Congressional Research Service
Informing the legislative debate since 1914

U.S. Farm Program Eligibility and Payment Limits

Updated January 17, 2017

Congressional Research Service
https://crsreports.congress.gov
R44739

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Current U.S. farm program participants—whether individuals or multi-person legal entities—must meet specific eligibility requirements to receive benefits under certain farm programs. Some requirements are common across most programs while others are specific to individual programs. In addition, program participants are subject to annual payment limits that vary across different combinations of farm programs. Federal farm support programs, along with their current eligibility requirements and payment limits, are listed in **Table 1**.

Since 1970, Congress has used varying policies to address the issue of who should be eligible for farm payments and how much should an individual recipient be permitted to receive in a single year. In recent years, congressional policy has focused on tracking payments through multi-person entities to individual recipients (referred to as direct attribution); ensuring that payments go to persons or entities actively engaged in farming; capping the amount of payments that a qualifying recipient may receive in any one year; and excluding farmers or farming entities with large average incomes from payment eligibility.

Current eligibility requirements that affect multiple programs include identification of every participating person or legal entity—both U.S. and non-U.S. citizens; the nature and extent of an individual's participation (i.e., actively engaged in farming criteria) including ownership interests in multi-person entities and personal time commitments (whether as labor or management); means testing—persons with combined farm and nonfarm adjusted gross income (AGI) in excess of $900,000 are ineligible for most program benefits; and conservation compliance requirements.

In general, if a foreign person or legal entity meets a program's eligibility requirements, then they are eligible to participate. One exception is the four permanent disaster assistance programs created under the 2014 farm bill (P.L. 113-79) and the noninsured crop disaster assistance program (NAP) whereby non-resident aliens are excluded.

The process of tracking payments to an individual through various levels of ownership in single or multi-person legal entities is critical for assessing an individual's cumulative payments against their annual payment limit. Current law requires direct attribution through four levels of ownership in multi-person legal entities. Current payment limits include a cumulative limit of $125,000 for all covered commodities under major Title I revenue support programs, with the exception of peanuts, which has its own $125,000 limit. The permanent disaster assistance programs also have a $125,000 per crop year limit, with some exceptions.

Supporters of payment limits contend that large payments facilitate consolidation of farms into larger units, raise the price of land, and put smaller, family-sized farming operations and beginning farmers at a disadvantage. In addition, they argue that large payments undermine public support for farm subsidies and are costly. Critics of payment limits counter that all farms need support, especially when market prices decline, and that larger farms should not be penalized for the economies of size and efficiencies they have achieved. Further, critics argue that farm payments help U.S. agriculture compete in global markets, and that income testing is at odds with federal farm policies directed toward improving U.S. agriculture and its competitiveness.

As part of the next farm bill debate, Congress may again address these concerns, as well as the following questions: How does policy design of payment limits relate to their distributional impact on crops, regions, and farm size? Is there an optimal aggregation of payment limits across commodities or programs? Do unlimited benefits under the marketing assistance loan program's forfeiture or commodity certificate exchanges reduce the effectiveness of overall payment limits?

Contents

Introduction 1
Background 1
Report Overview 2
Program Eligibility 5
Participant Identification 5
Three Principal Farm Business Categories 6
Actively Engaged In Farming (AEF) Requirement 7
Individual AEF Requirements 7
Partnership AEF Requirements 8
Corporate AEF Requirements 8
Special Nonfamily AEF Requirements 8
Foreign Person or Legal Entity 9
Adjusted Gross Income (AGI) Limit 9
AGI Defined 10
Historical Development of the AGI Limit 10
Conservation Compliance 12
Direct Attribution of Payments 12
Payment Limits 13
Farm Support Programs Subject to Annual Payment Limits 14
Multiple Payment Limits for a Partnership 14
Single Payment Limit for a Corporation 15
Exceptions that Avoid Payment Limits 15
Forfeiture of a Pledged Crop 15
Commodity Certificates 16
Death of a Principal Operator 17
Other Farm Support Programs Not Subject to Payment Limitations 17
Issues for Congress 18
Distributional Impacts on Farm Size 19
Potential Crop and Regional Effects of Tighter Payment Limits 19
Aggregation of Payment Limits 20
No Payment Limit on MAL Forfeiture or Commodity Certificates 20
Policy Design Considerations 20
AGI Concerns 21

Tables

Table 1. U.S. Farm Commodity Program Eligibility Requirements and Payment Limitations Under the 2014 Farm Bill 3
Table 2. U.S. Farms by Legal Status for Tax Purposes, 2012 7
Table 3. History of Adjusted Gross Income (AGI) Limits for Farm Programs 11

Table A-1. History of Annual Payment-Limits for U.S. Farm Commodity Programs 22
Table A-2. Glossary 24

Appendixes

Appendix. Supplementary Tables 22

Contacts

Author Information 25

Introduction

Program eligibility requirements and payment limits are central to how various U.S. farm programs operate. These requirements fundamentally address various equity concerns and reflect the goals of government intervention in agriculture. They determine who receives federal farm program payments and how much they receive.

Eligibility requirements and payment limits are controversial because they strongly influence what size farms are supported. Policymakers have debated what limit is optimal for annual payments, whether payments should be proportional to production or limited per individual or per farm operation, and whether the limit should be specific to each program or cumulative across all programs. Furthermore, program eligibility requirements and payment limits generate considerable congressional interest because their effects differ across regions and by type of commodities produced, and because a substantial amount of annual U.S. farm program[1] payments are at stake—direct federal outlays have averaged $13.9 billion per year from 1996 through 2015.[2] When federal crop insurance premium subsidies are included,[3] annual farm payments have averaged $17.5 billion over the same period.

Background

Farm program payment limits and eligibility requirements may differ by both type of program and type of participating legal entity (e.g., an individual, a partnership, or a corporation). Eligibility and payment limit determinations for farm programs are under the jurisdiction of the U.S. Department of Agriculture's (USDA's) Farm Service Agency (FSA).

Congress first added payment limits as part of farm commodity programs in the 1970 farm bill (P.L. 91-524); however, such limits have evolved over time in both scope and amount (**Table A-1**) as the structure of U.S. agriculture, farm policies, and commodity support programs has changed.[4] With each succeeding farm bill, Congress has addressed anew who is eligible for farm payments and how much an individual recipient should be permitted to receive in a single year.

In recent years, congressional debate has focused on

- attributing payments directly to individual recipients;
- ensuring that payments go to persons or entities currently engaged in farming;
- capping the amount of payments that a qualifying recipient may receive in any one year; and
- excluding farmers or farming entities with incomes above a certain level as measured by their adjusted gross income (AGI) from payment eligibility.

[1] The term "federal farm programs" generally refers to a suite of commodity support and disaster assistance programs administered by the U.S. Department of Agriculture (USDA). Many such programs are authorized in omnibus farm bills including most recently the Agricultural Act of 2014 (2014 farm bill, P.L. 113-79) and are listed in **Table 1**. Most conservation programs authorized in farm bills also include payment limits and eligibility requirements; however, they are not discussed in detail in this report.

[2] USDA, Economic Research Service (ERS), federal government direct farm program payments, data as of February 9, 2016; http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx.

[3] USDA, Risk Management Agency (RMA), Summary of Business database; http://www.rma.usda.gov.

[4] USDA, Farm Service Agency (FSA), "Legislative History of Payment Eligibility and Payment Limitation Provisions," FSA Handbook, *Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income—Agricultural Act of 2014*, as of February 10, 2016 (hereinafter FSA Handbook).

Each of these policy measures—depending on how they are designed and implemented—can have consequences, both intended and unintended, for U.S. agriculture including, but not limited to, farm management structure, crop choices, and farm size. Because U.S. farm program eligibility requirements and annual payment limit policy have such broad potential consequences for U.S. agriculture, a review of both current policies and related issues is of potential interest to Congress.

Report Overview

This report discusses various eligibility factors and their interaction under current law. It describes current restrictions that limit or preclude payments to farmers based on a number of factors. This report also highlights areas where few, if any, restrictions limit farmers' access to or amount of benefits. This report is not a legal brief, nor does it represent a CRS legal analysis. Furthermore, this report is not intended to discuss the merits, or lack thereof, of federal farm program payments and their current distribution.

This report begins by discussing farm program eligibility including the primary types of legal entities participating in farm programs. Other limiting requirements are discussed, such as participant identification, citizenship, the current interpretation of what constitutes "actively engaged in farming" (AEF), adjusted gross income (AGI) limits, and conservation compliance. This is followed by a discussion of the direct attribution of payments to individual recipients for assessing whether a person's payment limit has been exceeded. Next, annual payment limits for the major categories of farm programs are examined. Much of this information is summarized in **Table 1**.

This report also discusses several issues related to farm program payment limits, including policy design issues, that may be of interest to Congress. Finally, an **Appendix** contains a history of the evolution of annual payment limits for major commodity programs (**Table A-1**) and a glossary of acronyms (**Table A-2**) as an aid to readers.

This is the second of two reports on the subject of program eligibility and payment limits. While this report focuses on farm program payment limits, an earlier report (CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*) focuses on program eligibility requirements—in particular, criteria underpinning the "actively engaged in farming" (AEF) requirements.

Table 1. U.S. Farm Commodity Program Eligibility Requirements and Payment Limitations Under the 2014 Farm Bill

Program Payment Type	AEF[a]	U.S. Citizen[b]	AGI Limit	Conservation Compliance	Payment Limit
Commodity Programs					
Price Loss Coverage (PLC), Agricultural Risk Coverage (ARC), Loan Deficiency payments (LDP), and Marketing Loan Gain (MLG) payments	Y	N	Y	Y	$125,000 per crop year for total payments across all covered commodities except peanuts
PLC, ARC, LDP, and MLG payments	Y	N	Y	Y	$125,000 per crop year for peanuts
MLGs with commodity certificate or forfeiture benefits[c]	Y	N	Y	Y	Unlimited
Cotton Transition Assistance Program (CTAP)[d]	Y	N	Y	Y	$40,000 per crop year
Sugar Program implicit price support benefits[e]	N	N	N	N	Unlimited
Dairy Margin Protection Program (MPP)	N	N	N	Y	Unlimited
Disaster Assistance Programs					
Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), Livestock Forage Disaster Program (LFP), and Livestock Indemnity Program (LIP)[f]	N	Y	Y	Y	$125,000 per crop year for all three programs combined
Tree Assistance Program (TAP)	N	Y	Y	Y	$125,000 per crop year
Noninsured Crop Disaster Assistance Program (NAP)	N	Y	Y	Y	$125,000 per crop year
Landscape Assistance Programs					
Emergency Conservation Program (ECP)	N	N	Y	Y	$200,000 per disaster
Emergency Forest Restoration Program (EFRP)	N	N	Y	Y	$500,000 per disaster
Emergency Watershed Protection Program (EWP)[g]	N	N	N	Y	Unlimited
Conservation Programs					
Conservation Reserve Program (CRP)[h]	N	N	Y	Y	$50,000 total rental payments per fiscal year
Conservation Stewardship Program (CSP)	N	N	Y	Y	$200,000 all contracts for FY2014-FY2018
Environmental Quality Incentives Program (EQIP)[i]	N	N	Y	Y	$450,000 all contracts for FY2014-FY2018
Agricultural Management Assistance (AMA)	N	N	Y	Y	$50,000 per crop year

Program Payment Type	AEF[a]	U.S. Citizen[b]	AGI Limit	Conservation Compliance	Payment Limit
Agricultural Conservation Easement Program (ACEP)	N	N	Y	Y	Based on easement value
Regional Conservation Partnership Program (RCPP)	N	N	Y	Y	Subject to limitations of covered programs
Crop Insurance Programs					
Premium subsidies on individual insurance policies	N	N	N	Y	Unlimited
Indemnity payments[j]	N	N	N	Y	Unlimited
Miscellaneous					
Trade Adjustment Assistance for Farmers (TAAF)	Y	Y	Y	N	$10,000 per crop year

Source: Compiled by CRS from various public sources cited in footnotes throughout the text of this report.

Notes: AEF = Actively Engaged in Farming; AGI = Adjusted Gross Income; PLC = Price Loss Coverage program; ARC = Agricultural Risk Coverage program; LDP = loan deficiency payments; and MLG = marketing loan gains.

a. A "Y" implies that the Actively Engaged in Farming (AEF) requirements must be met by all payment recipients of that particular program. See CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf, for details.

b. U.S. citizenship or resident alien status required, assuming that any AEF requirements are met.

c. Two types of benefits obtainable under the marketing assistance loan program are not subject to the annual payment limit: (1) benefits derived from forfeiting to the CCC the quantity of a commodity pledged as collateral for a nonrecourse loan; and (2) MLG benefits that result from use of commodity certificates.

d. CTAP was only available in the 2014 and 2015 program years.

e. The U.S. sugar program provides indirect price supports to the producers of sugar beets and sugarcane through direct price guarantees to the processors of both crops (provided the crops are of U.S. origin) and import restrictions based on tariff-rate quota (TRQ) formulas. USDA administers the U.S. sugar program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market. Thus, the subsidy provides implicit price support and is not subject to payment limitations.

f. The total payment under ELAP, LFP, and LIP may not exceed $125,000. Separate payment limits apply individually to TAP and NAP.

g. The conservation compliance requirement only applies to the floodplain easement component of EWP.

h. The limit applies to combined annual rental and incentive payments. CRP contracts approved prior to October 1, 2008, may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.

i. In addition, organic production practice payments are limited to a total of $20,000 per year or $80,000 total for any six-year period.

j. To receive an indemnity, a person must first acquire a policy which includes a premium subsidy and the associated conservation compliance requirement.

Program Eligibility

Not all farm businesses are eligible to participate in federal farm programs. A number of statutory and regulatory requirements govern federal farm program eligibility for benefits under various programs. Some farm businesses, although eligible to participate, are restricted from receiving certain benefits or may be limited in the extent of program payments that they may receive.

Over time, program eligibility rules have evolved, expanding to more programs and including more limitations. Cross-cutting methods of determining program eligibility—such as Adjusted Gross Income (AGI) thresholds—are relatively new.[5] Discussed below are cross-cutting eligibility requirements that affect multiple programs, including participant identification, foreign ownership, nature and extent of participation (i.e., actively engaged in farming criteria), means tests, and conservation requirements.

Participant Identification

Generally, program eligibility begins with identification of participants. Identifying who or what is participating and therefore how payments may be attributed is the cornerstone to most farm program eligibility. To be eligible to receive any farm program payment, every person or legal entity—including both U.S. and non-U.S. citizens—must provide a name and address, and have either a social security number (SSN) in the case of a person, or a Taxpayer Identification Number (TIN) or Employee Identification Number (EIN) in the case of a legal entity with multiple persons having ownership interests. In this latter situation, each person with an interest must have a TIN or EIN and must declare their interest share in the joint entity using the requisite USDA forms.

All participants in programs subject to payment eligibility and payment limitation requirements must submit to USDA two completed forms. The first, CCC-901[6] (Members' Information), identifies the participating persons and/or entities (through four levels of attribution if needed) and their interest share in the operation. The second form, CCC-902 (Farm Operating Plan), identifies the nature of each person's or entity's stake—that is, capital, land, equipment, active personal labor, or active personal management—in the operation.[7] These forms only need to be submitted once (not annually), but must be kept current in regard to any change in the farming operation. Critical changes to a farming operation might include expanding the number of limitations for payment, such as by adding a new family member; changing the land rental status from cash to share basis; purchasing additional base acres[8] equivalent to at least 20% of the previous base; or substantially altering the interest share of capital or equipment contributed to

[5] For example, means testing (i.e., adjusted gross income requirements) was first introduced in the Food Security and Rural Investment Act of 2002 (2002 farm bill, P.L. 107-171).

[6] The CCC abbreviation signifies USDA's Commodity Credit Corporation. For additional information, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*, by Megan Stubbs.

[7] FSA Handbook, paragraph 44, p. 2-59. All forms are available at the local USDA county office or online at http://www.sc.egov.usda.gov.

[8] For the purpose of calculating program payments, the term "base acres" is the historical planted acreage on each farm within the USDA program system, using a multi-year average from as far back as the 1980s. Base acre provisions since 1981 are described in Edwin Young et al., *Economic Analysis of Base Acre and Payment Yield Designations Under the 2002 U.S. Farm Act*, USDA Economic Research Service, September 2005, pp. 36-41, https://www.ers.usda.gov/publications/pub-details/?pubid=44874.

the farm operation. This information is critical in determining the extent to which each person is actively engaged in the farming operation as described below.

Three Principal Farm Business Categories

Many types of farm business entities own operations engaged in agricultural production. For purposes of determining the extent to which the participants of a farm operation qualify as potential farm program participants, three major categories are considered (**Table 2**).[9]

- **Sole Proprietorship or Family Farm.** The farm business is run by a single operator or multiple adult family members—the linkage being common family lineage—whereby each qualifying member is subject to an individual payment limit. Thus, a family farm potentially qualifies for an additional payment limit for each family member associated with the principal operator. Family farms or sole proprietorships comprised nearly 87% of U.S. farm operations in 2012.
- **Joint Operation.** Each member of a joint operation—where members need not have a common family relation or lineage—is treated separately and individually for purposes of determining eligibility and payment limits. Thus, a partnership's potential payment limit is equal to the number of qualifying members (plus any special designees such as spouses), times the individual payment limit.
- **Corporation.** A legally defined association of joint owners or shareholders that is treated as a single person for purposes of determining eligibility and payment limits. This includes corporations, limited liability companies, and similar entities. Most incorporated farm operations are family held.

These three categories represent over 98% of U.S. farm operations (**Table 2**). In addition, federal regulations exist for evaluating both the eligibility of and relevant payment limits for other exceptional types of potential recipients including a spouse, minor children, and other family members as well as marketing cooperatives, trusts and estates, cash-rent tenants, sharecroppers, landowners, federal agencies, and state and local governments.[10] These institutional arrangements represent a small share (< 2%) of U.S. farm operations according to USDA's 2012 Census of Agriculture. Special rules also describe eligibility and payment limits in the event of the death of a previously eligible person.

[9] These three principal business categories, as they relate to farm program eligibility, are discussed in more detail in CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf.

[10] For a discussion of the eligibility of sharecroppers, estates and trusts, deceased and incapacitated persons, military personnel, and other exceptional circumstances, see the discussion under "Subpart C—Payment Eligibility," in the Electronic Code of Federal Regulations, at http://www.ecfr.gov/cgi-bin/text-idx?SID=283afd75831ce6025376e95a7532f8c1&mc=true&node=sp7.10.1400.c&rgn=div6.

Table 2. U.S. Farms by Legal Status for Tax Purposes, 2012

Farm Type	Number	Share	Production Value[a]	Share
Sole Proprietorship or Family Farm	1,828,946	86.7%	$202,637,055,000	50.3%
Joint Operation	137,987	6.5%	$87,447,400,000	21.7%
Corporation	106,716	5.1%	$105,815,058,000	26.3%
Other: Cooperative, estate or trust, institutional, etc.	35,654	1.7%	$6,798,315,000	1.7%
Total	**2,109,303**	**100%**	**$402,697,828,000**	**100%**

Source: USDA, National Agricultural Statistics Service (NASS), 2012 Census of Agriculture, Table 67, May 2014.

a. Includes the value of both agricultural production and government payments.

Actively Engaged In Farming (AEF) Requirement

To be eligible for certain Title I commodity program benefits,[11] participants—individuals as well as other types of legal entities—must meet specific requirements concerning their "active participation" in the farming operation. The active participation requirements are referred to as the "actively engaged in farming" or AEF requirements. The AEF requirements apply equally to U.S. citizens, resident aliens, and foreign entities. This section briefly reviews the specific requirements for each type of legal entity—person, partnership, or corporation—to qualify as "actively engaged in farming."[12]

Individual AEF Requirements

An individual producer must meet three AEF criteria.

- First, the person, independently and separately, makes a significant contribution to the farming operation of (a) capital, equipment, or land; and (b) active personal labor, active personal management, or a combination of active personal labor and management.
- Second, the person's share of profits or losses is commensurate with his/her contribution to the farming operation.
- Third, the person shares in the risk of loss from the farming operation.

Current law allows for special treatment of a spouse—if one spouse is determined to be actively engaged in farming, then the other spouse shall also be determined to have met the requirement.[13] In addition, an exception is made for landowners who may be deemed in compliance with all AEF requirements if they receive income based on the farm's operating results, without providing labor or management.[14]

[11] 2014 farm bill (§1604), and 7 U.S.C. 1308-1(b)(1) limits the AEF criteria to covered commodities for Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC), and benefits under the marketing assistance loan program.

[12] For details, see CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf.

[13] 7 U.S.C. 1308-1(c)(6).

[14] FSA Handbook, "Landowner Exemption," p. 2-158.

Partnership AEF Requirements

In a general partnership each member is treated separately for purposes of meeting the AEF criteria and determining eligibility. In particular, each partner with an ownership interest must contribute active personal labor and/or active personal management to the farming operation on a regular basis. The contribution must be identifiable and documentable, and separate and distinct from the contributions made by any other partner. Each partner that fails to meet the AEF criteria is ineligible to participate in the relevant farm program.

Corporate AEF Requirements

A corporation—as an association of joint owners—is treated as a single person for purposes of meeting the AEF criteria and determining eligibility. In addition to the AEF criteria cited for a person—of sharing commensurate profits or losses, and bearing commensurate risk—each member with an ownership interest in the corporation must make a significant contribution of personal labor or active personal management—whether compensated or not—to the operation that is (a) performed on a regular basis; (b) identifiable and documentable; and (c) separate and distinct from such contributions of other stockholders or members. Furthermore, the collective contribution of corporate members must be significant and commensurate with contributions to the farming operation.

If any member of the legal entity fails to meet the labor or management contribution requirements, then any program payment or benefit to the corporation will be reduced by an amount commensurate with the ownership share of that member. An exception applies if (a) at least 50% of the entity's stock is held by members that are "actively engaged in providing labor or management" and (b) the total annual farm program payments received collectively by the stockholders or members of the entity are less than one payment limitation.

Special Nonfamily AEF Requirements

Prior to the 2014 farm bill (P.L. 113-79), the definition of active personal labor or management was broad and could be satisfied by undertaking passive activities without visiting the operation, thus enabling individuals who lived significant distances from an operation to claim such labor or management contributions.[15] This was seen as potentially problematic, as passive investors were receiving farm program payments without actively contributing to the farming operation.

Recent farm bills have amended the AEF criteria in an attempt to tighten the requirements; however, the issue remains controversial. In particular, the 2014 farm bill (§1604) required USDA, in new regulations, to add more specificity to the role that a nonfamily producer must play to qualify for farm program benefits. As a result of the rule, a limit is placed on the number of nonfamily members of a farming operation that can qualify as a farm manager—depending on the size and complexity of the farm operation. Also, additional record-keeping requirements now apply for each nonfamily member of a farming operation claiming active personal management status.[16] No such limit applies to the potential number of qualifying family members.

[15] U.S. Government Accountability Office, *Changes Are Needed to Eligibility Requirements for Being Actively Involved in Farming*, GAO-13-781, September 2013, http://www.gao.gov/assets/660/658208.pdf.

[16] USDA, CCC, "Payment Limitation and Payment Eligibility; Actively Engaged in Farming," *Federal Register*, Vol. 80, No. 241, December 16, 2015. For more information on this rule, see CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*.

Foreign Person or Legal Entity

Generally, if a foreign person or legal entity meets a particular farm program's eligibility requirements, then they are eligible to participate.[17] One exception is the four permanent disaster assistance programs—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP); Livestock Forage Disaster Program (LFP); Livestock Indemnity Program (LIP); and Tree Assistance Program (TAP)—and the noninsured crop disaster assistance program (NAP), which explicitly prohibit payments to foreign entities, other than resident aliens.[18]

As of the end of 2013, foreign persons held an interest in 26.2 million acres of U.S. agricultural land (including forest land).[19] This accounts for 2% of all privately held agricultural land in the United States and approximately 1% of total U.S. land.

A Foreign Person or Entity

A foreign person is any person who is not a citizen of the United States nor an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).[20] Similarly, a foreign entity is a corporation or other legal entity where more than 10% of the ownership is held by foreign persons.

Foreign persons or entities can become eligible for most farm program benefits if they have the requisite U.S. taxpayer ID as described in the preceding section, and meet the "actively engaged in farming" (AEF) criteria discussed below. In the case where a foreign corporation or similar entity fails to meet the AEF criteria, but has shareholders or partners with U.S. residency status, then the foreign entity may—upon written request to USDA—receive payments representative of the percentage ownership interest by those U.S. citizens or U.S. resident aliens that do meet the AEF criteria.

In addition, current law imposes no specific restrictions on foreign persons or entities with respect to eligibility for crop and livestock insurance premium subsidies. Also, the dairy margin protection program (MPP) makes no distinction about producer or owner citizenship. Instead, the law states that all dairy operations in the United States shall be eligible to participate in the margin protection program to receive margin protection payments.[21] Similarly, no citizenship requirement exists for a sugar processor, or a cane or beet producer, operating under the U.S. sugar program price guarantees; however, the sugar cane and sugar beets being processed must be of U.S. origin.

Adjusted Gross Income (AGI) Limit

Means testing prohibits a person or legal entity from being eligible to receive any benefit under certain commodity and conservation programs during a crop, fiscal, or program year, as appropriate, if their income is above an established level. The first means test for farm programs was established by the 2002 farm bill (Farm Security Act of 2002, P.L. 107-171) (**Table 3**).

[17] Verifiable physical, on-farm presence is critical in a successful determination for eligibility for non-resident aliens.

[18] 7 U.S.C. 9081(a)(B).

[19] Lesa A. Johnson, Catherine A. Feather, and Leanne Schultz, *Foreign Holdings of U.S. Agricultural Land through December 31, 2013.*, USDA, FSA, Agricultural Foreign Investment Disclosure Act report, Washington, DC, December 31, 2013, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/afida2013report.pdf.

[20] 7 U.S.C. 1308-3.

[21] 7 U.S.C. 9054(a).

Income is measured by an individual's or entity's average adjusted gross income (AGI) from the previous three-year period, but excluding the most recent complete taxable year.[22]

Recent farm bills have preserved the three-year average AGI as the relevant measure of income. Now that an AGI limit appears acceptable, the debate has shifted to which programs are covered by the means test and what income level is an appropriate threshold.

AGI Defined

Since most U.S. farms are operated as sole proprietorships or partnerships (**Table 2**), most farm households are taxed under the individual income tax rather than the corporate income tax.[23] For an individual, AGI is the Internal Revenue Service (IRS) reported adjusted gross income. AGI measures *net* income, that is, income after expenses. Farm income is reported on the IRS Schedule F where AGI is net of farm operating expenses. For an incorporated business, a comparable measure to AGI—as determined by USDA—is used to measure income.

Since the household is the typical unit of taxation, farm and nonfarm income are combined when computing federal income taxes for farm households. In fact, most federal income tax paid by farm households can be attributed to nonfarm income.[24]

Farm operations overwhelmingly report operating losses for tax purposes (because of cash accounting, capital expensing via depreciation, and other practices). For example, in 2004, an estimated 1.4 million, or about 70%, of farm sole proprietors reported a net farm loss for tax purposes. In 2006, nearly three of every four farm sole proprietors reported a farm loss. The substantial portion of capital investment that can be expensed in the first year is an important determinant of the large loss reporting.

Program participants are required annually to give their consent to the IRS to verify to USDA that a participant is in compliance with their AGI limit provisions using a specific USDA form (CCC-941).[25] Failure to provide the consent and subsequent certification of compliance will result in ineligibility for program payments, and a required refund of any payments already received for the relevant year.

Historical Development of the AGI Limit

The initial AGI threshold established by the 2002 farm bill was for a total AGI of $2.5 million and covered most farm programs (listed in **Table 3**). However, the 2002 farm bill included an exemption if at least 75% of AGI was from farming.

The 2008 farm bill replaced the single AGI limit of the 2002 farm bill with three separate AGI limits that distinguished between farm and non-farm AGI. First, a non-farm AGI limit of $500,000 applied to eligibility for selected farm commodity program benefits including the milk

[22] For example, the AGI for the 2016 crop year is based on the AGI base years of 2012, 2013 and 2014, excluding the most recently completed tax year of 2015. Those tax years where the person or legal entity had no taxable income are excluded from the calculation of the AGI average.

[23] USDA estimates that 99% of farm households are taxed under individual rather than corporate income tax, Ron Durst, *Federal Tax Policies and Farm Households*, EIB-54, USDA, ERS, May 2009, p. 3.

[24] Ibid., p. 4.

[25] Thus, a participant completes form CCC-941 for USDA. USDA then submits the forms to IRS for processing. IRS in turn notifies USDA of each participant's compliance status regarding the AGI limit. Producers who fail to comply will be given written notice by USDA, and have a 30-day window to challenge their non-compliance status. A subsequent appeal process is available for producers deemed out of compliance following the initial challenge.

income loss contract (MILC) program, noninsured crop disaster assistance (NAP), and the disaster assistance programs. A second farm-specific AGI limit of $750,000 applied to eligibility for direct payments. A third non-farm AGI limit of $1 million—but subject to an exclusion if 66.6% of total AGI was farm-related income—applied to eligibility for benefits under conservation programs.

Also, the 2008 farm bill added a provision for married individuals filing a joint tax return, whereby the joint AGI could be allocated as if a separate return had been filed by each spouse. This would potentially allow the farmer to exclude any earned income from a spouse as well as a share of any unearned income from jointly held assets for purposes of the eligibility cap.[26] This provision had the potential to significantly reduce the share of farms affected by the AGI cap.

The 2014 farm bill returned to a single total AGI limit, but at a level of $900,000 for individuals and incorporated businesses.[27] It also retained the provision for married individuals filing a joint tax return to allocate the AGI as if a separate return had been filed by each spouse. In the case of a payment to a general partnership or joint venture comprising multiple individuals, the payment shall be reduced by an amount that is commensurate with the share of ownership interest of each person who has an average AGI in excess of $900,000.

Table 3. History of Adjusted Gross Income (AGI) Limits for Farm Programs

AGI Limit	If AGI Exceeds Limit, Then Ineligible for These Programs
Farm Security and Rural Investment Act of 2002 (2002 farm bill, P.L. 107-171**), Section 1604**	
$2.5 million for total AGI, unless 75% is farm AGI	Direct payments, counter-cyclical payments (CCP), marketing assistance loan benefits of marketing loan gains (MLGs) and loan deficiency payments (LDPs)[a], and conservation programs.
Food, Conservation, and Energy Act of 2008 (2008 farm bill, P.L. 110-246**), Section 1604**[b]	
$500,000 for nonfarm AGI	Direct payments, CCP, average crop revenue election (ACRE), marketing assistance loan MLGs and LDPs, and Milk Income Loss Contract (MILC), noninsured crop disaster assistance (NAP), Supplemental Revenue Assistance Payments (SURE) program, Emergency Assistance for Livestock, Honeybees and Farm-Raised Fish Program (ELAP), Livestock Forage Program (LFP), Livestock Indemnity Program (LIP), and Tree Assistance Program (TAP).
$750,000 for farm AGI	Direct payments.
$1 million on nonfarm AGI unless 66.6% of total AGI is farm AGI	Conservation programs.
Agricultural Act of 2014 (2014 farm bill, P.L. 113-79**), Section 1605**[c]	
$900,000 for total AGI	PLC, ARC, cotton transition assistance program, marketing assistance loan MLGs and LDPs, NAP, ELAP, LFP, LIP, and TAP, and conservation programs.

Source: Compiled by CRS.

Notes: The reference AGI is based on the average AGI for the previous three years preceding the most recently completed tax year. Those tax years where the person or legal entity had no taxable income are excluded from the calculation of the AGI average. Not all programs included in this table are discussed in the report. "Conservation programs" refers to all title II farm bill conservation programs in 2002, 2008, and 2014 and the Agricultural Management Assistance (AMA) program in 2008 and 2014.

[26] 7 U.S.C. 1308-3a(3).

[27] FSA Fact Sheet, "Average Adjusted Gross Income (AGI) Certification and Verification, 2014-2018," March 2016.

a. Two other benefits obtainable under the marketing assistance loan program—that is, gains under commodity certificate exchanges and/or forfeiture—are not covered by the AGI eligibility restriction.
b. Section 1604 of the 2008 farm bill included a provision that allows the AGI of a married couple to be divided as if separate tax returns were filed, thus potentially allowing for a doubling of the AGI limits.
c. Section 1605 retained the provision that allows the AGI of a married couple to be divided as if separate tax returns are filed, thus potentially allowing for a doubling of the AGI limits.

Conservation Compliance

Two provisions—highly erodible land conservation (sodbuster) and wetland conservation (swampbuster)—are collectively referred to as conservation compliance.[28] To be eligible for certain USDA program benefits, a producer agrees to conservation compliance—that is, to maintain a minimum level of conservation on highly erodible land and not to convert or make production possible on wetlands.

Conservation compliance has been in effect since the Food Security Act of 1985 (1985 farm bill, P.L. 99-198). The majority of farm program payments, loans, disaster assistance, and conservation programs are benefits that may be lost if a participant is out of compliance with the conservation requirements. Most recently, the 2014 farm bill extended conservation compliance to federal crop insurance premium subsidies.[29] Within U.S. farm policy, conservation compliance continues to be one of the only environmentally related requirements for program participation.[30]

Direct Attribution of Payments

The process of tracking payments to an individual through various levels of ownership in single and multi-person legal entities is referred to as "direct attribution." Several types of legal entities may qualify for farm program payments. However, ultimately every legal entity represents some combination of individuals. For example, a joint operation can be made up of a combination of individuals, partnerships, and/or corporate entities. A particular individual may be part of each of these three component entities, as well as additional sub-entities within each of these components. Farm payments flow down through these arrangements to individual recipients.

Congress defines a legal entity as an entity created under federal or state law that (1) owns land or an agricultural commodity, or (2) produces an agricultural commodity.[31] This broad definition of legal entity encompasses the multi-person legal entities discussed earlier such as family-farm operations, joint ventures, corporations, and institutional arrangements. Ownership shares in a multi-person legal entity are tracked via a person's social security number or Employee Identification Number, as reported in the USDA forms mentioned earlier, CCC-901 and CCC-902. Identification at the individual payment-recipient level is critical for assessing the cumulative payments of each individual against their annual payment limit.

[28] For additional information, see CRS Report R42459, *Conservation Compliance and U.S. Farm Policy*, by Megan Stubbs; or USDA, Natural Resources and Conservation Service (NRCS), "Conservation Compliance," as of June 27, 2016: http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=stelprdb1257899.

[29] Federal crop insurance premium subsidies were previously included under conservation compliance from 1985 to 1995. However, the Federal Agricultural Improvement and Reform Act of 1996 (P.L. 104-127, 1996 farm bill) removed crop insurance from the list of benefits that could be lost if the farmer was found out of compliance.

[30] A number of overarching environmental policies apply to agricultural production. However, conservation compliance is unique in that it is one of the only environmentally related policies authorized and overseen by the agriculture committees within the context of farm program participation.

[31] 7 U.S.C. 1308(a)(3).

Direct attribution was originally authorized in the 2008 farm bill (§1603(b)(3)).[32] All farm program payments made directly or indirectly to an individual associated with a specific farming operation are combined with any other payments received by that same person from any other farming operation—based on that person's pro rata interest in those other operations. It is this accumulation of an individual's payments—tracked through four levels of ownership in multi-person legal entities—that is subject to the annual payment limit.

The first level of attribution is an individual's personal farming operation. Subsequent levels of attribution are related to those legal entities in which an individual has an ownership share. If a person meets his or her payment limit at the first level of attribution (i.e., on his or her own personal farming operation), then any payments to legal entities at lower levels of attribution are reduced by that person's pro rata share.

Direct Attribution Examples

Suppose an individual operator (farmer #1) owns and farms 500 acres of cropland (operation #1), but owns farm equipment that is better suited to a much larger farming operation. To benefit from the surplus farming equipment, farmer #1 also is a member of a partnership that farms an additional 2,000 acres of farmland (operation #2). Assuming that farmer #1 meets all qualifying eligibility criteria for operation #2, then farmer #1 would be eligible for payments from both operation #1 and the partnership's operation #2. Any payments due farmer #1 from the activities on operation #2 would be combined with program payments from the activities on operation #1 and subject to a single payment limit. If farmer #1's program payments from activities on operation #1 reach the personal payment limit, then any payments due from activities on operation #2 would be reduced to zero.

As a second example, suppose that farmer #1 is also a member of a limited liability corporation that runs a third farming operation (operation #3). Assuming that farmer #1 meets all qualifying eligibility criteria for operation #3, then farmer #1 would be eligible for payments from both operation #1, the partnership's operation #2, and the corporation's operation #3—with the latter being on a pro rata basis reflecting ownership share in the corporation. If farmer #1's program payments from activities on operations #1 and #2 reached the personal payment limit, then any pro rata payments due from farmer #1's share of the corporation's activities on operation #3 would be reduced to zero in this case.

Payment Limits

When the eligibility criteria—including AEF, AGI, and others—are met, the cumulative benefits across certain farm programs are subject to specific annual payment limits (detailed in **Table 1**) that can be received by an individual or legal entity.

Explicit payment limits date back to the 1970s.[33] Despite their longevity, payment limits are not universal among programs. Payment limits are enforced differently for different types of legal entities (as mentioned earlier and summarized below). For example, certain program limits may be expanded depending on the number of participants, or they may be subject to exceptions, or may not exist. The major categories of farm program support and the applicability of annual payment limits, if any, are briefly discussed below.

[32] Prior to the 2008 farm bill, farmers were subject to the three-entity rule for determining whether an individual was within annual payment limits. Under this law, a person was permitted to receive payments up to the full cap on the first farm in which the person had a substantial beneficial interest, and up to half the full cap on each of two additional farms; hence the so-called three-entity rule. The 2008 farm bill replaced the three-entity rule with direct attribution.

[33] Carl Zulauf, *Farm Payment Limits: History and Observations*, University of Illinois Urbana-Champaign, Farmdoc Daily, June 21, 2012, http://farmdocdaily.illinois.edu/2012/06/farm_payment_limits_history_an.html.

Farm Support Programs Subject to Annual Payment Limits

Traditionally, much attention focuses on the annual payment limits for the Title I commodity programs, largely because this has been the conduit for the majority of farm program expenditures. Title I commodity program payment limits were first included in a farm bill in 1970, but have evolved substantially since that initial effort (**Table A-1**).

Several major farm support programs—as defined by specific titles of the 2014 farm bill—are currently subject to annual payment limits.[34]

- **Title I commodity programs: ARC and PLC**. These include the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs of Subtitle A.[35]
- **Title I commodity programs: Marketing Assistance Loan**. This refers to certain benefits under the Marketing Assistance Loan Program (Subtitle B)—that is, loan deficiency payments (LDP) and marketing loan gains (MLG), but not benefits under forfeiture or commodity certificate exchanges.
- **Title I disaster assistance programs**. These include the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), Livestock Forage Disaster Program (LFP), Tree Assistance Program (TAP), and Livestock Indemnity Program (LIP) of Subtitle E.[36]
- **Title XII (Subtitle C, §12305) Noninsured Crop Disaster Assistance Program (NAP)**.[37] Available for crops not currently eligible for crop insurance.

When the farm program benefits for a qualifying recipient exceed the annual limits (as listed in **Table 1**) for a given year, then that individual is no longer eligible for further benefits under that particular program during that year, and is required to refund of any payments already received under that program that are in excess of the relevant payment limit for that year.

Multiple Payment Limits for a Partnership

A partnership's payment limit is equal to the limit for a single person times the number of persons or legal entities that comprise the ownership of the joint operation plus any additional exemptions or exceptions. Adding a new member can provide one or two (with qualifying spouse) additional payment limits.

Each member of a partnership or joint venture must meet the AEF criteria and must be within the AGI limit. Furthermore, the payment limit is reduced by the share of any single member that has already met his/her payment limit on another farm operation outside of the partnership.

[34] The programs discussed in this report do not represent a comprehensive list of farm programs and benefits. Instead, this report focuses on the most common programs and benefits deemed relevant to a discussion of program eligibility and payment limits. For a more comprehensive list of U.S. farm programs, see CRS Report R43076, *The 2014 Farm Bill (P.L. 113-79): Summary and Side-by-Side*, coordinated by Ralph M. Chite.

[35] For more information on commodity programs, potential benefits, eligible program crops, and other details, see CRS Report R43448, *Farm Commodity Provisions in the 2014 Farm Bill (P.L. 113-79)*, coordinated by Randy Schnepf.

[36] For more information, see CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

[37] Ibid.

Single Payment Limit for a Corporation

A corporation is treated as a single person for purposes of determining eligibility and payment limits, provided that the entity meets the AEF criteria. Adding a new member to the corporation generally does not affect the payment limit, it only increases the number of members that can share a single payment limit.

Exceptions that Avoid Payment Limits

Three types of commodity program benefits are not subject to annual payment limits. Two are benefits obtainable under the marketing assistance loan program:[38] (1) benefits derived from forfeiting to the CCC the quantity of a commodity pledged as collateral for a marketing assistance loan; and (2) marketing loan gain (MLG) benefits that result from use of commodity certificates to repay a marketing assistance loan.[39] In addition, a general exception to annual payment limits under any program benefits (including Title I and most other payments) could result when the principal operator or a major partner dies during the course of a program year. These three exceptions are briefly described here.

Forfeiture of a Pledged Crop

Forfeiture of a pledged crop in lieu of loan repayment is an option that is available for all marketing loan crops that have been pledged as collateral under a USDA marketing assistance loan. Generally, a farmer repays the loan at the value of the loan rate plus interest. But rather than repaying the loan with cash, farmers can fulfill their loan obligation by forfeiting the pledged crop. By forfeiting the crop, the farmer keeps the value of the loan (equal to the loan rate times the volume of pledged crop) and forgoes paying any interest on the loan. This feature is meaningful only when the current market price for the pledged crop—that is, the posted county price (PCP) for grains and oilseeds, or effective adjusted world price (AWP) for rice and upland cotton—is less than the marketing loan rate.[40] The gain associated with the forfeiture, which is the difference between the higher loan rate and the PCP or AWP, is equivalent to an MLG or LDP.

For large producers, an important aspect of the forfeiture option is that the gain associated with forfeiting the crop does not count toward the payment limit of $125,000 per person, unlike a gain from repaying the loan with cash (or receiving an MLG or LDP). Producers decide which route to pursue (repay loan with cash at the local PCP or AWP and retain any MLG or LDP subject to payment limits, or forfeit the crop retaining any MLG or LDP but not subject to payment limits) depending on the expected value of each option, their need for loaned funds, and their likelihood of exceeding the payment limit.

If a farmer chooses to forfeit the crop, USDA takes ownership of the crop. Storage costs would then accrue to USDA until it sells or finds an alternate use for the crop. Forfeiture can be a

[38] A marketing assistance loan provides interim financing in the form of a nonrecourse, government loan, at a statutorily-fixed (7 U.S.C. 9032) price per unit of production—referred to as the market loan rate—for up to nine months for participating producers following harvest of their crops. Under a non-recourse loan, farmers have the option of forfeiting their collateral, i.e., the underlying crop, in payment of the loan, rather than paying the principal and interest.

[39] After being eliminated in 2009 by the 2008 farm bill (P.L. 110-246; §1607), commodity certificates were re-instated by the FY2016 consolidated appropriations act (P.L. 114-113, §740).

[40] "Nonrecourse Marketing Assistance Loans and Loan Deficiency Payments," 2014 Farm Bill Fact Sheet, FSA, USDA, February 2016.

particularly attractive option for peanut producers if the PCP is below or even slightly above the loan rate because USDA, by law, then pays for costs associated with storage, handling, and interest.[41] Otherwise, in the case of a producer who does not forfeit the crop under loan, but instead takes a MLG or LDP payment, the producer assumes all costs associated with storage.

Commodity Certificates

Another option for producers with crops under marketing loan that confront payment limits is the use of commodity certificates.[42] Commodity certificates are payment-in-kind certificates issues by the CCC that can be used to pay off an outstanding marketing assistance loan, accrue any MLG benefits, and avoid having the benefits count against a payment limit.

Commodity certificates can be purchased at the PCP for grains and oilseeds or the effective AWP for rice and upland cotton. Commodity certificates are useful when the relevant PCP or AWP is lower than the market loan rate such that the certificate can be purchased at a discount to the marketing loan rate. A producer purchases the certificate at the PCP or AWP for the volume of crop under marketing assistance loan, then immediately returns the certificate to USDA to pay off the loan. Thus, the producer re-acquires the crop being held as collateral for the loan in exchange for the certificate that he or she has just purchased from USDA. When the PCP or effective AWP is below the loan rate, producers benefit from commodity certificates by obtaining a lower loan repayment rate. Furthermore, such benefits are not counted against a payment limit as ordinary MLG or LDP benefits would be. Thus, certificates allow farmers to repay marketing assistance loans for less than the loan price, but without counting the resulting marketing loan gains against payment limitations for farm subsidies.[43]

The use of commodity certificates was eliminated in 2009 by a provision in the 2008 farm bill (P.L. 110-246, §1607). However, the Consolidated Appropriations Act of 2016 (P.L. 114-113, §740), enacted in December 2015, authorized the CCC to issue commodity certificates to agricultural producers in exchange for crops pledged under marketing assistance loans beginning with the 2015 crop year.

Hypothetical Example of Using a Commodity Certificate for Upland Cotton

In the case of upland cotton, according to current law (7 U.S.C. 9032), for each of the 2014 through 2018 crop years, the marketing loan rate floats within a band of 45¢ to 52¢ per pound depending on the simple average of the adjusted prevailing world price for the two immediately preceding marketing years, as determined by the Secretary and announced October 1 preceding the next domestic plantings, but in no case less than 45¢ per pound or more than 52¢ per pound.

To simplify this hypothetical example, suppose that:

- the marketing loan rate for upland cotton for a given crop year is 50¢/lb.;
- a producer has placed 500,000 lbs. of upland cotton as collateral to the CCC under the marketing loan program, thus, the producer has a marketing loan worth $250,000;
- the producer has already received $125,000 in annual program benefits under other federal farm programs;
- local market prices for upland cotton are 56¢/lb.; and
- the current effective adjusted world price (AWP) for upland cotton is 40¢/lb.

[41] For more information, see CRS Report R44156, *U.S. Peanut Program and Issues*, by Randy Schnepf.

[42] A commodity certificates is an official paper of exchange that represents the nominal volume of a commodity under loan that has been purchased from USDA. They are issued by USDA and are transcribed with the relevant exchange information—i.e., type and volume of purchased commodity.

[43] "Commodity Certificate Exchange (CCE)," 2014 Farm Bill Fact Sheet, FSA, USDA, February 2016.

Under this scenario, the producer currently stands to gain $50,000 in marketing loan gains (MLGs) for his upland cotton by repaying the loan rate at the lower AWP—calculated as (50¢ - 40¢) * 500,000 lbs. The producer has an interest in reclaiming the pledged cotton to be able to sell it in local markets for 56¢/lb. and, thus, does not want to forfeit the crop to the CCC. However, the MLG benefit would push the producer's combined annual program payments to $175,000, which would exceed the $125,000 payment limit. As a result, he simply would have to forgo receiving the MLG benefits of $50,000.

However, to avoid the payment limit, the producer could take advantage of commodity certificates. He could purchase a commodity certificate valued at $200,000, an amount determined by multiplying the quantity of upland cotton under loan (500,000 lbs.), times the AWP for upland cotton (40¢). The producer then would immediately exchange the purchased commodity certificate for the marketing loan collateral. As a result, he would then have his 500,000 lbs. of upland cotton while keeping the full value of the MLG ($50,000) equal to this original marketing loan ($250,000) minus the purchase cost of the certificate ($200,000). This exchange would also allow him to retain the full $125,000 of other farm program payments received in addition to the MLGs plus have the pledged upland cotton for sale into the local market at 56¢/lb.

Death of a Principal Operator

Payments received directly or indirectly by a qualifying person (i.e., someone who meets AEF, AGI, and any other eligibility requirements) may exceed the applicable limitation if all of the following apply: ownership interest in farmland or agricultural commodities was transferred because of death; the new owner is the successor to the previous owner's contract; and the new owner meets all other eligibility requirements. This provision also applies to an ownership interest in a legal entity received by inheritance if the legal entity was the owner of the land enrolled in an annual or multi-year farm program contract or agreement at the time of the shareholder's death.

The new owner cannot exceed the payment amount that the previous owner was entitled to receive under the applicable program contracts at the time of death. However, the new payment limit associated with this transfer would be in addition to the payment limit of the person's own farm operation. If the new owner meets all program and payment eligibility requirements, this provision applies for one program year for ARC and PLC. This reflects the idea that individual resources were committed by both farming operations (the deceased's and the inheritor's) during the growing season with no expectation of death, and that individual payment limits should reflect that resource commitment and not impose an unnecessary and unexpected burden on the inheritor.

Other Farm Support Programs Not Subject to Payment Limitations

Three other major types of federal farm support programs that are not currently subject to annual payment limits include the following:[44]

- **Title I (Subtitle C) sugar program.** This refers to the indirect price support provided to producers of sugar beets and sugarcane, and to the direct price guarantees provided to the processors of both crops in the form of a marketing assistance loan at statutorily fixed prices. USDA administers the U.S. sugar program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market, thus indirectly supporting

[44] Both sugar and dairy producers receive additional indirect price support in the form of tariff-rate quota (TRQ) protection from imports; however, TRQ-related indirect support is not considered in this discussion since they are not based on policy set in the farm bill.

market prices. This indirect subsidy is implicit and not subject to budgetary restrictions. Furthermore, there is no citizenship requirement for a sugar processor; however, the sugar cane and sugar beets being processed under the U.S. sugar program price guarantees must be of U.S. origin.[45]

- **Title I (Subtitle D) dairy program**. This refers to the margin protection program (MPP) for dairy producers created under the 2014 farm bill (§1401-§1431).[46] Participants may benefit from two potential types of support: an implicit premium subsidy, and an indemnity-like payment made when MPP price triggers are met. The fees or premiums charged for participating in the MPP are set in statute rather than being set annually by an actuary based on historical data and market conditions. Thus, the subsidy is implicit to the premium paid with no limit on the level of participation. Similarly, any payments made under the MPP are not subject to payment limits.
- **Title XI crop- and livestock-related insurance premium subsidies and indemnity payments**. These refer to federal premium subsidies for both catastrophic and buy-up insurance coverage, and to any indemnity payments made under either of these coverage levels.[47] To be eligible to purchase catastrophic risk protection coverage, the producer must be a "person" as defined by USDA; and for eligibility to purchase any other plan of insurance, the producer must be at least 18 years of age and have a bona fide insurable interest in a crop as an owner-operator, landlord, tenant, or sharecropper. Premium subsidies are not subject to any limit on the level of participation or underlying value. Similarly, indemnity payments made under crop insurance are not subject to payment limits.

Issues for Congress

Theoretically, market prices—based on relative supply and demand conditions and assuming competitive market conditions hold[48]—provide the most useful signals for allocating scarce resources. In other words, in a situation where no policy support is available, most producers would make production decisions based primarily on market conditions. If these conditions hold, then tighter payment limits (i.e., a smaller role for government support policies) would imply that more land would be farmed based on market conditions, and less land would be farmed based on policy choices.

Supporters of payment limits use both economic and political arguments to justify tighter limits. Economically, they contend that large payments facilitate consolidation of farms into larger units, raise the price of land, and put smaller, family-sized farming operations and beginning farmers at a disadvantage. Even though tighter limits would not redistribute benefits to smaller farms, they say that tighter limits could help indirectly by reducing incentives to expand, thus potentially

[45] For more information, see CRS Report R43998, *U.S. Sugar Program Fundamentals*, by Mark A. McMinimy.

[46] See CRS Report R43465, *Dairy Provisions in the 2014 Farm Bill (P.L. 113-79)*, by Randy Schnepf.

[47] For more information, see CRS Report R43494, *Crop Insurance Provisions in the 2014 Farm Bill (P.L. 113-79)*, coordinated by Randy Schnepf.

[48] Competitive market conditions include transparent, easily accessible knowledge of market conditions by all participants; no barriers to entry or exit, relatively homogeneous goods; a large number of market participants, all of which behave rationally and are price takers; there are no externalities; and the absence of intrusive government regulation.

reducing upward price pressure on land markets. This could help small and beginning farmers buy and rent land. Politically, they believe that large payments undermine public support for farm subsidies and are costly. In the past, newspapers have published stories critical of farm payments and how they are distributed to large farms, non-farmers, or landowners.[49] Limits increasingly appeal to urban lawmakers, and have advocates among smaller farms and social interest groups.

Critics of payment limits (and thus supporters of higher limits or no limits) counter that all farms are in need of support, especially when market prices decline, and that larger farms should not be penalized for the economies of size and efficiencies they have achieved. They say that farm payments help U.S. agriculture compete in global markets, and that income testing is at odds with federal farm policies directed toward improving U.S. agriculture and its competitiveness.

In addition to these concerns, this section briefly reviews other selected payment-limit issues and eligibility requirements.

Distributional Impacts on Farm Size

A large amount of money is involved in farm payments—much of it goes to a small share of large operators. According to USDA's 2012 Agricultural Census, farms with market revenue equal to or greater than $250,000 accounted for 12% of farm households, but received 60% of federal farm program payments.

Selecting a particular dollar value as a limit on annual government support payments involves a fundamental choice about who should benefit from farm program payments. This has important, but complex, policy implications. For example, numerous academic studies have shown that government payments are usually capitalized into cropland values, thus raising rental rates and land prices. Higher land values disfavor beginning and small farmers who generally have limited access to capital. As a result, critics contend that there is a lack of equity and fairness under the current system of farm program payments that appears to favor large operations over small, and that payment limits are really about farm size.

In contrast, supporters of the current system argue that larger farms tend to be more efficient operators, and that altering the system in favor of smaller operators may create inefficiencies and reduce U.S. competitiveness in international markets. Furthermore, they contend that tightening payment limits will have different effects across crops, thus resulting in potentially harmful regional effects.

Potential Crop and Regional Effects of Tighter Payment Limits

Tighter payment limits do not affect all crops and regions equally. As limits are tightened, they will likely first impact those crops with higher per-unit and per-acre production value. Among the major U.S. program crops, higher valued crops include rice, peanuts, and cotton, all of which tend to be produced in the Southeast, Mississippi Delta, and Western states.[50]

Furthermore, payment limits may influence local economic activity. In particular, payment limits are likely to have a greater economic impact in regions where agricultural production accounts for a larger share of economic output—that is in rural, agriculture-based counties—and where there

[49] For example, see the *Washington Post* series "Harvesting Cash," published in 2006, at http://www.washingtonpost.com/wp-srv/nation/interactives/farmaid/.

[50] Food and Agricultural Policy Research Institute (FAPRI), *Stricter Payment Limits*, FAPRI-UMC Report #05-03, June 17, 2003, and FAPRI, *Stricter Payment Limits: Additional Information*, FAPRI-UMC Report #06-03, June 24, 2003.

may be fewer opportunities for diversification to offset any payment-limit-induced reduction in agricultural incomes.

Aggregation of Payment Limits

Under the 2008 farm bill, the annual limit on payments for Title I commodity programs attributable to a person was split into two components: a $40,000 limit on direct payments and a $65,000 limit for combined CCP and ACRE payments, while there was no limit on benefits under the marketing assistance loan program (**Table A-1**).[51] The 2014 farm bill established a single aggregate limit of $125,000 for combined annual payments under the LDP and MLG benefits of the marketing assistance loan program and the PLC and ARC programs (which replaced the previous CCP and ACRE programs). As a result, in those situations where marketing assistance loan benefits are negligible and an individual relies primarily on either PLC or ARC, then his/her individual limit has been significantly expanded.

For example, consider a producer that relied on CCP and direct payments under the 2008 farm bill. Suppose that under the 2014 farm bill that same producer now relies almost exclusively on the PLC program for support (in part since direct payments were eliminated by the 2014 farm bill). In this case, his/her annual payment limit has been nearly doubled from $65,000 for CCP to a new $125,000 limit for PLC payments. Thus, depending on market conditions and a producer's mix of program activities, aggregation of the program limits could result in situations that favor specific crops and programs (**Table A-1**).

No Payment Limit on MAL Forfeiture or Commodity Certificates

The absence of a limit on benefits received under the marketing assistance loan's (MAL's) commodity certificate exchange and forfeiture options represents the potential for unlimited, fully coupled USDA farm support outlays. As a result, an apparent equity issue emerges when comparing program benefits of a producer facing a hard cap for ARC and PLC payments as compared to a producer with access to MAL forfeiture or commodity certificates.

Furthermore, MAL program outlays count directly against U.S. amber-box spending limits under World Trade Organization (WTO) commitments.[52] To the extent that such program outlays might induce surplus production and depress market prices, they could result in potential challenges under the WTO's dispute settlement mechanism.[53]

Policy Design Considerations

When eligibility requirements or payment limits are changed, rational producers are likely to alter their behavior to mitigate the effect of the policy changes while optimizing net revenue under the new set of policy and market circumstances. For example, new eligibility requirements or tighter payment limits may result in

- a reorganization of the farm operation to increase the number of eligible persons, or to lower the income that counts against a new AGI limit or the farm program payments that count against a smaller payment limit;

[51] For information on 2008 farm bill commodity programs, see CRS Report RL34594, *Farm Commodity Programs in the 2008 Farm Bill*, by Jim Monke.

[52] The current annual U.S. amber box spending is $19.1 billion. For more information, see CRS Report RS20840, *Agriculture in the WTO: Rules and Limits on Domestic Support*, by Randy Schnepf.

[53] See CRS Report R43817, *2014 Farm Bill Provisions and WTO Compliance*, by Randy Schnepf.

- a change in the crop and program choices or marketing practices, for example, to take advantage of the absence of a payment limit on MAL certificate exchange gains and forfeitures benefits; or
- a change in land use, such as, instead of farming the same acreage, renting out or selling some land to farmers that have not hit their payment limits.

Payment limits applied per unit or per base acre represent an alternative to per-person payment limits that may avoid distortions to producer behavior. An example of such a per-unit payment limit is the 85% payment reduction factor applied to base acres[54] receiving payments under either the PLC or ARC programs. The reduction factor is applied equally across all program payments irrespective of farm size, AGI, or total value of payments. Such a payment reduction factor is generally applied for cost-saving reasons rather than for "fairness" or equity reasons that at least partially motivate per-person payment limits.[55]

AGI Concerns

Analysis by USDA (2016) found that the number of farms affected by the single 2014 farm bill AGI cap ($900,000) is well below the number affected by the multiple farm ($500,000) and non-farm ($750,000) AGI caps of the 2008 farm bill.[56] For example, while federal income tax data are not available for the $900,000 cap level, published data from 2013, a year of record-high farm income, found that only about 0.7% of all farm sole proprietors and share rent landlords reported AGI in excess of $1 million. Thus, it is likely that consolidating the separate AGI farm and non-farm limits into a single AGI limit with a higher bound has restored eligibility for farm program payments to some farm operations that had previously been disqualified. Other major exemptions from the AGI limit include state and local governments and agencies, federally recognized Indian tribes, and CRP contracts entered into prior to October 1, 2008.

Furthermore, the 2014 farm bill shifted the farm safety net focus away from traditional revenue support programs and toward crop insurance programs, which are not subject to the AGI cap. During the five-year period of 2011-2015, federal crop insurance premium subsidies averaged $6.8 billion annually. Extending the AGI cap to crop insurance subsidies was considered during the 2014 farm bill debate, however, concerns were raised that the elimination of subsidies for high-income participants could affect overall participation to the extent that it could damage the soundness of the entire program. In contrast, USDA estimates that in most years, less than 0.5% of farms and less than 1% of premiums would be affected by the $900,000 income cap if it were extended to crop insurance participation as well as to farm programs.[57]

[54] See footnote 8 for a description of base acres.

[55] Zulauf, C. "Farm Payment Limits: History and Observation," *farmdoc daily*, Department of Agricultural, Environmental, and Development Economics, The Ohio State University, June 21, 2012.

[56] Ron Durst and Robert Williams, "Farm Bill Income Cap for Program Payment Eligibility Affects Few Farms," *Amber Waves*, August 1, 2016.

[57] Ibid.

Appendix. Supplementary Tables

Table A-1. History of Annual Payment-Limits for U.S. Farm Commodity Programs

Act	Payment Limit	Description and Comments
Agricultural Act of 1970 (P.L. 91-524), Section 101	$55,000 for wheat. $55,000 for feed grains. $55,000 for upland cotton.	Separate limits for each crop. Applied to price support payments, set-aside payments, diversion payments, and marketing certificates, but not loans or purchases.
Agricultural and Consumer Protection Act of 1973 (P.L. 93-86), Section 101	$20,000 for wheat, feed grains, and upland cotton, combined. Combined limit for covered crops.	Applied to deficiency, diversion, and disaster payments, but not loans or purchases.
Rice Production Act of 1975 (P.L. 94-214)	$55,000 for rice.	Added when deficiency payments were added for rice.
Food and Agriculture Act of 1977 (P.L. 95-113), Section 101	$40,000 (1978); $45,000 (1979); $50,000 (1980-1981) for wheat, feed grains, and upland cotton, combined. $52,250 (1978); $50,000 (1979-1981) for rice	Provided transition period as rice payment limit declined from $55,000 (1975) to $50,000 (1979) while the combined limit for other program crops rose from $40,000 (1978) to $50,000 (1980). Applied to deficiency and diversion payments, but not disaster or loan payments.
Agricultural and Food Act of 1981 (P.L. 97-98), Section 1101	$50,000 for wheat, feed grains, upland cotton, and rice, combined.	Applied to all program payments, except disaster payments and loans or purchases. A separate $100,000 limit applied to disaster payments.
Food Security Act of 1985 (P.L. 99-198), Section 1001	$50,000 for wheat, feed grains, upland cotton, extra-long staple cotton, and rice, combined.	Applied to all program payments such as deficiency payments, except the new marketing loan program, regular loans. A separate $100,000 limit applied to disaster payments. Required attribution of payments to individuals and entities.
Continuing Appropriations Act for FY1987 (P.L. 99-591), Section 108(a)(1)	$250,000 combined limit as above, but including marketing loan gains (MLGs) and loan deficiency payments (LDPs).	Revised the 1985 farm bill to apply limits to MLGs and LDPs. No limit on marketing assistance loan (MAL) program benefits derived from commodity certificate exchanges or forfeiture of crops under loan.
Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), Section 1301 et. seq.	No change to amounts.	Added AEF provisions to further limit eligibility for payments and three-entity rule, which limited payments to a person via maximum of three entities (including the individual), effectively allowing for a doubling of an individual's payment limit.
Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624), Section 1111	$75,000 for wheat, feed grains, upland cotton, rice, and oilseeds, combined. $200,000 for honey. $200,000 (1991); $175,000 (1992); $150,000 (1993); $125,00 (1994) for wool and mohair.	Applied to all program payments, including deficiency payments, MLGs, and LDPs. No limit on MAL program benefits from commodity certificate exchanges or forfeiture. USDA was given discretionary authority to implement a rule allowing spouses to be considered separate persons if certain requirements were met.

Act	Payment Limit	Description and Comments
Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104-127), Section 115	$40,000 for production flexibility contract payments. $75,000 for MLGs and LDPs.	Applied to wheat, feed grains, upland cotton, rice, and oilseeds, combined. No limit on MAL program benefits from commodity certificate exchanges or forfeiture.
Agriculture Appropriations Act for FY2000 (P.L. 106-78), Section 813	$150,000 for MLGs and LDPs. No change to limit on PFC payments.	Increased the limit in response to low market prices, which increased program payments.
Farm Security and Rural Investment Act of 2002 (P.L. 107-171), Section 1603	$40,000 for direct payments. $65,000 for CCPs. $75,000 for MLGs and LDPs.	Combined limit for all commodities, except peanuts which have separate but identical limit. MLG and LDP limit for peanuts is combined with wool, mohair, and honey. No limit on MAL program benefits from commodity certificate exchanges or forfeiture. Required USDA to track benefits to individuals and entities. Established the Commission on the Applications of Payment Limits for Agriculture to conduct a study.[a]
Food, Conservation, and Energy Act of 2008 (P.L. 110-246), Section 1603	$40,000 for direct payments. $65,000 for CCPs and ACRE. No limit on marketing loan program benefits.	Combined limit for all commodities, except peanuts, which have separate but identical limits. Eliminated the three-entity rule. Added precision to AEF and Direct Attribution to individuals through four levels of ownership. Added special rules for minor children, tenants, and institutional arrangements. Commodity certificates eliminated.[b] Disaster payment limit of $125,000 for ELAP, LFP, and LIP combined. Separate disaster payment limit of $125,000 each for TAP and NAP.
Agricultural Act of 2014 (P.L. 113-79), Section 1603	$125,000 for PLC, ARC, LDP, and MLG. $40,000 for cotton transition payments, effective 2014 and 2015 only.	Combined limit for all commodities, except peanuts, which have separate but identical limits. Also, no limit on MAL program benefits from forfeiture.
Commodity certificates were re-instated by the FY2016 consolidated appropriations act (P.L. 114-113, §740)	No limit on MAL program benefits under commodity certificate exchanges.	FY2016 appropriation restores commodity certificates for MAL program.

Source: Compiled by CRS from legislation listed in the notes below and from USDA, FSA, "Legislative History of Payment Eligibility and Payment Limitation Provisions," FSA Handbook, *Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income—Agricultural Act of 2014*, as of October 27, 2014.

Notes: For a complete list of current payment limits across all farm programs including disaster assistance, landscape assistance, conservation, and other programs, see **Table 1**. Excludes discussion of other eligibility requirements such as type of entities and actively engaged in farming. For such information, see CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*.

a. The Commission released its study as the "Report by the Commission on the Application of Payment Limits for Agriculture," August 2003, published by the Office of the Chief Economist, USDA.

b. Commodity certificates received in exchange for MAL program benefits were eliminated at end of the 2009 crop year by the 2008 farm bill (P.L. 110-246; §1607). However, they were reinitiated in the Consolidated Appropriations Act of 2016 (P.L. 114-113, §740), enacted in December 2015, which authorized the CCC to issue commodity certificates to agricultural producers in exchange for crops pledged under marketing assistance loans beginning with the 2015 crop year.

Table A-2. Glossary

ACEP	Agricultural Conservation Easement Program
ACRE	Average Crop Revenue Election
AEF	Actively Engaged in Farming
AGI	Adjusted Gross Income
AMA	Agricultural Management Assistance
ARC	Agricultural Risk Coverage
CCC	Commodity Credit Corporation
CCP	Counter-Cyclical Payments
CRP	Conservation Reserve Program
CSP	Conservation Stewardship Program
CTAP	Cotton Transition Assistance Program
ECP	Emergency Conservation Program
EFRP	Emergency Forest Restoration Program
ELAP	Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program
EQIP	Environmental Quality Incentives Program
EWP	Emergency Watershed Protection Program
FSA	Farm Service Agency
LDP	Loan Deficiency Payment
LFP	Livestock Forage Disaster Program
LIP	Livestock Indemnity Program
MLG	Marketing Loan Gains
MPP	Dairy Margin Protection Program
NAP	Noninsured Crop Disaster Assistance Program
NRCS	Natural Resources Conservation Service
OMB	Office of Management and Budget
PLC	Price Loss Coverage
RCPP	Regional Conservation Partnership Program
RMA	Risk Management Agency
TAP	Tree Assistance Program
USDA	United States Department of Agriculture

Author Information

Randy Schnepf
Specialist in Agricultural Policy

Megan Stubbs
Specialist in Agricultural Conservation and Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.