Crop Insurance[1]

INTRODUCTION

This backgrounder introduces federal programs that support production agriculture through the farm bill's Crop Insurance Title (Title XI of the 2018 Farm Bill). Section I surveys the history of the farm bill's crop insurance policy. Section II provides an overview of the current support for federal crop insurance in the 2018 Farm Bill. Finally, Section III discussed some key issues that may inform debate as Congress moves towards the next iteration of the farm bill in 2023.[2]

I. HISTORY

The federal government's role in crop insurance began in 1938 with the creation of the Federal Crop Insurance Corporation, which was a response to major crop losses in the Dust Bowl.[3] Since that time, federal crop insurance has grown from catastrophic protection to a multi-faceted mechanism deployed as part of a broader farm "safety net." Now authorized and shaped by the farm bill's Crop Insurance Title, federal crop insurance is deeply embedded in the nation's agricultural system. This section provides a history of the evolution of federal crop insurance in our country from the early twentieth century to the present

A. After the Great Depression

Congress established the Federal Crop Insurance Corporation (FCIC) in 1938 to "insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under one or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned."[4] The initial experimental program was limited to a few commodity crops in select production areas.[5] The pilot program sought to address the private insurance industry's unwillingness to provide affordable disaster protection to the agriculture sector.[6] The idea of agricultural risk shifting to the public sector was globally unprecedented at the time.[7] The push for federal crop insurance was largely instigated by public response to widespread drought in the 1930s.[8]

Private insurers at the time would not provide "multi-peril" insurance,[9] a single policy that covers many causes of crop loss, including "adverse weather, fire, insects, disease, wildlife, earthquake, volcanic

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[2] Note, federal crop insurance would continue to operate based on the Federal Crop Insurance Act of 1980 even if Congress failed to enact a new farm bill. ISABEL ROSA, CONG. RSCH. SERV., IF10980, FARM BILL PRIMER: FEDERAL CROP INSURANCE 1 (2018), https://fas.org/sgp/crs/misc/IF10980.pdf.

[3] DENNIS A. SHIELDS, CONG. RSCH. SERV., R40532, FEDERAL CROP INSURANCE: BACKGROUND 1 (2015), https://fas.org/sgp/crs/misc/R40532.pdf [hereinafter SHIELDS, BACKGROUND].

[4] 7 U.S.C. §1508(a)(1).

[5] *History of the Crop Insurance Program*, RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., https://www.rma.usda.gov/en/About-RMA/History-of-RMA (last visited Nov 16, 2019).

[6] SHIELDS, BACKGROUND, *supra* note 3, at 1.

[7] Randall A. Kramer, *Federal Crop Insurance 1938-1982*, 57 AGRIC. HIST. 181, 181 (1983).

[8] *Id.* at 185.

[9] SHIELDS, BACKGROUND, *supra* note 3, at 1.

eruption and failure of irrigation water due to unavoidable causes."[10] Originally, the FCIC only covered named perils, but that has expanded over time.

B. Federal Crop Insurance Act of 1980

The FCIC initially offered policies for only three commodity crops and only in specific areas of the country, as an experiment.[11] The Federal Crop Insurance Act of 1980 ("1980 Act") expanded federal crop insurance into a wider farm safety net by providing subsidies on premiums and expanding the crops and regions that could receive coverage.[12] By subsidizing the premiums paid by producers, Congress hoped to incentivize participation in the program[13] and in turn limit the amount of ad hoc disaster payments Congress made to producers without federal insurance.[14] In the 1970s, the Government Accountability Office found that ad hoc disaster payments alone provided "little economic relief" in the wake of widespread crop failures because funding for disaster payments remained limited by budget constraints.[15]

C. 1990s and 2000s: Continued Expansion

Although the 1980 Act expanded federal crop insurance by providing coverage to more crops and subsidizing premiums to a certain degree, it still had not achieved the desired levels of participation by the early 1990s, with less than 25 percent of eligible land covered.[16] Thus, many producers continued to rely on ad hoc disaster assistance through Congressional appropriations. In response, the Federal Crop Insurance Reform Act of 1994 ("1994 Act") and the Agricultural Risk Protection Act of 2000 ("ARPA") further increased premium subsidies available to producers, with ARPA essentially doubling the available subsidies.[17] The role of the private insurance industry in providing federal insurance expanded during this time as the government attempted to diversify insurance products available to producers.[18] The 1994 Act made participation in the federal catastrophic program ("CAT")—which indemnifies losses greater than 50 percent of price or yield, depending on the policy—a prerequisite for participation in other subsidized insurance policies.[19] Aside from a small enrollment fee, CAT is entirely federally subsidized.[20] To receive the fully subsidized premium, however, producers must meet "conservation compliance" requirements set forth in Title II of the farm bill.[21]

Modern-era federal crop insurance policies assume two basic forms: *yield-based* and *revenue-based* protection policies. Prior to 1997, federal crop insurance offered yield-based protection based on historical yields over a set period of time.[22] Options for revenue-based protection—based on a combination of yields

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[10] JASPER WOMACH, CONG. RSCH. SERV., ORD. CODE 97-905, AGRICULTURE: A GLOSSARY OF TERMS, PROGRAMS, AND LAWS, 2005 EDITION (2005), https://digital.library.unt.edu/ark:/67531/metacrs7246/m1/1/high_res_d/97-905_2005Jun16.pdf.
[11] Carl Zulauf, *Why Crop Insurance Has Become an Issue*, FARMDOCDAILY (Apr. 20, 2016), http://farmdocdaily.illinois.edu/2016/04/why-crop-insurance-has-become-an-issue.html.
[12] RISK MGMT. AGENCY, *supra* note 5.
[13] Kramer, *supra* note 7, at 198.
[14] Vincent H. Smith & Barry K. Goodwin, *Private and Public Roles in Providing Agricultural Insurance in the United States, in* PRIVATE AND PUBLIC ROLES IN INSURANCE 173, 173 (Jeffrey Brown ed., 2010).
[15] Kramer, *supra* note 7, at 197.
[16] Joseph W. Glauber, *The Growth of the Federal Crop Insurance Program, 1990-2011*, 95 AM. J. AGRIC. ECON. 482 (2013).
[17] SHIELDS, BACKGROUND, *supra* note 3, at 1.
[18] *Id.*
[19] RISK MGMT. AGENCY, *supra* note 5.
[20] *Id.*
[21] *Agricultural Act of 2014 – Conservation Compliance,* RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., http://www.rma.usda.gov/news/currentissues/farmbill/conservationcompliance.html (last visited Sept. 19, 2017).
[22] SHIELDS, BACKGROUND, *supra* note 3, at 2.

and expected market prices—were introduced in 1997 as a pilot program.[23] A revenue-based policy triggers a payment when revenue falls below a certain threshold, regardless of whether that dip results from crop loss, drops in market prices, or a combination of both.[24] Demand for revenue-based policies grew quickly, as they guarantee an annual minimum revenue, and by 2003 they accounted for the majority of policies under the federal program as more producers opted for this type of policy.[25] As of 2014, revenue-based policies accounted for 77 percent of all policies sold.[26]

D. The 2014 Farm Bill

The 2014 Farm Bill wrought important change to the farm safety net, including the elimination of direct payments to commodity producers under the Commodities Title. Two additional programs were added as a replacement for affected producers in the Crop Insurance Title: Stacked Income Protection (STAX) for upland cotton producers and the Supplemental Coverage Option (SCO).[27] Both STAX and SCO cover "shallow losses" above the deductible for a typical "buy up" crop insurance policy.[28]

STAX provides insurance for losses under a revenue-based plan and indemnifies losses of "10% of expected revenue but not more than 30%," which can be purchased stand-alone or as supplemental coverage.[29] The federal government pays 80 percent of the premium.[30]

SCO insurance can be stacked on both yield-based and revenue-based insurance policies for certain crops.[31] It covers the tranche of losses between 14 and 30 percent of expected yield or revenue, depending on the underlying policy.[32] SCO coverage is limited to producers participating in the PLC programs under Title I,[33] as ARC already provides shallow loss payments for commodity growers.[34] The federal government pays 65 percent of the premium for SCO policies.[35]

Programs affecting specialty crop and diversified producers were also a concern of the 2014 Farm Bill. One such program is Whole Farm Revenue Protection (WFRP), which has experienced low but growing participation,[36] with signups nearly doubling in the two years since its launch.[37] WFRP policies "insure revenue of the entire farm rather than an individual crop by guaranteeing a portion of whole-farm historic

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23 *Id.* at 10.
24 *Id.*
25 DENNIS A. SHIELDS, CONG. RES. SERV., R43494, CROP INSURANCE PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) 1 (2014), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43494.pdf [hereinafter SHIELDS, 2014 FARM BILL].
26 SHIELDS, BACKGROUND, *supra* note 3, at 7.
27 SHIELDS, 2014 FARM BILL, *supra* note 25, at 6–7.
28 *Id.*
29 *Id.* at 4.
30 *Id.* at 4.
31 *Id.* at 5.
32 *History of the Crop Insurance Program*, RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., https://www.rma.usda.gov/en/About-RMA/History-of-RMA (last visited Nov 16, 2019).
33 SHIELDS, 2014 FARM BILL, *supra* note 25, at 5.
34 *Id.* at 7.
35 *Id.* at 5.
36 *Id.*
37 *More Farmers Are Seeking Risk Management Options that Encourage Crop Diversity*, NAT'L SUSTAINABLE AGRIC. COAL. (Oct. 26, 2016), http://sustainableagriculture.net/blog/wfrp-sales-continue-to-expand/.

average revenue (both crops and livestock)."[38] For many producers, WFRP is the only federal insurance that suits their farming system.[39]

The 2014 Farm Bill also re-established the connection between Conservation Title conservation compliance requirements and the receipt of premium subsidies under the Crop Insurance Title.[40] It also provides incentives for beginning producers, including waiver of enrollment fees for CAT and an additional 10 percent premium subsidy for any "buy up" coverage purchased beyond CAT insurance.[41]

II. THE 2018 FARM BILL

A. *Current Administrative Structure (post-2018)*

The Risk Management Agency ("RMA"), housed in the U.S. Department of Agriculture ("USDA"), "was created to administer FCIC programs and other non-insurance-related risk management and education programs that help support U.S. agriculture."[42] RMA administers premium subsidies and works directly with eighteen private insurance companies to provide federal crop insurance to producers.[43] This public-private partnership includes RMA reinsuring the insurance companies during times of high payouts and paying overhead and administrative costs for companies that sell and service RMA policies.[44] One result is that crop insurance companies historically receive above-market returns on their federal crop insurance policies.[45] The RMA and FCIC set the insurance premium subsidy rates and develop the specific contracts to be used by private insurers.[46] RMA assesses and allows issuance of policies to producers on a yearly basis, and in 2017, managed approximately $106 billion in total crop insurance liability. [47]

Policies are currently provided for over 312 million eligible acres[48] and 122 different crops[49] which include fruits and vegetables ("specialty crops") and commodity crops such as corn, soy, wheat, and cotton.[50] Over 1.12 million individual federal policies—with some producers purchasing multiple policies—were issued in 2017 alone.[51] In contrast to the Title I commodities programs, there are no income caps barring receipt

[38] *Policies*, RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., http://www.rma.usda.gov/policies (last visited Sept. 19, 2017).
[39] *More Farmers Are Seeking Risk Management Options that Encourage Crop Diversity*, NAT'L SUSTAINABLE AGRIC. COAL. (Oct. 26, 2016), http://sustainableagriculture.net/blog/wfrp-sales-continue-to-expand/.
[40] *Agricultural Act of 2014 – Conservation Compliance*, RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., http://www.rma.usda.gov/news/currentissues/farmbill/conservationcompliance.html (last visited Sept. 19, 2017).
[41] SHIELDS, 2014 FARM BILL, *supra* note 25, at 6–7.
[42] RISK MGMT. AGENCY, *supra* note 5.
[43] SHIELDS, 2014 FARM BILL, *supra* note 25, at 3.
[44] *Id.*
[45] LAND STEWARDSHIP PROJECT, CROP INSURANCE—THE CORPORATE CONNECTION, http://landstewardshipproject.org/repository/1/1390/white_paper_1.pdf (average rate of return of 17 percent between 1989 and 2009—including 29 percent in 2009—when "reasonable" rate is 13 percent).
[46] RISK MGMT. AGENCY, *supra* note 5.
[47] ROSA, *supra* note **Error! Bookmark not defined.**.
[48] *Id.*
[49] OFF. OF INSPECTOR GEN., U.S. DEP'T OF AGRIC., AUDIT REPORT 05401-0010-11, FEDERAL CROP INSURANCE CORPORATION/RISK MANAGEMENT AGENCY FINANCIAL STATEMENTS FOR FISCAL YEARS 2018 AND 2017 12, exhibit C at 16 (2018), https://www.usda.gov/sites/default/files/05401-0010-11.pdf.
[50] RANDY SCHNEPF, CONG. RESEARCH SERV., IF11163, 2018 FARM BILL PRIMER: THE FARM SAFETY NET 2 (2019), https://fas.org/sgp/crs/misc/IF11163.pdf.
[51] OFF. OF INSPECTOR GEN., AUDIT REPORT 05401-0010-11, *supra* note 49 12, exhibit C at 16.

of federal crop insurance subsidies.[52] Further, Title I's "actively engaged in farming" (AEF) criteria is not applicable to crop insurance.[53]

As mentioned above, there are numerous ways for producers to "stack" insurance policies to receive broad coverage. Eligible crops receive catastrophic loss coverage under CAT, and premiums are entirely subsidized by the federal government (except for an administrative fee).[54] Additional units of coverage above CAT's 50 percent indemnity rate are available as "buy up" coverage, and premium subsidies for these policies vary based on crop type and other factors.[55] The **Appendix** provides a more illustrative model of how stacked coverage works to protect different tranches of a farm's revenue or yields. The average federal subsidy on "buy up" coverage is 62 percent of the insurance premium (for crop years 2008-2017)[56], and around 80 percent of all federal premium subsidies in a given year go to producers of four crops: corn, wheat, soybeans, and cotton.[57] From 2010–2014, the annual cost to the Treasury of Title XI programs averaged \$8.7 billion, with an average of \$6.2 billion directly subsidizing farmer premiums.[58] The remainder largely covers administrative and operating expenses of the private crop insurance companies.[59] The 2018 Farm Bill raises the CAT administrative fee from \$300 to \$655, which helps offset new spending on other provisions described below.[60]

B. Embracing Evolving Farming Practices in the 2018 Farm Bill

The 2018 Farm Bill largely leaves the farm safety net intact without any major structural modifications.[61] Title XI reflects this trend with just minor adjustments to existing programs.[62] This stands in contrast to the 2014 Farm Bill which made major structural changes under Title I and Title XI.[63] Two notable changes in the 2018 Farm Bill are the expansion of protection for hemp producers and coverage for forage and grazing.[64] The former extends the safety net to a burgeoning population of hemp farmers, while the latter effectively encourages flexible use of certain crops.[65]

Hemp farmers have gained access to federal crop insurance subsidies due to the 2018 Farm Bill's addition of hemp under the definition of eligible crops.[66] It has also been added to the list of crops that can be covered for post-harvest losses, a select list that previously only covered potatoes, sweet potatoes, and tobacco.[67] In addition to the extension of insurance coverage, the 2018 farm bill also waives certain viability and

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[52] SHIELDS, 2014 FARM BILL, *supra* note 25, at 4.
[53] RANDY SCHNEPF, CONG. RESEARCH SERV., R44656, USDA'S ACTIVELY ENGAGED IN FARMING (AEF) REQUIREMENT 7 (2019).
[54] SHIELDS, BACKGROUND, *supra* note 3, at 7.
[55] *Id.*
[56] ROSA, *supra* note 2.
[57] SHIELDS, BACKGROUND, *supra* note 3, at 13 (2015).
[58] DENNIS A. SHIELDS, CONG. RSCH. SERV., R43951, PROPOSALS TO REDUCE PREMIUM SUBSIDIES FOR FEDERAL CROP INSURANCE 3 (2015), https://crsreports.congress.gov/product/pdf/R/R43951/4.
[59] *Id.*
[60] Agriculture Improvement Act of 2018, P.L. 115-334, § 11110, 132 Stat. 4923; CONG. RSCH. SERV., R45525, THE 2018 FARM BILL (P.L. 115-334): SUMMARY AND SIDE-BY-SIDE COMPARISON 30 (2019), https://fas.org/sgp/crs/misc/R45525.pdf.
[61] SCHNEPF, 2018 FARM BILL PRIMER: THE FARM SAFETY NET, *supra* note 50, at 1.
[62] *See* CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60.
[63] SHIELDS, 2014 FARM BILL, *supra* note 25, at 6–7.
[64] CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 29.
[65] *See USDA Announces Dual Use Insurance Coverage for Grain/Graze,* RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC. (2019), https://www.rma.usda.gov/en/News-Room/Press/Press-Releases/2019-News/USDA-Announces-Dual-Use-Insurance-Coverage-for-Grain-Graze (last visited Nov 17, 2019)
[66] Agriculture Improvement Act of 2018, § 11101, 132 Stat. 4919.
[67] Agriculture Improvement Act of 2018, § 11106, 132 Stat. 4921; CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 62, at 304.

marketability requirements for private proposals to develop a hemp production related policy or pilot program.[68] This latter change is expected to increase expenditures to the tune of $8 million over FY2019-FY2028.[69]

The highest expected increase in federal crop insurance outlays ($90 million over FY2019-FY2028) is due to expanded coverage for forage and grazing.[70] The 2018 Farm Bill newly authorizes catastrophic level coverage for insurance plans covering grazing crops and grasses.[71] Producers will also be allowed to purchase and collect, independently, on separate insurance policies for crops that can be grazed and mechanically harvested on the same acres during the same growing season.[72]

C. Other Significant Changes in Title XI

Another notable change in to crop insurance is the definition of "beginning farmer or rancher" as an individual having actively operated and managed a farm or ranch for less than 10 years for the purposes of research and development of whole-farm insurance plans.[73] Elsewhere in the crop insurance statutes, the term is restricted to those with less than 5 crop years of experience.[74] This opens up such individuals to federal subsidy benefits related to research, development and implementation of whole-farm insurance plans.[75] This change translates to a 10 percent increase on premium subsidies for WFRP policies issued to farmers and ranchers in this demographic.[76] This is expected to increase expenditures by $13 million over FY2019-2028.[77]

The 2018 Farm Bill also introduces measures to reduce expenditures related to federal crop insurance. Apart from the spending decrease associated with the CAT administrative fee increase ($125 million over FY2019-2028),[78] an additional savings of $90 million is expected from cutbacks in a number of areas: certain research and development contracts and partnerships; funds for review, compliance and program integrity; and reduction of producer benefits when producing crops on native sod; and the expansion of enterprise units across county lines.[79] The combined effect of the budget adjustments is expected to result in a total reduction of $104 million, or approximately 0.1%, over FY2019-2028 in comparison to baseline levels.[80] While this does not represent a major budget cut, it is a significant slow-down compared to the growth of Title XI over recent farm bills.

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[68] Agriculture Improvement Act of 2018, § 11113, 132 Stat. 4924; CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 30.
[69] CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 30.
[70] *Id.* at 29.
[71] Agriculture Improvement Act of 2018, § 11109, 132 Stat. 4923.
[72] *Id.*
[73] Agriculture Improvement Act of 2018, § 11122, 132 Stat. 4927; CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 323, tbl. 16.
[74] *See* 7 U.S.C. § 1502(b)(3).
[75] CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 30.
[76] ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., AGRICULTURE IMPROVEMENT ACT OF 2018: HIGHLIGHTS AND IMPLICATIONS: CROP INSURANCE (2019), https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/crop-insurance/ (last visited Nov. 18, 2019).
[77] CONG. RSCH. SERV., R45525, THE 2018 FARM BILL, *supra* note 60, at 30.
[78] *Id.*
[79] *Id.*
[80] *Id.*

Finally, in an important, but incremental, win for environmental advocates, cover cropping was added to RMA's list of "good farming practices,"[81] providing assurance to farmers that those engaging in this practice will not be denied coverage due to a failure to follow RMA's guidelines.[82]

III. KEY ISSUES

A. Subsidy Levels

Stakeholder interests in reshaping or maintaining federal crop insurance span a vast divide. For the major cost-driver of the title—premium subsidies—commodity producers and their representative groups support current crop insurance subsidy levels, and have even lobbied for increased subsidies.[83] This group emphasizes the stability provided by the insurance not only for producers, but also for the American taxpayer, who they say avoids ad hoc payments to producers for disaster assistance.[84] However, the government still makes ad hoc disaster payments on a regular basis: from 1989 to 2012, Congress made separate appropriations outside the farm bill of more than $22 billion for crop disaster losses.[85] In fact, Congress recently authorized a combined $5.36 billion in supplemental assistance in the Bipartisan Budget Act of 2018 (P.L. 115-123) and the FY2019 supplemental appropriation (P.L. 116-20) just before and after the passing of the 2018 Farm Bill.[86]

Insurance companies argue that without premium subsidies, the market for crop insurance would be unsustainable, with insurers unwilling to lower premiums and producers unwilling to make up the difference. Proposals to trim crop insurance rarely get far. For example, a proposed budget cut in 2015 from a Republican Congress attempting to balance the budget called for a 10 percent reduction in subsidies under the Crop Insurance Title.[87] Commodity groups and crop insurance companies grounded their opposition in the argument that cuts would harm producers, while supporters of the proposal argued the cuts would not trickle down to the producer and instead would fall to insurance companies that already receive above-market profits on federally-backed crop insurance policies. In the end, the proposal did not advance.[88]

Current crop insurance subsidy levels also face criticism due to their lack of income-based limitations, which enables large farming operations to collect unlimited premium subsidies. In 2014, farms with crop sales among the top 10 percent received 68 percent of all crop insurance subsidies that year.[89] Crop insurance subsidies could, like Commodities Title programs, be limited by either gross farm income or by

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[81] Agriculture Improvement Act of 2018, § 11107, 132 Stat. 4921; *USDA Updates Options for Cover Crop Termination*, NAT'L SUSTAINABLE AGRIC. COAL. (July 17, 2019), https://sustainableagriculture.net/blog/usda-updates-cover-crop-termination/.
[82] *See* U.S. DEP'T OF AGRIC., RISK MGMT. AGENCY, GOOD FARMING PRACTICES PROTECT YOUR INVESTMENT IN CROP INSURANCE, https://www.rma.usda.gov/-/media/RMA/Publications/Risk-Management-Publications/good_farming_practices.ashx?la=en.
[83] *See, e.g.*, *Four Talking Points for Congressional Meetings: August 2014*, AM. ASS'N CROP INSURERS (2014), https://www.cropinsurers.com/images/August_Talking_Points__2014.pdf (emphasis on opposing all legislation to amend crop insurance, necessity of program as is for producers, and the importance of private sector administration of the insurance).
[84] *See, e.g.*, *Just the Facts*, NAT'L CROP INS. SERV., http://www.cropinsuranceinamerica.org/about-crop-insurance/just-the-facts/#.WADk6IWcHIV (last visited Sept. 19, 2017).
[85] RALPH M. CHITE, CONG. RSCH SERV., RL31095, EMERGENCY FUNDING FOR AGRICULTURE: A BRIEF HISTORY OF SUPPLEMENTAL APPROPRIATIONS, FY1989-FY2012 (2011), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL31095.pdf.
[86] MEGAN STUBBS, CONG. RESEARCH SERV., RS21212, AGRICULTURAL DISASTER ASSISTANCE 12–13 (2019).
[87] Jackie Calmes, *Crop Insurance Subsidies Prove Cutting Budget is Easier Said Than Done*, N.Y. TIMES (Nov. 26, 2015), http://www.nytimes.com/2015/11/27/us/politics/crop-insurance-subsidies-prove-cutting-budget-is-easier-said-than-done.html.
[88] *Id.*
[89] Gracy Olmstead, *The Farm Bill Ignores the Real Troubles of U.S. Agriculture*, N.Y. TIMES (Dec. 14, 2018), https://www.nytimes.com/2018/12/14/opinion/farm-bill-agriculture.html. As a point of comparison, small farms (as defined by USDA ERS) count for 89 percent of farms and operate over half of U.S. farmland but account for only 26 percent of production. ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., AMERICA'S DIVERSE FAMILY FARMS 2018 EDITION 4 (2018).

a maximum subsidy per operation, or both. Large operations are most able to self-insure or access unsubsidized private insurance, and subsidizing their insurance premiums may be regressive or counter to the interests of small- and medium-sized operations.

B. Revenue vs. Yield Protection

Many critiques of federal crop insurance focus on revenue-based insurance plans, which some groups argue unnecessarily waste taxpayer money and increase moral hazard.[90] The current system can also generate payments that defy the definition of a "safety net" and instead resemble windfalls. For example, after a 2012 drought in Iowa affecting soybean and corn producers with mostly revenue-based protection policies, the loss in yields resulted in windfall payouts because of a rise in market prices due to falling supplies.[91] Such effects may be further exacerbated by a changing climate and the increased incidence of adverse weather events that are expected to reduce production for most crops in most regions, which is likely to increase prices.[92] Projected annual costs of the Revenue Protection program across the three major crops (Corn, Soybean and Wheat) are expected to increase by about 3.5 percent under a moderate emissions scenario and 22 percent under a higher emissions scenario compared to baseline levels.[93] Some researchers have found that producers receive as much as $1.90 in indemnity payments for every dollar paid as insurance premiums.[94] Rates of return vary, with some regions receiving higher rates of return (Southeast, southern plains) than others (Midwest).[95] An insurance policy arguably can begin to look like a "generous lottery."[96] Some studies have found that increasing premium subsidies on crop insurance affects the coverage level of insurance purchased but not the numbers of acres insured.[97] This could suggest that producers may actually be treating the subsidies as free entries into such a "lottery."

C. Conservation

Conservation is another area where many groups see opportunities for reform. Although the 2018 Farm Bill made progress by adding cover cropping to RMA's list of good farming practices, advocates still hope to see all conservation practices approved by USDA's Natural Resource Conservation Service included in this list.[98] Conservation proponents emphasize the opportunity to use data-driven analyses to reward producers with policies reflecting their "good driver" behavior, which could also include conservation tillage, crop

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[90] Moral hazard occurs when the insured party takes *more* risks knowing their losses will be compensated, while retaining the upside from their risky behavior. What does moral hazard look like in practice? A farmer could specialize and grow a single crop instead of diversifying (a natural form of risk management), or could plant on marginal land where crops would not otherwise be grown, knowing that the government will cover the losses. *See, e.g.*, *Definition of Moral Hazard*, FIN. TIMES, http://lexicon.ft.com/Term?term=moral-hazard (last visited Sept. 19, 2017); Daren Bakst et al., *Addressing Risk in Agriculture*, HERITAGE FOUND. (Sept. 8, 2016), http://www.heritage.org/research/reports/2016/09/addressing-risk-in-agriculture (last visited Sept. 17, 2017).

[91] *See* BRUCE BABCOCK, ENVTL. WORKING GRP., CUTTING WASTE IN THE CROP INSURANCE PROGRAM 4 (2013), http://cdn.ewg.org/sites/default/files/u118/2013 Cutting Crop Insurance Waste_.pdf.

[92] ANDREW CRANE-DROESCH ET AL., ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., ERR-266, CLIMATE CHANGE AND AGRICULTURAL RISK MANAGEMENT INTO THE 21ST CENTURY 26 (2019).

[93] *Id.* at 22, tbl. 2.

[94] Barry K. Goodwin & Vincent H. Smith, *What Harm Is Done By Subsidizing Crop Insurance?*, 95 AM. J. AGRIC. ECON. 489, 492 (2013).

[95] BABCOCK, CUTTING WASTE, *supra* note 91, at 4 (upland cotton producers in the Southern Plains received well over 200 percent returns on average).

[96] BRUCE BABCOCK, ENVTL. WORKING GRP., CROP INSURANCE: A LOTTERY THAT'S A SURE BET (2016), http://static.ewg.org/reports/2016/federal_crop_insurance_lottery/EWG_CropInsuranceLottery.pdf.

[97] MESBAH MOTAMED ET AL., ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., ERR-250, FEDERAL RISK MANAGEMENT TOOLS FOR AGRICULTURAL PRODUCERS: AN OVERVIEW 9 (2018).

[98] *See* NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 81.

diversification, and other conservation practices.[99] "Good driver" policy provisions would place more emphasis on affirmative efforts of producers to actively manage environmental risk, in contrast to current policies that some argue suffer from moral hazard and windfall issues discussed above. On the other hand, some studies have found that the effects of crop insurance on soil erosion, nitrogen loss and soil organic carbon loss to be small, linked to just about one third of a percent increase.[100] To be truly effective, proposed changes would likely need to be integrated as part of a larger package to promote conservation that can adjust the greater economic dynamics that affect crop choice and cultivation practices.

D. Private Insurers

Proponents of change also emphasize the role of the eighteen or so private insurance companies involved in the public-private partnership for administration of these federal policies.[101] Many suggest that the payouts to these companies, which include payment of their overhead and administrative costs and higher-than-market returns on investment for policies, are wasteful and need to be reformed.[102] From 2005 to 2009, for every dollar paid out in insurance benefits to producers above their share of premiums (a measure of the total subsidy paid to producers), the insurance companies received an average of $1.44 in operating and administrative benefits, as well as underwriting gains from the federal government.[103] From 2003 to 2012, RMA paid a total of $12.3 billion for these insurance company costs, "virtually guaranteeing" that they would make a profit.[104] Typical private insurance companies can only pass on 10 percent of the business risk to the government, whereas the federal government absorbs 55 percent of the risk of crop insurance.[105]

The private insurance companies argue, however, that without government support, they would not be able to provide crop insurance coverage as broadly: farms are geographically disparate, requiring insurers to staff agents across all regions, which is more expensive than holding fewer, more centralized offices. As Congress sought in the 2014 Farm Bill to reduce the need for emergency appropriations following negative market fluctuation by increasing crop insurance coverage, insurance providers argue that Congress should bear the cost of facilitating such coverage without private industry having to shoulder the burden. However, this argument is less convincing given the large emergency appropriations that immediately preceded and followed the 2018 Farm Bill which maintains the approach of the previous bill.

E. Access for Organic, Small, Diverse, and Specialty Growers

For organic, small-scale, diverse, and specialty crop growers, the opportunities to participate in federal crop insurance are limited, leaving them lagging behind in government support when compared to commodity

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[99] Ferd Hoefner & Bruce Knight, *Crop Insurance That Conserves?*, NAT'L SUSTAINABLE AGRIC. COAL. (Feb. 19, 2015), http://sustainableagriculture.net/blog/agree-blog-crop-insurance.
[100] Roger Claassen et al., *Impacts of Federal Crop Insurance on Land Use and Environmental Quality*, 99 (3) AM. J. AGRIC. ECON. *592-613* (2017).
[101] *See Approved Provider Listing*, U.S. DEP'T OF AGRIC., RISK MGMT. AGENCY, https://public.rma.usda.gov/AipListing/InsuranceProviders.
[102] Tracy Bruckner, *Crop Insurance: How Does the Money Flow?*, CTR. FOR RURAL AFF. (April 13, 2015), http://www.cfra.org/node/5592 (Based on 2012 figures, it cost taxpayers $1.2 billion to cover overhead and administrative costs of insurance companies administering the federal policies for crop insurance.).
[103] Barry K. Goodwin & Vincent H. Smith, *What Harm Is Done By Subsidizing Crop Insurance?*, 95 AM. J. AGRIC. ECON. 489, 492 (2013).
[104] LAND STEWARDSHIP PROJECT, CROP INSURANCE—THE CORPORATE CONNECTION, http://landstewardshipproject.org/repository/1/1390/white_paper_1.pdf.
[105] David J. Lynch, *Safety Net for Crops Means $14 Billion Tab for Taxpayers*, BLOOMBERG NEWS (Sept. 18, 2013), http://www.bloomberg.com/news/articles/2013-09-10/crop-insurers-14-billion-some-see-as-money-laundering.

producers.[106] Specialty crop producers are subsidized at a lower rate when compared to their "relative crop value."[107] Some reasons proffered for this relative lack of coverage as compared to commodity crops include: the lack of availability and acreage participation; the level of coverage purchased; and lower levels of coverage for the same types of insurance as commodities, such as CAT.[108] Even with WFRP, participation is still at low levels among specialty crop producers. This may be because program is new,[109] and it may be that the paperwork burden causes the benefits to fall short of the time investment required to participate.[110] Some experts remain optimistic that WFRP, if amended and administered wisely, may provide an opportunity to promote diversification and healthier, sustainable systems. However, it is still too early to determine its effectiveness in achieving its goals.[111]

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[106] *USDA Issues Rule to Allow Unlimited Subsidies for Mega Farms*, NAT'L SUSTAINABLE AGRIC. COAL. (Dec. 15, 2015), http://sustainableagriculture.net/blog/payment-limits-final-rule/.
[107] DENNIS A. SHIELDS, CONG. RESEARCH SERV., R42813, FEDERAL CROP INSURANCE FOR SPECIALTY CROPS: BACKGROUND AND LEGISLATIVE PROPOSALS 11 (2012), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42813.pdf.
[108] *Id.* at 11–12.
[109] *USDA Issues Rule to Allow Unlimited Subsidies for Mega Farms*, NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 106.
[110] Interview with Steve Carlson, Practical Farmers of Iowa (Sept. 29, 2016).
[111] *USDA Issues Rule to Allow Unlimited Subsidies for Mega Farms*, NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 106.

APPENDIX

This chart shows how producers "stack" different kinds of insurance policies to insure different tranches of expected revenue. It shows a revenue-based policy model, since the majority of policies are revenue-based and not yield-based.

CAT, which is a 100 percent subsidy, provides the basic disaster insurance for extreme loss. Anything above CAT is considered a "buy-up" policy, with varying levels of premium subsidies depending on a variety of factors (e.g. type of crop, size of farm, location). After the 2014 Farm Bill, select crops can opt for supplemental coverage under SCO, and upland cotton producers can opt for more coverage under STAX. This chart demonstrates that producers participating in these combinations of policies are insured from all but the shallowest losses in revenue. Producers who opted into Agricultural Risk Coverage (a Title I program) are not eligible for SCO but receive so-called "shallow loss" protections under that program.