HISTORIC COMMODITY TITLE PAYMENT LIMITATION REFORM INCLUDED IN BOTH HOUSE AND SENATE FARM BILLS

The House and Senate Farm Bills which are currently in a House-Senate conference committee both contain identical reforms to payment limitation law. The language in both farm bills is taken from the Farm Program Integrity Act, an NSAC supported marker bill introduced in the Senate by Senators Chuck Grassley (R-IA) and Tim Johnson (D-SD) and in the House by Congressman Jeff Fortenberry (R-NE).

The reform measure has two major provisions that will lower the per farm cap on farm commodity program payments, simplify eligibility, and ensure that federal farm payments flow to working farmers.

There are two parts:

- Part one - Creates a hard cap on commodity payments so that no farm can receive more than $250,000 per year – rather than the current unlimited amount – in farm subsidies, including not more than $100,000 per farm in payments not associated with marketing loans. (Both of those numbers assume there is a farm spouse.)
- Part two - Targeting payments to working farmers and closing existing loopholes that allow mega-farms to collect far higher payments than current law would otherwise seem to allow.

With regard to part one, the cap per individual on payments (regardless of what title one options a farmer chooses to participate in) is $50,000 and the cap per individual on marketing loan gains is $75,000. Both get doubled for a married couple. The chart at the end of this document summarizes the limits.

With regard to part two, the House and Senate farm bills close a long-standing egregious loophole that has allowed unlimited payments to any mega farm with a good lawyer and accountant. Current law requires a contribution of 1,000 hours of labor on the farm ***<u>or</u>*** involvement in its management in order to receive farm payments. However, the vague and largely unenforceable regulatory standard for "actively managing" farm operations has foiled lawmakers' attempts to target payments to working farmers as well as USDA's attempts to enforce the statutory limit.

For instance, according to Farm Service Agency sources cited by the GAO, despite the $40,000 ($80,000 married couple) limit on direct payments, a farm in Indiana was paid over $375,000, none of which went to an active operator of the farm, but instead flowed to 7 corporations and 4 general partners. A farm in Mississippi received $440,000, again none of it to someone actually working the farm, but to 6 general partners and 5 spouses, all of who claim to be providing the management needed to run the farm. A farm in Louisiana received over $650,000, none of it to the working farmers, via 16 persons organized as limited liability corporations plus 4 spouses. All of these abuses are made possible by the vague and largely unenforceable management test.

The House and Senate bills create a clear and easily enforced standard. An individual serving as the manager of a farming operation would be deemed actively engaged, in addition to the person who qualifies under the existing labor test and their spouse. As under current law, multi-family operations may qualify each family via the labor test. As under current law, landowners who ***<u>share rent</u>*** land to actively engaged producers are also deemed actively engaged, while ***<u>cash rent</u>*** landlords are ineligible.

Opponents of reform dislike both the limits and the reforms to the actively engaged in farming rules. But they tend to focus their attack on the latter. It is the loopholes in the actively engaged rules that are the linchpins to the ability of mega farms to receive multiple payments. As long as one can fairly easily collect unlimited multiple payments, the actual dollar value of the limits is obviously of lesser concern. Here are some of the main arguments that one hears from opponents of reform.

Myths and Realities

The opposition to payment limitation reform rarely speaks directly to the issue of the loopholes that allow for general partnerships with unlimited number of partners to collect payments without being truly actively engaged in farming. Instead, they tend to throw around a fairly consistent set of half-truths and untruths. Here is a sampling of arguments that get made.

Myth: The changes made by the House and Senate farm bills will change the **spouse rule**.

> ***Fact***: No, the changes have no impact on the spouse rule contained in current law. Spouses are exempt from the labor and management tests, exactly as they are under current law. Prior to 2008, spouses had to be actively engaged in farming to qualify, but the 2008 Farm Bill made them automatically eligible, and neither the House nor Senate farm bills change that 2008 provision. Whether the 2008 change was a good one or not is a matter of debate (bachelor farmers may tend to think not), but the fact is, neither bill proposes to change the 2008 law on this point.

Myth: The changes made by the House and Senate farm bills redefine what it means to provide **farm labor**. Requiring active, on-farm labor is counterproductive to encouraging farms to improve and become more efficient, and it is not the place of the government to dictate how many hours of labor a farmers should perform.

> ***Fact***: No changes are made to the labor test. It remains the same as it has been since 1987, namely 1,000 hours (half-time) or at least 50% of the person's commensurate share of the labor required for the farm.
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> Some may argue that farmers need not work on the farm, but Congress, reflecting popular will, has disagreed and has long required subsidy recipients to be working farmers. As noted above, the labor test, which is the relevant test for the vast majority of farmers, is unchanged in the pending new law.
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> The vast majority of farmers, of course, never have to worry about these reforms because they provide labor to the farming operation. For those farmers or landowners who choose to focus only on managing the farming operation, the new House and Senate farm bill provision allows them to be eligible for the statutory maximum amount of payments, but limits payments to one additional manager beyond the working operator, not 10 or 20 additional "managers" common in the cases of documented abuse.

Myth: The new reforms in the House and Senate farm bills will encourage people to switch from share rent to **cash rent**.

> ***Fact***: Landowners decide whether and how to rent land for a wide variety of reasons. To the extent their decision is based on whether or not they will be eligible for farm program payments, however, the new payment limit reforms will, if anything, encourage cash rent owners to switch to share rent in order to become eligible for payments. The current exemption for crop share landlords continues, and the current prohibition on payments to cash rent landlords also continues. It is not plausible that the reforms would encourage people to switch to cash rent and thereby deny themselves government support payments.

Myth: These reforms will hurt young and **beginning farmers** as well as farmers growing a **diversity** of crops.

> ***Fact***: What hurts young and beginning farmers is being shut out of the market to buy or rent land by mega farms using unlimited government subsidies to outbid everyone else -- and especially cash-

strapped beginners -- from the competition for land for sale or rent. The reforms in this amendment would, over time, help moderate the unfair competitive disadvantage that current law places on beginning farmers.

There is no penalty at all in the proposed amendment to crop diversity. Farmers can grow as many covered commodities as they like, provided they do not exceed the overall, still quite generous payment limitation.

Myth: The new reforms will hurt **grandparents** who no longer farm but offer lots of important management advice to their children, denying them payments for the farm they passed on, or will hurt **siblings** who, while they don't farm, still identify with the family farm and help out as they can.

Fact: Grandpa can keep right on providing management help and advice. And if the current farmer wants to count grandpa as the one additional manager, that is allowed, provided he otherwise qualifies and regardless of whether grandpa lives on the farm, or in the next town, or 1,000 miles away.

The same holds true for siblings of the current farmers who provide management advice or services from afar. They can keep offering the same help under the new reforms. But the farm as a whole can only secure additional payments for one additional manager, be it one of the siblings, or someone else entirely.

Myth: Now that direct payments are ending, there is no longer any need for payment limits or actively engaged in farming rules.

Fact: Payment limits and rules surrounding them predated direct payments by several decades. They were relevant then, and are no less relevant now. They are not in any way an artifact of the era of direct payments. They have been part of the farm safety net social contract for five different decades now, and remain important regardless of the always changing program options within the commodity title of the farm bill.

Myth: These payment limits are an attack on **southern commodities**.

Fact: Quite the contrary, the amendment establishes one set of rules and a level playing field for all commodities that will receive target price or shallow loss payments under the new farm bill. The vast majority of farmers ***in all regions*** are in compliance with the existing statutory limitation. Some mega farms ***in each region*** of the country are not, and this amendment takes the long overdue step of not just enacting a feel good statutory payment limit, but also actually creating one that works and is enforceable.

Myth: The changes will cause massive **reorganization** of farm businesses.

Fact: Both before and after these reforms, an unlimited number of people can participate as general partners in a farming operation. The reforms don't prevent people from operating as a general partnership. But, unlike under current law, the partners won't be able to use the vague management test to qualify for farm payments and thereby game the system. Large general partnerships can continue operating just as they do today, they just won't receive as much in federal farm payments. And just like under current law, any additional reorganizations made for the purpose of side stepping the payment limitation are not legal.

Myth: The reforms are "**social engineering**" and penalize unfairly the country's very largest farms.

Fact: There is no right to government subsidies as if they were a God-given entitlement. One could easily argue that current commodity regime of providing unlimited subsidies no matter how large a farm gets and no matter what the negative impact on rural communities or the ability of new and aspiring farmers to successfully enter agriculture is far more akin to social engineering than anything proposed in the pending House and Senate farm bills. The current system of not having any effective payment limits on farm program payments is placing smaller-than-mega-sized farms and new and beginning farmers at a competitive disadvantage, one that is driven by taxpayer dollars in the form of unlimited subsidies to the largest producers.

Commodity Payment	**Current Law**	**House and Senate Bill**	**Current Law**	**House and Senate Bill**
	Limit per individual		*Limit per married couple*	
Direct Payments - *repealed in House and Senate bills*	$40,000	Not applicable	$80,000	Not applicable
Counter-cyclical and Acreage crop revenue election payments - *repealed in House and Senate bills*	$65,000	Not applicable	$130,000	Not applicable
Any new price or revenue triggered payment in next farm bill, including Price Loss Coverage, Agricultural Risk Coverage, Adverse Market Payments	Not applicable	$50,000	Not applicable	$100,000
Marketing loan gains and Loan deficiency payments	No limit	$75,000	No limit	$150,000
TOTAL PAYMENTS	**No limit**	**$125,000**	**No limit**	**$250,000**