



Emergency Assistance for Agricultural Land Rehabilitation

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Summary

The U.S. Department of Agriculture (USDA) administers several permanently authorized programs to help producers recover from natural disasters. Most of these programs offer financial assistance to producers for a loss in the production of crops or livestock. In addition to the production assistance programs, USDA also has several permanent disaster assistance programs that help producers repair damaged crop and forest land following natural disasters. These programs offer financial and technical assistance to producers to repair, restore, and mitigate damage on private land. These emergency agricultural land assistance programs include the Emergency Conservation Program (ECP), the Emergency Forest Restoration Program (EFRP), and the Emergency Watershed Protection (EWP) program. In addition to these programs, USDA also has flexibility in administering other programs that allow for support and repair of damaged cropland in the event of an emergency.

Both ECP and EFRP are administered by USDA's Farm Service Agency (FSA). ECP assists landowners in restoring agricultural production damaged by natural disaster. Participants are paid a percentage of the cost to restore the land to a productive state. ECP is available only on private land and eligibility is determined locally. EFRP was created to assist private forestland owners to address damage caused by a natural disaster on nonindustrial private forest land.

The EWP program and the EWP floodplain easement program are administered by USDA's Natural Resources Conservation Service (NRCS) and the U.S. Forest Service (USFS). The EWP program assists sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster. In some cases this can include state and federal land. The EWP floodplain easement program is a mitigation program that pays for permanent easements on private land meant to safeguard lives and property from future floods, drought, and the products of erosion.

Most of the emergency agricultural land assistance programs are funded through supplemental appropriations, rather than annual appropriations. As a result, funding for emergency agricultural land assistance varies greatly from year to year. Agricultural land assistance programs do not usually receive the level of attention that triggers a supplemental appropriation. Therefore, funding is typically provided for these land assistance programs as part of a larger supplemental appropriation that funds a number of agencies and programs beyond agriculture. This irregular funding method has left some agricultural land assistance programs without funding during times of high request.

Recent restrictions placed on supplemental appropriations for disaster assistance have changed the way the agricultural land assistance programs allocate funding, potentially assisting fewer natural disasters. Language in the Budget Control Act of 2011 (P.L. 112-25) limits emergency supplemental funding for disaster relief. Specifically, funding used for disaster relief must be used for activities carried out pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288) for FY2012 through FY2021. This means funds appropriated through emergency supplementals for disaster relief for these ten years may only apply to activities with a Stafford Act designation. Since funding for agricultural land disaster assistance programs is appropriated almost exclusively through supplementals, this requirement could limit the way agricultural land assistance programs work in the future, potentially assisting fewer natural disaster events.

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Overview

Natural disasters can have varying effects on the landscape. For agricultural producers, natural disasters are part of the inherent risk of doing business. The federal role for mitigating weather risk is primarily through federal crop insurance and a suite of agricultural disaster assistance programs to address a producer's crop or livestock production loss.¹

Other, separate U.S. Department of Agriculture (USDA) programs are designed to repair agricultural and forest land following a natural disaster and potentially mitigate future risk. These programs offer financial and technical assistance to producers to repair, restore, and mitigate damage on private land. Agricultural land assistance programs include the Emergency Conservation Program (ECP), the Emergency Forest Restoration Program (EFRP), and the Emergency Watershed Protection (EWP) program. In addition to these programs, USDA also has flexibility in administering other programs that allow for support and repair of damaged cropland in the event of an emergency.

This report describes these emergency agricultural land assistance programs. It presents background on the programs—purpose, activities, authority, eligibility requirements, and authorized program funding levels, as well as current congressional issues.

Federal Emergency Assistance for Agricultural and Rural Land

Agricultural land assistance programs help producers rehabilitate crop and forest land following natural disasters. These programs are described below.

Emergency Conservation Program

Purpose, Activities, and Authority

The Emergency Conservation Program (ECP) assists landowners in restoring land used in agricultural production when damaged by a natural disaster. This can include removing debris, restoring fences and conservation structures, and providing water for livestock in drought situations. Restoration practices are authorized by the Farm Service Agency (FSA) county committee, with approval from state FSA committees, and the FSA national office.²

¹ Most of the USDA disaster assistance programs offer financial assistance to producers for a loss or reduction in production. These programs include federal crop insurance, the Noninsured Crop Disaster Assistance Program (NAP), and emergency disaster loans. The 2008 farm bill (P.L. 110-246) included authorization and funding for five new disaster programs to cover production losses from weather events, beginning with 2008 crops and ending September 30, 2011. These permanent and expired programs typically cover only production losses and not damage to the land or production practices. These programs are discussed further in CRS Report RS21212, *Agricultural Disaster Assistance*, and not in this report.

² FSA county and state committees are composed of locally elected farmers and ranchers who advise FSA on agricultural programs such as commodity price support loans and payments; conservation programs; incentive, indemnity and disaster payments for some commodities; payment eligibility; and emergency programs. For additional information, see CRS Report R40179, *Farm Service Agency: State Executive Directors, and State and County/Area* (continued...)

Payments are made to individual producers based on a share of the cost of completing the practice. This can be up to 75% of the cost, or up to 90% of the cost if the producer is considered to be a limited-resources producer. Payments are made following completion and inspection of the practice.

The ECP was created under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Section 2201-2205. The program is permanently authorized, subject to appropriations. Authorized funding is for “such funds as may be necessary,” and once appropriated, funds are typically available until expended.

Eligible Land

Land eligibility is determined by the FSA county committee except in the event of a drought, in which case the national FSA office authorizes the use of funds. Following an on-sight inspection, the land may be considered eligible if it is determined that the lack of treatment would:

- impair or endanger the land;
- materially affect the productive capacity of the land;
- lead to damage that is unusual in character and, except for wind erosion, is not the type that would recur frequently in the same area; and
- be so costly to rehabilitate that future federal assistance is or would be required to return the land to productive agricultural use.³

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

Eligible Participant

An eligible participant is defined as an agricultural producer with an interest in the land affected by the natural disaster. The applicant must be a landowner or user in the area where the disaster occurred, and must be a party who will incur the expense that is the subject of the ECP cost-share application. Participants are limited to \$200,000 per natural disaster.⁴

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

Funding and Allocation

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

(...continued)

Committees.

³ 16 U.S.C. 2201.

⁴ 7 CFR 701.104.

Table I. Appropriations for the Emergency Conservation Program (ECP), FY2002-FY2012

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2012	\$122.7 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act (42 U.S.C. 5121 et seq.) only
2011	\$0	
2010	\$0	
2009	\$66.314 million (approximate)	P.L. 111-32, repurposed previously appropriated funding, mostly funds designated for Hurricane Katrina that went unused
2009	\$155 million	P.L. 110-329
2008	\$89.4 million	P.L. 110-252
2007	\$16 million	P.L. 110-28, payment and income limits apply
2006	\$199.8 million	P.L. 109-148, funds only apply to hurricane damage during the 2005 calendar year. Additional direction is provided for nursery, oyster, poultry, and nonindustrial private forest land producers
2005	\$150 million	P.L. 108-324
2004	\$12 million	P.L. 108-199, for Southern California wildfires
2003	\$0	
2002	\$0	

Source: CRS, using historical appropriation acts, FY2002-FY2012.

Funding is generally appropriated to remain available until expended. In some instances, Congress has required that ECP funding be used for specific disasters, activities, or locations. For example, funding appropriated in FY2012 was to be used for major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).⁵ Since ECP does not typically require a Stafford Act declaration, this requirement limited the use of ECP funds to select locations as well as for future disasters. For further discussion, see the “Issues for Congress” section.

Once funding is appropriated, the FSA national office generally allocates ECP funds to the FSA state offices. The local FSA county committees will then obligate the funds on a “first-come, first-served” basis.⁶

Emergency Forest Restoration Program (EFRP)

Purpose, Activities, and Authority

The Emergency Forest Restoration Program (EFRP) provides cost-share assistance to private forestland owners to repair and rehabilitate damage caused by a natural disaster on nonindustrial

⁵ For additional information related to emergency declarations pursuant to the Stafford Act, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*.

⁶ 71 FR 70889, Emergency Conservation Program Interim Final Rule, May 26, 2006.

private forest land. Natural disasters include wildfires, hurricanes or excessive winds, drought, ice storms or blizzards, floods, or other resource-impacting events, as determined by USDA. The program is administered by FSA.

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

The EFRP was created under Section 8203 of the 2008 farm bill, by adding a new Section 407 to Title IV of the Agricultural Credit Act of 1978. It is codified at 16 U.S.C. Section 2207 and is permanently authorized subject to appropriations. Authorized funding is for “such funds as may be necessary,” and once appropriated, funds are typically available until expended.

Eligible Land

For land to be eligible for EFRP, it must be nonindustrial private forest land and must:

- have existing tree cover or have had tree cover immediately before the natural disaster and be suitable for growing trees;
- have damage to natural resources caused by a natural disaster, which occurred on or after January 1, 2010, that, if not treated, would impair or endanger the natural resources on the land and would materially affect future use of the land; and
- be physically located in a county in which EFRP has been implemented.⁷

Land is ineligible if it is owned or controlled by the federal government, a state, a state agency, or a political subdivision of a state.

Eligible Participant

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

Funding and Allocation

The EFRP was created in the Food, Conservation, and Energy Act of 2008 (2008 farm bill, P.L. 110-246). Congress initially appropriated \$18 million to the program in an FY2010 supplemental appropriations act. Funds were not obligated, however, until FY2011, when final regulations were published. **Table 2** provides a funding history for EFRP.

⁷ 7 CFR 701.205.

Table 2. Appropriations for Emergency Forest Restoration Program (EFRP), FY2010-FY2012

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2012	\$28.4 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act (42 U.S.C. 5121 et seq.) only
2011	\$0	
2010	\$18 million	P.L. 111-212, for disasters that occurred on or after January 1, 2010. Additional direction was provided to expedite the program's implementation

Source: CRS, using historical appropriation acts, FY2002-FY2012.

Emergency Watershed Protection (EWP) Program

Purpose, Activities, and Authority

The Emergency Watershed Protection (EWP) program assists sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster. Eligible activities may include removing debris from stream channels, road culverts, and bridges; reshaping and protecting eroded banks; correcting damaged drainage facilities; establishing cover on critically eroding lands; removing carcasses; and repairing levees and structures. EWP funds cannot be used to perform operation or maintenance for existing structures or to repair, rebuild, or maintain private or public transportation facilities or public utilities. EWP is administered by both USDA's Natural Resources Conservation Service (NRCS) and the U.S. Forest Service (USFS).

The federal contribution toward the implementation of emergency measures may not exceed 75% of the construction cost. This can be raised to 90% if the area is considered to be a limited-resource area.⁸

The EWP was created under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Sections 2203-2205. The program is permanently authorized, subject to appropriations. Authorized funding is for "such funds as may be necessary," and once appropriated, funds are typically available until expended.

Eligible Land

Private, state, tribal, and federal lands are eligible for EWP. EWP is administered by NRCS on state, tribal, and private lands and by USFS on National Forest System lands. EWP assistance funded by NRCS may not be provided on any federal lands if the assistance would augment the appropriations of another federal agency.

⁸ The definition of a limited-resource area is a county where average housing values are less than 75% of the state average, per-capita income is less than 75% of the national per-capita income, and unemployment during the preceding three years is at least twice the U.S. average (source: 7 CFR 624.4(e)(1)).

Eligible Participant

All projects under EWP must have a sponsor. Sponsors must be a state or political subdivision, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.⁹

Sponsors are responsible for:

- obtaining necessary land rights and permits to do repair work;
- providing the non-federal portion of cost-share assistance;
- completing the installation of all emergency measures; and
- carrying out any operation and maintenance responsibilities that may be required.

Funding and Allocation

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

Table 3. Appropriations for the Emergency Watershed Protection (EWP) Program, FY2002-FY2012

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2012	\$215.9 million	P.L. 112-55, for major disasters declared pursuant to the Stafford Act (42 U.S.C. 5121 et seq.) only
2011	\$0	
2010	\$0	
2009	\$0	
2008	\$100 million	P.L. 110-329
2008	\$390.464 million	P.L. 110-252
2007	\$0	
2006	\$50.955 million	P.L. 109-234, to provide financial and technical assistance to remove and dispose of debris and animal carcasses in areas affected by Hurricane Katrina and other hurricanes of the 2005 season
2006	\$300 million	P.L. 109-148, to repair damages from hurricanes in the 2005 calendar year
2005	\$104.5 million	P.L. 109-13, for unfunded projects as of April 25, 2005, requires USDA to count in-kind materials and services toward the local matching requirement for Washington County, Utah in response to the January 2005 flooding event
2005	\$250 million	P.L. 108-324

⁹ 7 CFR 624.6(a)

Fiscal Year	Funding Level	Authorizing Statute and Congressional Direction
2004	\$150 million	P.L. 108-199, to repair and prevent damage to non-federal land in watersheds impaired by fires initiated by the federal government, and to waive the cost-sharing requirement for assistance. Specifically wildfires in southern California, including Los Angeles, Riverside, San Diego and San Bernadino counties
2003	\$0	
2002	\$94 million	P.L. 107-206, a total of \$144 million was made available; however, \$50 million was contingent upon a request from the President. The President did not request the funds; therefore \$50 million was unavailable to USDA

Source: CRS, using historical appropriation acts, FY2002-FY2012.

NRCS provides assistance based upon a determination by the NRCS State Conservationist¹⁰ that the current condition of the land or watershed impairment poses a threat to health, life, or property. Sponsors must submit a formal request to the NRCS State Conservationist within 60 days of the natural disaster or 60 days from the date when access to the site becomes available. No later than 60 days from receipt of the request, the State Conservationist will investigate the situation and prepare an initial cost estimate to be forwarded to the NRCS national office. Before release of any funds, the project sponsor must sign a cooperative agreement with NRCS that details the responsibilities of the sponsor (e.g., funding, operation, and maintenance). No funding is provided for activities undertaken before the cooperative agreement is signed.

Approval of funding is based on the following rank order:

- exigency situations;¹¹
- sites where there is a serious, but not immediate threat to human life; and
- sites where buildings, utilities, or other important infrastructure components are threatened.¹²

Emergency Watershed Protection (EWP) Program— Floodplain Easements

Purpose, Activities, and Authority

Floodplain easements under EWP are administered separately from the general EWP program. The easements are meant to safeguard lives and property from future floods, drought, and the products of erosion through the restoration and preservation of the land's natural values. All EWP floodplain easements are held by USDA in perpetuity. Floodplain easements are purchased as an emergency measure and on a voluntary basis. If a landowner offers to sell a permanent

¹⁰ The NRCS State Conservationist is the lead federal official for the agency within a state. NRCS State Conservationists are responsible for direction and supervision of all NRCS programs with a state.

¹¹ Exigency means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damage, or the potential loss of life.

¹² 7 CFR 624.8(c)(3)

conservation easement, then NRCS has the full authority to restore and enhance the floodplain's functions and values. This includes removing all structures, including buildings, within the easement boundaries and providing up to 100% of restoration costs. In exchange, a landowner receives the smallest of the three following values as an easement payment:

- a geographic area rate established by the NRCS State Conservationist;
- the fair market value based on an area-wide market analysis or an appraisal completed according to the Uniform Standards of Professional Appraisal Practices (USPAP); or
- the landowner's offer.

Section 382 of the Federal Agricultural Improvement and Reform Act of 1996 (1996 farm bill, P.L. 104-127) amended the EWP authorization to include the purchase of floodplain easements. Prior to this amendment, NRCS had been directed in a 1993 emergency supplemental appropriations act (P.L. 103-75) to use EWP funds for the purchase of floodplain easements under the Wetlands Reserve Program (WRP)—a farm bill program for restoring wetlands through the voluntary purchase of long-term and permanent easements on agricultural land. This became known as the Emergency Wetlands Reserve Program (EWRP), which purchased floodplain easements on cropland with a history of flooding in the 1993 and 1995 Midwest flooding events. Following the 1996 farm bill amendment, NRCS began an EWP floodplain easement pilot program in 17 states in FY1997.

Similar to the general EWP program, EWP floodplain easements are authorized under Title IV of the Agricultural Credit Act of 1978 (P.L. 95-334) and codified at 16 U.S.C. Sections 2203-2205. The authorization of appropriations is for “such funds as may be necessary,” and does not expire.

Eligible Land

Lands are considered eligible for an EWP floodplain easement if they are:

- floodplain lands that were damaged by flooding at least once within the previous calendar year or have been subject to flood damage at least twice within the previous 10 years; or
- other lands within the floodplain that would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or
- lands that would be inundated or adversely impacted as a result of a dam breach.

Land is considered ineligible if:

- restoration practices would be futile due to “on-site” or “off-site” conditions;
- the land is subject to an existing easement or deed restriction that provides sufficient protection or restoration of the floodplain's functions and values; or
- the purchase of an easement would not meet the purposes of the program.¹³

¹³ 7 CFR 624.10

Eligible Participants

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

Funding and Allocation

The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) provided \$290 million to Watershed and Flood Prevention Operations, of which half (\$145 million) was to be used for the purchase and restoration of EWP floodplain easements. Per requirements in ARRA, the funding was obligated by FY2011. Through the end of FY2011, NRCS reported enrolling 1,402 easements on 184,675 acres, as well as 1,344 closed and restored easements on 179,457 acres.¹⁴

Prior to the ARRA funding and since 2001, congressional appropriations language had prevented the acquisition of floodplain easements.

Other Programs

Emergency Disaster Loans

Emergency disaster (EM) loans are available through USDA's Farm Service Agency when a county has been declared a disaster area by either the President or the Secretary of Agriculture. Agricultural producers in the declared county and contiguous to the county may become eligible for low-interest EM loan. EM loan funds may be used to help eligible farmers, ranchers, and aquaculture producers recover from production losses (when the producer suffers a significant loss of an annual crop) or from physical losses (such as repairing or replacing damaged or destroyed structures or equipment, or replanting permanent crops such as orchards). A qualified applicant can then borrow up to 100% of actual production or physical losses (not to exceed \$500,000) at a current interest rate of 2.25%.¹⁵

Conservation Programs

In addition to the authorized land assistance programs, USDA uses a number of existing conservation programs to assist with rehabilitating land following natural disasters. In many cases this assistance comes through the use of waivers and flexibility provided to the Secretary of Agriculture. The following section discusses programs recently used by USDA to offer assistance.

¹⁴ Easements are considered enrolled when they are accepted into the EWP programs but before final completion of closing procedures (e.g., eligibility determinations, surveys, compensation, investigations, and title options). Easements are considered closed when the easement acquisition is complete, all contract documents are filed, and the deed is officially restricted by the easement. Source: *FY2013 President's Budget Request*, congressional justification, p. 25-72.

¹⁵ For additional information on EM loans, see CRS Report RS21212, *Agricultural Disaster Assistance*.

Conservation Reserve Program (CRP)

The Conservation Reserve Program (CRP) provides payments to agricultural producers to take highly erodible and environmentally sensitive land out of production and install resource-conserving practices for 10 or more years. In limited situations, harvesting and grazing may be conducted on CRP land in response to drought or other emergency (except during primary nesting season for birds) and requires a payment reduction commensurate with the economic value of the authorized activity. Historically, this reduction ranges between 10%-25% of the annual rental payment. In many cases environmentally sensitive land is ineligible for harvesting and grazing. During the summer and fall of 2012, CRP land was opened to harvesting and grazing in response to a prolonged drought. Program and funding authority for CRP expired September 30, 2012, and currently awaits reauthorization.¹⁶

Environmental Quality Incentives Program (EQIP)

The Environmental Quality Incentives Program (EQIP) is a voluntary program that provides financial and technical assistance to agricultural producers to address natural resource concerns on agricultural and forest land. In August 2012, USDA granted permission for farmers and ranchers in drought-stricken areas to modify current EQIP contracts to reschedule planned conservation practices until drought conditions improve. In the short term, funding was targeted toward the hardest-hit drought areas, totaling approximately \$15.95 million as of September 2012.

Wetlands Reserve Program (WRP)

The Wetlands Reserve Program (WRP) voluntarily enrolls land through easements (30 years or permanent), restoration agreements (usually 10 years in length), and 30-year contracts to assist land owners in protecting and restoring wetlands. The program provides technical and financial assistance, and emphasizes restoration to original natural conditions where possible. In very limited cases the Secretary of Agriculture has the authority to allow for harvesting and grazing on WRP land in drought-affected areas. Landowners must receive prior approval through a Compatible Use Authorization (CUA) to ensure the harvesting and grazing is consistent with the conservation of wildlife and wetlands. This was allowed during the summer of 2012 in response to a prolonged drought.

In addition to limited harvesting and grazing, WRP land also provides long-term flood protection and mitigation. Wetlands restored under WRP can help reduce downstream flooding through planted trees and vegetation used to slow flood waters, and by providing water storage and groundwater recharge, resulting in more moderate stream and river flow. Additionally, because WRP land is not occupied by homes, farms, or crops, structural damage and production losses are reduced.¹⁷ Funding authority for WRP expired on September 30, 2012, and currently awaits reauthorization.

¹⁶ For additional information on CRP, see CRS Report R42783, *Conservation Reserve Program (CRP): Status and Issues*.

¹⁷ USDA, NRCS, *Restoring America's Wetlands: A Private Lands Conservation Success Story*, Wetlands Reserve Program, http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045079.pdf.

Issues for Congress

Funding Mechanisms

Since most of the agricultural land assistance programs are funded through supplemental appropriations, rather than annual appropriations, this makes funding sporadic and unpredictable. It usually allows appropriators to use budget authority separate from the annual appropriations process. A supplemental appropriation provides additional budget authority during the current fiscal year either to finance activities not funded in the regular appropriation, or to provide funds when the regular appropriation is deemed insufficient.

The supplemental appropriations process for funding disasters has been a subject of continued debate because of concerns over increased federal spending and the lack of a fiscal planning mechanism. Some support the current funding system, citing that disasters are unpredictable and flexible funding mechanisms are needed to react in a timely fashion. Others counter that some level of disaster assistance will always be needed, regardless of timing, and the use of supplemental spending allows lawmakers to circumvent budgetary enforcement measures as well as enacting potentially non-germane provisions that might not pass on their own.¹⁸

Most agricultural land assistance programs do not receive the level of attention that triggers a supplemental appropriation. During years of large-scale disaster events that receive national attention, funding is typically provided for the agricultural land assistance programs as part of a larger supplemental appropriation that funds a number of agencies and programs beyond agriculture. This results in funding for emergency agricultural land assistance that varies greatly from year to year. Funds are typically provided to remain available until expended, which has allowed smaller, more localized disasters to be addressed in years without supplemental appropriations. Despite this small overlap, the inconsistent funding has left some agricultural land assistance programs without funding during times of high request volume.

The variation of funding has led some to suggest that funds for agricultural land assistance programs be continuously funded either through annual appropriations or mandatory spending authorized in omnibus farm bills. A similar consideration occurred in the Food, Conservation, and Energy Act of 2008 (2008 farm bill, P.L. 110-246), which attempted to end the “ad hoc” disaster assistance to agricultural production by authorizing five new disaster assistance programs using mandatory funding.¹⁹ Some have suggested that the use of permanent disaster funding could be expanded beyond production to include emergency land assistance. Others contend that the 2008 farm bill disaster programs were expensive and could be difficult to expand in the current fiscal climate.

¹⁸ For additional discussion on emergency supplemental appropriations, see CRS Report R40708, *Disaster Relief Funding and Emergency Supplemental Appropriations*.

¹⁹ Program authorities for all five programs expired September 30, 2011, and await reauthorization. For additional information, see CRS Report RS21212, *Agricultural Disaster Assistance*.

Stafford Act Limitations

Emergency agricultural land assistance programs do not require a federal disaster designation from either the President or a state official. Recent changes in appropriations and budget language, however, have altered how disaster funding for the programs may be used.

It is not uncommon for Congress to provide directional language in emergency supplemental appropriations that requires land assistance funding be used for specific disasters, activities, or locations. This was true for a number of programs and years (described above in the “Federal Emergency Assistance for Agricultural and Rural Land” section). For example, in FY2012, funding appropriated for the Emergency Conservation Program (ECP), Emergency Forestry Restoration Program (EFRP), and Emergency Watershed Protection (EWP) program was to be used for “major disasters declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288).” Currently, the Stafford Act is the primary statutory authority for most federal disaster response and recovery activities, especially for the Federal Emergency Management Agency (FEMA) and its programs, including the Disaster Relief Fund. The Stafford Act authorizes the President to issue major disaster, emergency, and fire management declarations at the request of the states.²⁰ The agricultural land assistance programs do not typically require a Stafford Act declaration; therefore this requirement in the FY2012 appropriations act limits the use of program funds to select locations. Since funds are typically available until expended, the Stafford Act requirement will also limit what areas will receive future assistance.

Beyond the FY2012 appropriations, the Budget Control Act of 2011 (BCA, P.L. 112-25) further limited emergency supplemental funding for disaster relief. Under Section 251(b)(2)(D) of the BCA, funding used for disaster relief must be used for activities carried out pursuant to the Stafford Act for FY2012 through FY2021. This means funds appropriated through emergency supplemental acts for disaster relief for the next several years may only apply to activities with a Stafford Act designation.

Since funding for agricultural land disaster assistance programs is appropriated almost exclusively through supplementals, this BCA requirement could limit the way agricultural land assistance programs work in the future, potentially assisting fewer natural disaster events. For example, droughts are traditionally not declared as major disaster events under the Stafford Act. However, droughts are one of the eligible natural disasters for land assistance programs—primarily to assist livestock producers with providing water to animals.

Mitigation

Another contentious issue for federal land assistance programs is mitigation. Mitigation actions are steps taken to reduce risk before a natural disaster occurs. Currently only one mitigation program exists for emergency agricultural land assistance—the EWP floodplain easement program (described above). This program purchases floodplain easements on agricultural land that has a history of flooding (two of the previous ten years). Under the program, the land is permanently taken out of production and restored to a natural function. This program has been

²⁰ For additional information related to emergency declarations pursuant to the Stafford Act, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*.

authorized since 1997; however, prohibitions in appropriations language have limited available funding for the program. The program received \$145 million in FY2009, and has received no subsequent funding.

Some have questioned the use of federal restoration funds in areas with a high risk of damage by natural disasters, citing that it encourages poor land use decisions. While the alternative of mitigation can potentially reduce the future cost of federal assistance, the initial cost of the permanent easement and restoration is sometimes viewed as too expensive a federal cost.

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