

Actively Engaged In Undermining Congressional Intent

The Department of Agriculture recently announced changes to how individuals can qualify for many farm income subsidy programs authorized by the 2018 Farm Bill ([P.L. 115-334](#)). While this [rule](#) implements a number of costly expansions to farm subsidy programs, it also appears to narrow the broad “active management” loophole many operations exploit to increase their federal subsidies. By specifying what a “significant contribution” of management is, this rule should be an important step in a decades-long Congressional effort to close farm program payment loopholes.

The effect of the change may be limited, however, because sophisticated farm operations have proven adept at avoiding Congressional efforts to stop bad actors from farming federal programs instead of the soil. Even if USDA puts teeth behind its enforcement efforts, the changes only apply to certain Farm Bill-authorized programs. In recent years federal subsidies delivered through federally subsidized crop insurance and ad hoc disaster programs dwarf the costs of Farm Bill programs. In these programs the Secretary of Agriculture Sonny Perdue has chosen to ignore the will of Congress and broaden eligibility requirements while arbitrarily setting payment limits. Congress should follow this rule and continue its efforts to ensure all programs constituting the farm safety net are limited to actual farmers with actual needs.

Farm Subsidies and Eligibility

Individuals and corporations seeking federal financial assistance for farming and ranching are subject to both eligibility requirements and, for many programs, annual subsidy limits. Farm bill commodity programs have included payment limits since the [1970 farm bill](#). The first attempt to narrow farm program participation to actual farmers occurred in the [Omnibus Budget Reconciliation Act of 1987](#). In this bill farm program participants were required to be “[actively engaged](#)” in farming, that is providing labor and/or management, to qualify for income subsidies. The intent was to exclude passive investors or other “partners” that provided little to no labor/management contribution. Subsequently Congress has modified eligibility and payment limits as part of every omnibus farm bill legislation, the most recent being the Agriculture Improvement Act of 2018.

After elements of Congressional and Agriculture committee leadership [conspired to prevent even debate](#) of the most substantive subsidy reform amendments, the 2018 farm bill continued the basic program structure established in the 2014 farm bill. Eligibility for farm bill programs and the total potential subsidy depended on the type of individual or operation seeking assistance. “Family farms,” which are operations run by one individual or multiple adult family members, [constitute nearly 98 percent](#) of all farm operations and face no limit to the number of individuals that can qualify for subsidies and their own individual payment limit. Farm businesses structured as General Partnerships or Joint Operations, in

Program	Payment Limit
Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC)	\$125,000 per crop year \$125,000 additional per crop year for peanuts
Marketing Assistance Loans and Loan Deficiency Payments	Unlimited
Noninsured Crop Disaster Assistance Program	Catastrophic coverage - \$125,000 per crop year Buy-up coverage - \$300,000 per crop year
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

which multiple people farm together, can receive a separate payment limit for each individual member that satisfies the “[actively engaged](#)” test.

Actively Engaged in Farming Test

As implemented after the 2014 Farm Bill, the actively engaged in farming test was [one of the biggest loopholes](#) used for maximizing federal subsidies. Proof of active engagement could be satisfied by providing either Labor (working on the farm), Active Personal Management, or some combination of the two. It is in this “active personal management” that contained the loophole. USDA defined management as anything from securing financing and marketing crops to “supervision of activities” and even more broadly “any other management function reasonably necessary.” With no specificity on the amount of time an individual had to spend doing “management” to qualify, some operations distributed minimal duties amongst numerous people to maximize federal subsidies. [In a 2015 review of farm programs](#), the Government Accountability Office (GAO) found more than 23 percent of members of General Partnerships qualified for subsidies based on management only. The operation receiving the most funds, \$3.7 million, consisted of 34 members, 25 of which provided “management only.”

Putting the “Active” into Actively Engaged

For the first time since the Actively Engaged test was initiated, USDA’s final rule appears to require those seeking subsidies as “active” managers to be substantively involved in actually managing the operation. To qualify as active management the individual must contribute at least 500 hours, or 25 percent of the annual management hours required for the farm.

This application by the USDA is more in line with Congressional intent. In debating the 2014 farm bill, both the House and the Senate adopted reforms to reduce the number of individuals claiming subsidy eligibility by providing “management” only. [Conference negotiators, however, replaced](#) this farm subsidy work requirement with a directive for the Secretary of Agriculture to determine how to reduce the number of people receiving subsidies for “active management” only. Secretary Vilsack implemented the provision by first excluding all “family” farms, nearly 98 percent of all farms, from the new rule. Operations consisting of non-family members seeking their own separate payment limit were limited to no more than three non-family farm managers. One simply because and additional managers if the operation was “complex” and or if it was “large.” Family members involved in these joint operations face no limit on the number of individuals that can qualify for subsidies. But even with this minimal management requirement the USDA may be able to exclude some individuals that have structured their operations to harvest subsidies from federal farm programs.

Common Sense Limits on Federal Farm Subsidies

While farm program eligibility requirements and payment limits continue to enjoy broad bipartisan support, elements in Congress, and agricultural special interests, seek to undermine these efforts. Since 2018, these elements have utilized annual “emergency” spending bills to direct billions in additional farm subsidies to favored constituents while permanently changing farm program payment limits. In addition, the Secretary of Agriculture has used his authority under the Commodity Credit Corporation Charter Act to respond to the damages inflicted by the administration’s trade war by directing even more farm income subsidies outside of existing payment limits.

Stacking Farm Subsidy Limits Outside of the Farm Bill Process

- **[Bipartisan Budget Act of 2018](#) (Congress – February 2018)**
 - Eliminated \$125,000 payment limit for Farm Bill disaster programs (Livestock Indemnity Program, Tree Assistance Program, Emergency Assistance for Livestock, Honeybees, and Farm Raised Fish Program)
- **[2017 Wildfires and Hurricanes Indemnity Program](#) (USDA – July 2018)**
 - Increased payment limit to \$900,000 if 75% of income came from farming and ranching
 - Maintained \$125,000 payment limit if farm income constituted less than 75% of income
- **[2018 Market Facilitation Program](#) (USDA – July 2018)**
 - Payment limit of \$125,000 for all crops; must have AGI of less than \$900,000*
 - Payment limit of \$125,000 for all livestock; must have AGI of less than \$900,000*
 - *AGI limit retroactively eliminated by Congress in 2019 Disaster Supplemental (P.L. 116-20, June 2019)
- **[2019 Market Facilitation Program](#) (USDA – July 2019)**
 - Payment limit of \$250,000 combined for all non-specialty crops
 - Payment limit of \$250,000 combined for all livestock
 - Payment limit of \$250,000 combined for all specialty crops
 - Payment limit of \$500,000 TOTAL across all three categories
- **[Wildfire and Hurricane Indemnity Program Plus](#) (USDA – September 2019)**
 - Top Up payments for prevented plant claims under crop insurance (no limit)
 - Maintained payment limit of \$125,000 if farm income constituted less than 75% of income = combined total for payments under 2018, 2019, and 2020 crop years.
 - Increased payment limit to \$250,000 per 2018, 2019, and 2020 crop years (\$500,000 total) if 75% of income came from farming and ranching.
- **[Coronavirus Food Assistance Program](#) (Congress and USDA – May 2020)**
 - Individual payment limit of \$250,000
 - Corporation payment limit of \$250,000 per shareholder up to 3 shareholders (\$750,000)

Despite professing a desire to close loopholes, as articulated in every [presidential budget request from the Trump Administration](#), when given the opportunity to do so, Secretary Perdue has chosen not to. This choice has enabled [certain favored farm businesses](#) to secure federal subsidies totaling in the [millions of dollars](#), while [many small to medium sized businesses](#) Congress intended to assist, continue to be overlooked by the USDA.

Payment limits on farm subsidy programs have been included in every farm bill since 1970. Clearly Congressional intent is to focus farm safety net programs on actual farmers. USDA's rule providing some specificity to what constitutes "active" management in a farm operation is a step in the right direction. Both Congress and the Secretary bear responsibility in working to further close farm program payment loopholes so the farm safety is focused on actual farmers with actual needs.

*For more information contact, Joshua Sewell, 202.546.8500 x116
josh@taxpayer.net*