# Commodities[1]

## INTRODUCTION

This background memo introduces federal programs that support production agriculture through the farm bill's Commodities Title. Section I provides a very brief history of commodities programs. Section II introduces the main programs in the 2014 Farm Bill's Commodities Title, including Agricultural Risk Coverage, Price Loss Coverage, the dairy and sugar programs, and catastrophic disaster assistance programs. Finally, Section III identifies key policy issues that may be addressed through Title I reform.

## I. HISTORY

The Federal Government has long intervened in the agricultural sector. A series of homesteading acts in the second half of the nineteenth century ceded 10 percent of American land to pioneers in exchange for settling and farming the land.[2] However, the first farm bill was not established until the Great Depression. Widespread market collapse caused prices to fall, including for food. The early farm bill addressed depressed prices by providing incentives for individual producers to avoid collective overproduction, thereby seeking to stabilize the marketplace. The bill provided subsidies to producers and allowed the government to buy excess grain from producers. The basic structure of commodity supports remained the same for sixty years.

Then, the 1996 Farm Bill (the "Freedom to Farm Act," as it came to be known) attempted to return free market principles to the agricultural sector. Freedom to Farm removed price supports and rolled back the government's role in grain price stabilization. As prices sharply declined over the following years, Congress backtracked and reintroduced direct support.[3] The new direct subsidy payments were based on producers' historical crop yields and acreage alone, and did not fluctuate based on market prices or farm revenue. In addition, counter-cyclical payments created a price floor for specific commodities when the "effective," or market, price fell below a target price.[4]

While these payment systems were popular with many landowners, they were criticized across the political spectrum.[5] Congress again eliminated direct payments in the 2014 farm bill. In their place, the 2014 farm bill required commodity producers to choose between two new programs, Price Loss Coverage

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[2] *The Homestead Act of 1862*, NAT'L ARCHIVES (Oct. 3, 2016), http://www.archives.gov/education/lessons/homestead-act (last visited Sept. 16, 2017).

[3] Kathleen Masterson, *The Farm Bill: From Charitable Start To Prime Budget Target*, NAT'L PUB. RADIO: THE SALT (Sept. 26, 2011), http://www.npr.org/sections/thesalt/2011/09/26/140802243/the-farm-bill-from-charitable-start-to-prime-budget-target.

[4] Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Direct and Counter-Cyclical Payment Program (Jan. 2013), https://www.fsa.usda.gov/Internet/FSA_File/dcp_fact_sheet_01242013.pdf.

[5] *The Case for Farm Subsidy Reform*, ENVTL. WORKING GRP., http://www.ewg.org/farming-and-the-environment/the-case-for-farm-subsidy-reform (last visited Sept. 16, 2017); *The Scariest Thing You'll Read All Day*, NAT'L SUSTAINABLE AGRIC. COAL.: BLOG (Oct. 31, 2012), http://sustainableagriculture.net/blog/the-scariest-thing-youll-read-all-day; Richard Mertens, *Senate's new farm bill will waste billions on subsidies, critics say*, CHRISTIAN SCIENCE MONITOR (June 10, 2013), http://www.csmonitor.com/USA/Politics/2013/0610/Senate-s-new-farm-bill-will-waste-billions-on-subsidies-critics-say; Brian M. Riedl, *Farm Subsidies Ripe for Reform*, HERITAGE FOUND. (Mar. 29, 2011), http://www.heritage.org/research/commentary/2011/03/farm-subsidies-ripe-for-reform; *Farm Subsidies Top $28 Billion*, TAXPAYERS FOR COMMON SENSE (Jan 09, 2001), http://www.taxpayer.net/library/weekly-wastebasket/article/farm-subsidies-top-28-billion.

(PLC) or Agriculture Risk Coverage (ARC), explained below, while the anticipated budgetary savings were used to expand the federal crop insurance program. Notably, in response to a settlement with Brazil over US subsidies for upland cotton, cotton lost eligibility in Subtitle A programs (it remains eligible for Marketing Assistance Loans under Subtitle B and Stacked Income Protection under Title XI).[6]

## II. THE 2014 FARM BILL

Title I of the U.S. farm bill traditionally contained the bulk of agricultural subsidies and direct payments made to producers, and remains a key driver of both agricultural support and the political will to deliver timely farm bill reauthorizations. The most significant programs in Title I, contained in Subtitles A and B, directly support producers of commodity crops. Other sections of Title I authorize Sugar Programs (Subtitle C), Dairy Programs (Subtitle D), and Supplemental Agricultural Disaster Assistance (Subtitle E). When the 2014 farm bill became law, the programs were originally projected to cost $23.5 billion over the five years from 2014-2018; updated projections from the Congressional Budget Office now anticipate $38.5 billion in outlays over the same period.[7]

### A. *Subtitle A: Farm Commodity Programs*

Subtitle A contains the largest programs in Title I and supports producers growing enumerated commodity crops. The following crops are eligible for Subtitle A programs: wheat, corn, grain sorghum, barley, oats, long grain rice, medium grain rice, soybeans, other oilseeds, peanuts, dry peas, lentils, small chickpeas, and large chickpeas.[8] These stand in contrast to more perishable fruit and vegetable "specialty" crops.[9] During the 2015 crop year, 1.7 million farms that enrolled in Subtitle A programs received payments.[10] To be eligible for Subtitle A program payments, producers must also meet conservation and wetland protection requirements known as "conservation compliance."

#### i. Definitions

*Base acres* are a farm's crop-specific acreage of wheat, feed grains, rice, oilseeds, pulse crops, or peanuts eligible for program payments. Confusingly, base acres do not necessarily align with current crop production but are determined based on a historical 4-year average of harvest, grazing, haying, silage, or other similar purposes.[11] Due to the removal of upland cotton from Subtitle A, base acres previously designated for upland cotton are renamed "generic" base acres and are only eligible for Subtitle A program payments to the extent they are planted in (non-cotton) eligible commodities.[12]

Eligible participants are required to provide "significant contributions" to the farming operation in order to be considered "**actively engaged in farming**."[13] ARC and PLC have an annual **payment limitation** of

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[6] *See generally*, RANDY SCHNEPF, CONG. RES. SERV., R43817, 2014 FARM BILL PROVISIONS AND WTO COMPLIANCE (2015), http://nationalaglawcenter.org/wp-content/uploads//assets/crs/R43817.pdf
[7] CONG. RES. SERV., THE 2014 FARM BILL (AGRICULTURAL ACT OF 2014) 2 (2016), http://nationalaglawcenter.org/wp-content/uploads//assets/crs/IF10187.pdf.
[8] H.R. 2642, PART II—COMMODITY POLICY, SEC. 1111. DEFINITIONS, (6).
[9] *What is a Specialty Crop?,* AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., http://www.ams.usda.gov/services/grants/scbgp/specialty-crop (last visited Sept. 16, 2017).
[10] U.S. Dep't of Agric., Release No. 0214.16, USDA Issues Safety-Net Payments to Farmers in Response to 2015 Market Downturn (Oct. 4, 2016), http://www.usda.gov/wps/portal/usda/usdahome?contentid=2016/10/0214.xml.
[11] 7 U.S.C., Ch. 106, Subch. I, § 7911(a)(A).
[12] FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., ARC/PLC DEFINITIONS, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/arc-plc/pdf/definitions_arc_plc.pdf (last visited Sept. 17, 2017).
[13] 7 U.S.C. § 1400.201(b).

$125,000 for each individual actively engaged in farming. Spouses may collect an additional $125,000.[14] In addition, producers whose 3-year average Adjusted Gross Income (AGI) exceeds $900,000 (farm and non-farm combined) lose eligibility for program payments.[15]

ii. Price Loss Coverage

The ***Price Loss Coverage*** program makes payments to eligible producers when average market prices for a commodity fall below a statutory "reference price."[16] If the national average marketing year price[17] for the crop drops below that reference price, a producer with base acres specific to that crop receives a payment based on the difference. The payment amount is the payment rate *times* 85 percent of the producer's base acres in the commodity *times* the payment yield, which is calculated as 90 percent of the producer's own yield on acres planted to the commodity between 2008 and 2012.[18]

Since "reference prices" act as the "triggering" prices for PLC payments, their statutory levels determine how often and how generously producers will receive payments under a PLC election. In the 2014 farm bill, commodity groups successfully lobbied for across-the-board increases in reference prices relative to analogous 2008 farm bill payment trigger levels (PLC did not exist in 2008, but a similar target price program did).[19] For example, payment trigger levels rose 51 percent for wheat, meaning that producers in the PLC program receive payments when prices fall below $5.50 per bushel compared with a trigger level of $3.65 per bushel under the 2008 act.[20] Trigger prices rose 57 percent for corn, 51 percent for soybeans, 73 percent for sorghum and 107 percent for barley.[21]

iii. Agriculture Risk Coverage

The ***Agriculture Risk Coverage*** program makes payments when a producer's revenue (price times yield) falls below 86 percent of historical levels.[22] ARC thus provides "shallow loss" protection for losses not otherwise covered under a producer's crop insurance policies. If a producer experiences a 20 percent revenue loss relative to historical benchmarks, and her crop insurance carries a 25 percent deductible, her crop insurance policy would pay nothing, but Agriculture Risk Coverage would make a payment. ARC payments are capped at 10 percent of the benchmark revenue. In this example, the overall effect is that the producer bears the first 14 percent of revenue losses relative to the benchmark, ARC covers losses from 15-25 percent, and crop insurance and marketing assistance loans cover deeper losses.[23]

Both individual (ARC-IC) and county-based (ARC-CO) options exist. In the county option, benchmark crop revenue is calculated using 5-year "Olympic" averages of county yields and national prices, where the highest and lowest values are excluded. In contrast, the individual option is based on an individual

[14] *Payment Limitations*, FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., https://www.fsa.usda.gov/programs-and-services/payment-eligibility/pay-limitations/index (last visited Sept. 17, 2017).
[15] Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Average Adjusted Gross Income (AGI) Certification and Verification, 2014-2018 (Mar. 2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/AGI_Fact_Sheet.pdf.
[16] 7 U.S.C. § 9011(18).
[17] "Average market price means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses." 7 C.F.R. § 760.802.
[18] 7 U.S.C., Ch. 115, Subch. I, § 9016(d)(3) & Ch. 106, Subch. I, § 791(f).
[19] DENNIS A. SHIELDS, CONG. RES. SERV., R43448, FARM COMMODITY PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) 6 (2014), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43448.pdf.
[20] *Id.* at 7.
[21] *Id.*
[22] *Id.* at 9.
[23] *Id.*

producer's historical revenue. ARC-IC payments are calculated from only 65 percent of a producer's base acres, whereas ARC-CO and PLC payments are made on 85 percent of the base acres for each individual crop base.[24] USDA's Farm Service Agency (FSA) oversees the ARC Program. If a farm chooses either ARC option, no covered commodity is eligible for the Supplemental Coverage Option (SCO), a new shallow-loss insurance program in Title XI.

### B. *Subtitle B: Nonrecourse Marketing Assistance Loans (MAL)*

The Marketing Assistance Loan Program provides both a guaranteed price floor and a short-term financing vehicle for commodity crops, plus wool, cotton, and honey.[25] MAL takes the form of a post-harvest nonrecourse commodity loan program. Using the crop as collateral, FSA originates a loan at a specified "per-unit" loan rate. Prior to loan maturity, if the market price is at or above the loan rate, the producer sells her crop on the market and repays the loan principal and interest. In contrast, when market prices remain below the loan rate, the producer may forfeit the crop to the Commodity Credit Corporation (CCC) and keep the loan payment.

"Nonrecourse" means that the crop itself is the only asset securing the loan and the government may not seek additional payment, which is the mechanism that guarantees the price floor. In order to avoid a glut of CCC-owned forfeitures, producers do not actually need to turn over their crop to CCC.[26] Instead, producers may sell the crop on the market, repay the loan at the prevailing market price and keep the difference as a "marketing loan gain."[27] Producers who did not take out an MAL are entitled to a "loan deficiency payment" equal to the marketing loan gain.

The same payment limitations and income caps that apply to Subtitle A programs also apply to MAL, meaning combined payments from ARC, PLC, and MAL cannot exceed $125,000 per eligible recipient per year.[28] To be eligible for MAL, producers must also meet conservation and wetland protection requirements known as "conservation compliance."[29]

### C. *Subtitle C: Sugar Program*

The U.S. sugar program originates in the 1981 Agriculture and Food Act, which tasked the Secretary of Agriculture with providing minimum price support for cane and beet sugar.[30] The American Sugar Alliance, a lobbying group that represents the interests of the sugar industry, claims that the program is necessary to protect American sugar producers from unfair competition with highly subsidized foreign sugar.[31]

The USDA is required to administer the program at no cost to the federal government.[32] USDA accomplishes this by restricting the domestic sugar supply available for human consumption through both

[24] Andy Swenson, *When to Consider the ARC-IC Farm Bill Option*, N.D. ST. U. AGRIC. COMMC'N (Jan. 26, 2015), http://www.ag.ndsu.edu/news/newsreleases/2015/jan-26-2015/when-to-consider-the-arc-ic-farm-bill-option.
[25] 7 U.S.C. 7, Ch. 115, Subch. II, § 9031(a).
[26] DENNIS A. SHIELDS, CONG. RES. SERV., R43758, FARM SAFETY NET PROGRAMS: BACKGROUND AND ISSUES 4 (2015), http://nationalaglawcenter.org/wp-content/uploads//assets/crs/R43758.pdf.
[27] SHIELDS, *supra* note 19, at 11.
[28] Joseph Cooper, *Crop Commodity Program Provisions-Title I*, ECON. RES. SERV., U.S. DEP'T OF AGRIC., http://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/crop-commodity-program-provisions-title-i.aspx (last updated Nov. 22, 2016).
[29] 7 U.S.C., Ch. 115, Subch. II, § 9031(d).
[30] MARK A. MCMINIMY, CONG. RES. SERV., R43998, U.S. SUGAR PROGRAM FUNDAMENTALS 1 (2016), https://fas.org/sgp/crs/misc/R43998.pdf.
[31] *Id.* at 14.
[32] *Id.* at 1.

domestic restrictions on sales (but not production) and also through quota restrictions. The underlying purpose for restricting supply is to raise the price of sugar. If sugar prices fall below a certain level, outlays are triggered, as seen in 2012–13, where prices fell and federal spending totaled $259 million as a result.[33]

**Price Support Loans** lie at the core of the U.S. sugar program. USDA implements the price support loans by lending short term and at low cost to sugar refiners.[34] These loans are given at the statutory *marketing loan rate* (18.75¢/lb for cane sugar and 24.09¢/lb for beet sugar) with the sugar itself serving as collateral. Similar to MAL, described above, if prices fall below a statutory level, refiners are given the option of defaulting and handing over the sugar to the USDA instead of paying the loan. This price, the "effective support level," is defined as the price at which it no longer makes sense for refiners to default.[35] The effective support level prices are slightly above the loan rate, as the market price of sugar must be high enough to cover storage, interest, and transportation costs in order to disincentivize defaulting. Sugar prices remained above the effective support level until mid-2013, when USDA was forced to sell a large quantity of forfeited sugar at a huge loss under the Feedstock Flexibility Program (discussed below).[36]

A second tool at USDA's disposal for controlling sugar supply, and by extension prices, are **Marketing Allotments**. Through the Commodity Credit Corporation, which is run by the USDA, domestic sales are limited to 85 percent of domestic demand for human consumption.[37] This allotment intends to ensure that the sum of domestic sales and imports do not depress market prices so much as to trigger forfeitures. Recently, domestic production has consistently fallen short of the allotment level. In this case, the USDA is authorized to reallot these shortfalls to imports.

Because domestic production has lately been under the allotment maximum, **Import Quotas** are considered vital for preventing price dips below the effective support level. WTO commitments obligate the U.S. to let a minimum of 1.256 million tons of sugar enter domestic markets.[38] These commitments are called the *tariff-rate quota*. The USDA strategy with respect to controlling supply is to set the tariff-rate quota at the minimum allowable level as the default.[39] Then, if the domestic allotment level falls short of the required amount, the USDA temporarily adjusts the quota to account for the difference (it resets to the minimum default amount the following year). This strategy ultimately failed to manage Mexico's import quantity, which until recently could not be restricted as a result of the North American Free Trade Agreement (NAFTA). The Mexican imports suffered from a high degree of variability, and it is this variability that caused the price depression that triggered forfeitures in 2013.

The inability to manage Mexican exports ended in 2014 when Mexico and the United States negotiated a suspension of certain rights under NAFTA. Mexico was induced to negotiate because of two parallel investigations, on countervailing duties and anti-dumping grounds, initiated by the International Trade Commission and the International Trade Administration.[40] These investigations arose in response to a petition from the American Sugar Coalition. Mexico agreed to concede certain NAFTA privileges in return for America ending its investigation. The concessions included a cap on maximum imports and a

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[33] *Id.* at 11.
[34] MARK A. MCMINIMY, CONG. RES. SERV., R42535, SUGAR PROGRAM: THE BASICS 1 (2014), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42535.pdf.
[35] *Id.*
[36] *Id.* at 3.
[37] MCMINIMY, *supra* note 30, at 6.
[38] MCMINIMY, *supra* note 34, at 7.
[39] *Id.* at 8.
[40] MCMINIMY, *supra* note 30, at 10.

minimum price guarantee, in order to prevent Mexican sugar from putting downward pressure on American domestic prices. As of mid-2017, sugar is once again the subject of negotiations between the U.S. and Mexico as the current administration seeks to renegotiate key terms of NAFTA.

Under current policy, the USDA has two fallback mechanisms to counter low prices if the initial supply controls prove to be inadequate to keep prices above the effective support level. First the USDA runs a program that purchases sugar from processors and sells it off to brokers and refiners in return for the brokers and refiners relinquishing their import rights.[41] The second program is the Feedstock Flexibility Program, through which USDA purchases sugar and sells it to bioenergy companies that convert it into ethanol.[42]

*D. Subtitle D: Dairy Programs*

The farm bill has supported dairy[43] producers since its inception, although the nature of these supports has changed significantly over time. Since 1949, the Milk Price Support Program set a price floor under all milk and dairy products. The floor directed the USDA to purchase dairy products when price for milk fell below a set price.[44] The 2014 Farm Bill shifted away from these price supports, instead offering the bulk of assistance through a new producer margin protection program.

The **Dairy Margin Protection Program (DMPP)** provides both catastrophic insurance and price protection. Dairy producers receive catastrophic coverage protections with no cost to the producer other than an annual $100 administrative fee.[45] The DMPP uses a formula for dairy margin to calculate payouts. The dairy margin is calculated by subtracting average feed costs from average dairy prices, with payments triggered relative to this margin.[46] Catastrophic coverage provides payments to participating producers when the national dairy production margin is less than a set price, currently $4.00 per one hundred pounds or "hundredweight" (cwt)).[47]

The DMPP also offers "buy-up" coverage that makes payments when margins are low, but not catastrophic: between $4.00 and $8.00 per hundredweight. To participate in buy-up coverage, a producer must pay a premium that varies with the level of protection the producer elects.[48] DMPP also provides protection through the Dairy Product Donation Program. This program is available during periods of sustained low operating margins for producers. If margins fall below $4 per hundredweight for two consecutive months, USDA is required to purchase dairy products for three consecutive months, or until

[41] *Id*. at 13-14.
[42] *Id*.
[43] Dairy is split into different classes based on quality. The price differences for these classes vary based on actual product prices and sales. Class I milk is used for fluid, or beverage, milk products; Class II refers to milk used for 'soft' manufactured products such as sour cream, cottage cheese, ice cream, and yogurt; Class III refers to milk used for making hard cheeses; Class IV milk is used to make butter and dry dairy products such as nonfat dry milk. *See* 7 U.S.C. 1621 & 608c; AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., CLS-0817, ANNOUNCEMENT OF CLASS AND COMPONENT PRICES (Aug. 30, 2017), http https://www.ams.usda.gov/mnreports/dymclassprices.pdf; *How Farm Milk is Priced*, INT'L DAIRY FOODS ASSOC. (July 2014), http://www.idfa.org/news-views/media-kits/milk/how-farm-milk-is-priced.
[44] University News Release, *Dairy Policy Changes in the 2014 Farm Bill*, AGWEB (Apr. 1, 2014), http://www.agweb.com/article/dairy_policy_changes_in_the_2014_farm_bill_naa_university_news_release.
[45] 7 U.S.C., Ch. 115, Subch. III, Part A, § 9054.
[46] 7 U.S.C., Ch. 115, Subch. III, Part A, § 9052.
[47] 7 U.S.C., Ch. 115, Subch. III, Part A, § 9056.
[48] *Dairy Margin Protection Program,* FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., http://www.fsa.usda.gov/programs-and-services/Dairy-MPP/index (last visited Sept. 17, 2017).

margins rebound above $4.[49] These products are donated to food banks and other federal programs and cannot be resold in the open market.

While the price of dairy responds to market forces, these are strongly influenced by federal and state dairy programs. The **Dairy Forward Pricing Program** allows producers to voluntarily enter into forward price contracts (an agreement to buy or to sell milk at a future date at a price agreed upon today) with handlers for pooled dairy for use in lower-grade products.[50] This program allows regulated handlers to pay producers in accordance with the terms of a forward contract instead of paying the minimum federal order blend price for pooled milk.[51]

The **Dairy Research and Promotion Program**, commonly called the "Dairy Checkoff Program," is a national program for dairy product promotion[52]. It funds research, nutrition education, and advertising and is funded by dairy producers, who pay 15¢ per hundredweight of milk (7.5¢ for imported diary).[53]

Finally, the **Dairy Indemnity Payment Program**[54] (DIPP) makes payments to dairy producers if a public regulatory agency directs producers to remove their raw milk from the commercial market because it has been contaminated by pesticides, nuclear radiation or fallout, or toxic substances and chemical residues other than pesticides.[55]

*E. Subtitle E: Supplemental Agricultural Disaster Assistance*

Subtitle E contains four programs that provide disaster support to producers, ranchers, and arborists. They are the Livestock Indemnity Program (LIP), Livestock Forage Disaster Program (LFP), Emergency Assistance for Livestock, Honeybees & Farm-Raised Catfish (ELAP), and the Tree Assistance Program (TAP). Combined, these programs paid out three billion dollars in fiscal year 2014.[56]

The ***Livestock Indemnity Program*** offers payments to livestock producers for deaths caused by bad weather when death rates exceed that of normal mortality. LIP also covers livestock producers for attacks by animals reintroduced into the wild, such as wolves and other predators, by the federal government or protected by federal law.[57] The program provides payments equal to 75 percent of the livestock's market value on the day before the date of death.[58]

The ***Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program*** (ELAP) provides emergency assistance to eligible producers for losses due to eligible weather or other events, like

[49] 7 U.S.C., Ch. 115, Subch. III, Part B, § 9071.
[50] 7 U.S.C., Ch. 115, Subch. IV, § 8772.
[51] *Dairy Forward Contracting*, AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., http://www.ams.usda.gov/rules-regulations/dfc (last visited Sept. 17, 2017).
[52] 7 U.S.C., Ch. 76, Subch. I, § 4501.
[53] *National Dairy Promotion & Research Board*, AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., http://www.ams.usda.gov/rules-regulations/research-promotion/dairy (last visited Sept. 17, 2017).
[54] 7 U.S.C., Subtitle B, Ch. VII, Subch. D, Pt. 760, Subpt. A, § 760.2.
[55] Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Dairy Indemnity Payment Program (January 2005) https://www.fsa.usda.gov/Internet/FSA_File/dipp.pdf.
[56] CONG. BUDGET OFF., CBO'S MARCH 2015 BASELINE FOR FARM PROGRAMS (Mar. 9, 2015) https://www.cbo.gov/sites/default/files/recurringdata/51317-2015-03-usda.pdf.
[57] 7 U.S.C., Subtit. B, Ch. XIV, Subch. B, Pt. 1416, Subpt. C, § 1416.205.
[58] FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., FACT SHEET: LIVESTOCK INDEMNITY PROGRAM (LIP) (2017), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2017/lip_fact_sheet_march2017.pdf.

blizzards, disease, water shortages, and wildfires that are not covered by other disaster programs.[59] Payments are based off of value of livestock prior to qualifying event.[60]

The ***Livestock Forage Disaster Program*** offers payments help eligible producers with grazing losses. This is triggered when native or improved pastureland with permanent or planted grazing cover is impacted by a disaster, such as a fire.[61] The LFP also provides support for livestock producers on rangeland managed by a federal agency if the producer is prohibited from grazing on the land due to a qualifying fire.[62]

Finally, the ***Tree Assistance Program*** provides financial assistance to qualifying orchardists and nursery tree growers to replant or rehabilitate eligible trees, bushes and vines damaged by natural disasters.[63]

## III. Key Issues

This section surveys some key issues concerning the Commodities Title of the 2014 farm bill that could be addressed in future farm bills. These include the continued existence and expense of direct payments program, the broad definition of "actively engaged" in farming, and the divergent effectiveness of the current commodities programs with respect to different commodity crops.

### A. *The 2014 Farm Bill did not keep its promise to reduce Title I liabilities.*

The 2014 farm bill eliminated direct and other Title I payments, shifting those funds to further subsidize crop insurance premiums. This effort garnered bipartisan support among agricultural state legislators, including Senator Claire McCaskill (D-MO), who called the old direct payment programs "huge gravy for those big operations,"[64] and House Agriculture Committee chairman Frank Lucas (R-OK), who said the reforms would provide "major savings to deficit reduction."[65] Count-cyclical payments (CCP) and Average Crop Revenue Election (ACRE) had cost $47 billion over the ten years prior to the 2014 bill, which put approximately three-fourths of the projected savings from eliminating these programs toward funding the newly-expanded crop insurance and disaster assistance programs.[66] In addition to shifting costs to crop insurance, though, the 2014 farm bill also created two new programs, Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC), which essentially mirror the former CCP and ACRE programs. These were originally projected to cost $27 billion over 10 years,[67] but updated Congressional Budget Office projections now anticipate them to cost $42.6 billion over the coming decade.[68]

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[59] 7 U.S.C., Subtit. B, Ch. XIV, Subch. B, Pt. 1416, Subpt. B, § 1416.104
[60] Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/ELAP%20Fact%20Sheet.pdf.
[61] 7 U.S.C., Subtitle B, Chapter VII, Subchapter D, Part 760, Subpart D, Section 760.305.
[62] Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Livestock Forage Disaster Program (LFP) (2017), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2017/livestock_forage_disaster_program_april2017.pdf.
[63] 7 U.S.C., Ch. 108, § 8203; Farm Serv. Agency, U.S. Dep't of Agric., Fact Sheet: Tree Assistance Program (2015), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2015/tap_fact_sheet_oct_2015.pdf.
[64] Julie Harker, *McCaskill on Farm Bill*, Brownfield Ag News (June 12, 2013) (quoting Senator Claire McCaskill), https://brownfieldagnews.com/news/mccaskill-on-farm-bill/.
[65] Press Release, Lucas Praises House Passage of Farm Bill Conference Report, House Comm. on Agric. (Jan. 29, 2014), https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=1219.
[66] Shields, *supra* note 19, at 5.
[67] Ryan Alexander, *Farming Bigger Losses for Taxpayers*, US News & World Reps. (Mar. 31, 2016), http://www.usnews.com/opinion/economic-intelligence/articles/2016-03-31/farm-bill-costs-are-exploding.
[68] *Id*.

*B. The "actively engaged in farming" requirement is broadly defined.*

To be eligible to participate in either the Price Loss Coverage or Agriculture Risk Coverage programs, applicants must be considered "actively engaged in farming."[69] The current definition of this term includes anyone who provides "significant contributions" to the farming operations,[70] which contributions must be of capital, equipment, land, personal labor, or active personal management.[71] In practice, this definition is broadly construed and often encompasses individuals and entities with little to no direct involvement in a farming operation. This allows large farming operations to circumvent payment limits and collect disproportionate subsidies from Title I programs.[72] In 2014, the House- and Senate-passed versions of the farm bill included an amendment by Senator Chuck Grassley (R-IA) that would have closed this loophole. This amendment was removed from the final text in conference committee.[73] Senator Grassley introduced the Farm Payment Loophole Elimination Act of 2016 to address this loophole, but it has since died in committee.[74]

As the farm bill is reauthorized, Congress is likely to consider whether to require USDA to clarify the regulatory definition of "significant contribution" to farming to more accurately reflect the natural meaning of the phrase. This would limit program eligibility to producers and their immediate family members who actually participate in the cultivation or operations of a farm and eliminate the loophole for multiple payments.

*C. Current commodities programs serve only some commodities markets well.*

By its own metric of stabilizing agricultural markets, the commodities programs established by the 2014 Farm Bill have only been partially successful. Most corn and soybean producers have received large payments, for instance, as prices have declined from historic highs since the farm bill's passage, triggering PLC and ARC payouts. The sugar program maintains relatively high prices for the benefit of domestic producers. Dairy producers, however, have suffered under the current farm bill. Cotton, following the Brazil WTO case and alone among commodity crops, has lost Subtitle A program coverage entirely and now receives both more expensive and risker insurance protections under the new Stacked Income Protection Program.[75] As Congress writes a new farm bill, expect interests representing different commodities and geographical reasons to make the case that their constituency requires stronger program support.

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[69] 7 U.S.C. § 1400.201(b).
[70] *Id.*
[71] SHIELDS, *supra* note 26.
[72] ROBERT SCHNEPF, CONG. RES. SERV., R44656, USDA'S ACTIVELY ENGAGED IN FARMING (AEF) REQUIREMENT (2016), https://fas.org/sgp/crs/misc/R44656.pdf.
[73] Forrest Laws, *Iowa's Sen. Grassley authors new bill limiting 'non-family' managers*, DELTA FARMPRESS (Apr. 8, 2016), http://www.deltafarmpress.com/cotton/iowas-sen-grassley-authors-new-bill-limiting-non-family-managers.
[74] Farm Payment Loophole Elimination Act, S. 2743, 114th Cong. (2016).
[75] RANDY SCHNEPF, CONG. RES. SERV., REPORT NO. R43336, THE WTO BRAZIL-U.S. COTTON CASE (2014), https://www.everycrsreport.com/files/20141001_R43336_5650c1f7d5a184440e35b007153c04c506829b19.pdf.