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The Unfortunately Obligatory Farm Bill Expiration and Extension Discussion

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Onward September, an approaching autumn felt in football air. This year, the month features the senescent stage of the 118th Congress struggling before it passes into the pages of history with that most basic responsibility: funding the federal government. ‘Tis the season of the continuing appropriations resolution in which Congress, unable to pass individual appropriations bills, simply continues the prior year’s spending for another stretch of time (Emma and Beavers, [September 11, 2024](#); Quigley, [September 9, 2024](#); Bogage and Sotomayor, [September 9, 2024](#); Folley, [September 8, 2024](#)). If further proof is needed that Farm Bill reauthorization is not going to happen in the 118th Congress, the impasse over funding the government provides it. This article reviews the expiration and extension issue.

Background

Appropriations are at the core of Congressional, and thus governmental, power. The power of the purse, like everything else, begins with the Constitution. Article 9 provides: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law” (U.S. Const., Art. 9 ([Archives.gov, Constitution](#))). With those words, the Constitution vests Congress with the power to affirmatively authorize all federal spending. Federal agencies may not obligate any money, nor “incur any liability” for the payment of public funds, unless explicitly authorized to do so by Congress; or, more specifically, “obligations and expenditures are permitted only in accordance with an appropriation made by law” (GAO, *The Red Book*, [Ch.1](#), at 6). It is up to Congress what constitutes the power of the purse. It can authorize spending through properly enacted annual, supplemental, continuing, temporary, partial, or other appropriations legislation; it can authorize permanent funding mechanisms, such as entitlement spending, as well as fees collected by an agency.

Any law authorizing the payment of funds from Treasury is an appropriation, or “legal authority granted by Congress to incur obligations and to make disbursements for the purposes, during the time periods, and up to the amount limitations specified in the appropriation acts” (GAO, *The Red Book*, [Ch. 2](#), at 2-3). Only Congress can provide budget authority. While there is no requirement that spending legislation be labeled

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an appropriation, it is the general rule “that the making of an appropriation must be expressly stated” and be a “specific direction to pay and a designation of the funds to be used” including out of any funds at Treasury not otherwise appropriated (*Id.*, at 23-24). If both are expressly stated, the direction to pay and the designation of funds, it is an appropriation and includes contract authority as well as direct borrowing authority such as through the Commodity Credit Corporation (CCC) used in the Farm Bill. Finally, federal agencies can only spend—including for salaries and basic operating costs—if “Congress has enacted the necessary budget authority and if the obligation is consistent with all applicable statutes” (GAO, *The Red Book*, Ch. 2, at 2-3 and 4-8).

Discussion

In general, Congress writes Farm Bill reauthorizations with expiration dates such that most of this omnibus authorization legislation is scheduled to expire after five years. The Agriculture Improvement Act of 2018 (P.L. 115-334) technically expired with the 2023 fiscal and crop years. Unable to reauthorize it last year, Congress extended those expiration dates to 2024 (P.L. 118-22).

Expiration means different things to different titles, programs, and policies. Many programs in the Farm Bill are authorized for discretionary funding or appropriations and these programs would presumably continue to receive funding with any legislation that continues appropriations (e.g., most of rural development, credit, and research). On the other end of the spectrum are programs with mandatory funding that continue after expiration and have baseline (e.g., farm payment programs, Supplemental Nutrition Assistance Program, and trade programs). Of these programs, crop insurance is permanently authorized and does not expire, while most of the conservation programs were extended to FY2031 by the Inflation Reduction Act of 2022 (P.L. 117-169). Finally, there are 21 programs that received mandatory funding in the 2018 Farm Bill but do not have baseline funding that continues after expiration (e.g., some research programs, three conservation and three energy programs, some programs in the horticulture title, and others reauthorized in the miscellaneous title). These are the programs that are most at risk because Congress may need to offset the costs of extending them. Otherwise, extension is relatively straightforward: Congress must pass, and the President must sign into law, legislation that changes the 2024 dates to a different year, or even something short of a year (Monke, Stubbs, and Aussenberg, February 23, 2024; Monke, November 28, 2023; July 8, 2024).

Arguably, the most prominent Farm Bill extension issue involves the farm payment programs in Title I (Commodities). If allowed to expire, these programs can technically revert to what is known as permanent law from the Agriculture Act of 1949 and the Agricultural Adjustment Act of 1938. Usually, the last subtitle in Title I contains provisions for administration of the programs, including a section titled “suspension of permanent price support authority” (7 U.S.C. §9092; P.L. 115-334, Sec. 1702). These provisions remain as permanent law, with operation suspended for the duration of the current Farm Bill’s authorization. The policy is the long-outdated parity price support system of high loan rates, production controls, and the forfeiture of supported commodities when prices are below the loan rates (Coppess, 2018). The provision suspending permanent price support law was added by Congress in the 1996 Farm Bill (P.L. 104-127; 7 U.S.C. §7301).

Prior to the 1996 Farm Bill, Congress generally wrote the commodity support policies on a program crop basis (e.g., separate provisions for wheat, feed grains, cotton, etc.). In the 1977 to 1990 Farm Bills, each supported commodity had its own title, and any relevant suspensions of permanent law were included within the commodity’s provisions. Commodity policy in the 1949 to 1973 Farm Bills was generally written as amendments to the 1938 and 1949 Act provisions relevant to the program crop (see generally, [Farm Bill Legislation](#), National Ag Law Center). For those provisions, suspension of the 1938 and 1949 Act provision would not have been necessary.

Like the 1996 Farm Bill itself, the permanent law suspension provision traveled an interesting path into the law. That Farm Bill began by being included in the omnibus budget reconciliation bill which included a provision that eliminated the permanent price support authorities of the 1949 Farm Bill (see H.R. 2517, Sec.1105; H.R. 2491, Sec. 1105). While it passed Congress, the budget reconciliation bill was vetoed by President Bill Clinton and never enacted into law.

When it returned in January 1996, the House Agriculture Committee began the Farm Bill reauthorization process anew. The legislation provided for elimination of the 1949 Act (H.R. 2854, Sec. 109 (Introduced);

(H.R. 2854, Sec. 109 (Reported); H.R. 2854, Sec. 109 (Engrossed)). The House Agriculture Committee was clear in its intent to eliminate permanent price support authority. One of the stated purposes of the bill was to terminate the authority (*H. Rept.*, 104-462, at 66).

The provision eliminating permanent price support authority was included in the bill introduced in the Senate, but was amended to a provision suspending the authority (compare, S. 1541, at Sec. 19 (Introduced); S. 1541, at Sec. 109 (Engrossed)). The issue of suspending permanent price support authority was briefly debated on the Senate floor, led by Senator Tom Daschle (D-SD). The Minority Leader argued that the bill would “eliminate permanent farm law for the first time in 60 years” (*Cong. Rec.*, Feb. 6, 1996, S900). His amendment included among its provisions the “reinstating of the Agricultural Act of 1949 at the expiration of the so-called freedom to farm act” but the amendment was defeated 33 to 63 (*Cong. Rec.*, February 7, 1996, S1044; S. Amend. 3452). The opposition to eliminating permanent price support authority appears to have had an impact. A different version of the suspension text was incorporated as a modification to a substitute amendment on the Senate floor, replacing the termination text, and was agreed to by a voice vote (S. Amend. 3184; *Cong. Rec.*, February 7, 1996, S1001-S106). Procedurally, the Senate then took the House bill, struck out the entire text and replaced it with its own text in March 1996, passing the bill that included the modified provision that is the suspension language (H.R. 2854, Sec. 109). The Conference Committee adopted the Senate provision, switching from termination to suspension during the years of operation (*H. Rept.* 104-494, at 349). Suspension of permanent price support law has remained a feature of every Farm Bill since 1996.

Concluding Thoughts

Once again, the Farm Bill finds itself in the legislative bardo: no path forward; going back (expiration/reversion) is likely impossible and would be catastrophic. This state of things begs many questions that can be summarized with a song lyric: “And you may ask yourself, ‘Well, how did I get here?’” (Talking Heads, “Once in a Lifetime,” 1981). You are welcome for the earworm; the inquiry, however, is a serious matter. The traditional Farm Bill formula no longer works: a broad-based coalition to clear the difficult legislative process, backed by the potential of reversion to troubled farm policy in permanent law. This motivational backstop for legislative dysfunction was an important negotiated outcome of the most substantial changes in over 60 years of farm policy history and development (decoupling in the 1996 Farm Bill). The modern variants of the mortal disease—partisan polarization, negative-sum factional politics, etc.—have overcome the Farm Bill’s inoculations, however. And, as extension becomes increasingly convenient, more politically palpable, it will become the default; the more times it is extended, the easier it will be to keep extending. Appropriations legislation is the primary example. An honest reckoning about the causes and reasons, while important and necessary, suffers from the same complications: Attempts at further factional capture combined with budget-amplified partisan fights (see e.g., *farmdoc daily*, July 18, 2024; August 8, 2024).

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