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Five Years of the Budget Control Act's Disaster Relief Adjustment

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Summary

Signed into law on August 2, 2011, the Budget Control Act (P.L. 112-25, or BCA) established a set of limits on federal spending, as well as a set of mechanisms to adjust those limits to accommodate special categories of spending that has special priority. One of these mechanisms—a limited allowable adjustment to pay for the congressionally designated costs of major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter "the disaster relief allowable adjustment" or "allowable adjustment")—represented a new approach to paying for disaster relief. By providing this flexibility in the budget caps, Congress changed the way it approached funding disaster relief and recovery efforts.

The disaster relief allowable adjustment is based on a modified rolling average of annual federal government appropriations for the costs of major disasters, pursuant to a methodology laid out in the BCA. Annually, the Office of Management and Budget (OMB) looks back at the past 10 years of disaster relief appropriations. For fiscal years prior to FY2012, OMB has identified appropriations associated with major disaster declarations for use in the calculation. For FY2012 and later years, OMB relies on explicit Congressional designations of appropriations as disaster relief pursuant to the BCA. OMB takes these 10 annual totals of disaster relief appropriations, drops the highest and lowest years, and averages the remaining 8. This modified average is then supplemented by any unused amounts from the average calculated for the previous fiscal year. This calculation generates a limit up to which the discretionary budget caps can be adjusted to accommodate appropriations on major disasters. In practice, this limitation on the size of the disaster relief adjustment has also limited the application of the disaster relief designation. Funds that would meet the definition of disaster relief may not be classified as such.

Implementation of the disaster relief allowable adjustment has allowed Congress to fund the Federal Emergency Management Agency's Disaster Relief Fund (DRF) to a greater degree through annual appropriations, rather than through supplemental appropriations as it had before enactment of the BCA. Allowing the discretionary budget limitations to be adjusted to pay for disaster costs has removed, to an extent, the costs of disaster relief from competing with other annual priorities for funding. However, the allowable adjustment is expected to drop significantly in the near future as two of the highest disaster cost years roll out of the calculated average used in setting the adjustment.

This report examines how the adjustment has functioned over the first five years, and what the future of disaster relief (as defined by the BCA) may look like for the next five years and beyond. Under current law, the allowable adjustment is expected to decline from a high of almost $18.5 billion in FY2015 to between $7.5 billion and $9.5 billion by the time the BCA discretionary spending limits expire after FY2021.

As Congress considers budget planning and potential changes to how it budgets for disaster assistance for a variety of different types of incidents, it may consider whether the allowable adjustment has worked as planned. Congress may also consider changes to how it addresses disaster costs, through changes to the existing structure of the allowable adjustment, or by revisiting other laws.

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Introduction

Signed into law on August 2, 2011, the Budget Control Act (P.L. 112-25, hereinafter the BCA) established a set of limits on federal spending, as well as a set of mechanisms to adjust those limits to accommodate spending that has special priority.[1] One of these mechanisms—a limited allowable adjustment to pay for the congressionally designated costs of major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act[2] (hereinafter "the disaster relief allowable adjustment" or "allowable adjustment")—represented a new approach to paying for disaster relief. By providing this flexibility in the budget caps, Congress changed the way it approached funding disaster relief and recovery efforts.

The BCA is now halfway through its 10-year term. This report looks at how the adjustment has functioned over the first five years, and what the future of disaster relief (as defined under the BCA) may look like under current law for the next five years and beyond.

Disaster Relief versus Disaster Assistance

The terms "disaster relief" and "disaster assistance" are often used interchangeably to describe support provided to communities in the wake of a disaster—be it small, large, or catastrophic. For the purposes of this report, "disaster relief" is generally discussed in terms of the definition included in the BCA—support provided pursuant to a major disaster declaration under the Stafford Act—unless otherwise specified. Generally, this report uses the term "disaster assistance" to refer to the broader category of support possibly provided in the wake of a disaster. This broader category includes BCA-defined disaster relief, as well as a range of support for incidents unrelated to major disaster designations.

The Disaster Relief Allowable Adjustment: The First Five Years (FY2012-FY2016)

Calculating the Allowable Adjustment

The BCA defined disaster relief as activities carried out pursuant to a declaration of a major disaster under the Stafford Act.[3] A limited amount of appropriations designated by Congress as being for disaster relief each year can be accommodated by adjusting the BCA's discretionary spending limits. That limitation is based on a modified 10-year rolling average of disaster relief appropriations calculated by the Office of Management and Budget (OMB). The average is calculated disregarding the high and low funding years in the 10-year data set. Unused adjustment can be rolled forward into the next fiscal year—however, this "carryover" expires if unused in the next fiscal year.[4]

[1] For more background on the BCA and federal disaster assistance see CRS Report R42352, An Examination of Federal Disaster Relief Under the Budget Control Act, by Bruce R. Lindsay, William L. Painter, and Francis X. McCarthy. For a broader overview of the BCA, see CRS Report R42506, *The Budget Control Act of 2011 as Amended: Budgetary Effects*, by Grant A. Driessen and Marc Labonte.

[2] P.L. 93-288, 42 U.S.C. 5121 et seq.

[3] P.L. 112-25, 125 Stat. 245. For more information on major disaster declarations see CRS Report R42702, Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress, by Bruce R. Lindsay and Francis X. McCarthy.

[4] The Office of Management and Budget performs these calculations each year as a part of its sequestration report cycle.

The first calculations of the allowable adjustment, which applied to FY2012, relied entirely on BCA-mandated OMB calculations of past appropriations pursuant to major disaster declarations.

The OMB report on disaster spending used to calculate the initial allowable adjustment noted the parameters of its task:

> Section 251(b)(2)(D)(i)(I) requires the calculation of "the average funding *provided for disaster relief* over the previous 10 years, excluding the highest and lowest years." "Disaster relief" is defined in section 251(b)(2)(D)(iii) as "activities carried out pursuant to a determination under section 102(2)" of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). A "determination under section 102(2)" means the Presidential declaration of a "major disaster."[5]

OMB itself noted challenges in making the prescribed retroactive assessment, pointing out that "OMB's calculation does not reflect total appropriations that were provided to respond to major disasters, but rather only funding that was provided pursuant to appropriations or authorizing language that specifically referenced the Stafford Act."[6] OMB interprets the language of the BCA as directing them to use annual totals of congressional disaster relief designations as annual totals for disaster relief spending used in calculating the allowable adjustments for FY2013 and later.[7]

Reliance on this total of annual congressional disaster relief designations as a measure of major disaster costs is not wholly accurate either. Some major disaster costs are absorbed by federal agencies within their budgets after the completion of the appropriations cycle, when those costs were not anticipated. Congress also has chosen not to designate all costs of major disasters as "disaster relief." The application of this designation has been limited to the allowable size of the disaster relief adjustment in a given year, with costs beyond that limit being designated by Congress as emergency funding.

Figure 1, below, shows the OMB-calculated amounts of disaster relief from FY2001 through FY2011, and the amount designated as disaster relief by Congress from FY2012 through FY2016 as solid bars on the chart. For FY2012 through FY2016, blue data points connected by a line indicate the allowable adjustment for disaster relief available under the BCA. In FY2012 and FY2013, the disaster relief allowable adjustment approached full usage. In FY2014, for the first time, several billion dollars of the adjustment went unused, and was carried over to FY2015.

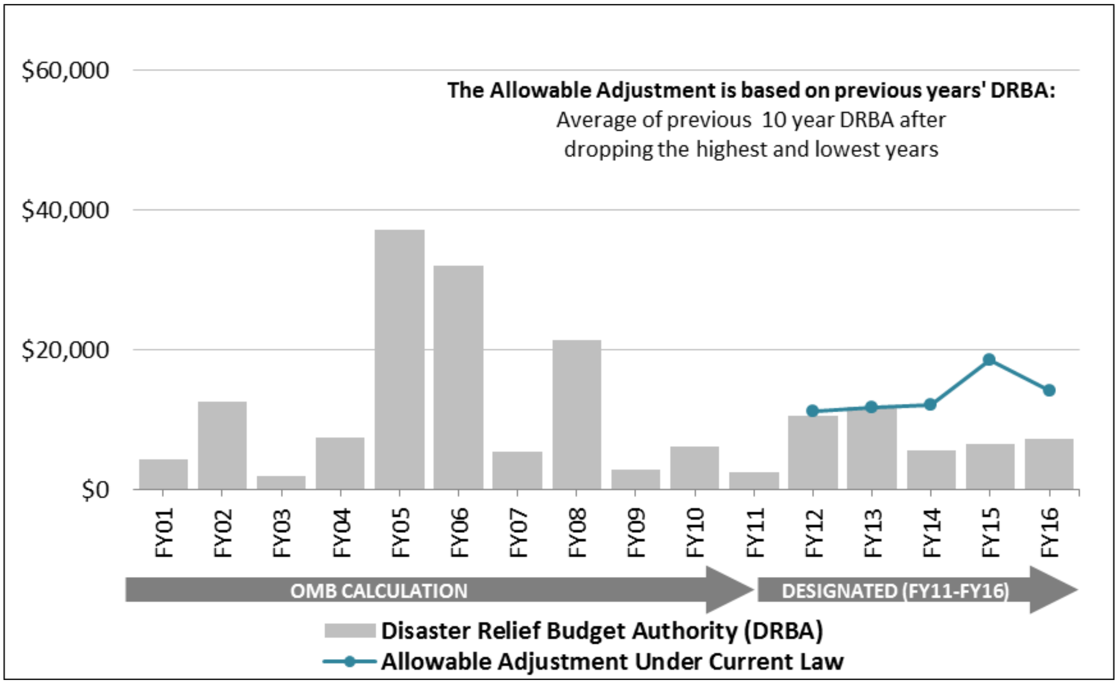
[5] Office of Management and Budget, *OMB Report on Disaster Relief Funding to the Committees on Appropriations and the Budget of the U.S. House of Representatives and the Senate*, Washington, DC, September 1, 2011, p. 1. (Hereinafter *OMB Disaster Relief Report*.)

[6] Ibid, p. 2, note.

[7] Office of Management and Budget, *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2013*, Washington, DC, August 20, 2012, p. 16, https://www.whitehouse.gov/omb/legislative_reports/sequestration.

Figure 1. Disaster Relief and the Allowable Adjustment, FY2001-FY2016

(in millions of nominal dollars of discretionary budget authority)



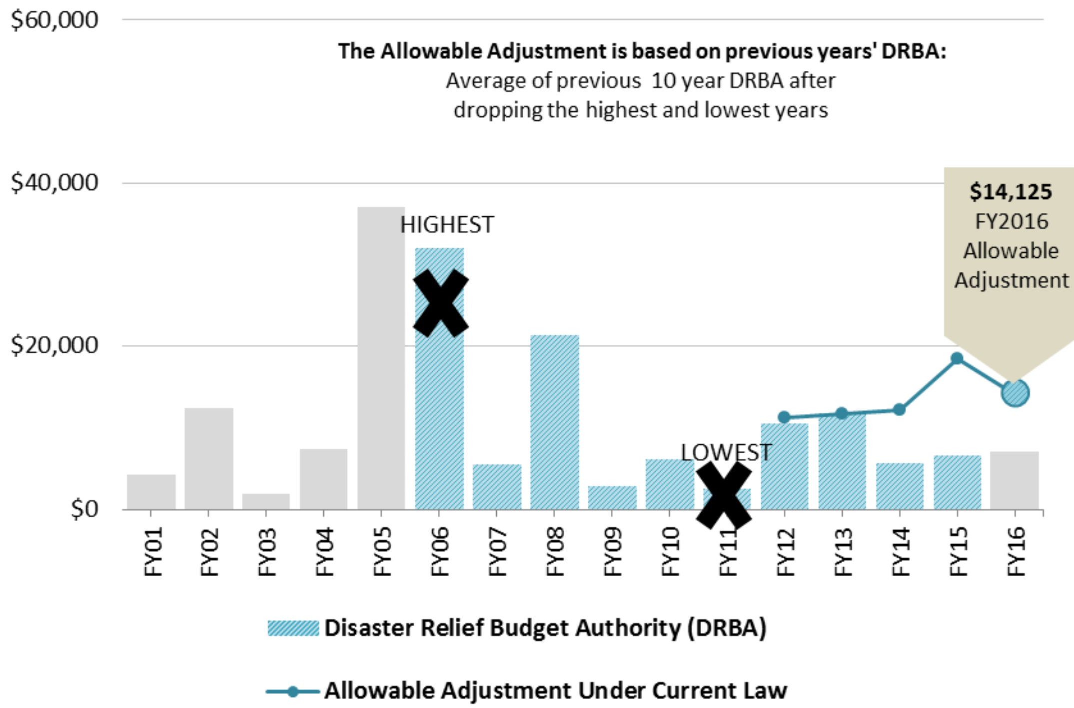
Source: CRS compilation and analysis of data from OMB Sequestration Reports.

Figure 2 illustrates how the allowable adjustment was calculated for FY2016. Blue bars indicate the ten years of disaster relief from FY2006 through FY2015 that the calculation is based on: black Xs indicate the high and low years that were excluded from the calculation. The average of the eight remaining years, plus the unused portion of the allowable adjustment from FY2015 (excluding carryover from FY2014), is the allowable adjustment for FY2016.

The disaster relief provided in FY2005 and FY2006—which was largely driven by hurricanes Katrina, Rita, and Wilma—is in the process of "aging out" of the disaster relief allowable adjustment calculations. Those two fiscal years supported a higher average than otherwise would have been calculated in their absence. Beginning in FY2017, the only other year in the data set with disaster relief spending in excess of $20 billion (FY2008), will be the high year, and therefore be excluded from the calculation for the allowable adjustment. The implications of these changes for the allowable adjustment are discussed in greater detail below.

Figure 2. Calculation of the Allowable Adjustment for FY2016

(in millions of nominal dollars of discretionary budget authority)



Source: CRS compilation and analysis of data from OMB Sequestration Reports.

Note: Annual totals of DRBA not used in the calculation of the FY2016 allowable adjustment are shown in gray, while the ten years of annual totals used in the calculation are shown in blue.

As noted above, the annual total of disaster relief appropriations for years after FY2011 used to calculate the allowable adjustment is based on the congressional designation of appropriations as disaster relief. As years pass, the calculation is becoming less reliant on OMB's somewhat more inclusive annual totals of disaster relief and more reliant on annual congressional designations of disaster relief that have, in practice, been constrained to an extent by the allowable adjustment.

Using the Allowable Adjustment

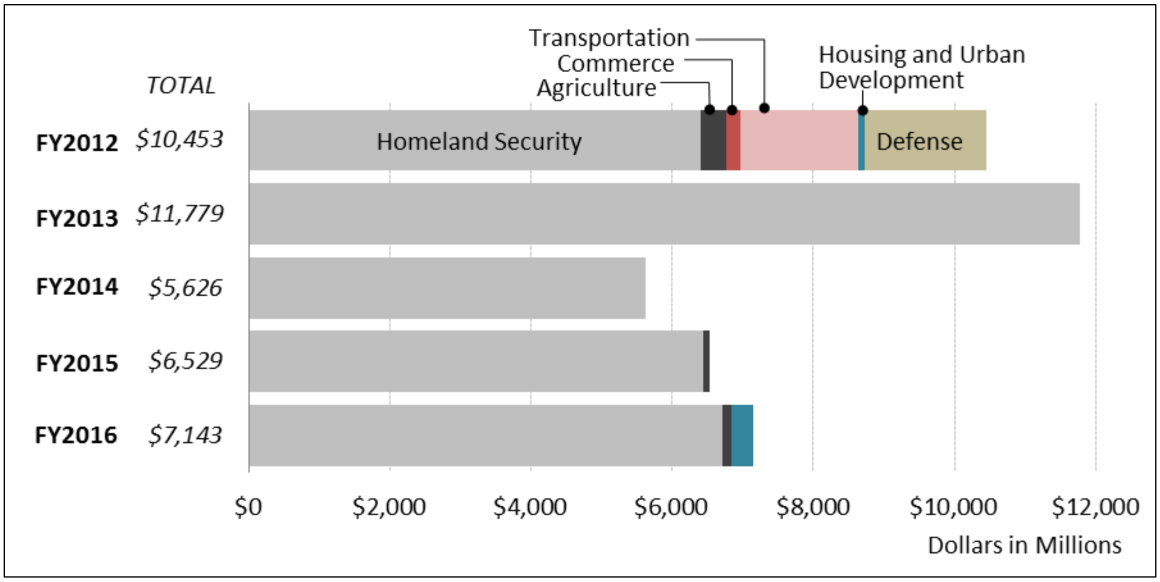
The allowable adjustment has been most often used to accommodate budget authority for the Federal Emergency Management Agency's Disaster Relief Fund (DRF)—the primary FEMA account used to fund disaster response activities and pay for ongoing disaster recovery programs.[8] However, the use of the allowable adjustment is not limited to the DRF. It has accommodated funding for several other departments and government agencies, as shown in **Figure 3**. In FY2016, three departments received funding in annual appropriations designated as disaster relief—the Departments of Homeland Security (which includes FEMA), Agriculture, and

[8] For more information on the DRF, see CRS Report R43537, *FEMA's Disaster Relief Fund: Overview and Selected Issues*, by Bruce R. Lindsay.

Housing and Urban Development—the broadest use of the designation across agencies since FY2012, the first year of its use.

Figure 3. Appropriations with Disaster Relief Designations by Government Agency, FY2012-FY2016

(in millions of nominal dollars of discretionary budget authority)



Source: CRS analysis of appropriations legislation.

Notes: Homeland Security funding is FEMA's Disaster Relief Fund at the Department of Homeland Security; Agriculture represents the Emergency Conservation Program, Emergency Forest Restoration Program, and Emergency Watershed Protection Program at the U.S. Department of Agriculture; Commerce represents Economic Development Assistance programs at the Department of Commerce; Transportation represents the Federal Highway Administration's Emergency Relief Program at the Department of Transportation; Housing and Urban Development represents the Community Development Fund at the Department of Housing and Urban Development; and Department of Defense funding is for three separate accounts the U.S. Army Corps of Engineers' Civil Works Program.

The Disaster Relief Allowable Adjustment: The Next Five Years (FY2017-FY2021)

Forecasts for the Next Five Years with the Status Quo

As Congress considers the future of federal disaster relief and budgetary controls, it may choose to consider changes to the disaster relief allowable adjustment. Under the status quo, the disaster relief allowable adjustment will continue to be available through FY2021, after which the limitations on discretionary spending under the BCA expire. As past years roll out of the calculation and new years roll in, it is possible to assess potential future scenarios for the size of the allowable adjustment.

Using OMB's methodology for calculating the allowable adjustment, three models of potential future scenarios are presented here:

- **Maximum Usage Scenario**: presumes Congress will designate the maximum amount available under the allowable adjustment for disaster relief each year;

- **Medium Usage Scenario**: presumes obligations for major disaster activities will follow FEMA's 10-year average of non-catastrophic major disasters, which is less than the total disaster relief allowable adjustment.
- **Minimum Usage Scenario**: presumes that no catastrophic disasters occur, no further major disasters are declared, and that the designation is only used to cover ongoing costs anticipated to the DRF from the past major disasters as of November 15, 2015.

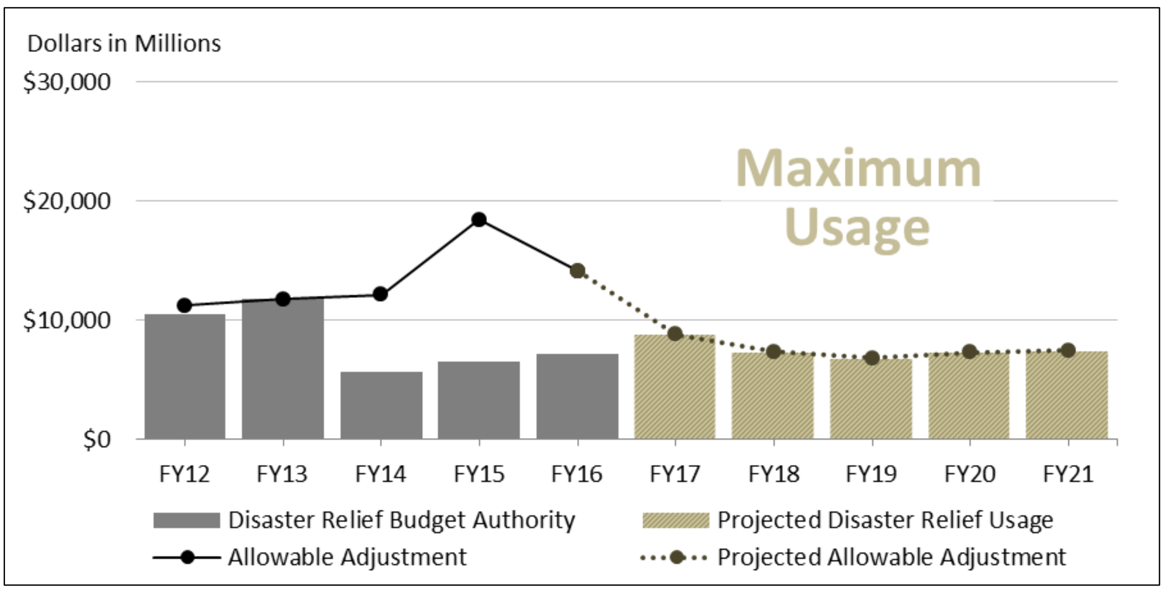
From FY2013 through FY2016, Congress appropriated almost $31.1 billion under the disaster relief designation, of which the DRF has received almost $30.6 billion—98.3% of the total funds designated. Given this pattern of predominant usage, the medium and minimum usage scenarios are based on projections of DRF spending on major disasters, with those appropriations being designated as disaster relief as has been congressional practice since FY2012.

The Maximum Usage Scenario

Figure 4 shows what the allowable adjustment would look like for the next five years if it were fully exercised every year, leaving no carryover. The allowable adjustment declines to roughly $6.8 billion as high expenditure years "age out" of the average, before increasing to nearly $7.5 billion in 2021.

Figure 4. Projected Allowable Adjustment for Disaster Relief: Maximum Usage

(in discretionary budget authority)



Source: CRS analysis based on historical appropriations and projected disaster relief spending.

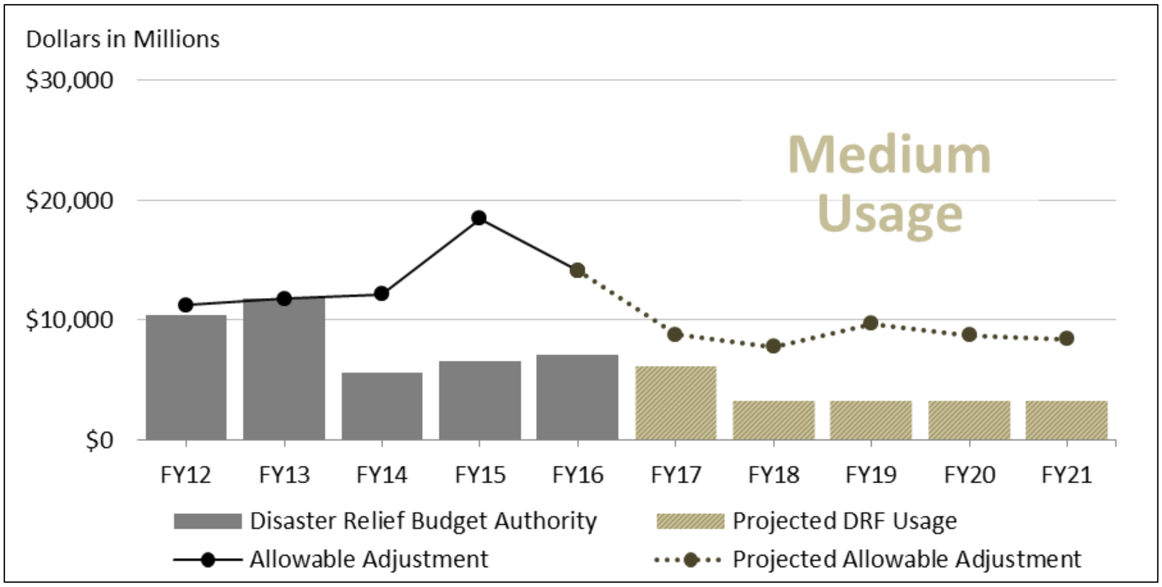
The Medium Usage Scenario

Figure 5 shows a projected future scenario for the allowable adjustment based on a FEMA projection from November 2015, of anticipated usage of the DRF over the next five fiscal years. According to FEMA, this anticipated usage includes estimates for existing disasters and future non-catastrophic major disasters calculated using a 10-year average of non-catastrophic major disasters adjusted to FY2017 dollars.[9]

FEMA's five-year projection provided a data point for FY2017, and a projection for the total cost of major disasters over the full five-year time horizon through FY2021. Due to the unpredictable nature of disasters, FEMA did not make annual projections. For purposes of developing a hypothetical scenario, CRS estimated annual levels by dividing the total projected spending for years two through five (FY2018-FY2021) evenly among those years. As noted above, given that the predominant usage of the allowable adjustment has been for the DRF, the DRF projection is being used as a surrogate for all disaster relief spending in this scenario.

Figure 5. Projected Allowable Adjustment for Disaster Relief: Medium Usage

(in discretionary budget authority)



Source: CRS analysis based on historical appropriations and projected DRF spending, which is used as a surrogate for projected usage of the allowable adjustment for disaster relief.

In this scenario, like the "maximum usage" scenario, the allowable adjustment declines through FY2018, but then rebounds in FY2019 to almost $9.7 billion due to the impact of carryover of unused adjustment from the prior year. This effect is temporary, as the carryover effect expires after a year. Lower levels of annual usage ultimately begin to impact the average and drive the allowable adjustment back down, falling to just above $8.4 billion in FY2021.

The Minimum Usage Scenario

Figure 6 shows a projected future scenario for the allowable adjustment based on a FEMA projection from November 2015, of anticipated usage of the DRF over the next five fiscal years, funding only the costs of previously declared disasters.[10] While it is highly unlikely that no further major disaster declarations would be made over the next five years, this projection is

[9] These types of estimates are subject to change as a result of revisions of damage estimates related to existing disasters and changes in the 10-year average as time passes year to year.

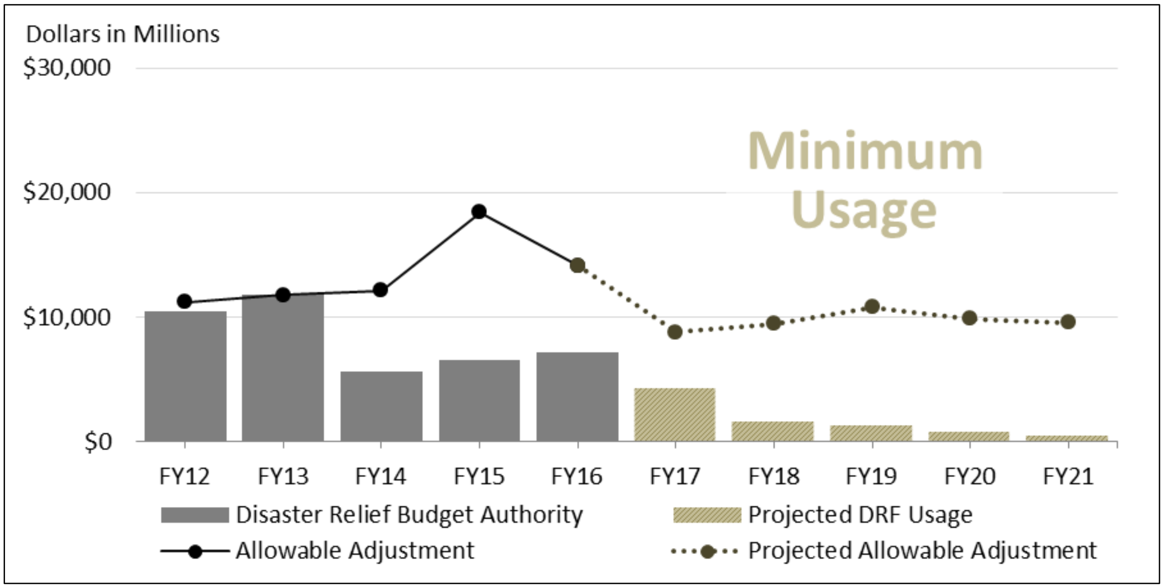
[10] This estimate can and will change due to additional damage verification for existing disasters, eligibility determinations, appeals, arbitrations, etc. This can be highly variable based on numerous factors.

intended to serve as a lower bound of possible usage of the allowable adjustment. As noted above, given that the predominant usage of the allowable adjustment has been for the DRF, the DRF projection is being used as a surrogate for all disaster relief spending.

In this scenario, the carryover has a greater impact, with the larger carryover from FY2017 boosting the allowable adjustment in FY2018 to a greater extent than in the medium scenario, and a larger-still carryover applied to FY2019 boosting the allowable adjustment to almost $10.8 billion. As in the medium usage scenario, lower levels of expenditure on disaster relief result in further decline in the underlying 10-year average in ensuing years, leading to a decline in the projected allowable adjustment to slightly less than $9.6 billion in FY2021.

Figure 6. Projected Allowable Adjustment for Disaster Relief: Minimum Usage

(in discretionary budget authority)

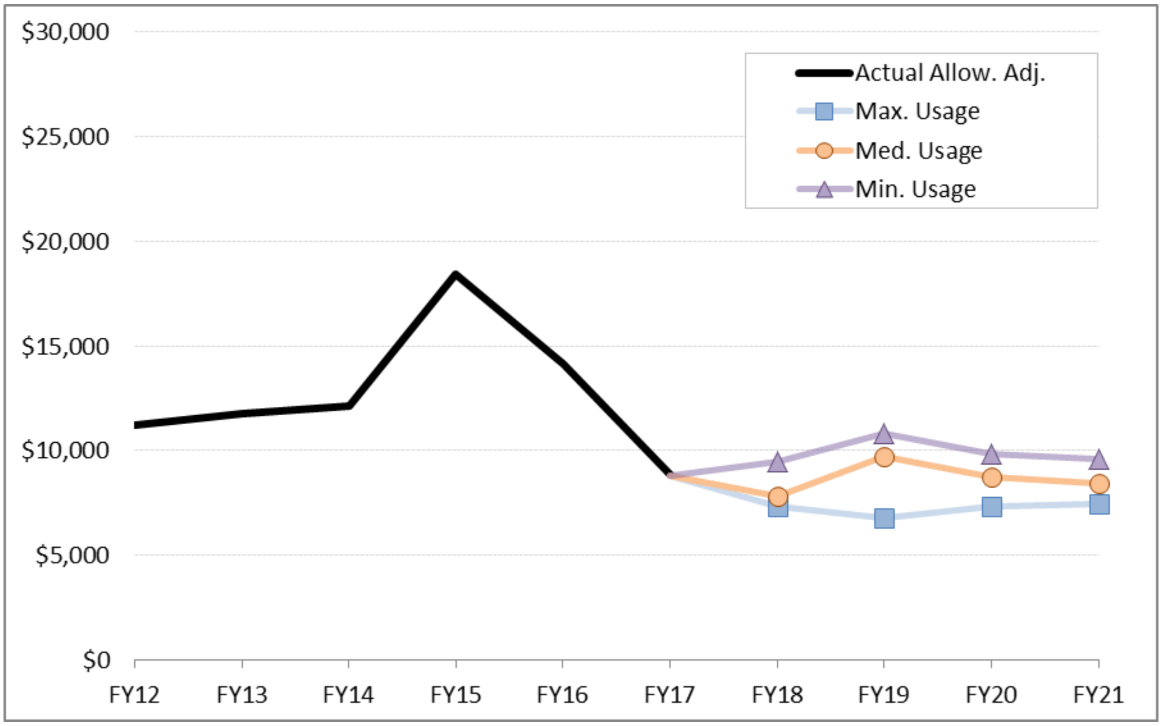


Source: CRS analysis based on historical appropriations and projected DRF spending, which is used as a surrogate for projected usage of the allowable adjustment for disaster relief.

To facilitate comparison, **Figure 7** shows the maximum, medium, and minimum scenarios for the future of the disaster relief allowable adjustment in a single graphic. In the near term, lower usage of the allowable adjustment tends to support higher allowable adjustments due to the impact of carryover. However, those lower spending levels ultimately reduce the level of the adjustment by pulling down the average. As higher-usage years continue to roll out, if the BCA structure and allowable adjustment were continued past 2021 unchanged, the allowable adjustments in medium and minimum usage scenarios would continue to decline, while the allowable adjustment in the maximum usage scenario would remain relatively stable.

Figure 7. Allowable Adjustment for Disaster Relief Scenarios

(in millions of dollars of discretionary budget authority)



Source: CRS analysis based on historical appropriations and projected DRF spending.

Note: FY2017 "Actual Allowable Adjustment" assumes no supplemental appropriations for FY2016 receive a disaster relief designation.

What If Sandy Emergency Funding Had Counted?

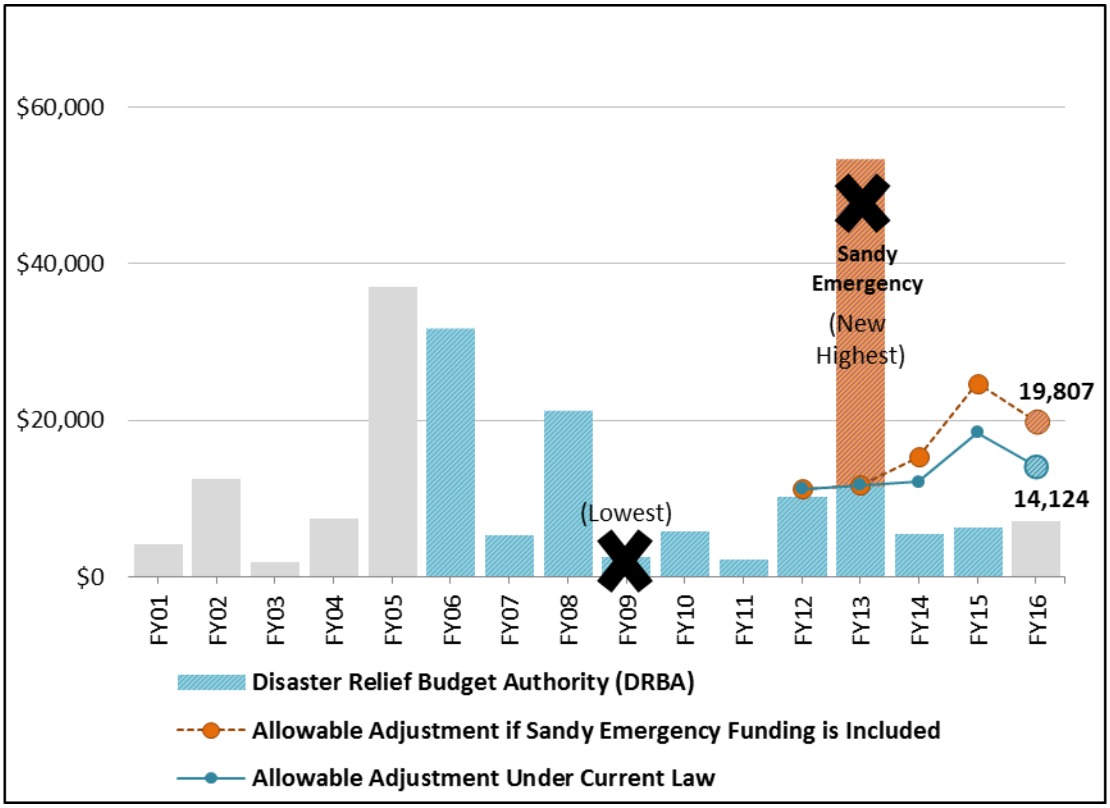
The allowable adjustment initially was based wholly on OMB calculations of actual disaster relief spending. With each year, the calculation uses less of OMB's historical analysis, and more congressional designations of disaster relief appropriations, in its rolling average. These congressional designations have not been applied to all costs of major disasters, as noted above. One specific year of interest is FY2013. In FY2013, Congress provided $41.6 billion in supplemental disaster assistance in the wake of Hurricane Sandy in excess of the allowable adjustment—assistance that was designated as emergency spending rather than disaster relief—and therefore not included in the annual disaster relief total. This raises the question, what would be allowable adjustment look like if all the disaster assistance provided in FY2013 had been included in that year's disaster relief total?

Had OMB's methodology been used to account for disaster relief spending in the 10 years prior to the enactment of the BCA been used in FY2013, virtually all of the funding provided in P.L. 113-2 would have been included in the total disaster relief for FY2013. As a result, the allowable adjustment would have been significantly higher for FY2014-FY2016.

Figure 8 illustrates the effect of including Sandy-related supplemental disaster assistance designated as emergency spending in the allowable adjustment calculation. With FY2013 becoming the new "high year," other years with more than $20 billion in disaster relief remain part of the calculation for a longer period. Including Sandy-related supplemental disaster assistance in future allowable adjustment calculations would require a change in law. Options include retroactively designating the Hurricane Sandy funding as disaster spending, or modifying how OMB calculates the adjustment.

Figure 8. Impact of Including P.L. 113-2 Emergency Funding in the Allowable Adjustment Calculation

(in millions of nominal dollars of discretionary budget authority)



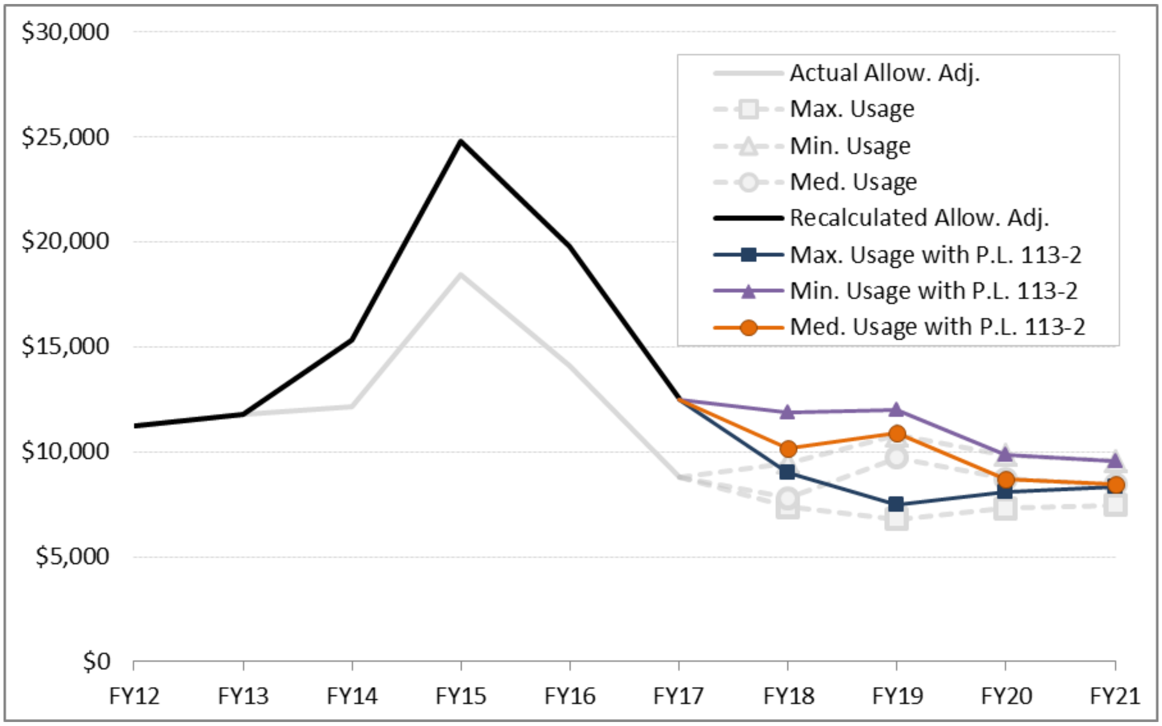
Source: CRS compilation of data from OMB Sequestration Reports.

Figure 9 further illustrates the effects of including disaster relief appropriations from P.L. 113-2 when calculating the allowable adjustment. Specifically, the maximum, medium, and minimum usage scenarios described above are recalculated, assuming inclusion of disaster relief appropriations from P.L. 113-2. In this scenario, FY2013 becomes the new "high year," making FY2005 disaster relief eligible for inclusion in the average for the first time and keeping FY2006 and FY2008 included in the calculation for more years than they would have otherwise. Larger carryovers are available in FY2015 and FY2016, but as existing levels went unused, and the allowable adjustment in future years still settles below $10 billion per year by FY2020. This exercise suggests that even if an exception was made to include more of the cost of catastrophic disasters, a single high year may have a limited impact on the level of the allowable adjustment over the long term because it is tossed out of the average as the "high year."

Higher spending over multiple years—such as the two years of higher disaster relief spending associated with the Gulf Coast hurricanes—has a much greater impact. In the case of Hurricane Katrina, only one of those "high" years was dropped from the calculation before FY2016. The "aging out" of those two years from the calculation results in a significant reduction in the modified 10-year average.

Figure 9. Allowable Adjustment for Disaster Relief Scenarios, Including Emergency Funding from P.L. 113-2

(millions of dollars of budget authority)



Source: CRS analysis based on historical appropriations and projected DRF spending.

Note: FY2017 "Actual Allowable Adjustment" assumes no supplemental appropriations for FY2016 receive a disaster relief designation.

Considerations for the Future of Disaster Relief Appropriations

Allowable Adjustment: What Has It Done?

One of the more visible impacts of the allowable adjustment for disaster relief is increased funding for the Disaster Relief Fund through the annual appropriations process. By essentially removing the funding for the costs of major disasters from the debate on discretionary spending, the annual appropriation now more closely resembles the annual expenditure. Prior to the enactment of the BCA, there was an incentive to fund the DRF at lower amounts annually in favor of other priorities, with the assumption that any shortages could be made up through a supplemental appropriations bill should the need arise during the fiscal year. By making the majority of the DRF eligible for funding outside discretionary spending limits, the BCA removed that incentive, and it became easier to request and appropriate more budget authority for the DRF on an annual basis.

As noted above, the allowable adjustment has largely been used to fund the DRF: yet both FY2015 and FY2016 consolidated appropriations bills[11] funded other disaster accounts using the disaster relief designation. Use of the disaster relief designation and the allowable adjustment to more broadly pre-fund commonly used disaster relief accounts may allow some federal agencies to exercise their disaster response authorities after major disasters without waiting for emergency funding, or relying on transfers from other funded activities. However, removing the urgency from the supplemental appropriations process may have unintended consequences for programs whose agencies may anticipate relying on supplemental appropriations to fund their efforts.

When Hurricane Sandy struck, a combination of two timely features ensured that the DRF had adequate resources to deal with the immediate needs presented by the storm: a $6.4 billion supplemental appropriation for the DRF in FY2012[12] and a continuing resolution for the beginning of FY2013 that provided interim funding for the DRF at a rate based on that large supplemental appropriation.[13] The immediate availability of those resources may have allowed the Administration to move more deliberately in response to the storm than would have been the case had the DRF not been relatively flush—for example, the Administration's request for supplemental appropriations was not sent to Congress until six weeks after the storm had passed. Other programs—even some of those included in the supplemental request—did not have the benefit of those ready resources, and had to rely on transfers or reprogramming of resources if they wished to move ahead, or wait for the passage of a supplemental appropriations bill.

Does the Allowable Adjustment Cover All Disaster Relief? Is Disaster Relief Accurately Accounted For?

As noted earlier, the BCA defined "disaster relief" as activities carried out pursuant to a declaration of a major disaster under the Stafford Act.[14] According to OMB, to be accounted for under the allowable adjustment, and to be included in the calculation of the 10-year rolling average on which the adjustment is based, appropriations must be designated by Congress as disaster relief.[15]

Not all costs of major disasters receive the disaster relief designation. As noted above, in the case of FY2013, if all the costs of those combined major disasters paid in P.L. 113-2 had been designated as disaster relief, those designations would have exceeded the allowable adjustment. As a result, the majority of disaster relief was designated as emergency appropriations.

Furthermore, the definition of disaster relief in the BCA is a limiting factor—it already excludes some forms of federal disaster assistance by focusing on the major disaster declaration.

Some Stafford Act Assistance Is Not Accounted For

Two specific types of Stafford Act disaster declarations funded through the DRF are not linked to major disasters, and are therefore not included in the 10-year average of disaster relief spending:

[11] P.L. 113-235 and P.L. 114-113.

[12] P.L. 112-77.

[13] P.L. 112-175.

[14] 125 Stat. 245.

[15] Office of Management and Budget, *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2013*, Washington, DC, August 20, 2012, p. 16, https://www.whitehouse.gov/omb/legislative_reports/sequestration.

Emergency declarations and Fire Management Assistance Grants (FMAG). Emergency declarations at the federal level—made by the President—authorize assistance that helps states and localities carry out essential services during emergency situations.[16] FMAGs authorize various forms of federal assistance such as the provision of equipment, personnel, and grants to state, local, and tribal governments for the control, management, and mitigation of any fire on public or private forest land or grassland that might become a major disaster.[17]

Spending levels for emergency declarations and FMAGs are much lower than the spending level for major disaster declarations. From FY1992-FY2015, $155.60 billion was spent pursuant to major disaster declarations, an average of $6.48 billion per year. Over that same period, $4.23 billion was spent pursuant to emergency declarations and fire management grants, an average of $176 million per year—less than 3% of spending on major disaster declarations.[18] Thus, it might be argued that their inclusion would not make an appreciable difference to the 10-year average. Others may argue that emergencies and FMAGs should be included to provide a more precise and complete calculation of federal disaster relief.

Disaster Assistance Not Associated with the Stafford Act Is Not Accounted For

A similar argument could be made for the inclusion of disaster assistance programs that can be carried out under an authority separate from the Stafford Act. For example, the Secretary of the Department of Health and Human Services (HHS) has general authority under the Public Health Service Act to provide public health assistance to states, upon their request, without a Stafford Act declaration.[19] Another significant example is the U.S. Forest Service (FS) and the U.S. Department of the Interior (DOI) which provide assistance to suppress wildfires and protect lives.[20] These examples of federal disaster assistance would not be part of the annual calculation of the allowable adjustment, specifically because of their lack of a nexus to a major disaster declaration under the Stafford Act.

Some might argue that the definition of disaster relief and the calculation of the allowable adjustment should capture all instances of federal disaster relief—not just what is provided under the Stafford Act as a major disaster. Doing so would require much more complete reporting of disaster assistance spending, which in turn could allow for more thorough congressional oversight and policy innovation.

It should be noted, however, that historically, obtaining a comprehensive financial picture of federal funding for disaster assistance has proven to be a difficult task for a variety of reasons:

- It is difficult to identify all of the federal entities that provide disaster assistance because many federal entities provide aid through a wide range of programs, not

[16] Emergencies are defined under the Stafford Act as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States." (42 U.S.C. §5122) The process and parameters for emergency declarations is outlined in 42 U.S.C. §5191-5193.

[17] FMAGs are authorized under 42 U.S.C. §5187. For more information on FMAGs, see CRS Report R43738, *Fire Management Assistance Grants: Frequently Asked Questions*, coordinated by Bruce R. Lindsay.

[18] CRS analysis of FEMA data on DRF obligations.

[19] 42 U.S.C. 243.

[20] For additional discussion regarding these costs, see CRS Report R44082, Wildfire Spending: Background, Issues, and Legislation in the 114th Congress, by Katie Hoover et al.

necessarily through those designated specifically as "disaster assistance" programs.[21]

- The degree of transparency in reporting funding levels for disaster relief varies tremendously among federal entities. As an example, Congress requires FEMA to submit monthly status reports on the DRF, detailing balances, obligations, allocations, and expenditures for a range of major disasters. This requirement has not been extended to other agencies, and limited data exist, particularly on a state-by-state or disaster-by-disaster basis, on other federal funding for emergencies and major disasters.
- Scoping what constitutes a disaster is difficult because disaster definitions vary by statute, regulation, and program. Some might argue that all these definitions should be combined to get an accurate measure of federal expenditures for disaster assistance. Others might argue it makes the universe of disaster assistance too broad and may include items such as emergency preparedness and mitigation efforts, livestock losses, economic disasters, and search and rescue missions.

Is Disaster Relief Constrained by the Allowable Adjustment?

Some observers mistakenly believe that the allowable adjustment for disaster relief is a constraint on how much Congress can spend on disaster assistance.[22] This is a misconception. A spokesman for then-Majority Leader Eric Cantor put it thusly:

> One of the reasons House Republicans insisted on reforming the disaster funding process, which we did as part of the Budget Control Act, was so that we would have a separate dedicated pot of money available based on historical disaster needs.... We also provided that should a disaster exceed that capacity, Congress and the president could provide additional emergency funds.[23]

The allowable adjustment is a constraint on the amount Congress can adjust the discretionary spending limits to accommodate designated disaster relief. While the BCA states that designated disaster relief is not eligible for designation as emergency funding,[24] the definition of emergency under the BCA encompasses a range of eventualities that includes disasters: designated new budget authority and outlays are "for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security; and ... is unanticipated."[25] In the wake of Hurricane Sandy, the allowable adjustment was exhausted, and supplemental appropriations were covered largely by emergency designations, as explained above.[26]

[21] For example, the Department of Housing and Urban Development's Section 8 program also provides vouchers for disaster victims.

[22] For example, see Matt A. Mayer, *Hurricane Sandy: Disaster Aid Request Too Big*, Heritage Foundation, Issue Brief #3803 on Homeland Security, Washington, DC, December 13, 2012, http://www.heritage.org/research/reports/2012/12/hurricane-sandy-disaster-aid-request-too-big. Mr. Mayer refers to a DRF "cap."

[23] Doug Heye, as quoted in Paul Krawzak, "GOP Lawmakers Not Calling for Offsets for Sandy Aid," *Roll Call*, November 15, 2012.

[24] 125 Stat. 245.

[25] 125 Stat. 246.

[26] For more information on supplemental appropriations passed in response to Hurricane Sandy, see CRS Report R42869, FY2013 Supplemental Funding for Disaster Relief, coordinated by William L. Painter and Jared T. Brown.

Legislation Proposing Changes to the Allowable Adjustment

During the 114th Congress legislation addressing the allowable adjustment for disasters under the BCA took two different approaches. Several pieces of legislation proposed directly amending the BCA to permit additional forms of disaster spending (e.g., wildfire suppression activities). Legislation passed by the House during the 1st session of the 114th Congress (H.R. 2467) used a "work-around" to avoid directly amending the BCA.[27]

The measure passed by the House (H.R. 2647) would instead amend the Stafford Act, which is the main disaster relief legislation administered by FEMA following a major disaster declaration. The measure would create new definitions and spending authorities under the Stafford Act. These changes would allow federal agencies to request declarations for disaster impacts on federal lands—currently not within the Stafford Act's jurisdiction—and therefore fund a new set of disaster response activities through DRF.

As this report has noted, it appears that the allowable adjustment for disaster relief may settle around $7.5-$9.5 billion as more expensive incidents drop out of the current calculation method. The projected allowable adjustment could change, however, if there are future high-expense incidents. Arguably, the inclusion of an additional category of incidents approved by the President as disasters could eventually increase the rolling average over time, although in initial years, it would reduce the impact of carryover.

H.R. 2647 addresses issues related to funding for disaster-related costs incurred in federal efforts to fight wildfires. It could be argued that modifying the Stafford Act addresses a known disaster risk and provides a funding avenue to meet unanticipated needs that is preferable to intra-agency borrowing. However, modifying the Stafford Act could also be viewed as placing wildfire funding for federal agencies in competition with requests from governors for supplemental disaster relief from the DRF. This could be seen as jeopardizing a long-standing federal backstop for states for other perils and hazards that are beyond their capacity to respond to and recover from.

Disaster Relief After the BCA

As it currently stands, the discretionary spending limits pursuant to the Budget Control Act expire after FY2021. Should Congress choose to continue with annual caps on discretionary spending, it may choose to maintain the existing allowable adjustment for disaster relief, or modify its approach. Should Congress choose to modify its approach, there are several options to consider.

Congress may continue to provide mechanisms in its budget process that allow for funding outside the discretionary spending levels outlined in annual budget resolutions in special circumstances, either generically as "emergency" spending, or with more specific ends, such as funding for overseas military operations, disaster relief, or for other specific ends. It may choose unlimited adjustments, limited allowable adjustments, or possibly a combination of such approaches as it has under the Budget Control Act.

If Congress chooses to continue to provide an adjustment for disaster relief, linking the definition of disaster relief to major disasters under the Stafford Act and limiting the adjustment available by formula could continue without the prescription of discretionary spending limits in law, or the

[27] While passed by the House, the language regarding the expansion of the Stafford Act to cover wildfire suppression costs on federal lands was not included in the consolidated appropriations legislation approved by Congress at the conclusion of the 1st Session of the 114th Congress.

threat of sequestration. Congress may choose to revisit its definition of disaster relief, or whether the adjustment is limited. If Congress chooses an allowable adjustment model, it may also seek to change the formula for calculating the allowable adjustment, in any number of ways: extending the time period being averaged; including the high and low years; or modifying the scope of disaster assistance included in the calculations.

A more fundamental change to how the federal government pays for the costs of disaster relief is also possible. Congress could take steps to shift costs paid by the federal government to states and localities, or provide borrowing authority to agencies responding to disasters rather than discretionary budget authority through the appropriations process. However, these options would require legislative actions traditionally outside the budget process to implement.

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