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U.S. Farm Program Eligibility and Payment Limits Under the 2018 Farm Bill (P.L. 115-334)

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SUMMARY

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Under the Agricultural Improvement Act of 2018 (P.L. 115-334; 2018 farm bill), U.S. farm program participants—whether individuals or multiperson 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 and risk management programs, along with their current eligibility requirements and payment limits, are listed in **Table 1**. Terms for most of these programs are applicable for the 2019-2023 crop years.

Since 1970, Congress has used various policies to address the issue of who should be eligible for farm payments and how much an individual recipient should be permitted to receive in a single year. In recent years, congressional policy has focused on tracking payments through multiperson 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 multiperson entities and personal time commitments (whether as labor or management) and means testing (persons with combined farm and nonfarm adjusted gross income in excess of $900,000 are ineligible for most program benefits); and conservation compliance requirements.

In general, if foreign persons or legal entities meet 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) in which nonresident aliens are excluded.

Current law requires direct attribution through four levels of ownership in multiperson legal entities. Current payment limits include a cumulative limit of $125,000 for all covered commodities under the Price Loss Coverage (PLC) and Agricultural Revenue Coverage (ARC) support programs, with the exception of peanuts, which has its own $125,000 limit. Only one permanent disaster assistance program—the Livestock Forage Disaster Program (LFP)—is subject to a payment limit ($125,000 per crop year). NAP is also subject to a $125,000 per crop year limit per person for catastrophic coverage.

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.

Congress may continue to address these issues, as well as related questions, such as: How does the current 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 reduce the effectiveness of overall payment limits?

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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 influence what size farms are supported.[1] 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[2] payments are at stake: Direct federal outlays have averaged $13.7 billion per year from 1996 through 2017.[3] When federal crop insurance premium subsidies[4] are included, annual farm payments have averaged $18.5 billion over the same period.

This report discusses various eligibility factors and their interaction under the 2018 farm bill.[5] It describes current restrictions that limit or preclude payments to farmers based on a number of factors as well as areas where few, if any, restrictions limit farmers' access to such benefits or to the amount of benefits.

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**.

[1] U.S. Department of Agriculture (USDA), Office of the Chief Economist, *Report of the Commission on the Application of Payment Limitations for Agriculture, Submitted in Response to Section 1605, Farm Security and Rural Investment Act of 2002*, August 2003.

[2] The term federal farm programs generally refers to a suite of commodity support and disaster assistance programs administered by USDA. Many such programs are authorized in omnibus farm bills, including most recently the Agricultural Act of 2018 (2018 farm bill, P.L. 115-334), 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.

[3] USDA, Economic Research Service (ERS), federal government direct farm program payments, data as of November 30, 2018, http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics.aspx.

[4] Federal crop insurance subsidies include premium subsidies, delivery cost payments, and shared underwriting risks. USDA, Risk Management Agency, Summary of Business database; http://www.rma.usda.gov; and Congressional Budget Office (CBO), annual baseline for farm programs, various years.

[5] 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*, by Randy Schnepf) focuses on program eligibility requirements—in particular, criteria underpinning the AEF requirements.

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**).

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.[6] 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 AGI from payment eligibility.

Each of these policy measures—depending on how they are designed and implemented—can have consequences, both intended and unintended, for U.S. agriculture. These consequences include, but are 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.

[6] 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).

Table 1. U.S. Farm Commodity Program Eligibility Requirements and Payment Limitations Under the 2018 Farm Bill

Program Payment Type	AEF[a]	U.S. Citizen[b]	AGI Limit	Conservation Compliance	Payment Limit
Commodity Programs					
Combined PLC and ARC payments (all except peanuts)[c]	✓	—	✓	✓	$125,000 per crop year
PLC and ARC payments for peanuts	✓	—	✓	✓	$125,000 per crop year for peanuts
Benefits under the MAL program[d]	✓	—	✓	✓	Unlimited
Cotton Ginning Cost-Share Program (CGCS)[e]	✓	—	✓	✓	$40,000 per crop year
Sugar Program (implicit price support benefits)[f]	—	—	—	—	Unlimited
MFP: corn, sorghum, soybeans, upland cotton, and wheat	✓	—	✓	✓	$125,000 per person
MFP: hogs and dairy	✓	—	✓	✓	$125,000 per person
MFP: shelled almonds and fresh, sweet cherries	✓	—	✓	✓	$125,000 per person
Disaster Assistance Programs					
Livestock Forage Disaster Program	—	✓	✓	✓	$125,000 per crop year
Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program	—	✓	✓	✓	Unlimited
Livestock Indemnity Program	—	✓	✓	✓	Unlimited
Tree Assistance Program	—	✓	✓	✓	Unlimited
NAP: Catastrophic	—	✓	✓	✓	$125,000 per crop year
NAP: Additional Coverage	—	✓	✓	✓	$300,000 per crop year
Landscape Assistance Programs					
Emergency Conservation Program	—	—	✓	✓	$500,000 per disaster
Emergency Forest Restoration Program	—	—	✓	✓	$500,000 per disaster
Emergency Watershed Protection Program (EWP)[g]	—	—	—	✓	Based on project amount.
Conservation Programs					
Conservation Reserve Program[h]	—	—	✓	✓	$50,000 total rental payments per fiscal year
Conservation Stewardship Program	—	—	✓	✓	$200,000 all contracts for FY2019-FY2023
Environmental Quality Incentives Program[i]	—	—	✓	✓	$450,000 all contracts for FY2019-FY2023

Program Payment Type	AEF[a]	U.S. Citizen[b]	AGI Limit	Conservation Compliance	Payment Limit
Agricultural Management Assistance	—	—	✓	✓	$50,000 per fiscal year
Agricultural Conservation Easement Program	—	—	✓	✓	Based on easement value
Regional Conservation Partnership Program	—	—	✓	✓	Unlimited
Risk Management Programs					
Dairy Margin Coverage Program	—	—	—	✓	Unlimited
Crop Insurance Premium subsidies on individual policies	—	—	—	✓	Unlimited
Crop Insurance Indemnity payments[j]	—	—	—	✓	Unlimited
Miscellaneous					
Trade Adjustment Assistance for Farmers	✓	✓	✓	—	$12,000 over 36 months

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

Notes: "✓" implies that the column's requirement must be met to be eligible for a payment under the particular program. "—" implies that it is not a necessary requirement. AEF = Actively Engaged in Farming; AGI = Adjusted Gross Income; ARC = Agricultural Risk Coverage; MFP = Market Facilitation Program; NAP = Noninsured Crop Disaster Assistance Program; PLC = Price Loss Coverage.

a. For details on AEF requirements, see CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf.

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

c. Combined payments for all covered commodities except peanuts, which has its own separate payment limit.

d. Two types of benefits are obtainable under the marketing assistance loan (MAL) program when the loan repayment rate is below the statutory loan rate: (1) a loan deficiency payment may be claimed in lieu of placing a commodity under a MAL; or (2) for commodities already under a MAL, a marketing loan gain (MLG) may be obtained in three potential ways: by repaying the MAL at the lower repayment rate and keeping the difference; by using commodity certificates to repay a MAL at the lower repayment rate, or by forfeiting to USDA's Commodity Credit Corporation the quantity of a commodity pledged as collateral for a MAL and keeping the loan value.

e. The CGCS program to date has been available only in the 2016 and 2018 program years.

f. 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 formula and an import limitation and minimum price agreement that applies to sugar from Mexico. USDA is to administer 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.

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

h. An AGI waiver for select eligible entities is available.

i. In addition, organic production practice payments are limited to a total of $140,000 between FY2019 and FY2023.

j. To receive an indemnity, a person must first acquire a policy that 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 AGI thresholds—are relatively new.[7] Discussed below are cross-cutting eligibility requirements that affect multiple programs, including participant identification, foreign ownership, nature and extent of participation (i.e., AEF criteria), means tests, and conservation requirements.

Participant Identification

Generally, program eligibility begins with identification of participants. Identifying who or what entity 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. citizens and noncitizens—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 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[8] (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.[9] These forms need to be submitted only 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[10] equivalent to at least 20% of the previous base, or substantially altering the interest share of capital or equipment contributed to 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.

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[7] For example, means testing (i.e., AGI requirements) was first introduced in the Food Security and Rural Investment Act of 2002 (P.L. 107-171).

[8] 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.

[9] 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.

[10] 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 multiyear 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*, ERS, September 2005, pp. 36-41, https://www.ers.usda.gov/publications/pub-details/?pubid=44874.

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**).[11]

1. **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 (18 years or older) associated with the principal operator. Family farms or sole proprietorships comprised nearly 87% of U.S. farm operations in 2012.
2. **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.
3. **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.

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, 2012 Census of Agriculture, Table 67, May 2014.

Note: USDA's Census of Agriculture is conducted every five years. USDA plans to release 2017 Census of Agriculture data, in both electronic and print formats, beginning in April 2019.

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

As of 2012, these three categories represented 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.[12] These

[11] 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.

[12] 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.

institutional arrangements represent a small share (less than 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.

AEF Requirement

To be eligible for certain Title I commodity program benefits under the 2018 farm bill, participants—individuals as well as other types of legal entities—must meet 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."[13]

Individual AEF Requirements

An individual producer must meet three AEF criteria:

1. 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.
2. The person's share of profits or losses is commensurate with his/her contribution to the farming operation.
3. The person shares in the risk of loss from the farming operation.

In general, family farms receive special treatment whereby every adult member (i.e., 18 years or older) is deemed to meet the AEF requirements. Family membership is based on lineal ascendants or descendants but is also extended to siblings and spouses. Furthermore, under the 2018 farm bill (§1703), for purposes of assessing the availability of individual payment limits, the definition of *family member* has been extended to include first cousins, nieces, and nephews.

Current law also 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.[14] The spousal exception applies to both individual producers (as in a family farm) and producers operating within a partnership.

An additional 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.[15]

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, documentable, separate, and distinct from the contributions made by any other partner. Each partner who fails to meet the AEF criteria is ineligible to participate in the relevant farm program.

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

[14] 7 U.S.C. §1308-1(c)(6).

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

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.[16] This was often seen as 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 to add more specificity to the role that a nonfamily producer must play to qualify for farm program benefits.[17] These AEF regulations continue under the 2018 farm bill.

As a result of the rule, a limit is placed on the number of nonfamily members of a farming operation who can qualify as a farm manager—depending on the size and complexity of the farm operation. Also, additional recordkeeping requirements now apply for each nonfamily member of a farming operation claiming active personal management status. No such limit applies to the potential number of qualifying family members.

Foreign Person or Legal Entity

Generally, if foreign persons or legal entities meet a particular farm program's eligibility requirements, then they are eligible to participate.[18] 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

[16] 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.

[17] CCC, "Payment Limitation and Payment Eligibility; Actively Engaged in Farming," 80 *Federal Register* 78119, December 16, 2015. For more information on this rule, see CRS Report R44656, *USDA's Actively Engaged in Farming (AEF) Requirement*, by Randy Schnepf.

[18] Verifiable physical, on-farm presence is critical in a successful determination for eligibility for nonresident aliens.

(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.[19]

As of December 31, 2016, foreign persons held an interest in 28.3 million acres of U.S. agricultural land (including forest land).[20] This accounts for 2.2% 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 neither 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.*).[21] Similarly, a foreign entity is a corporation or other legal entity in which 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 and meet the AEF criteria discussed earlier. 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 Coverage (DMC) program 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 DMC program to receive margin protection payments.[22] 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 sugarcane and sugar beets being processed must be of U.S. origin.

AGI Limit

Means testing prohibits persons or legal entities 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 (P.L. 107-171) (**Table 3**). Income is measured by an individual's or entity's average AGI from the previous three-year period but excluding the most recent complete taxable year.[23]

Recent farm bills, including the 2018 farm bill, 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.

[19] 7 U.S.C. §9081(a)(B).

[20] Lesa Johnson et al., *Foreign Holdings of U.S. Agricultural Land through December 31, 2016*, FSA, December 31, 2016, https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/index.

[21] 7 U.S.C. §1308-3.

[22] 7 U.S.C. §9054(a).

[23] 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.

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.[24] 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 (80% in 2016).[25]

Farm operations overwhelmingly report operating losses for tax purposes (because of cash accounting, capital expensing via depreciation, and other practices). For example, in 2015, two-thirds of farm sole proprietors reported a net farm loss for tax purposes.[26] 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 to annually give their consent to the IRS to verify to USDA that they are in compliance with their AGI limit provisions using a specific USDA form (CCC-941).[27] Failure to provide the consent and subsequent certification of compliance results 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 eligibility 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.

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, countercyclical 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]	

[24] USDA estimates that 98% of farm households are pass-through entities (including sole proprietorships, partnerships, and Subchapter S corporations), meaning that any profit or loss from them is passed to the owner/partner/shareholder, and tax is paid at the individual level rather than the corporate level. James Williamson and Siraj Bawa, *Estimated Effects of the Tax Cuts and Jobs Act on Farms and Farm Households*, ERS, June 2018, p. 3.

[25] Williamson and Bawa, *Estimated Effects of the Tax Cuts and Jobs Act on Farms and Farm Households*, p. 4.

[26] Williamson and Bawa, *Estimated Effects of the Tax Cuts and Jobs Act on Farms and Farm Households*, p. 4.

[27] 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 noncompliance status. A subsequent appeal process is available for producers deemed out of compliance following the initial challenge.

AGI Limit	If AGI Exceeds Limit, Then Ineligible for These Programs
$500,000 for nonfarm AGI	Direct payments, CCP, average crop revenue election; marketing assistance loan MLGs and LDPs; Milk Income Loss Contract; Noninsured Crop Disaster Assistance Program (NAP); Supplemental Revenue Assistance Payments 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; may be waived on a case-by-case basis if protecting environmentally sensitive land of special significance.	Conservation programs.
Agricultural Act of 2014 (2014 farm bill, P.L. 113-79), Section 1605	
$900,000 for total AGI[c]. Applied the changes starting with the 2014 crop, fiscal, or program year as appropriate.	Price Loss Coverage, Agriculture Risk Coverage, cotton transition assistance program, marketing assistance loan MLGs and LDPs, NAP, ELAP, LFP, LIP, and TAP, and conservation programs.
Agricultural Improvement Act of 2018 (2018 farm bill, P.L. 115-334**), Section 1704**	
$900,000 for total AGI[c]; may be waived on a case-by-case basis if protecting environmentally sensitive land of special significance.	Retains the 2014 farm bill's list of programs subject to AGI limitation.

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. For a discussion of farm programs, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy. "Conservation programs" refers to all Title II farm bill conservation programs in 2002, 2008, 2014, and 2018 and the Agricultural Management Assistance program in 2008, 2014, and 2018.

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. Both the 2014 and 2018 farm bills 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.

The 2008 farm bill replaced the single AGI limit of the 2002 farm bill with three separate AGI limits that distinguished between farm and nonfarm AGI. First, a nonfarm AGI limit of $500,000 applied to eligibility for selected farm commodity program benefits including the Milk Income Loss Contract program,[28] NAP, and the disaster assistance programs. A second farm-specific AGI limit of $750,000 applied to eligibility for direct payments. A third nonfarm 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. The AGI limit could be waived in its entirety

[28] This program was eliminated by the 2014 farm bill.

on a case-by-case basis if a conservation program would protect environmentally sensitive land of special significance.

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.[29] This provision had the potential to significantly reduce the share of farms affected by the AGI cap.

The 2014 farm bill returned the eligibility threshold to a single total AGI limit but at a level of $900,000 for individuals and incorporated businesses.[30] 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 would 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. The 2018 farm bill retained the AGI provisions from the 2014 farm bill but added the 2008 farm bill's case-by-case waiver for conservation programs that would protect environmentally sensitive land of special significance.[31]

Conservation Compliance

Two provisions—highly erodible land conservation (Sodbuster) and wetland conservation (Swampbuster)—are collectively referred to as conservation compliance.[32] 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. The 2014 farm bill extended conservation compliance to federal crop insurance premium subsidies, and the 2018 farm bill retains this compliance requirement.[33] Most recently, the 2018 farm bill made relatively minor amendments to the compliance provisions. Within U.S. farm policy, conservation compliance continues to be one of the only environmentally based requirements for program participation.[34]

[29] 7 U.S.C. §1308-3a(3).

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

[31] Annual reports to Congress are required for waivers issued under this provision.

[32] For additional information, see CRS Report R42459, *Conservation Compliance and U.S. Farm Policy*, by Megan Stubbs; or USDA, Natural Resources and Conservation Service, "Conservation Compliance," as of March 7, 2019, http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=stelprdb1257899.

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

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

Direct Attribution of Payments

The process of tracking payments to an individual through various levels of ownership in single and multiperson 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 subentities within each of these components. Farm payments flow down through these arrangements to individual recipients.

Congress defines *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.[35] This broad definition encompasses the multiperson legal entities discussed earlier such as family farm operations, joint ventures, corporations, and institutional arrangements. Ownership shares in a multiperson legal entity are tracked via a person's social security number or EIN as reported in CCC-901 and CCC-902. Identification at the individual payment recipient level is critical for assessing the cumulative payments of each individual against the annual payment limit.

Direct attribution was originally authorized in the 2008 farm bill (§1603(b)(3)).[36] 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 multiperson legal entities—that is subject to the annual payment limit (see text box below).

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 is also 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. Any payments received by farmer #1 as a member of the partnership would be attributed as second-level payments.

As a second example, suppose that farmer #1 is also a member of a limited liability corporation (LLC) 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

[35] 7 U.S.C. §1308(a)(3).

[36] 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. The 2008 farm bill replaced this rule with direct attribution.

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.

Suppose that the LLC in the second example was itself a member of the partnership from the first example. Then, any payments that individual #1 would receive as a member of the LLC from the farming activity of the partnership would be third-level attribution of payments. Farm payments are tracked through four levels of attribution.

Payment Limits

When the eligibility criteria—including AEF, AGI, conservation compliance, 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 in a year.

Explicit payment limits date back to the 1970s.[37] Despite their longevity, payment limits are not universal among programs. Payment limits are also 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 they may not exist. The major categories of farm program support and the applicability of annual payment limits, if any, are briefly discussed below.

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 2018 farm bill—are currently subject to annual payment limits.[38]

- **Title I (Subtitle A): ARC and PLC.** Payments for the two revenue-support programs—Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC)—must be combined for all covered commodities (except peanuts) and reduced by any sequestration[39] prior to assessing whether they are within the $125,000 annual payment limit for an individual. Peanuts are a notable exception to this rule in that ARC and PLC payments for peanuts (after sequestration) are subject to their own annual payment limit of $125,000 per individual.[40]

[37] Carl Zulauf, "Farm Payment Limits: History and Observations," *Farmdoc Daily*, June 21, 2012, https://farmdocdaily.illinois.edu/2012/06/farm-payment-limits-history-an.html.

[38] 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 R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy.

[39] §1703(a)(3) of the 2018 farm bill.

[40] Combined ARC and PLC payments are subject to an annual limit of $125,000 per person. 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.

- **Title I (Subtitle E): Livestock Forage Disaster Program (LFP).** The LFP program is subject to an annual limit of $125,000 per person.[41]
- **Title I (Subtitle F): Noninsured Crop Disaster Assistance Program (NAP).**[42] Available for crops not currently eligible for crop insurance. Payments for catastrophic coverage are limited to $125,000 per crop year per individual or entity. Payments for additional coverage (referred to as buy-up coverage) are limited to $300,000 per crop year per individual or entity.

In addition to commodity programs authorized in periodic farm bills, the Secretary of Agriculture has broad authority under the CCC charter to make payments in support of U.S. agriculture.[43] These payments may be purely ad hoc in nature, or they may be made according to a formula as part of a temporary program. Payments under this type of authority may or may not be subject to payment limits in accordance with the program's specification. Two such programs are currently active—both are subject to annual payment limits.

1. **Cotton Ginning Cost Share (CGCS) Program.** The CGCS program has been available only in the 2016 and 2018 crop years.[44] Payments under the CGCS program are subject to an annual payment limit of $40,000 per person.
2. **Market Facilitation Program (MFP).** USDA established the MFP program in August 2018 as a one-time payment program to help offset the financial losses associated with lost agricultural trade to China as a result of a trade dispute with the United States.[45] MFP payments are subject to a per-person payment limit of $125,000. However, the limit applies separately to three categories of commodities—field crops (corn, sorghum, soybeans, upland cotton, and wheat); livestock (dairy and hogs); and specialty crops (shelled almonds and fresh, sweet cherries).

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 any payments already received under that program that are in excess of the relevant payment limit for that year.

Special Treatment of Family Farms

As mentioned earlier, family farms receive special treatment whereby every adult member—18 years or older—is deemed to meet the AEF requirements and is potentially eligible to receive farm program payments in an amount up to the individual payment limit. Furthermore, under the 2018 farm bill (§1703(a)(1)), the definition of *family member* was extended to include first cousins, nieces, and nephews.

[41] Following the 2014 farm bill, all four disaster assistance programs included some form of a payment limit. The Bipartisan Budget Act of 2018 (§20101, P.L. 115-123) removed the payment limit requirements for the Tree Assistance Program (TAP) and Livestock Indemnity Program (LIP). The 2018 farm bill (§1501(e)) removed the payment limit requirement for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP). For more information, see CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

[42] Ibid.

[43] For details, see CRS Report R44606, *The Commodity Credit Corporation: In Brief*, by Megan Stubbs.

[44] For more information, see the FSA online site for "Cotton Ginning Cost Share Program" at https://www.fsa.usda.gov/programs-and-services/cgcs/index.

[45] For details, see CRS Report R45310, *Farm Policy: USDA's Trade Aid Package*, by Randy Schnepf et al.

Multiple Payment Limits for a Partnership

A partnership's potential 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 partnership's total payment limit is reduced by the share of each single member who has already met his or her payment limit (or portion thereof) on another farm operation outside of the partnership.

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 but only increases the number of members that can share a single payment limit.

Conservation Programs Subject to Annual Payment Limits

Limits on conservation programs have existed long before limits on farm support programs.[46] Most current conservation programs include some limit on the amount of funding a participant may receive, but these limits vary by program. Some programs have multiple limits that vary based on activity or practice implemented. Several major conservation programs in Title II of the 2018 farm bill are currently subject to annual payment limits.[47]

- **Conservation Reserve Program (CRP).** Payments for CRP can vary based on the type of contract and type of payment. In general, annual rental payments for general enrollment contracts and continuous enrollment contracts are limited to 85% and 90% of the average county rental rate, respectively, and not more than $50,000 total per year. Cost-share payments and incentive payments are also limited and may be waived or applied at different levels under subprograms of CRP, such as land enrolled under the Conservation Reserve Enhancement Program or the Soil Health and Income Protection Pilot.[48]
- **Environmental Quality Incentives Program (EQIP).** Total cost-share and incentive payments are limited to $450,000 for all EQIP contracts entered into by a person or legal entity between FY2019 and FY2023. This limit may be waived for new Conservation Incentive Contracts authorized under Section 2304(g) of the 2018 farm bill. Payments for EQIP conservation practices related to organic production are limited to a total of $140,000 between FY2019 and FY2023.

[46] For example, the Agricultural Adjustment Act of 1938 (P.L. 75-430, §102) amended the Soil Conservation and Domestic Allotment Act (49 Stat. 1149; 50 Stat. 329) to limit payments for soil conservation assistance to $10,000 per year per person.

[47] The programs discussed in this section do not represent a comprehensive list of conservation programs and benefits. Instead, this section focuses on the largest programs (by funding level). For a more comprehensive list of conservation programs and provisions under the conservation title of the 2018 farm bill, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy.

[48] Cost-share and incentive payments are typically one-time payments under CRP and therefore not discussed in detail in this report. For additional information on these limits, see CRS Report R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, coordinated by Mark A. McMinimy.

- **Conservation Stewardship Program (CSP).** A person or legal entity may not receive more than a total of $200,000 for all CSP contracts between FY2019 and FY2023. This limit does not apply to the new CSP Grassland Conservation Initiative authorized under Section 2309 of the 2018 farm bill. However, annual payments under the initiative are limited to $18 per acre, not to exceed the number of base acres on a farm.

Exceptions That Avoid Payment Limits

Payments under certain Title I and Title II programs in the 2018 farm bill are excluded from annual payment limits. These exceptions are described below. Another exception to payment limits could result if the principal operator or a major partner of a farm operation dies during the course of a program year and any associated program benefits for the deceased are transferred to another farm operator or partner.

Selected Farm Programs Without Payment Limits

Certain farm programs are not subject to annual payment limits. This includes any benefits obtainable under the marketing assistance loan (MAL) program, the sugar program, the dairy program, and three of the four disaster assistance programs (ELAP, LIP, and TAP). Also, benefits from crop insurance premium subsidies and indemnity payments on loss claims are not subject to any limits. Finally, any payments made under the Emergency Watershed Protection Program (EWP) are not subject to payment limits.[49]

- **Title I (Subtitle B) MAL program.** Benefits under the MAL program include loan deficiency payments (LDP), marketing loan gains (MLG), and gains under forfeiture or commodity certificate exchanges. Traditionally, MAL benefits in the form of LDPs and MLGs have been subject to payment limits, whereas MAL benefits derived from forfeiting to the CCC the quantity of a commodity pledged as collateral for a marketing assistance loan or from use of commodity certificates to repay a marketing assistance loan have traditionally been excluded from payment limits. However, the 2018 farm bill (§1703(a)(2)) excluded all MAL benefits from payment limits.
- **Title I (Subtitle C) sugar program.** The U.S. sugar program does not rely on direct payments from USDA, and generally operates with no federal budget outlays.[50] Instead, the sugar program provides indirect price support to producers of sugar beets and sugarcane and direct price guarantees to the processors of both crops in the form of a marketing assistance loan at statutorily fixed prices. Congress has directed the USDA to administer 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 market prices. This indirect subsidy is implicit and not subject to budgetary restrictions. Furthermore, there is no citizenship requirement for a sugar processor, but the

[49] 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 because TRQs are not based on policy set in the farm bill.

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

sugarcane and sugar beets being processed under the U.S. sugar program price guarantees must be of U.S. origin.

- **Title I (Subtitle D) dairy program.** The margin-based dairy support program was first established under the 2014 farm bill (§1401-§1431) without payment limits as the dairy margin protection program (MPP).[51] The MPP was revised and renamed as the Dairy Margin Coverage (DMC) program by the 2018 farm bill. Under the DMC, participants benefit from two potential types of support: an implicit premium subsidy and an indemnity-like payment made when program price triggers are met. The fees or premiums charged for participating in the DMC are set in statute rather than being set annually 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 DMC are not subject to payment limits.
- **Title I (Subtitle E) disaster assistance programs: ELAP, LIP, and TAP**. Payments under three of the disaster assistance programs in Title I of the 2018 farm bill are excluded from any payment limits. This includes ELAP, LIP, and TAP.[52]
- **Title II conservation programs.** Total payments under certain conservation programs are limited to the value or cost of the specific conservation measure that the program is paying for rather than a fixed limit. Under the Agricultural Conservation Easement Program and the EWP program, payments are limited to a portion of the total cost of the easement or project rather than a total funding amount. In the case of the Regional Conservation Partnership Program (RCPP), the 2018 farm bill allows USDA to make payments to producers in an amount necessary to achieve the purposes of the program with no limit on the total amount.
- **Title XI crop- and livestock-related insurance premium subsidies and indemnity payments**. The principal support provided for farmers under the federal crop insurance program are federal premium subsidies for both catastrophic and buy-up insurance coverage.[53] Premium subsidies are not subject to any limit on the level of participation or underlying value. Crop insurance indemnities are payments made to cover insurable losses and thus are not subject to any payment limit. To be eligible to purchase catastrophic risk protection coverage, the producer must be a "person" as defined by USDA, and to be eligible to purchase any other plan of insurance (such as buy-up coverage, among others), 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.

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

[52] See footnote 41 for a narrative of when these limits were removed. For more information on the disaster assistance programs, see CRS Report RS21212, *Agricultural Disaster Assistance*, by Megan Stubbs.

[53] USDA's Risk Management Agency pays for a portion of the premium cost to purchase crop insurance coverage. This subsidy has averaged $6.4 billion per year from 2011 to 2018. Premiums are charged on a per-acre basis and rise with the value of the insured crop. As a result, larger farmers receive greater premium subsidy support than do smaller farmers. However, Congress has refrained from imposing any payment limits on the premium subsidy out of concern that such a limit would discourage participation. For more information, see CRS Report R43758, *Farm Safety Net Programs: Background and Issues*, coordinated by Randy Schnepf.

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 multiyear 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.

Issues for Congress

Limitations on farm program payments raise a number of issues that have led to debate among farm policymakers and agricultural stakeholders and may continue to be of interest to Congress as it considers issues of equity and efficiency in farm programs.

Payment Limits and Market Signals

Theoretically, market prices—based on relative supply and demand conditions under competitive market conditions[54]—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 and production incentives) 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.[55] 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 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

[54] 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; no externalities; and the absence of intrusive government regulation. Paul Krugman and Robin Wells, *Microeconomics*, 2nd ed. (New York: Worth Publishers, 2009).

[55] For example, see National Sustainable Agriculture Coalition, "2014 Farm Bill Drilldown: Subsidy Reform and Fair Competition," February 14, 2014, http://sustainableagriculture.net/blog/farm-bill-subsidy-reform/.

subsidies and are costly. In the past, newspapers have published stories critical of farm payments and how they are distributed to large farms, nonfarmers, or landowners.[56] 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

The majority of farm payments go 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 produced 89% of the value of total U.S. agricultural production and 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, the Mississippi Delta, and western states.[57]

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

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

[57] Food and Agricultural Policy Research Institute, *Stricter Payment Limits*, FAPRI-UMC Report #05-03, June 17, 2003; and *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.

Separate Payment Limit for Peanuts

Under current law, peanuts have a separate program payment limit—a consequence of the 2002 federal quota buyout (P.L. 107-171, §1603).[58] This separate payment limit affords peanut production an advantage over production of other program crops that are subject to combined payments for ARC and PLC under a single limit. As a result of this feature, a farmer who grows multiple program crops including peanuts has essentially two different program payment limits:

1. $125,000 per person for an aggregation of ARC and PLC program payments made to all program crops other than peanuts, and
2. $125,000 per person for ARC and PLC program payments made exclusively to peanuts.

Thus, under an extreme scenario involving large payments for both peanuts and other program crops, this could potentially double a peanut farmer's payment limits to as much as $250,000.

No Payment Limit on MAL Benefits

The 2018 farm bill (§1703) excluded MAL benefits from any payment limit while also raising the MAL rates for several program crops (§1202), including barley, corn, grain sorghum, oats, extra-long-staple cotton, rice, soybeans, dry peas, lentils, and small and large chickpeas.

Raising MAL rates has two potential program effects. First, since MAL rates function as floor prices for eligible loan commodities, higher rates increase the potential for greater USDA outlays under MAL. Second, MAL rates are used to establish the maximum payment under PLC. Thus, raising the loan rate for a program commodity lowers its potential PLC program payment rate.

The absence of a limit on benefits received under the MAL program creates 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 benefits.

Because MAL payments are fully coupled—that is, tied to the production of a specific crop—MAL program outlays count directly against U.S. amber box spending limits under World Trade Organization (WTO) commitments.[59] 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.[60]

[58] For more on the policy shift, see CRS Report R44156, *U.S. Peanut Program and Issues*, by Randy Schnepf; and E. Dohlman et al., "The Post-Buyout Experience: Peanut and Tobacco Sectors Adapt to Policy Reform," ERS, November 2009.

[59] According to WTO classifications, amber box programs are the most market-distorting type of programs and thus are subject to strict aggregate annual spending limits. The United States has committed to a spending limit of $19.1 billion for amber box outlays. For more information, see CRS Report R45305, *Agriculture in the WTO: Rules and Limits on U.S. Domestic Support*, by Randy Schnepf.

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

Policy Design Considerations

When eligibility requirements or payment limits are changed, economically rational producers are likely to alter their behavior to make adjustments to optimize 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;
- 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 benefits;
- a change in crop choices, as agronomic and marketing opportunities allow, to favor a crop with an expanded limit (e.g., peanuts) over crops with more restricted program payment opportunities; or
- a change in land use, such as instead of farming the same acreage, renting out or selling some land to farmers who 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 mitigate some potential distortions to producer behavior. An example of such a per-unit payment limit is the 85% payment reduction factor applied to base acres[61] receiving payments under either the PLC or ARC programs. The reduction factor is applied equally across all program payments irrespective of crop choice, farm size, AGI, or total value of payments. Some economists contend that 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.[62]

AGI Concerns: On- versus Off-farm Income

The 2018 farm bill retained the $900,000 AGI limit established under the 2014 farm bill. This AGI limit applies to all farm income whether earned on the farm or off. Under the 2008 farm bill, the AGI limit was divided into two components: a $500,000 AGI limit for farm-earned income and a $750,000 AGI cap on nonfarm earned income.

Analysis by USDA (2016) found that fewer farms are affected by the single AGI cap ($900,000) compared with the multiple farm ($500,000) and nonfarm ($750,000) AGI caps of the 2008 farm bill.[63] 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 total AGI in excess of $1 million. Thus, it is likely that consolidating the separate AGI farm and nonfarm 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 waivers under RCPP.

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. The 2018

[61] See footnote 10 for a description of base acres.

[62] Zulauf, "Farm Payment Limits."

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

farm bill maintains this emphasis on crop insurance as the foundational farm safety net program. During the eight-year period of 2011-2018, federal crop insurance premium subsidies averaged $6.4 billion annually. Extending the AGI cap to crop insurance subsidies was considered during both the 2014 and 2018 farm bill debates. However, concerns were raised that the elimination of subsidies for higher-income participants could affect overall participation in crop insurance and damage the soundness of the entire program. However, USDA has estimated 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 subsidies as well as to farm program payments.[64]

[64] Durst and Williams, "Farm Bill Income Cap."

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.	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.
Agriculture 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); $125,000 (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 countercyclical payments (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. Disaster payment limit of $125,000 for ELAP, LFP, and LIP combined. Separate disaster payment limit of $125,000 each for TAP and NAP.	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]
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.
FY2016 Consolidated Appropriations Act (P.L. 114-113), Section 740	No limit on MAL program benefits under commodity certificate exchanges.	FY2016 appropriation restores commodity certificates for MAL program.
Agricultural Improvement Act of 2018 (P.L. 115-334), Section 1703	$125,000 for combined PLC and ARC. No limit on any MAL program benefits; effective in 2019. Separate disaster payment limit of $125,000 each for LFP and NAP. No payment limit for ELAP, LIP, and TAP.	MAL program benefits are removed from inclusion under individual payment limits. They remain subject to AGI criteria. The individual payment limit of $125,000 applies only to combined payments under ARC and PLC programs.

Source: Compiled by CRS from legislation listed in the notes below and from 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*, by Randy Schnepf.

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 USDA Office of the Chief Economist.

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.

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