phase HR23 (the SSP also includes this transportation coordination requirement).[65]

There are some significant distinctions between the eligible expenditures under the EFSP and EFSP-H. Selected examples are included below.

Transportation

A broader set of transportation costs are eligible for reimbursement under the EFSP-H program than the EFSP.

- The **EFSP** provides limited local transportation costs related to the direct provision of food and shelter. Transportation to another city or to a relative or friend's home, and air travel (except as an administrative allowance) are listed as ineligible.[66]

[61] The Texas Governor's office estimated that 9,100 migrants were sent to Washington, DC; 5,200 to New York City; 1,500 to Chicago; and 890 to Philadelphia. See, Michael Adkinson, "Migrant Busing Initiative Costing Taxpayers More per Migrant, State Records Show," *CBS Austin*, February 21, 2023.

[62] See, for example, Camilo Montoya-Galvez, "Texas Gov. Greg Abbott Expands Migrant Bus Operation, Sending First Group to Denver," *CBS News*, May 18, 2023; Laura Benshoff, "Busing migrants was a partisan lightning rod. Here's why Democrats have embraced it," *NPR*, February 6, 2023.

[63] Tim Henderson, "Minus the Politics, Migrants Often Use Buses, Planes to Reach Shelter," *Stateline*, October 4, 2022.

[64] See Jasmine Garsd, "NYC has seen an influx of 90,000 migrants and asylum-seekers since last spring," *NPR*, August 1, 2023; Jericka Duncan, "New York City Mayor Eric Adams responds to migrant crisis criticism: 'Everything is on the table'," *CBS News*, August 22, 2023.

[65] National Board, *Humanitarian Relief Funding Guidance Addendum: Fiscal Year 2022*, September 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/AddendumtotheHumanitarianGuidance.pdf; National Board, *Phase HR FY23 CR Guidance*, pp. 19-20; National Board, *Phase HR23 Guidance*, pp. 21-23. FEMA confirmed that staff salaries related to providing long-distance transportation services, including coordinating transportation, should be claimed under the Administration category as a payroll expense (email from FEMA Office of External Affairs staff, April 20, 2023). The SSP NOFO for the first and second tranches of funding also include the coordination requirement (DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification).

[66] National Board, *Phase 35 Manual*, pp. 50 and 75.

- The **EFSP-H** permits reimbursement for domestic local and long-distance travel-related costs. This includes local transportation costs to and from shelters and food services, and domestic long-distance transportation costs to aid migrants traveling to other cities or states.[67] Methods of EFSP-H eligible transportation may include car, taxi, bus, train, and airplane.[68]

Primary (Shelter)

EFSP-H housing assistance is more limited than what may be provided by the EFSP, which may be rooted in a distinction in the purposes of the programs.

- **EFSP** housing assistance is focused on meeting short-term needs, and is provided to prevent homelessness or evictions and enable people to maintain their housing (e.g., through the provision of up to 90 days of hotel/motel assistance, up to three months of rent or mortgage assistance).[69]
- **EFSP-H** is focused on meeting the immediate sheltering needs of migrants entering the United States—the EFSP-H may provide migrants with shelter in a hotel/motel for up to five days (or 30 days if the individual has no sponsor).[70] Rent/mortgage assistance are not listed as an eligible expenditure for mass shelter services under the EFSP-H.[71]

Comparing the Funding Award Process and Considerations

When Congress appropriates funding to FEMA for the EFSP and EFSP-H, DHS/FEMA issues a Notice of Funding Opportunity (NOFO)[72] and awards the funding as a single grant to the National Board—the entity that governs the EFSP and is responsible for establishing program policies, procedures, and guidelines, and disbursing the funding as smaller grants.[73] From there, a significant difference between the implementation of the EFSP and EFSP-H is the process by

[67] National Board, "Emergency Food and Shelter Program Supplemental Appropriations for Humanitarian Assistance Funding: Frequently Asked Questions," p. 3, last accessed December 8, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Supplemental%20Funding%20FAQs%20Final%20508%20Compliant.pdf. See also National Board, *Phase SAHA Guidance (Round 1)*. The Phase SAHA guidance notes that "[d]omestic air travel for long distance transportation to move migrants to another city may be an allowable activity. However, international air transportation of people and property are not allowable activities that can be funded with SAHA funds." This is also stated in the *Phase ARPA Guidance* on page 48, the *Phase HR22 Guidance* on page 49, the *Phase HR FY23 CR Guidance* on page 50, and the *Phase HR23 Guidance* on page 51.

[68] National Board, *Phase SAHA Guidance (Round 1)*, pp. 9, 21; National Board, *Phase SAHA Guidance (Round 3)*, p. 4.

[69] National Board, *Emergency Food and Shelter Program Changes/New Guidance: Implementation Beginning with Phases 39 and ARPA-R Awards*, last accessed February 28, 2023, https://www.efsp.unitedway.org/efsp/website/websiteContents/pdfs/EFSP%20Program%20Changes.pdf.

[70] National Board, *Phase HR FY23 CR*, p. 15.

[71] National Board, *Phase HR FY23 CR*, p. 15. The EFSP-H also does not provide utility assistance to prevent the disconnection of utility services.

[72] Descriptions of the Notices of Funding Opportunities (NOFOs) for the EFSP-H are included in **Appendix C**.

[73] 42 U.S.C. §11341; FEMA, "Emergency Food and Shelter Program." The National Board, by statute, includes representatives from six private nonprofit organizations: (1) the American Red Cross; (2) Catholic Charities U.S.A.; (3) the Jewish Federations of North America (referred to in statute as the Council of Jewish Federations, Inc.); (4) the National Council of Churches of Christ in the U.S.A.; (5) the Salvation Army; and (6) United Way Worldwide (referred to in statute as the United Way of America). United Way Worldwide serves as the National Board's secretariat and fiscal agent, and administers the program day-to-day, along with the Director (the FEMA Administrator) (42 U.S.C. §11331).

which funding gets awarded to the LROs.[74] While EFSP funding is formula-based and set at the jurisdiction level, with Local Boards determining local funding priorities and selecting LROs, EFSP-H funding is competitive,[75] and the National Board makes award determinations, as further described below.[76]

Eligible organizations apply for EFSP-H funding through their Local Board or State Set-Aside Committee (acting as a Local Board). Local Boards and State Set-Aside Committees then review the local and statewide applications, respectively, for completeness and eligibility, and submit the applications, with supporting documentation, to the National Board.[77] The National Board reviews the applications, makes the final award determinations, and directly awards funding to eligible LROs (LROs may be represented by a Fiscal Agent).[78]

The National Board has stated that they prioritize award determinations by considering a number of factors, including

- ICE and CBP migrant release data;
- proximity to ICE and CBP facilities performing releases;
- number of migrants served;
- direct costs incurred serving migrants;
- National Board discretion and subject matter expertise;
- sufficiency of available funding; and
- other applicable information.[79]

[74] The EFSP program guidance includes minimum award amounts that may be provided by a State Set-Aside Committee to a Jurisdiction ($2,800) and a Local Board to a Local Recipient Organization ($500; if only administrative funding is provided, the award amount may be less than the $500 minimum) (see National Board, *Phase 35 Manual*, p. 11. The subsequent addendums to the *Phase 35 Manual* (through Phase 38) do not address the minimum award amount). The EFSP Humanitarian Relief program guidance does not specify any minimum award amounts.

[75] National Board, *Phase HR23 Guidance*, p. 7.

[76] National Board, *Phase HR23 Guidance*, p. 7. In previous EFSP-H Phases, "Funds are largely awarded to service organizations assisting migrants in the Southwest Border states, but organizations in all states may apply if they are serving families and individuals encountered by DHS" (National Board, "EFSP FY22 Humanitarian Relief FAQs," p. 3).

[77] National Board, *Phase HR23 Guidance*, p. 8. Local Boards and State Set-Aside Committees may also submit administrative expenses to the National Board (National Board, *Phase HR23 Guidance*, p. 9). They can also make recommendations to the National Board (National Board, *Phase HR23 Guidance*, p. 9; FEMA, "Emergency Food and Shelter Program" (see section on "Funds for Organizations Assisting Migrants—How to Apply?"); National Board, "EFSP FY22 Humanitarian Relief FAQs," pp. 1-2).

[78] National Board, *Phase HR23 Guidance*, pp. 7-10; FEMA, "Emergency Food and Shelter Program" (see section on "Funds for Organizations Assisting Migrants—How Funds Will Be Awarded"); National Board, "EFSP FY22 Humanitarian Relief FAQs," pp. 3-4. Per the *Phase HR23 Guidance*, Fiscal Agents prepare advanced funding requests on behalf of LROs, and the National Board will disburse payments for Humanitarian Advanced Funding Requests to the Fiscal Agent, which will then disburse funds to recipient agencies and vendors, and manage documentation (see page 11).

[79] National Board, "Emergency Food and Shelter Program Supplemental Appropriations for Humanitarian Assistance Funding: Frequently Asked Questions," p. 2, last accessed December 8, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Supplemental%20Funding%20FAQs%20Final%20508%20Compliant.pdf; National Board, "Update Notice Supplemental Appropriations for Humanitarian Assistance: August 1, 2019," p. 2, last accessed December 8, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/Update%20Notice%20-%20Supplemental%20Appropriations%20for%20Humanitarian%20Assistance.pdf. Per the most recent EFSP-H NOFO, the National Board will consider these factors when reviewing LRO applications and making award determinations (DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program—Humanitarian Relief," NOFO Number: DHS-23-DAD-024-00-03, p. 46); National Board, (continued...)

EFSP-H Application for Prospective or Advanced Funding

The initial EFSP-H phases were only awarded as reimbursement, but since Phase ARPA, funding has been issued for both reimbursements and prospective or advanced funding.[80]

The EFSP-H program Phases have given potential Local Recipient Organizations, represented by a Fiscal Agent, the option to submit prospective or advanced funding requests to the National Board—referred to as Humanitarian Advanced Funding Requests (HAFRs) (earlier EFSP-H Phases called these Special Funding Requests [SFRs]). Fiscal Agents must meet all LRO requirements and be a member of the Local Board. They must also be approved by the National Board Secretariat (i.e., United Way Worldwide). HAFRs can only be submitted by Fiscal Agents.

When the National Board awards funding pursuant to a HAFR, such payments are disbursed directly to the Fiscal Agent, who then pays the subrecipient organizations/vendors for services provided.

HAFRs are intended to expedite funding because potential LROs would not need to submit individual requests for consideration by the National Board—instead, such requests can be submitted collectively in a single request.

Geographic Distribution of EFSP-H and SSP Funding

The EFSP-H program can distribute funds across a broad geographic area, to include the southern border and U.S. interior.

With regard to the first EFSP-H Phase (Phase SAHA funding ($30 million)), to ensure the funding went to communities experiencing a significant influx of migrants, the NOFO that DHS/FEMA issued for the 2019 Border Supplemental limited the geographic distribution of the appropriated funding such that the majority of the funding ($25 million) was allocated for the reimbursement of eligible services by LROs in Arizona, California, New Mexico, and Texas, while the remaining $5 million was allocated nationwide.[81] While the subsequent EFSP-H funding phases did not similarly limit the provision of the majority of the funding to the four southwest border states, the program guidance stated that funding priority would be given to the most impacted communities and noted most of the funding was anticipated to be awarded to organizations in southwest border states.[82] Still, any eligible organization providing eligible services to migrants encountered by DHS—both LROs at the southern border and in the interior of the United States—could be eligible for EFSP-H funding.[83]

Phase ARPA Guidance, p. 7; National Board, *Phase HR22 Guidance*, p. 9; National Board, *Phase HR FY23 CR*, p. 8; National Board, *Phase HR23 Guidance*, p. 7.

[80] See, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2022 Emergency Food and Shelter National Board Program DHS Appropriations Act, 2022, Section 543," NOFO Number: DHS-22-DAD-024-00-01, p. 7. Organizations may submit applications for reimbursement requests directly, but Special Funding Requests (SFRs) for advance/prospective funding must be submitted by way of the Local Boards or State Set-Aside Committees; GAO, *Southwest Border: DHS Coordinates with and Funds Nonprofits*, pp. 4-5.

[81] DHS, "Fiscal Year 2019 Notice of Funding Opportunity (NOFO) Supplemental Appropriations for Humanitarian Assistance Emergency Food and Shelter National Board Program," NOFO Number: DHS-19-DAD-024-00-02, p. 6; National Board, "The National Board for the Emergency Food and Shelter Program Announces $30 Million Available to Organizations Providing Humanitarian Aid to Southern Border Migrants Eligible Nonprofit, Faith-Based, and Government Entities Invited to Apply," p. 1, last accessed December 8, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/EFSP%20NB-UWW%20Advisory%20Supp%20Funds_Final_508%20Compliant.pdf.

[82] See, for example, National Board, *Phase ARPA Guidance*, pp. 2, 4.

[83] National Board website, "Humanitarian Funding Info" tab (also referenced as "Humanitarian Funding Information Details"), last accessed July 25, 2023, https://www.efsp.unitedway.org/efsp/website/websiteContents/index.cfm?template=fy2021info.cfm. Notably, the *Phase HR23 Guidance* expanded the eligibility of the migrant population served beyond those individuals entering by way of the land border to also include maritime entrances (including California, Texas, Louisiana, Mississippi, Alabama, and Florida) (National Board, *Phase HR23 Guidance*, p. 5).

FEMA's statement that it expected most of the funding to be awarded to service organizations from southern border states was borne out by the program award data.[84] **Figure 2** depicts the total EFSP-H awards by state and shows the majority of the EFSP-H funding provided from FY2019 to FY2023 went to the four southwest border states, with Texas, California, Arizona, and New Mexico receiving the most funding (in that order). Additionally, **Figure 3** provides a more granular view of the EFSP-H awards for each funding phase by state.[85]

Additionally, DHS's SSP announcement regarding its plan to award approximately $360 million through the SSP later in FY2023,[86] stated that DHS anticipated that "this next round of funding will be focused on the needs of interior cities, in addition to border communities."[87] Subsequently, the SSP NOFO, which specified the eligible applicants for the first tranche of funding ($291 million of the total available funding amount of $363.8 million), did provide more funding to interior cities than had been provided previously through the EFSP-H. The second tranche of SSP funding ($77.3 million) provided the majority of the funding to border jurisdictions, but left $10 million in reserve for allocation prior to the end of September 2023. According to the NOFO, the reserve funding will be available to eligible applicants from both the first and second tranches of SSP funding "to account for rapidly changing trends and operational considerations."[88] **Figure 4** depicts the total consolidated allocations for the first and second tranches of FY2023 SSP funding by state, and **Figure 5** provides a more granular view of the allocations for both FY2023 SSP funding tranches by state).

[84] FEMA, "Emergency Food and Shelter Program" (see section on "Funds for Organizations Assisting Migrants—How Funds Will Be Awarded"). Per the *Phase HR23 Guidance*, "Funding is prioritized for those service organizations at the Southern Border (to include maritime entrances)" (National Board, *Phase HR23 Guidance*, p. 4).

[85] In general, unlike the EFSP funding, most information on the distribution of EFSP-H funding was not made publicly available on the National Board's website; information on EFSP program funding is available on the National Board's website at https://www.efsp.unitedway.org/efsp/website/index.cfm; see also **Appendix B**). However, on May 5, 2023, DHS announced the National Board's allocation of $332.5 million (i.e., the $350 million made available pursuant to the Department of Homeland Security Appropriations Act, 2023 [Div. F, Title II of P.L. 117-328], minus administrative costs) (see DHS, "Emergency Food and Shelter Program National Board Allocates Over $300 Million to Local Communities for Humanitarian Support," press release, May 5, 2023, https://www.dhs.gov/news/2023/05/05/emergency-food-and-shelter-program-national-board-allocates-over-300-million-local (hereinafter DHS, "National Board Allocates Over $300 Million for EFSP-H"); and FEMA, "Emergency Food and Shelter Program" [see the "Fiscal Year 2023 Funding" shaded text box]). Associated with the DHS announcement, FEMA's website reflected awards under the EFSP-H for the FY2023 funding, including listing the state, fiscal agent, and total funding for Phase HR23 (FEMA, "Emergency Food and Shelter Program—Humanitarian Awards," last updated May 5, 2023, https://www.fema.gov/grants/emergency-food-and-shelter-program/humanitarian-awards).

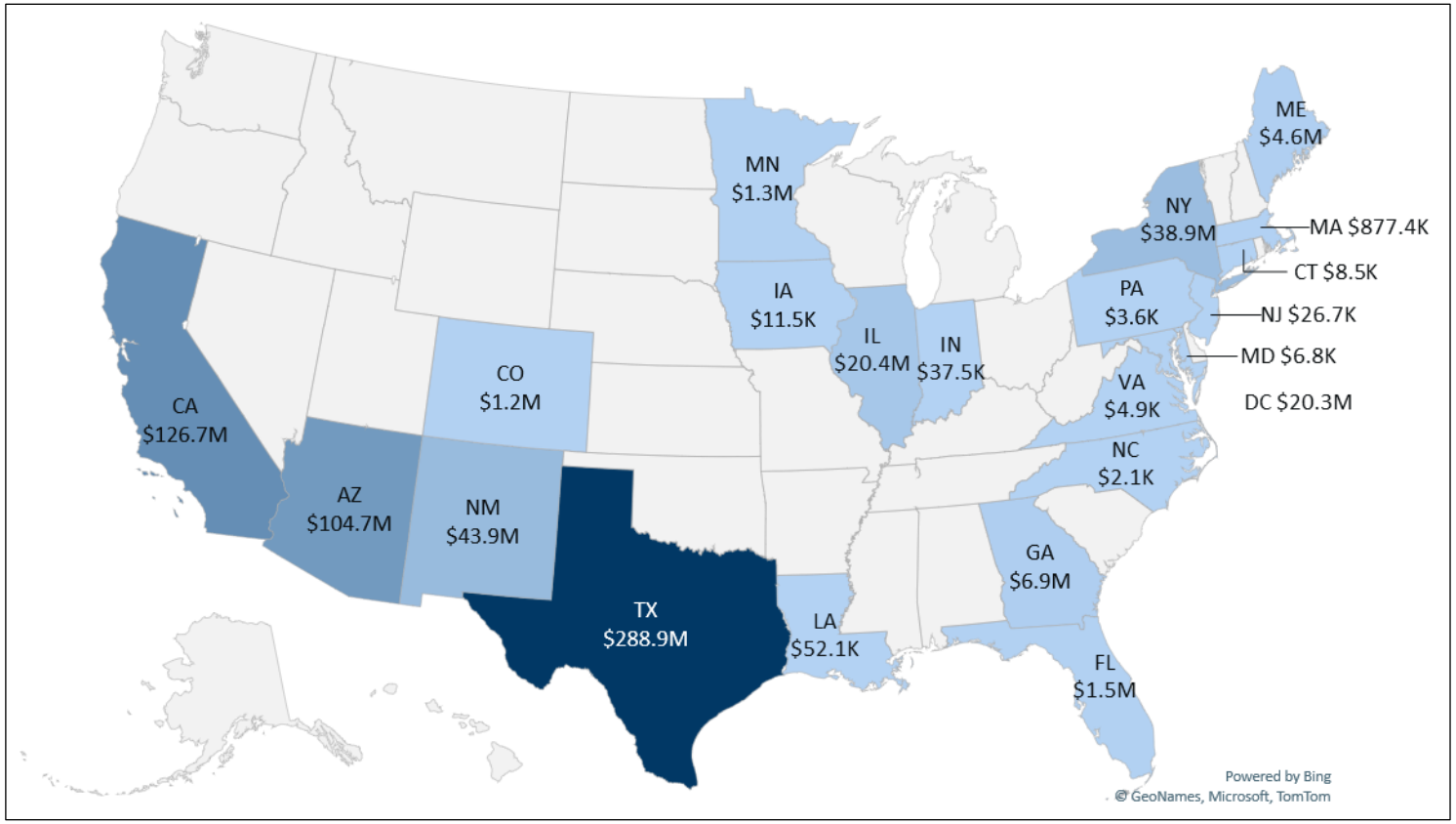
[86] FEMA stated, "Future support for emergency migrant care will be supported by the newly created Shelter and Services Program, which has about $360 million to grant before the end of the Fiscal Year" (FEMA, "FEMA Bulletin Week of May 9, 2023," May 9, 2023, https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/359821f).

[87] DHS, "National Board Allocates Over $300 Million for EFSP-H."

[88] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

Figure 2. EFSP-H Total Awards by State (FY2019-FY2023)

(as of May 23, 2023)

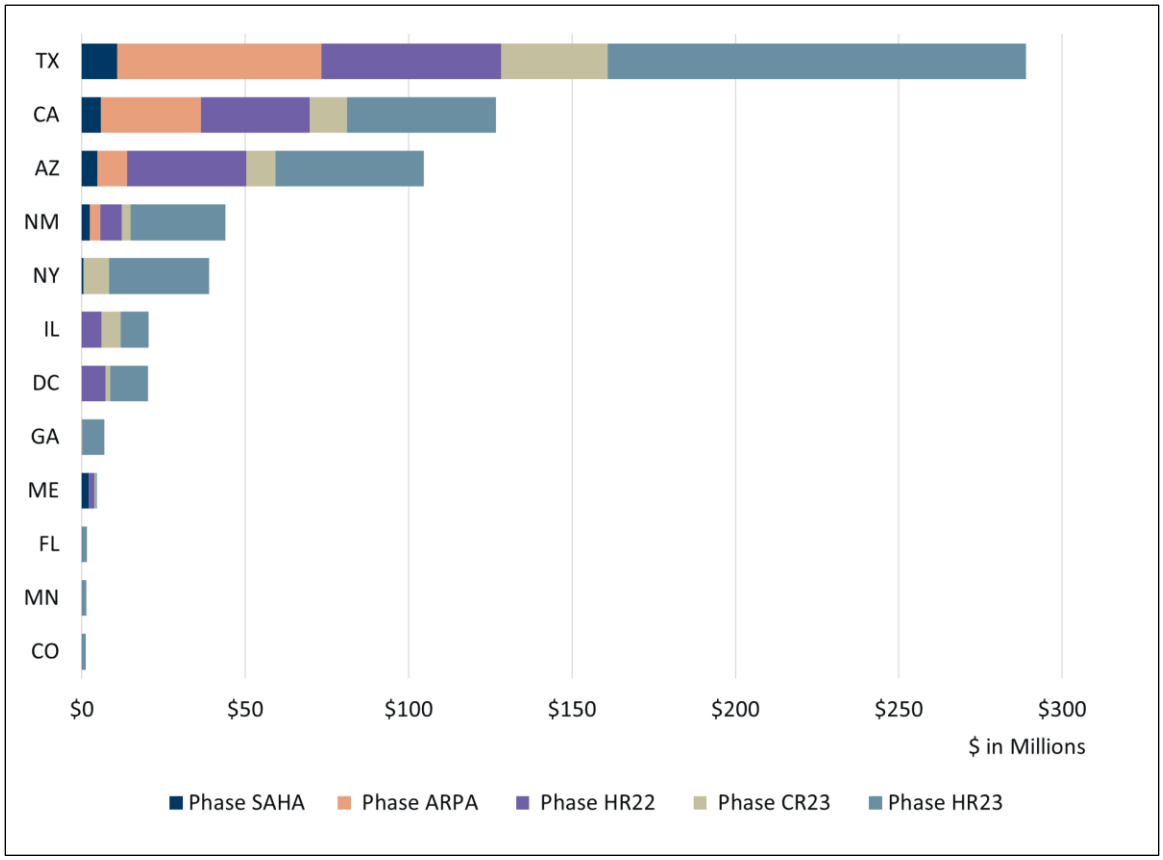


Source: Created by CRS from data provided to CRS by FEMA Office of External Affairs staff on June 26, 2023.

Notes: This figure includes award information for all EFSP-H Phases (SAHA, ARPA, HR22, CR23, and HR23) (refer to **Figure 3** for the breakdown of awards by funding Phase). Most awards are represented in millions of dollars (indicated with an M), but awards totaling less than $1 million are represented in thousands of dollars (indicated with a K). The Excel workbook provided by FEMA's Office of External Affairs staff included the date label May 23, 2023 and is referenced in the subheading of the figure. Each tab of the Excel workbook, by Phase, also listed an "as of" date: the Phase SAHA data tab is as of April 6, 2023; the Phase ARPA data tab is as of May 17, 2023; the Phase HR22 data tab is as of May 17, 2023; the Phase CR23 data tab is as of April 28, 2023; and the Phase HR23 data tab is as of April 28, 2023.

Figure 3. EFSP-H Awards by Funding Phase and State (FY2019-FY2023)

(as of May 23, 2023)



Source: Created by CRS from data provided to CRS by FEMA Office of External Affairs staff on June 26, 2023.

Notes: This figure includes award information for all EFSP-H Phases. States receiving awards in EFSP-H Phases totaling less than $1 million are not included (i.e., LA, IN, NJ, IA, CT, MD, VA, PA, and NC) (refer to **Figure 2** for award totals for all Phases by state). The Excel workbook provided by FEMA's Office of External Affairs staff included the date label May 23, 2023 and is referenced in the subheading of the figure. Each tab of the Excel workbook, by Phase, also listed an "as of" date: the Phase SAHA data tab is as of April 6, 2023; the Phase ARPA data tab is as of May 17, 2023; the Phase HR22 data tab is as of May 17, 2023; the Phase CR23 data tab is as of April 28, 2023; and the Phase HR23 data tab is as of April 28, 2023.

Shelter and Services Program (SSP)

The Consolidated Appropriations Act, 2023 (P.L. 117-328) directed the establishment of a new grant program—the Shelter and Services Program (SSP).[89] Specifically, the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328), transferred $800 million from CBP to FEMA "to support sheltering and related activities provided by non-Federal entities, including facility improvements and construction, in support of relieving overcrowding in short-term holding facilities of [CBP]."[90]

[89] A brief overview of the SSP can be found in CRS Insight IN12177, *Shelter and Services Program (SSP) FY2023 Funding*, by Elizabeth M. Webster.

[90] See also the Senate Explanatory Statement for Division F—Department of Homeland Security Appropriations Act, (continued...)

Transitioning from the EFSP-H to the SSP

Congress authorized a portion of the SSP funding to be used to implement the existing EFSP-H in order to provide time for CBP and FEMA to establish the SSP, and noted that

> While the Emergency Food and Shelter National Board has performed admirably in administering EFSP-H since it was first funded in fiscal year 2019, funding the SSP through CBP will facilitate more effective support of CBP efforts to efficiently process and humanely treat noncitizens. It also acknowledges the existing vital partnership between CBP and NGOs.[91]

Through the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328), Congress made funding available for FEMA to implement the EFSP-H in a different manner than EFSP-H had previously been authorized. Instead of appropriating a set amount of funding directly to FEMA for the EFSP-H, Section 211(a) stated that a portion of the $800 million—specifically, up to $785 million—may potentially be used to provide shelter and supportive services to migrants encountered by DHS through EFSP-H.[92] Although it was initially unclear how much, if any, funding would be provided for the EFSP-H, FEMA awarded grants of $75 million and $350 million of the potentially available $785 million (totaling $425 million) for the EFSP-H.[93]

DHS announced that the remaining funding, totaling approximately $360 million, would be awarded through the new SSP later in FY2023.[94] To that end, on June 12, 2023, DHS/FEMA published the first NOFO for the new SSP after FEMA and CBP developed the new grant

2023, which notes the SSP is intended "to support CBP in effectively managing noncitizen processing and preventing the overcrowding of short-term CBP holding facilities" (Senate Explanatory Statement, p. S8557).

[91] Senate Explanatory Statement, pp. S8557-S8558, S8564, and S8568-S8569.

[92] Senate Explanatory Statement, p. S8557.

[93] FEMA, "Emergency Food and Shelter Program," accessed May 18, 2023, https://www.fema.gov/grants/emergency-food-and-shelter-program. The text box on "Fiscal Year 2023 Funding," stated, "In December 2022, the Emergency Food and Shelter Program's National Board awarded $71.2 million ($75 million minus administrative costs) to assist communities receiving noncitizens released from custody as they await the outcome of their immigration proceedings. On May 5, 2023, the National Board announced an additional $332.5 million ($350 million minus administrative costs) in assistance." See also, DHS, "The Department of Homeland Security Awards $350 Million for Humanitarian Assistance Through the Emergency Food and Shelter Program," press release, February 28, 2023, https://www.dhs.gov/news/2023/02/28/department-homeland-security-awards-350-million-humanitarian-assistance-through (hereinafter DHS, "DHS Awards $350 Million for EFSP-H"); FEMA, "DHS Awards $350 Million for Humanitarian Assistance Through the Emergency Food and Shelter Program," press release, HQ-23-031, February 28, 2023, https://www.fema.gov/press-release/20230228/dhs-awards-350-million-humanitarian-assistance-through-emergency-food-and; FEMA, "FEMA Bulletin: Week of March 7, 2023," https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/34d3b54 (see section on "FEMA Awards $350 Million for Humanitarian Assistance"); email from FEMA Office of External Affairs staff, April 27, 2023; DHS, "National Board Allocates Over $300 Million for EFSP-H." For additional information on the Shelter and Services Program, see CRS Insight IN12132, *FEMA's Emergency Food and Shelter Program-Humanitarian Relief (EFSP-H) and the New Shelter and Services Program (SSP)*, by Elizabeth M. Webster.

[94] DHS, "National Board Allocates Over $300 Million for EFSP-H."

program.[95] DHS/FEMA amended the original NOFO, updating it for the second tranche of SSP funding, on August 21, 2023.[96]

FEMA and CBP stated that the SSP will replace the EFSP-H.[97] Consistent with this, the Biden Administration's FY2024 budget request did not request funding for the EFSP-H, because "DHS has transitioned to the Shelter and Services Program."[98]

[95] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; DHS, "DHS Awards $350 Million for EFSP-H." FEMA and CBP began developing the SSP, starting with conducting stakeholder listening sessions with tribal nations, NGOs, and state and local governments to inform the future SSP's implementation—according to FEMA and CBP, they conducted 14 listening sessions; see FEMA and CBP, "Shelter and Services Program Stakeholder Engagement," presentation slides, April 2023, p. 4, https://content.govdelivery.com/attachments/USDHSFEMA/2023/04/17/file_attachments/2469612/SSP%20Stakeholder%20Engagement_Phase%202%20_4-14-2023.pdf (hereinafter FEMA and CBP, "SSP Stakeholder Engagement"); and FEMA and CBP, "Shelter and Services Program: Stakeholder Listening Session," presentation slides, March 2023, https://content.govdelivery.com/attachments/USDHSFEMA/2023/03/03/file_attachments/2427106/SSP%20Stakeholder%20Engagement_Listening%20Sessions%203-3-2023.pdf (hereinafter FEMA and CBP, "SSP Stakeholder Listening Session"). See also DHS, *Federal Emergency Management Agency Budget Overview: Fiscal Year 2024 Congressional Justification*, March 12, 2023, p. FEMA-FA-20, https://www.dhs.gov/sites/default/files/2023-03/FEDERAL%20EMERGENCY%20MANAGEMENT%20AGENCY_Remediated.pdf (hereinafter DHS, *FEMA FY2024 Congressional Budget Justification*). They then worked to design the program, including proposing a framework for operating the SSP (FEMA and CBP, "SSP Stakeholder Engagement," pp. 5-8).

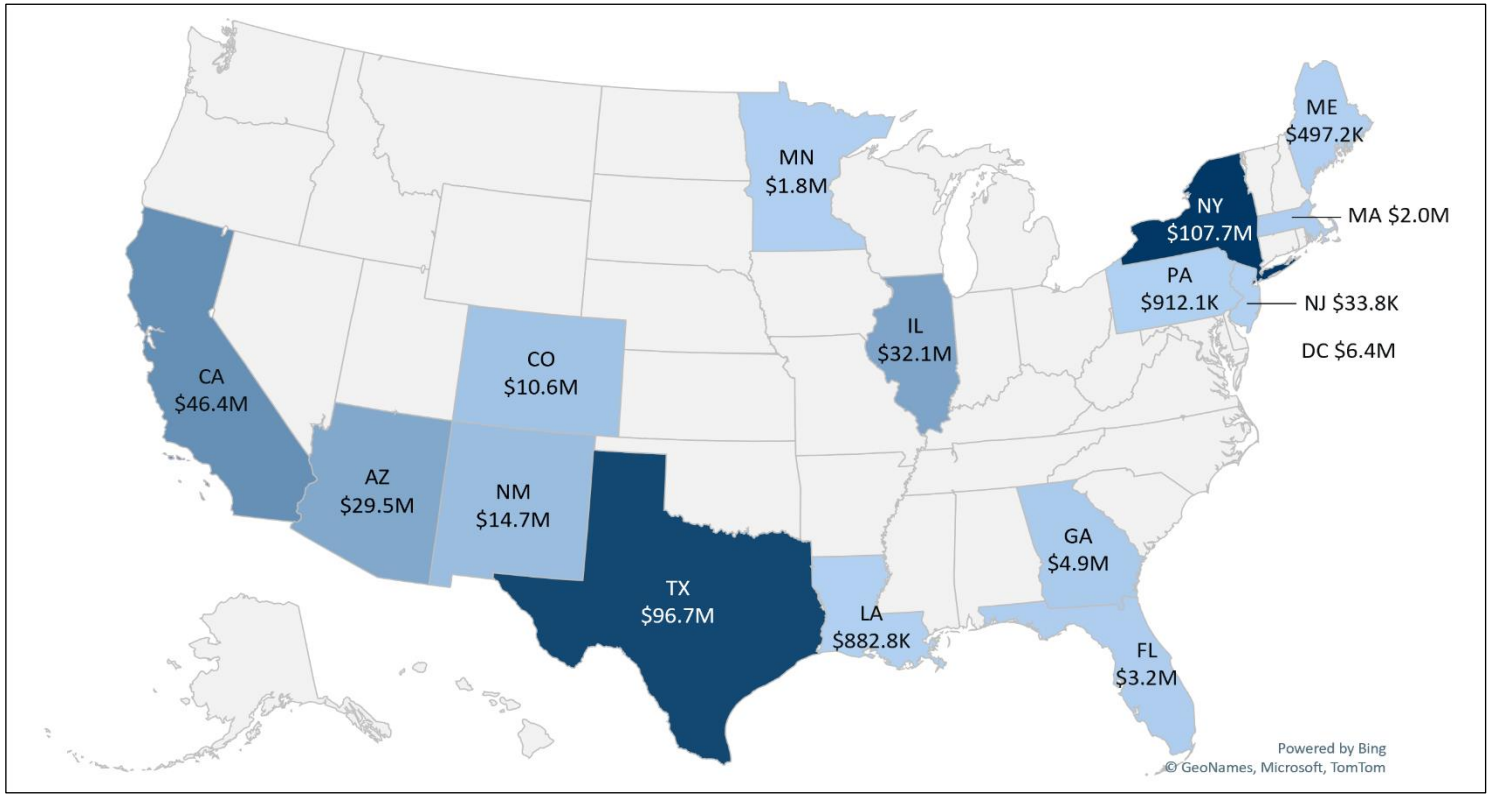
[96] DHS, "Department of Homeland Security Announces Distribution of More Than $77 Million in Congressional Funding for Communities Receiving Migrants," press release, August 21, 2023, https://www.dhs.gov/news/2023/08/21/dhs-announces-distribution-more-77-million-congressional-funding-communities; DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

[97] FEMA and CBP, "SSP Stakeholder Listening Session." This information was provided by FEMA and CBP during the virtual listening session conducted on March 3, 2023, and is consistent with the Senate Explanatory Statement (see Senate Explanatory Statement, p. S8557).

[98] DHS, *FEMA FY2024 Congressional Budget Justification*, p. FEMA-FA-98.

Figure 4. SSP First and Second Tranches Combined Allocations by State (FY2023)

(as of August 21, 2023)

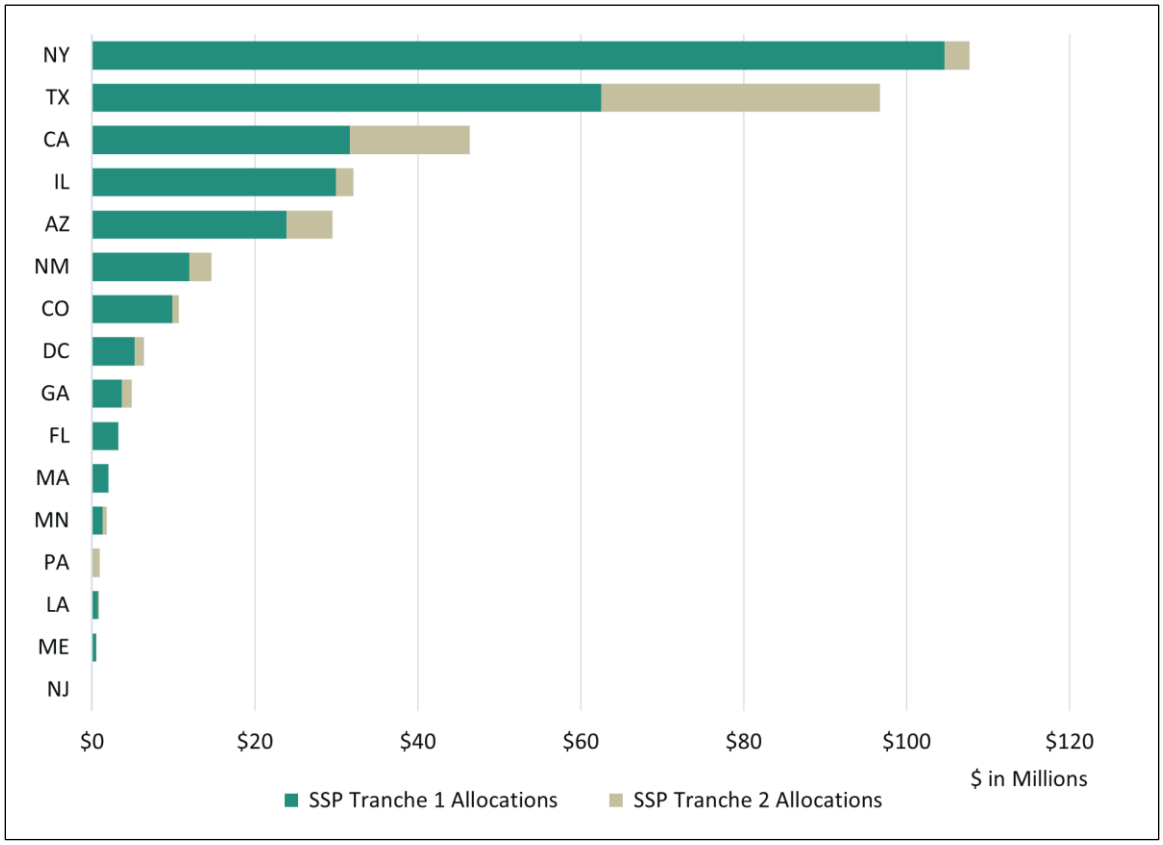


Sources: Created by CRS based on DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

Notes: This figure reflects the consolidated allocation information for FY2023 SSP funding tranches (i.e., first and second tranches) by state, to include the District of Columbia. The first tranche of SSP funding made $291 million available, and the second tranche made $77.3 million available. There is $10 million in reserve from the $77.3 million "for allocation prior to the end of September 2023 [to] eligible applicants from the first tranche and second tranche to account for rapidly changing trends and operational considerations." Most awards are represented in millions of dollars (indicated with an M), but awards totaling less than $1 million are represented in thousands of dollars (indicated with a K).

Figure 5. SSP Allocations by Funding Tranche and State (FY2023)

(as of August 21, 2023)



Sources: Created by CRS based on DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

Notes: This figure reflects the consolidated allocation information for FY2023 SSP funding tranches (i.e., first and second tranches) by state, to include the District of Columbia. The value for NJ is not visible due to scale (refer to **Figure 4** for award totals for the first and second tranches by state). The first tranche of SSP funding made $291 million available, and the second tranche made $77.3 million available. There is $10 million in reserve from the $77.3 million "for allocation prior to the end of September 2023 [to] eligible applicants from the first tranche and second tranche to account for rapidly changing trends and operational considerations."

Funding the SSP

In FY2023, a total of $363.8 million is being made available for the SSP in two tranches. The first tranche of funding, made available through the SSP NOFO, was for $291 million, and the second tranche of funding made $77.3 million available.[99]

[99] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification. For additional information on the SSP, see CRS Insight IN12177, *Shelter and Services Program (SSP) FY2023 Funding*, by Elizabeth M. Webster.

In its FY2024 budget, DHS proposed a $4.7 billion Southwest Border Contingency Fund to provide additional funding for three of its components most directly involved in processing and supporting migrants at the southwest border—CBP, ICE, and FEMA—for purposes including funding the SSP.[100] Funds would be appropriated quarterly only in the event that migrant encounters at the border reach specified levels.[101]

Regarding the SSP, the FY2024 budget request acknowledged that

> the costs NGOs and local and state jurisdictions incur [providing shelter and other services to migrant families and individuals] are significant and the SSP represents an important source of funding for these partners.[102]

While the budget did not request $800 million for the implementation of the SSP, the DHS budget documentation stated that the budget assumed that the SSP would receive at least $800 million to operate in FY2024 from the Southwest Border Contingency Fund, if the pre-defined thresholds are fully met in FY2024.[103] Further, the budget requested $83.5 million be appropriated directly to FEMA to implement the SSP (with the remainder being made available from the proposed Southwest Border Contingency Fund).[104]

The EFSP-H, SSP, and Southwest Border Contingency Fund were not included for funding in the FY2024 DHS Appropriations Act introduced in the House of Representatives (H.R. 4367). Further, the bill summary states that funding is not provided for the EFSP-H or SSP, and that the Southwest Border Contingency Fund is excluded.[105] One proposed amendment to the bill by Representative Chellie Pingree sought to provide $200 million for the SSP, but the amendment was not adopted.[106] Proponents of the amendment cited it as a vital resource for both U.S. border and interior communities and nonprofit organizations, acknowledged the work of social services providers, and noted that more resources are needed to support the asylum seeking population and provide for immigrants' basic needs. Opponents of the amendment noted that the SSP funding does not end up close to the border (referencing the SSP first tranche allocations of funding for New York, Chicago, and Washington, DC), and criticized funding the SSP and "failed border management programs," instead emphasizing the need to fund border security measures.[107]

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[100] DHS, *Fiscal Year 2024 Congressional Justification*, March 13, 2023, DHS-8, https://www.dhs.gov/sites/default/files/2023-03/DEPARTMENT%20OF%20HOMELAND%20SECURITY%20OVERVIEW_Remediated.pdf; DHS *Office of the Secretary and Executive Management Budget Overview: Fiscal Year 2024 Congressional Justification*, March 12, 2023, p. OSEM SWBCF-3, https://www.dhs.gov/sites/default/files/2023-03/OFFICE%20OF%20THE%20SECRETARY%20AND%20EXECUTIVE%20MANAGEMENT_Remediated.pdf (hereinafter DHS, *OSEM FY2024 Congressional Budget Justification*). Additional information on the Southwest Border Contingency Fund can be found in CRS Report R47496, *DHS Budget Request Analysis: FY2024*, by William L. Painter.

[101] DHS, *OSEM FY2024 Congressional Budget Justification*, pp. OSEM SWBCF–3-4.

[102] DHS, *OSEM FY2024 Congressional Budget Justification*, p. OSEM SWBCF-5.

[103] See the thresholds listed in the DHS, *OSEM FY2024 Congressional Budget Justification*, p. OSEM SWBCF-3.

[104] DHS, *FEMA FY2024 Congressional Budget Justification*, p. FEMA-29.

[105] U.S. Congress, House Committee on Appropriations, *FY24 Homeland Security—Bill Summary*, 118th Cong., 1st sess., May 18, 2023, pp. 1 and 8, https://appropriations.house.gov/sites/republicans.appropriations.house.gov/files/documents/FY24%20Homeland%20Security%20-%20Bill%20Summary.pdf.

[106] Representative Chellie Pingree requested a roll call vote on her amendment to increase the SSP by $200 million. The amendment was not adopted—25 yeas to 32 nays (U.S. Congress, House Committee on Appropriations, "Full Committee Votes: Homeland Security Bill, FY 2024, Roll Call 3," June 21, 2023, https://docs.house.gov/meetings/AP/AP00/20230621/116152/HMKP-118-AP00-20230621-SD008.pdf).

[107] U.S. Congress, House Committee on Appropriations, "Full Committee Markup of Fiscal Year 2024 Homeland Security," June 21, 2023, https://appropriations.house.gov/legislation/markups/full-committee-markup-fiscal-year-2024-homeland-security-and-legislative-branch (see video recording at 02:46:55-02:54:56).

Another amendment, which was proposed and withdrawn by Representative Juan Ciscomani, sought $83.5 million for the SSP, but would have limited the availability of funding to states along the southwest border. In support, Representative Ciscomani recognized the important work of social services providers in border communities, criticized the FY2023 SSP first tranche allocations of funding outside the border states, and asked the question: whose role is it to help migrants?[108]

The EFSP-H and Southwest Border Contingency Fund were not included for funding in the FY2024 DHS Appropriations introduced in the Senate; however, the SSP is included (see S. 2625). As with the Department of Homeland Security Appropriations Act, 2023 (Div. F, Title II of P.L. 117-328), Title II of S. 2625, if enacted, would transfer funding from CBP to FEMA "to support sheltering and related activities provided by non-Federal entities, in support of relieving overcrowding in short-term holding facilities of U.S. Customs and Border Protection." The Senate bill would transfer $752 million for the SSP, of which FEMA's administrative costs could not exceed $10.5 million.[109]

Thus, in their current forms (as of the date of publication), the House committee version of the FY2024 DHS appropriations bill would not fund the SSP, but the Senate committee version would (and in the manner it was funded in FY2023).[110]

Potential Considerations to Help Inform the Need for Future SSP Funding

Data Sources

In initially establishing the EFSP, as described by FEMA, "Congress recognized the burden placed on charitable groups and local governments in addressing unmet needs of families and individuals who were experiencing homelessness or at-risk of becoming homeless."[111] Similarly, some Members of Congress have cited the need to reduce the burden borne by social service organizations and local governments aiding migrants as justification for funding the EFSP-H.[112] The need for long-term, sustainable funding has also been acknowledged by some Members of Congress and humanitarian relief organizations. As explained by Beth Strano, Asylum Seekers and Families Coordinator, International Rescue Committee, in a hearing before the Senate

[108] Representative Juan Ciscomani introduced and withdrew an amendment on the SSP (U.S. Congress, House Committee on Appropriations, "Full Committee Markup of Fiscal Year 2024 Homeland Security," June 21, 2023, https://appropriations.house.gov/legislation/markups/full-committee-markup-fiscal-year-2024-homeland-security-and-legislative-branch (see video recording at 03:00:16-03:02:49)).

[109] For additional information on the SSP per S. 2625, see the U.S. Congress, Senate Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2024, report to accompany S. 2625, 118th Cong., 1st sess., S.Rept. 118-85 (Washington, DC: GPO, 2023), pp. 33 and 97.

[110] The Biden Administration's FY2023 supplemental funding request also included $600 million for the SSP (Letter from Shalanda D. Young, Director of the United States Office of Management and Budget, to Kevin McCarthy, Speaker of the House of Representatives, August 10, 2023, p. 47, https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf).

[111] DHS/FEMA, *FEMA Emergency Food and Shelter Program Alignment and Oversight Plan: Fiscal Year 2018 Report to Congress*, November 21, 2018, p. 24, https://www.dhs.gov/sites/default/files/publications/FEMA%20-%20Emergency%20Food%20and%20Shelter%20Program.pdf (hereinafter DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*).

[112] Letter from Senator John Cornyn, to Senator Richard Shelby, Chairman, Senate Committee on Appropriations et al., June 18, 2019, https://www.cornyn.senate.gov/sites/default/files/SJC%20Letter%20to%20SAC%206.18.19%20Border%20Supp_0.pdf; Letter from Senator Dianne Feinstein, to Senator Richard Shelby, Chairman, and Senator Patrick Leahy, Vice Chairman, Senate Committee on Appropriations, June 12, 2019, https://www.feinstein.senate.gov/public/_cache/files/7/5/7519ca59-0909-4c7f-8ea5-fc5783404de9/D459B14337529B6A136032B69B5D592B.feinstein-letter-re-fy20-border-supp-local-govt-06122019.pdf.

Committee on Homeland Security and Governmental Affairs, Subcommittee on Government Operations and Border Management,

> funding needs to become more long-term and sustainable.... [W]e see increases and decreases in arrivals, but we also have to compare those numbers alongside expulsions, alongside apprehensions. There are very different ways to see those numbers. The reality is that every day it is a safe assumption that folks are arriving at our border seeking asylum, and that those services are needed.[113]

Congress has an oversight role, and may wish to evaluate past trends in how organizations have used funding to help inform and anticipate potential future needs. Changes to U.S. border enforcement actions and policies may also affect the number of migrants arriving at the southern border, including either by increasing or decreasing their numbers or affecting the locations where they arrive. Evaluating these trends could provide insights for future funding needs. It may also be useful to consider ways to preserve flexibility in the allocation and disbursement of funds to account for shifting trends. Given the role of local government and nonprofit organizations in providing support to migrants entering the United States, and the fact that the funding authorized specifically for this purpose—the SSP—has only been made available through FY2023, Congress could consider whether there is a need to provide funding to support organizations meeting the needs of migrants, and could consider the need to authorize funding for the SSP in future fiscal years.

FEMA, CBP, and the EFSP National Board have used selected data sources to inform SSP and EFSP-H funding allocations and awards, respectively, which could be of interest to Congress. For example, EFSP-H request data were used to make SSP funding allocations for the eligible entities identified in the SSP NOFO.[114] The National Board also used data to prioritize EFSP-H award determinations, including ICE and CBP migrant release data (such data also informed FEMA and CBP's SSP allocations);[115] proximity to ICE and CBP facilities performing releases; number of migrants served; and direct costs incurred serving migrants (see the "Comparing the Funding Award Process and Considerations" section, above). Consideration could be given to information documented and submitted by EFSP-H grant recipients as part of reporting/program oversight (e.g., consideration could be given to the number of migrants served, the types and number of services provided, and the cost of providing such services—such information on unique persons served and expenses incurred are documentation requirements for recipients of EFSP-H funding—this is discussed more below in the "EFSP and EFSP-H Program Oversight" section).[116] Further, data on whether previous tranches of EFSP-H program funding were disbursed in their entirety, including whether the program was oversubscribed (i.e., there were more eligible

[113] HSGAC, *NGO Perspective on the Border*, pp. 17-18.

[114] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99.

[115] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program," NOFO Number: DHS-23-GPD-141-00-99; and DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification.

[116] See, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program—Humanitarian Relief," NOFO Number: DHS-23-DAD-024-00-03, p. 8 (see reporting requirements in the NOFO's "Performance Measures" section, which notes, "All expenditures must be for eligible purposes, delivered in adherence to program requirements, and thoroughly documented and reported."); see also National Board, *Phase SAHA Guidance (Round 1)*, pp. 20, 26, 35; National Board, *Phase SAHA Guidance (Round 2)*, pp. 14, 15, 17; National Board, *Phase SAHA Guidance (Round 3)*, pp. 16-20; National Board, *Phase ARPA Guidance*, pp. 12-18; National Board, *Phase HR22 Guidance*, pp. 12-21; National Board, *Phase HR FY23 CR Guidance*, pp. 11-21; National Board, *Phase HR23 Guidance*, pp. 16-22.

applications for funding than funding available to meet the requested need) could be of use. To this point, the DHS announcement about the allocation of funding pursuant to the Department of Homeland Security Appropriations Act, 2023, stated that "[d]ue to the significant demand for the limited funds from this competitive grant program, the Board was unable to fully fund all eligible applications."[117] These data sources are not currently publicly available, but Congress could consider requesting the above-listed data from FEMA and CBP to support its funding considerations.

As implemented, FEMA and CBP have retained some flexibility with regard to making SSP funding allocation and award determinations. For example, FEMA and CBP decided to make the funding available in two tranches, and FEMA set aside in reserve $10 million of the $77.3 million made available for the second tranche of SSP funding "for allocation prior to the end of September 2023 … to account for rapidly changing trends and operational considerations."[118] The reserve is available to eligible applicants from both the first and second tranches.

Local Government and Nonprofit Organization Capacity Challenges

The COVID-19 pandemic and the scale of the need presented by the influx of migrants since 2019 have affected the capacity of local government and nonprofit social service providers to support migrants.[119] Media reports from the southwest border describe how the influx of migrants is overwhelming the capacity of local governments and nonprofit organizations receiving and assisting such individuals—the Director of the Rescue Mission of El Paso stated his shelter was "bursting at the seams" and that "[t]he situation is overwhelming us."[120]

In the past, when representatives from NGOs provided recommendations regarding what Congress could do to aid the situation, several recommended providing additional funding and support to NGOs to aid migrants, including through the EFSP and FEMA and/or other federal agencies.[121] Additionally, FEMA and CBP conducted stakeholder engagement sessions while they established the SSP, and the recommendations provided included that the SSP cover the EFSP-H-eligible activities, that advanced funding is needed, and that the program be available

[117] DHS, "National Board Allocates Over $300 Million for EFSP-H."

[118] DHS, "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Shelter and Services Program (Amended): Amendment 00001: The purpose of this amendment is to update the NOFO for information about Tranche 2," DHS-23-GPD-141-00-99, August 21, 2023 modification. The amended NOFO for the second tranche of SSP funding describes considerations for the $10 million reserve, noting that it will be allocated "based on operational considerations including, but not limited to: an eligible applicant's location at the Southwest Border (California, Arizona, New Mexico, Texas); data from CBP on migrant encounters, releases, and demographics; and recent reports, trends, policies, and information on migrant flows and migration patterns from federal sources involved in day-to-day operations in the Southwest Border. These operational considerations have the following order of priority: (1) the applicant's location at the Southwest Border and CBP data on noncitizen migrant encounters, releases, and demographics; (2) recent reports, projection estimates, and trends from federal sources; and (3) policies and information on migrant flows and migration patterns from federal sources involved in day-to-day operations at the Southwest Border."

[119] For example, see U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice, "Notice of Proposed Rulemaking in Anticipation of a Potential Surge of Migration at the Southwest Border," 88 *Federal Register* 11714-11715, February 23, 2023, https://www.govinfo.gov/content/pkg/FR-2023-02-23/pdf/2023-03718.pdf (see the "Effects on Resources and Operations" section).

[120] Simon Romero, J. David Goodman and Eileen Sullivan, "Mass Migrant Crossing Floods Texas Border Facilities," *New York Times*, December 12, 2022, https://www.nytimes.com/2022/12/12/us/el-paso-migrants-border.html.

[121] HSGAC, *NGO Perspective on the Border*, pp. 37, 42 (see recommendation 3 included in the testimony of Dulce Garcia, Executive Director, Border Angels, and Chair of the San Diego Immigrant Rights Consortium, April 28, 2021; see also recommendation included in the testimony of Beth Strano, Asylum Seekers and Families Coordinator, International Rescue Committee, April 28, 2021).

nationwide.[122] Congress could consider requiring FEMA, with other federal agencies that fund the provision of social services, to evaluate additional options for funding and/or directly providing aid to migrants, with consideration given to immigration status and options for meeting the needs of different migrants (e.g., people with or without "A numbers"). This could also include consulting with local governments in southwest border states, nonprofit and faith-based organizations, the EFSP National Board, and other stakeholders to understand their capacity constraints and resource needs (similar to the SSP stakeholder engagement sessions, but with a focus beyond the development of the SSP program).

Additional considerations could include

- evaluating options for ensuring organizations serving the influx of migrants have sufficient staffing;
- funding the leasing or construction of mass shelter and feeding facilities in areas receiving an influx of migrants (similar to the funding for the construction and expansion of shelter facilities made available in FY2023 pursuant to Section 211(b) of Div. F, Title II of P.L. 117-328);
- providing longer-term federal support or a bridge to other federal support programs (e.g., the EFSP-H program provides shorter-term relief than the U.S. Department of Housing and Urban Development [HUD]). EFSP-H may provide funding for temporary assistance, such as hotel/motel services limited to 5 days per individual or family [or 30 days if the individual or family has no sponsor]. HUD, however, may offer longer-term support through its Continuum of Care [CoC] program—in some instances, the CoC program may be able to provide housing assistance for up to 24 months);[123] and
- working to connect and enroll eligible migrants and/or their children in existing federal programs (e.g., migrants may be eligible for assistance through the Special Supplemental Nutrition Program for Women, Infants, and Children [WIC], as well as The Emergency Food Assistance Program [TEFAP]).[124]

Implementing such solutions may take time (e.g., time to locate available facilities or construct new facilities) and may require additional support for LROs (e.g., additional administrative funding to hire more staff), and in the meantime, local governments and nonprofit organizations are dealing with a significant influx of migrants who need support.[125]

[122] FEMA and CBP, "SSP Stakeholder Engagement," p. 4.

[123] The Continuum of Care (CoC) program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §§11381-11389), 24 C.F.R. Part 578.

[124] See the U.S. Department of Agriculture, Food and Nutrition Service's "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," available at https://www.fns.usda.gov/wic. For additional information, see CRS Report R44115, *A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children*, by Randy Alison Aussenberg. See also the U.S. Department of Agriculture, Food and Nutrition Service's "The Emergency Food Assistance Program," available at https://www.fns.usda.gov/tefap/emergency-food-assistance-program. For additional information, see CRS Report R45408, *The Emergency Food Assistance Program (TEFAP): Background and Funding*, by Kara Clifford Billings.

[125] In April 2023, GAO reported that the EFSP-H is the only DHS grant program funding nonprofits assisting migrants released from DHS custody, and cited the capacity of nongovernmental organizations to meet the needs of the high volumes of migrants as a challenge to the provision of services (GAO, *Southwest Border: DHS Coordinates with and Funds Nonprofits*, pp. 1, 3-4).

EFSP and EFSP-H Program Oversight

Both the EFSP and EFSP-H emphasize strong public-private partnerships and reliance on local decision-making. Another program hallmark, and justification for using the EFSP to deliver funding for migrant support through the EFSP-H, is the speed with which funding can be provided because of the existing grant funds delivery structure. These cited program benefits[126] may also raise oversight concerns related to the use of program funds. When questioned about EFSP oversight in June 2022, FEMA Administrator Criswell described some of the EFSP oversight mechanisms, stating

> [FEMA has] a couple of mechanisms in place to ensure that the funding is being spent appropriately. First, there are the local boards for the charities that look at every expenditure to make sure that it's a valid expenditure. Then our National Board also looks at all of the expenditures to make sure that they are authorized expenditures. And then we conduct through FEMA and one of our contractors an annual audit of the program to ensure that we're using the funding is the way it was intended.[127]

In FEMA's *Emergency Food and Shelter Program Alignment and Oversight Plan* (hereinafter FEMA's *EFSP Alignment and Oversight Plan*), provided to Congress in November 2018, FEMA stated, "Rigorous oversight and accountability practices by FEMA, the National Board, and independent auditors ensure that there is strong accountability in the stewardship of this public-private program."[128] The LROs, Local Board, National Board, FEMA, and other federal agency requirements that contribute to EFSP program oversight are described below.[129]

LRO Requirements

Per the statute, recipients of assistance are required to keep records related to the provision of EFSP assistance, which would be needed to facilitate an effective audit.[130] LROs must account for all EFSP funds received each fiscal year through required reports, with supporting documentation regarding their eligible expenditures and proof of payments.[131] LROs must submit required

[126] National Board, "Supplemental Funding Information Details," available from the Internet Archive as of July 18, 2022, at https://web.archive.org/web/20220718130108/https://www.efsp.unitedway.org/efsp/website/websiteContents/index.cfm?template=suppFundingInfoDetails.cfm. Such sentiments are also reflected in the EFSP-H guidance.

[127] House Homeland, *Investing in the Future* (see the questions from Ranking Member Cammack and responses from FEMA Administrator Deanne Criswell). According to FEMA, "Both the EFSP- Regular and the EFSP-Humanitarian programs operate under the authority of the McKinney Vento Homeless Assistance Act" (email from FEMA Office of External Affairs staff, April 20, 2023). As such, FEMA's EFSP oversight functions set forth in the statute apply to the EFSP-H (e.g., conducting annual audits of the National Board per 42 U.S.C. §11333(b)(3)). Further, the DHS OIG reported that the EFSP's "existing grant delivery structure and public-private partnership made it a viable means for providing funds quickly to organizations providing humanitarian relief to families and individuals encountered by DHS in southern border states with the greatest need. The EFSP involves multiple organizations with different roles" and described the oversight responsibilities of the National Board, United Way Worldwide, and FEMA, as well as Local Boards and Local Recipient Organizations (DHS OIG, *FEMA Should Increase Oversight*, pp. 1-4).

[128] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 24.

[129] FEMA, as well as recipients and subrecipients of federal funding, must comply with federal civil rights laws. For additional information, see CRS Report R47280, *Defining FEMA's Approach to Equity and Emergency Management: Policy Considerations*, coordinated by Erica A. Lee.

[130] 42 U.S.C. §11334(b)(1).

[131] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 11, 19. Per the *Phase HR23 Guidance*, "As part of the application process for reimbursement of eligible expenses, funded agencies will be required to complete and submit a Humanitarian Relief Funding Reimbursement Report reflecting expenditures made within the eligible timeframe with the application. Agencies may be required to submit copies of spreadsheets and supporting documentation (proofs of payment or receipts) of eligible expenditures to the Local Board.... Prior to the release of (continued...)

reports to the Local Board; failure to comply results in the National Board withholding their funds. According to FEMA, "The National Board holds funds until all reporting requirements have been satisfied."[132]

LROs may also be subject to audit requirements, as required by the National Board, depending on the amount of EFSP funding received:

- LROs receiving $100,000 or more in EFSP funding must have an independent annual audit in accordance with Government Auditing Standards;
- LROs receiving $50,000 to $99,999 must conduct an annual accountant's review; and
- any agency expending $750,000 or more in federal funds must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200).[133]

Local Board Oversight Requirements

Per the statute, Local Boards must monitor LRO program compliance and ensure proper reporting.[134] Local Boards are required to submit reports to the National Board, which include supporting documentation of expenditures made with program funds, and that track funds spent, unspent, or reallocated. Additionally, Local Boards must meet at least semiannually to monitor the program and ensure LROs are implementing the program pursuant to the program guidance.[135]

National Board Oversight Requirements

The EFSP National Board is required to adhere to federal grant regulations and requirements, and the National Board's accounts are subject to an annual audit that meets the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200) and is performed using "Generally Accepted Accounting Principles."[136] Specifically, the statute states that the National Board's accounts shall be subject to an annual independent audit on site and affording access to all necessary "books, accounts, financial records, reports, files, and all other papers, things, or property," as well as facilities for verifying transactions.[137] To conduct the audit, the National Board has access to EFSP recipients' books, documents, papers, and records related to EFSP assistance received.[138]

The National Board is required to include the results of the annual audit in the annual report that it submits to Congress.[139] As described in FEMA's *EFSP Alignment and Oversight Plan*, the

funds, all required information must be filed with the National Board for all agencies. No agency that has not submitted the required information by the established deadlines will receive funds" (National Board, *Phase HR23 Guidance*, p. 26).

[132] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 16.

[133] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 17.

[134] 42 U.S.C. §11332(b)(2) and (4).

[135] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 16.

[136] 42 U.S.C. §11334(a); DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 20.

[137] 42 U.S.C. §11334(a)(1).

[138] 42 U.S.C. §11334(b)(2).

[139] 42 U.S.C. §11334(a)(2) and 42 U.S.C. §11335.

National Board reports to Congress through the U.S. Interagency Council on Homelessness Annual Report.[140]

The National Board is required to

- subject its accounts to an annual independent audit;
- ensure EFSP funds are properly accounted for;
- ensure unused funds and funds that must be returned because of compliance issues are collected;
- compile reports using Local Board-provided data on services provided;
- provide quarterly federal financial reports and a final federal financial report following the period of performance;
- provide quarterly performance progress reports and a final performance progress report following the period of performance that list the LROs and funding award amounts; the total disbursement of funds awarded to LROs; the total numbers of financial reports received from LROs, compliance issues requiring resolution and the number resolved, and audited awarded agencies; estimates of assistance provided in services categories, including the numbers of meals provided, nights of lodging provided, COVID-19 tests administered, medical care provided associated with COVID-19 during quarantine and isolation, and other eligible services; administrative costs incurred; and a narrative of accomplishments;
- participate in the award closeout process;
- submit an annual report to Congress that provides a detailed accounting of use for all program monies (copies are also provided to the FEMA Program Manager and Federal Audit Clearinghouse);
- provide monthly Secretariat Reports with financial status updates to the FEMA Program Manager and FEMA's Grant Programs Directorate;
- conduct compliance reviews of expenditures for specified LROs;
- conduct site reviews for specific LROs; and
- monitor LRO compliance with Office of Management and Budget Circular A-133.[141]

Per FEMA's *EFSP Alignment and Oversight Plan*, the National Board meets in person on a monthly basis in support of its program administration and oversight responsibilities; two of the meetings each year are held offsite in local communities.[142]

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[140] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 11. FEMA's *EFSP Alignment and Oversight Plan* also states, on page 14, that "FEMA reports to Congress on the year's program activities through the USICH [U.S. Interagency Council on Homelessness] Annual Report."

[141] 42 U.S.C. §11334; DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 18-19; see also, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program—Humanitarian Relief," NOFO Number: DHS-23-DAD-024-00-03, pp. 25-27; DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, pp. 28, 46; and DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, referencing Department of Homeland Security Appropriations Act, 2022," NOFO Number: DHS-23-DAD-024-00-01, pp. 8-9. Note that Title 2 of the *Code of Federal Regulations* superseded A-133 "Audits of States, Local Governments and Non-Profit Organizations" (2 C.F.R. §200.104(g)).

[142] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 6, 18.

FEMA Oversight Requirements

Per the statute, FEMA—specifically the Director of the National Board—must conduct annual audits of the National Board and "at such other times as may be appropriate."[143]

As described in FEMA's *EFSP Alignment and Oversight Plan*, the agency monitors the EFSP "both programmatically and fiscally in accordance with federal grant regulations and requirements."[144] In its monitoring capacity, FEMA

- conducts an annual independent audit, as well as audits at other times, as requested (National Board Director);
- reports to Congress through the U.S. Interagency Council on Homelessness Annual Report;
- conducts periodic in-office desk reviews and an annual onsite financial monitoring assessment (FEMA Program Manager and FEMA's Grant Programs Directorate) and shares the resulting report with the National Board;
- conducts Improper Payments Elimination and Recovery Act (IPERA) compliance assessments (FEMA Program Manager and FEMA's Office of the Chief Financial Officer); and
- attends National Board Meetings, and makes site visits (FEMA may also make visits without the National Board's presence).[145]

As noted above, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200) apply to the EFSP, and FEMA is responsible for ensuring the EFSP is administered consistent with these requirements.[146] In FEMA's *EFSP Alignment and Oversight Plan*, FEMA stated that the EFSP program is administered responsibly, noting

- the program has had "clean, annual independent audits (A-133 audits) since the program's inception";
- it has a low risk for improper payments; and
- accountability is ensured through reporting and adherence to all grant requirements.[147]

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[143] 42 U.S.C. §11333(b)(3).

[144] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 5. FEMA's EFSP NOFOs also discuss monitoring and oversight, noting that "FEMA regularly monitors all grant programs both financially and programmatically in accordance with federal laws, regulations (including 2 C.F.R. Part 200), program guidance, and the terms and conditions of the award" (DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2022 Emergency Food and Shelter National Board Program," NOFO Number: DHS-22-DAD-024-00-02, pp. 29-30).

[145] FEMA is required to conduct an annual audit of the National Board (42 U.S.C. §11333(b)(3)). The audit process and information regarding records is detailed at 42 U.S.C. §11334. FEMA also stated that it reports to Congress on the EFSP's annual activities through the United States Interagency Council on Homelessness's Annual Report (DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 5, 14, 17, 18-19; see also, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, pp. 27, 47).

[146] See, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, pp. 27-28.

[147] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, p. 6. Title 2 of the *Code of Federal Regulations* superseded A-133 "Audits of States, Local Governments and Non-Profit Organizations" (2 C.F.R. §200.104(g)). As detailed in FEMA's report, "IPERA [Improper Payments Elimination and Recovery Act] assessments conducted in (continued...)

Further, FEMA monitors the National Board's annual program audit through the DHS Office of Inspector General (DHS OIG),[148] and FEMA's Office of the Chief Financial Officer.[149] FEMA also receives monthly reports from the EFSP's Secretariat,[150] and National Board-provided data on how funds were spent and the services provided (annually and as requested).[151]

FEMA also attends the National Board's monthly meetings, as well as the National Board's agency visits.[152] FEMA also responds to congressional inquiries and requests, including using National Board-provided data.[153]

Other Federal Oversight

Per statute, the Comptroller General also has access to the National Board's books, documents, papers, and records for purposes of conducting an audit.[154] Federal grant recipients, including the National Board, are subject to audit oversight from multiple entities, including the DHS OIG and GAO.[155]

Potential Congressional Considerations

EFSP-H Oversight and Enforcement of Program Requirements

On March 28, 2023, the DHS OIG released a report on FEMA's oversight of the EFSP-H funds provided pursuant to the ARPA appropriation ($110 million), which found LROs did not always use funding in accordance with the program guidance, and found some LROs did not maintain or were unable to provide some of the required documentation to support their reimbursement requests.[156] For example, although the ARPA appropriation for the EFSP-H required the funds be

2013 and 2014 determined improper payments below the 1.5 percent error rate and $10 million value thresholds established by the Office of Management and Budget (OMB). Consequently, OMB granted a waiver to an IPERA assessment in 2015 for EFSP.... EFSP has been assessed to be low risk for improper payments in the intervening years. A risk assessment was completed in September 2018 and EFSP continues to remain low risk."

[148] DHS OIG, *FEMA Needs to Improve Its Oversight of the Emergency Food and Shelter Program*, OIG-22-56, August 10, 2022, https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-56-Aug22.pdf. The DHS OIG audited the EFSP program funds that were awarded during FY2017-FY2020 (i.e., Phases 35, 36, 37, and CARES), totaling $560 million (p. 6). The DHS OIG found that the National Board did not promptly reallocate funds that went unclaimed and noted deficiencies in the National Board's tracking of Local Boards and State Set-Aside Committees resulting in funding going unclaimed and challenges contacting some jurisdictions that received funding allocations—FEMA did not concur with the DHS OIG's recommendations in this regard (pp. 9, 16-17). The National Board's failure to enforce LRO requirements to quickly resolve outstanding compliance issues was another cited issue, which resulted in LROs not being paid and made it so that Local Boards were unable to reallocate the unpaid funds to eligible LROs (pp. 9-10). In response to one of the DHS OIG's recommendations included in an August 2022 report, FEMA stated that it will develop written guidance to define FEMA's EFSP roles, responsibilities, and procedures for the EFSP staff in the Individual Assistance Division (estimated completion date: June 30, 2023) (pp. 15, 18; see Recommendation 5).

[149] See, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, p. 47.

[150] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 14, 18; see also, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, p. 47.

[151] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 18-19.

[152] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 6, 18.

[153] DHS/FEMA, *FEMA EFSP Alignment and Oversight Plan: FY2018*, pp. 5, 19.

[154] 42 U.S.C. §11334(c).

[155] See, for example, DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, p. 42.

[156] DHS OIG, *FEMA Should Increase Oversight*, p. "DHS OIG Highlights."

used for migrants "encountered by DHS," the ARPA guidance did not require LROs to maintain logs that included the names of the migrants receiving services, nor were they required to record their "A numbers" (i.e., a unique numbers DHS assigns to noncitizens).[157] Thus, the DHS OIG found that some LROs provided services to migrants who had not been encountered by DHS, making those expenses for services provided ineligible for EFSP-H funding. Additionally, services were provided to migrants before they were encountered by DHS or before funding was available.[158]

The DHS OIG attributed these issues to insufficient federal oversight and enforcement by FEMA and the National Board.[159] The report cites FEMA and the National Board's reliance on Local Boards and Fiscal Agents to ensure LROs' reimbursement requests were adequately supported.[160] One active oversight step FEMA reported on in its response was to note that the *Phase HR FY23 CR Guidance* instituted a quarterly reporting requirement to enhance oversight, and reported that the Phase HR23 funding would also require quarterly reporting (this requirement was included in the *Phase HR23 Guidance*).[161] In addition, the *Phase HR23 Guidance* clarified and specifically defined what is considered a DHS encounter (see the text box on "Emergency Food and Shelter Program (EFSP) Terms," above).[162]

Conclusion

As Title 42 was ending, DHS put new policies into place to deter illegal immigration and to restructure how asylum-seekers are processed at the southwest border.[163] Examples include a new rule and procedure to request asylum,[164] including a mobile application (app) developed by CBP to schedule appointments for inspections at designated ports of entry;[165] tougher penalties for illegal entry;[166] enhanced programs for certain nationals to be legally paroled into the United States;[167] and increased border resources, including holding facilities, DHS personnel, and increased military personnel at the border to manage anticipated increases in encounters.[168] It is too soon to know how the constellation of new policies will affect the level or the composition of new arrivals of asylum seekers at the border over the long term. Neither is it possible to predict

[157] DHS OIG, *FEMA Should Increase Oversight*, pp. 6-7.

[158] DHS OIG, *FEMA Should Increase Oversight*, p. 7.

[159] DHS OIG, *FEMA Should Increase Oversight*, p. "DHS OIG Highlights."

[160] DHS OIG, *FEMA Should Increase Oversight*, p. 7.

[161] DHS OIG, *FEMA Should Increase Oversight*, pp. 14, 16, 18; National Board, *Phase HR23 Guidance*, pp. 26, 57.

[162] DHS OIG, *FEMA Should Increase Oversight*, p. 18; National Board, *Phase HR23 Guidance*, p. 5.

[163] DHS, *Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border Through Deterrence, Enforcement, and Diplomacy*, May 10, 2023, https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border (hereinafter "DHS Fact Sheet Announcing Sweeping Measures to Manage Border").

[164] See Department of Homeland Security and Department of Justice (DOJ), "Circumvention of Legal Pathways," 88 *Federal Register* 11714, February 23, 2023; and CRS Legal Sidebar LSB10961, *The Biden Administration's Final Rule on Arriving Aliens Seeking Asylum*, by Hillel R. Smith.

[165] See "CBP Privacy Impact Assessment for CBP One."

[166] See "DHS Fact Sheet Announcing Sweeping Measures to Manage Border."

[167] DHS implemented new parole processes for certain nationals of Cuba, Haiti, Nicaragua, and Venezuela that are designed to reduce the number of CBP encounters and allow eligible migrants to lawfully enter the United States on a case-by-case determination of parole. See U.S. Citizenship and Immigration Services, "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans," press release, 2023, https://www.uscis.gov/CHNV (last updated May 18, 2023).

[168] DHS, "DHS Statement on Request for Additional DoD Support on the Southwest Border," press release, May 20, 2023, https://www.dhs.gov/news/2023/05/02/dhs-statement-request-additional-dod-support-southwest-border.

the number of migrants in removal proceedings who may be released from DHS custody at the southern border and may then need services provided by local NGOs or governments, including to assist them with their initial needs upon entering the United States.

To that end, while the federal government has exclusive jurisdiction over policies governing the U.S. border, including immigration enforcement, the challenge of managing the influx of migrants is also carried out by states and localities at the border and destinations well beyond the border in places released migrants initially travel to stay. Acknowledging the challenges of the rising volume of migrants, the changing demographics of the encountered migrant population, and the corresponding need for additional support, Congress has approved the use of funding for humanitarian aid for migrants encountered by DHS at the southwest border or southern border (as specified in the EFSP-H NOFO and/or program guidance for each specific phase—see **Appendix C**), through the EFSP-H in FY2019, FY2021, FY2022, and FY2023, and also established a new Shelter and Services Program in FY2023 to replace the EFSP-H. Still, this evolving situation may raise questions regarding the need for such assistance, the amount of assistance needed, and the availability of other programs and resources that can support such individuals.

As legal challenges to the recent post-Title 42 policies and procedures mount and as it remains to be seen how well policy changes that depend on the cooperation of other nations may proceed (e.g., by agreement, Mexico currently accepts the return of certain migrants to Mexico following a CBP encounter), DHS and other agencies may have to alter existing practices going forward.[169] As such, Congress may contemplate the need for an oversight review of current practices and their effectiveness toward achieving their intended effects (e.g., related to the volume of migrants encountered, the efficacy of asylum process changes, and how quickly aliens are removed under the new procedures). These practices are intended to limit the number of migrants who would potentially be released at the border, where DHS capacity to hold migrants is constrained. The policy changes may thus—potentially—reduce the burden on local entities providing assistance to migrants.

Human migration patterns may shift, potentially in direct response to U.S. border policy changes or due to other factors, such as political instability or the effects of climate change in migrants' home countries. This may cause fluctuations in the number of migrants arriving to the southern border seeking asylum and could affect the level of support local government and social service organizations need (to increase or decrease). To that end, Congress is likely to face continuous monitoring of the flexibility and sufficiency of federal programs to meet the needs of newly arrived migrants.

[169] Legal challenges to some of the new border policies include the practice of releasing migrants on "parole with conditions," and the new final asylum rule. See, e.g., Muzaffar Chishti and Kathleen Bush-Joseph, "U.S. Border Asylum Policy Enters New Territory Post-Title 42," Migration Policy Institute, May 25, 2023, https://www.migrationpolicy.org/article/border-after-title-42; Shweta Watwe, "Key Plank of Biden Post-Title 42 Border Policy Halted by Judge," *Bloomberg Law*, May 17, 2023; and Rebecca Beitsch, "ACLU Sues to Block New Asylum Restrictions," *The Hill*, May 12, 2023.

Appendix A. EFSP-H Eligible Costs

The EFSP-H guidance groups eligible expenditures into five categories: (1) Primary; (2) Secondary; (3) Administrative; (4) Equipment and Assets; and (5) Transportation, with priority being given to Primary services. Detailed examples of eligible costs, organized by category, are listed below.

1. **Primary Services (only food and shelter)**, such as
   - shelter/lodging expenses related to mass sheltering
   - shelter/lodging expenses related to hotel/motel shelter nights (limited to a maximum of 5 days, or 30 days if the individual/family has no sponsor;[170] reimbursement is based on actual costs, not to exceed the rate set by the U.S. General Services Administration [GSA] for the location[171])
   - food purchases (contracted meals, congregate meals, or food pantry services)
   - food bank direct support of migrants (i.e., giving food/meal-supportive purchases to migrants), and indirect support of migrants (i.e., giving food/meal-supportive items to other agencies providing the direct services to migrants)
   - t-shirt bags
   - hygiene items
   - consumable supplies essential to mass feeding (e.g., plastic utensils) or mass shelters (e.g., personal hygiene items)
   - equipment purchases or rentals for mass feeding (e.g., pots and pans, storage containers) or mass shelters (e.g., cots and linens, washer/dryer)
   - feeding facility/mass shelter utilities
   - maintenance and housekeeping
   - contracted services (i.e., security and trash pickup)
   - personal protective equipment (PPE)
   - basic first aid and over-the-counter medication
2. **Secondary Services (health/medical and other supportive services)**, such as
   - health and medical services (i.e., basic first aid, health screenings, medical care limited to assessment and stabilization for onward travel, COVID-19 testing and limited care related to quarantine and isolation,[172] mental health)
   - legal aid (limited to "know your rights" presentations and completion of forms necessary for onward travel)
   - translation services
   - clothing, shoes, and belts

[170] The limitation was put in place for the Phase ARPA funding, and also applies to the Phase HR22, Phase HR FY23 CR, and Phase HR23 funding.

[171] The hotel/motel reimbursement limitation based on the U.S. General Services Administration (GSA) rate for the location was added in Phase ARPA (National Board, *Phase ARPA Guidance*, p. 12), and also applies to Phase HR22 and Phase HR23.

[172] COVID-19-related testing and associated care were ineligible expenses in Phase SAHA (National Board, *Phase SAHA Guidance (Round 3)*, p. 3).

- backpacks

3. **Administrative Services (e.g., staff time and postage)**, such as[173]
   - staff time to provide direct services to migrants or to support migrant needs (e.g., meal preparation, shelter intake, translation, casework, maintenance, transportation coordination)[174]
   - staff time to prepare/complete an application
   - postage to send/mail documentation as part of the application process
   - expenses to purchase supplies to complete the application
4. **Equipment and Assets Services (purchases/leases, and necessary renovations)**, such as
   - purchase of vehicle or equipment necessary to perform humanitarian relief functions (e.g., HVAC system) (limited to a fair market value up to $5,000 at the time of purchase)
   - facility repairs for the provision of services to make it safe, sanitary, or compliant with local codes
5. **Transportation Services (local and long-distance domestic travel for migrants and staff supporting migrants)**, such as:
   - local transportation expenses via taxi, rideshare, or charter bus, including contracted services, vehicle rental, gas, insurance, and drivers (limited to the federal mileage rate or actual fuel costs)
   - domestic long-distance transportation costs to move migrants to another city or state via bus, train, or airplane (limited to coach class fares; airfare not to exceed $700 per ticket;[175] long-distance travel will be prioritized for up to 30% of the migrant population, unless otherwise permitted by the National Board[176])
   - transport of LRO staff "that may be required to assist [migrants] while traveling"

[173] Local Boards may also receive administrative expenditures for advertising the availability of funding and reviewing applications from service agencies (National Board, *Phase HR23 Guidance*, p. 19).

[174] EFSP Humanitarian Relief program eligible administrative-related expenditures can also include applicant agency application-related expenditures and Local Board administrative expenditures related to advertising funding, assistance service agencies with the application process, etc.

[175] The airfare limitation of $700 per ticket was added in Phase HR22 (National Board, *Phase HR22 Guidance*, p. 20).

[176] Phase HR22 prioritized expenses for up to 30% of the migrant population served, and noted additional flexibility may be permitted if immigration policies change that substantially increase the number of migrants received by local jurisdictions and nonprofit organizations (National Board, *Phase HR22 Guidance*, p. 20). The 30% cap also applies in Phase HR FY23 CR (National Board, *Phase HR FY23 CR Guidance*, p. 19), and Phase HR23 (National Board, *Phase HR23 Guidance*, p. 20). Previously, Phase ARPA prioritized expenses for long-distance transportation for up to 10% of the migrant population served (National Board, *Phase ARPA Guidance*, p. 17).

Appendix B. EFSP Program Overview

The EFSP funds grants to local government, nonprofit, and faith-based organizations to supplement and expand efforts to provide shelter, food, and supportive services to individuals and families experiencing (or at risk of experiencing) hunger, or homelessness.[177] This appendix provides information on the EFSP to complement the report's discussion of the EFSP-H's eligible clients, eligible costs, and the funding award process.

Eligible Clients

Local Boards may choose to establish client eligibility criteria based on community needs. If the Local Board does not establish client eligibility criteria, LROs may use their existing criteria or set criteria for assistance provided under the EFSP award (with Local Board approval). Criteria used must not discriminate based on age, race, sex, religion, national origin, disability, economic status, or sexual orientation.[178]

The EFSP does not restrict the eligibility of the clients served on the basis of their immigration status—meaning EFSP-funded LROs may be reimbursed for assistance provided to migrants (as they would any client experiencing or at risk of experiencing homelessness and/or hunger).[179]

Eligible Costs

As established in statute, the EFSP provides funding for shelter, food, and supportive services, and the specific details of the assistance provided are included in the program guidance for each funding phase. There are several program categories detailed in the program guidance for Phase 35 (FY2017)—referred to as the *Phase 35 Manual*—which is also referenced in the subsequent EFSP program phases.[180] These include "mass feeding, other food, mass shelter, other shelter,

[177] 42 U.S.C. §11343(a)(1). In addition to the EFSP, the federal government provides other programs to assist individuals experiencing homelessness. For additional information, see CRS Report RL30442, *Homelessness: Targeted Federal Programs*, coordinated by Libby Perl.

[178] National Board, *Phase 35 Manual*, pp. 18, 29. The National Board does not set client eligibility criteria.

[179] National Board, *Phase 35 Manual*, p. 18. The *Phase 35 Manual* states, "[i]n providing assistance under the EFSP, verification of proof of citizenship or qualified alien status of any applicant for assistance is not required."

[180] National Board, *Phase 35 Manual*. The National Board produced addendums to the *Phase 35 Manual* or published tables reflecting updates to the guidance for these subsequent phases. **Table 1** lists the EFSP allocation phases for FY2017-FY2023. For additional information on subsequent Phases, see National Board, *Phase 36 Addendum*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/AddendumtoProgramManual/AddendumP36Manual.pdf (the *Phase 35 Manual* with the *Phase 36 Addendum* were used to administer Phase 36); National Board, *Phases 37 and CARES Addendum to the Phase 35 Responsibilities and Requirements Manual and the Phase 36 Addendum*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/AddendumtoProgramManual/AddendumP37Manual.pdf (the *Phase 35 Manual* and *Phase 36 Addendum*, with the *Phases 37 and CARES Addendum* were used to administer Phase 37 and Phase CARES); National Board, *Phase 38 Addendum to the Phase 35 Responsibilities and Requirements Manual and the Phases 36 and 37 & CARES Addendums*, last accessed December 7, 2022, available from Changing Homelessness at https://www.changinghomelessness.org/wp-content/uploads/2022/03/12.-EFSP-Phase-38-Addendum-to-Phase-35-Program-Manual.pdf (the *Phase 35 Manual* and *Phase 36 Addendum*, *Phases 37 and CARES Addendum*, and *Phase 38 Addendum* were used to administer Phase 38); National Board, *Emergency Food and Shelter Program Changes / New Guidance Implementation Beginning with Phases 39 and ARPA-R Awards*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/pdfs/EFSP%20Program%20Changes.pdf. CRS was unable to find additional publicly available detailed program guidance for the implementation of Phase 39, Phase ARPA-R, or Phase 40. According to FEMA, "The National Board will not be issuing phase manuals for Phases 39, 40, or ARPA-R. *The Emergency Food and Shelter National Board Program Phase 35 Responsibilities and Requirements* (continued...)

supplies/equipment, rent/mortgage, utilities and administration."[181] To provide a more detailed, albeit not exhaustive list, the *Phase 35 Manual* includes as eligible program costs:[182]

- **Mass Feeding and Other Food-Related Costs**, such as
  - food purchases, including for food banks/pantries and other food providers, as well as purchases for mass feeding
  - transportation, including to pick up and deliver or distribute purchased and donated food to food banks/pantries and other food providers (limited to a dated mileage log at the federal mileage rate)
- **Mass Shelter and Other Shelter, and Rent/Mortgage-Related Costs**, such as
  - local transportation to pick up and deliver food, and transport clients to a mass shelter or feeding site (limited to a dated mileage log at the federal mileage rate, contracted services, or public transportation)
  - off-site hotel/motel or other shelter (initially limited to 30 days, assistance was increased to up to 90 days if necessary to prevent homelessness for Phase 39 and Phase ARPA-R)
  - rent/mortgage assistance (initially limited to 30 days, assistance was increased to up to 90 days if necessary to maintain housing for Phase 39 and Phase ARPA-R)
  - first month's rent payment (e.g., if moving from a temporary shelter to longer-term accommodations; cannot be provided in addition to rent/mortgage assistance)
- **Supplies and Equipment-Related Costs**, such as
  - small equipment purchases (not exceeding $300 per item) that are essential to the operation of food banks/pantries (e.g., shelving and storage containers), or essential to mass feeding (e.g., pots and pans) or mass shelters (e.g., cots and linens)
  - minor emergency repair (not to exceed $300 per item) of small equipment essential to mass feeding or mass shelters (e.g., hot water heater)
  - consumable supplies essential to mass feeding (e.g., plastic utensils) or mass shelters (e.g., personal hygiene items)
  - limited first aid supplies for mass sheltering and mass feeding (e.g., Band-Aids)

Manual is updated via addendum as needed and as posted on the website" (email from FEMA Office of External Affairs staff, April 20, 2023).

[181] National Board, *Phase 35 Manual*, p. 12.

[182] National Board, *Phase 35 Manual*, pp. 65-74. See also updates referenced in parentheticals from the National Board, *Emergency Food and Shelter Program Changes / New Guidance Implementation Beginning with Phases 39 and ARPA-R Awards*, last accessed December 7, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/pdfs/EFSP%20Program%20Changes.pdf. FEMA confirmed that the National Board will not be issuing phase manuals for Phase 39, Phase 40, or Phase ARPA-R, noting that the *Phase 35 Manual* is updated via addendum and as posted on the National Board's website to reflect the program changes (email from FEMA Office of External Affairs staff, April 20, 2023). The Program Guidance Reminders for Phase 41 (FY2023) follow the same changes/new guidance that were implemented with Phases 39 and ARPA-R (National Board, "Emergency Food and Shelter National Board Program Preliminary Notification of Funding Awards Phase 41 (FY 2023)," https://www.efsp.unitedway.org/efsp/website/websiteContents/pdfs/Phase%2041%20FY23%20Preliminary%20Notification%20of%20Funding%20Awards.pdf).

- **Facility-Related Costs**, such as
  - building code/accessibility improvements (not to exceed $2,500) for mass feeding facilities or mass shelters (if owned by a nonprofit LRO), with prior EFSP National Board and Local Board approval
- **Utility-Related Costs**, such as
  - metered utility assistance (initially limited to one month, assistance was increased to up to 90 days if necessary to prevent disconnection of service for Phase 39 and Phase ARPA-R)
  - limited non-metered utility assistance (limited to one-time delivery—e.g., the minimum amount of delivery for firewood)
  - utility reconnect fees and required fees
- **Diapers and Feminine Hygiene Items**:
  - diapers for direct distribution to individuals, residents of mass shelters, or vouchers to grocery stores
  - basic feminine hygiene items for direct distribution to individuals, residents of mass shelters, or vouchers to grocery stores

The *Phase 35 Manual* also included an administrative allowance by Local Boards, State Set-Aside Committees, and LROs.[183]

During the COVID-19 pandemic, a new eligible cost was added for Phase 37 (FY2019) and Phase CARES (FY2020)—the program guidance added, as eligible, funding to purchase Personal Protective Equipment (PPE) for use by LRO staff and volunteers conducting and delivering services and/or to clients to receive services (limited to 10% of an LRO's award).[184] Additionally, COVID-19 testing and associated medical care during quarantine and isolation were added as eligible expenses in Phase 39 (FY2021), Phase 40 (FY2022), and in FY2023.[185]

Funding Award Process

The National Board is responsible for selecting the "jurisdictions of highest need for food and shelter assistance and determin[ing] the amount to be distributed to each."[186] To determine a jurisdiction's (i.e., county or city, or a combination's) eligibility for EFSP funding, the National Board uses a formula that considers population data, poverty data from the U.S. Bureau of the Census's American Community Survey, and unemployment data from the U.S. Department of Labor, Bureau of Labor Statistics. Jurisdictions must meet specific criteria to qualify for EFSP funding. These criteria may vary for different Phases (i.e., grant cycles aligning with each tranche

[183] National Board, *Phase 35 Manual*, pp. 21, 36, 77.

[184] National Board, *Phases 37 and CARES Addendum to the Phase 35 Responsibilities and Requirements Manual and the Phase 36 Addendum*, last accessed December 7, 2022, p. 5, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/AddendumtoProgramManual/AddendumP37Manual.pdf.

[185] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2021 Emergency Food and Shelter National Board Program," NOFO Number: DHS-21-DAD-024-00-01, p. 5; DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2022 Emergency Food and Shelter National Board Program," NOFO Number: DHS-22-DAD-024-00-02, p. 5; DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, p. 5.

[186] DHS, "Notice of Funding Opportunity (NOFO) Emergency Food and Shelter National Board Program," NOFO Number: DHS-17-DAD-024-00-01, p. 4.

of funding).[187] Funding provided under the EFSP is set at the jurisdiction level and grant award amounts to formula-qualified jurisdictions are based on a per capita rate, which is determined by dividing the available funds by the number of unemployed persons within each qualifying jurisdiction. In addition, there is a "State Set-Aside" process that allows any jurisdiction—formula-qualified or not—to receive EFSP funding. The National Board allocates a portion of the appropriated funds for such purposes based on the unemployment rates in the jurisdictions that do not qualify under the formula.[188] These grants can be used to address pockets of homelessness and poverty or immediate needs.[189] The National Board notifies qualifying jurisdictions of their allocations and publishes the allocations for the Phases.

Each locality designated for funding must establish a Local Board, which determines how to distribute the locality's funding allocation.[190] The Local Boards and State Set-Aside Committees (acting as Local Boards) of the jurisdictions designated for funding select the LROs that are to be awarded funds (i.e., Local Boards make the EFSP award determinations).[191] The National Board disburses funds directly to LROs selected by the Local Boards/State Set-Aside Committees.

EFSP awards are typically reimbursement based, but some EFSP NOFOs note that the National Board determines whether reimbursements or advanced funding, or both, will be allowable.[192]

Publicly Available EFSP Award Information

Information on EFSP funding is available on the National Board's website at https://www.efsp.unitedway.org/efsp/website/index.cfm. The website includes information on

- jurisdictions and award amounts funded in the most recent Phases (see "County List for Current Awards");
- jurisdictions funded over time, including the Phase, year, and total award (see "County Award History");
- the award history for states, including the Phase, year, and total award (see "State Award History");
- state summaries of recent awards (see "National Award Summary");
- LROs that received funding (see "Funded Organizations"); and
- jurisdiction-level data with a detailed breakdown of the funding categories—served meals, other food, mass shelter, other shelter, supplies and equipment, rehabilitation, rent or mortgage assistance, utility assistance, and administrative costs (see "Your Community").

[187] National Board, "How Areas Qualify," last accessed December 19, 2022, https://www.efsp.unitedway.org/efsp/website/websiteContents/index.cfm?template=qualify.cfm. For example, per the National Board's website, a jurisdiction could qualify for Phase 40 funding (FY2022 annual appropriations) "if [it] met one of the following criteria: Number of unemployed: 300 or more with a 3.9% rate of unemployment [or] Number of unemployed: 300 or more with a 12.8% rate of poverty." Further, a jurisdiction could qualify for Phase 39 funding (FY2021 annual appropriations) "if [it] met one of the following criteria: ... Number of unemployed: 300 or more with a 5.6% rate of unemployment [or] Number of unemployed: 300 or more with a 16.6% rate of poverty."

[188] National Board, *Phase 35 Manual*, pp. 20-21. Per the *Phase 35 Manual*, "each state's average number of unemployed in non-funded jurisdictions divided by the average number of unemployed in non-funded jurisdictions nationwide equals each state's percentage of the total amount available for SSA [State Set-Aside] awards." State Set-Aside Committees also must develop a formula to select high-need jurisdictions to determine award amounts, and may award funding to formula-qualified high-need jurisdictions (this requires a request to the National Board).

[189] National Board, *Phase 35 Manual*, p. 20. For example, per the National Board's website, the portion allocated for the State Set-Aside process for the FY2021 annual appropriations was 8% of the EFSP award for Phase 39.

[190] 42 U.S.C. §11332(a).

[191] 42 U.S.C. §11332(b)(1); National Board, "Emergency Food and Shelter Program Frequently Asked Questions," last accessed December 6, 2022, p. 1, https://www.efsp.unitedway.org/efsp/website/websiteContents/PDFs/FAQ.pdf; National Board, "EFSP FY22 Humanitarian Relief FAQs," pp. 1-2.

[192] See DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2022 Emergency Food and Shelter National Board Program," NOFO Number: DHS-22-DAD-024-00-02, p. 7; see also DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program," NOFO Number: DHS-23-DAD-024-00-02, p. 45 (Appendix A).

Appendix C. EFSP Implementation Notes for Supplemental Funding

The EFSP Notices of Funding Opportunities (NOFOs) provide additional award information, including related to allowable program costs. This is true of the NOFOs for the supplemental funding provided for the EFSP through the CARES Act and ARPA,[193] as well as the funding approved for the EFSP-H. The NOFOs for the EFSP-H explain that the purpose of the funding is to provide humanitarian relief to migrants encountered by DHS. The EFSP-H NOFOs do not all specify that this means migrants at the "southwest border" or "southern border," but this distinction is generally included in the program guidance for the EFSP-H funding phases.

- The Phase SAHA (FY2019) NOFO states, "The EFSP Supplemental Appropriations for Southern Border Humanitarian Assistance is available for the purposes of helping aliens from the southern border that are released from the custody of DHS."[194] Also, the *Phase SAHA Guidance (Round 1)* states that the funding is to reimburse costs of entities that "experienced a significant influx of migrants from the southern border."[195]
- The Phase ARPA (FY2021) NOFO states that the funding made available will "provide humanitarian relief to individuals and families encountered by the Department of Homeland Security."[196] There is no specific mention of the southwest border in the Phase ARPA NOFO. The *Phase ARPA Guidance* states "most of the funding is anticipated to be awarded to service organizations in southern border states where the greatest needs are expected to be met."[197]
- The Phase HR22 (FY2022) NOFO states that the funding made available will "provide shelter and other services to families and individuals encountered by the Department of Homeland Security."[198] There is no specific mention of the southwest border in the Phase HR22 NOFO. The *Phase HR22 Guidance* states "Unless directed otherwise, these funds are solely intended for migrants crossing the Southwest Border and encountered by DHS."[199]
- The Phase HR FY23 CR (FY2023) NOFO states that the funding made available will "provide shelter and other services to migrant families and individuals encountered by the Department of Homeland Security."[200] There is no specific

[193] For example, the EFSP CARES Act NOFO emphasized that the funding was to assist individuals impacted by the COVID-19 public health emergency (DHS, "Notice of Funding Opportunity (NOFO) Emergency Food and Shelter National Board Program: Coronavirus Aid, Relief, and Economic Security Act ($200 Million)," NOFO Number: DHS-20-DAD-024-00-02, pp. 6, 15).

[194] DHS, "Notice of Funding Opportunity (NOFO) Supplemental Appropriations for Humanitarian Assistance Emergency Food and Shelter National Board Program," NOFO Number: DHS-19-DAD-024-00-02, pp. 5-6.

[195] National Board, *Phase SAHA Guidance (Round 1)*, p. 3.

[196] DHS, "Notice of Funding Opportunity (NOFO) Emergency Food and Shelter National Board Program American Rescue Plan Act of 2021, Section 4008," NOFO Number: DHS-21-DAD-024-00-02, p. 4.

[197] National Board, *Phase ARPA Guidance*, p. 4.

[198] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2022 Emergency Food and Shelter National Board Program, DHS Appropriations Act, 2022, Section 543," NOFO Number: DHS-22-DAD-024-00-01, p. 5.

[199] National Board, *Phase HR22 Guidance*, p. 3.

[200] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, referencing Department of Homeland Security Appropriations Act, 2022," NOFO Number: DHS-23-DAD-024-00-01, p. 6.

mention of the southwest border in the Phase HR FY23 CR NOFO. The *Phase HR FY23 CR Guidance* states "Unless directed otherwise, these funds are solely intended for migrants crossing the Southwest Border and encountered by DHS."[201]

- The Phase HR23 (FY2023) NOFO states that the funds made available "will provide shelter and other services to families and individuals encountered by the Department of Homeland Security."[202] There is no specific mention of the southwest border in the Phase HR23 NOFO. The *Phase HR23 Guidance* references southern states and further specifies that eligibility includes "maritime entrance," stating, "Language was updated to state Southern border instead of Southwest border throughout document [sic] to allow maritime migrants from California, Texas, Louisiana, Mississippi, Alabama, and Florida in addition to migrants entering through the Southern land border encountered by DHS."[203]

Author Information

Elizabeth M. Webster
Analyst in Emergency Management and Disaster Recovery

Audrey Singer
Specialist in Immigration Policy

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[201] National Board, *Phase HR FY23 CR Guidance*, p. 3.

[202] DHS, "Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Food and Shelter National Board Program—Humanitarian Relief," NOFO Number: DHS-23-DAD-024-00-03, p. 7.

[203] National Board, *Phase HR23 Guidance*, pp. 4-5.

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