



The Reconciliation Farm Bill: Top Five Most Problematic Changes to Farm Policy, #1

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This series reaches its conclusion with the most problematic change to farm policy in the Reconciliation Farm Bill. That unfortunate distinction belongs to the expanded payment limit loophole for qualified pass-through entities. The sole intent of this seemingly minor and technical revision is to allow some farm operations to maximize federal subsidy payments. It has earned the top spot because it will work to the detriment of other farmers, and of rural communities, with consequences that will reverberate far beyond them.

Background

Section 10306 (“Equitable Treatment of Certain Entities”) of the Reconciliation Farm Bill (P.L. 119-21) takes a concerning and problematic loophole for farm policy and expands it. In that provision, Congress amended the payment limit provisions initially enacted in the Food Security Act of 1985, which amended the Agricultural Adjustment Act of 1938 (7 U.S.C. §1308). The revision expands an existing exception, or loophole, that had applied to joint ventures and general partnerships (*farmdoc daily*, July 17, 2025). Such operations were allowed to receive payments up to “the amount determined by multiplying the maximum payment amount,” or payment limit (now \$155,000), by the number of persons or legal entities that comprise the ownership, attributed through four layers of legal entities (7 U.S.C. §1308(e)(B)(ii)). The Reconciliation Farm Bill opens the loophole for all “qualified pass-through entities”: partnerships, S corporations, limited liability companies (LLC), and joint ventures or general partnerships.

Discussion

This discussion opens in the realm of the legal fictional entity. Corporations and Limited Liability Companies (LLC) are legal fictional entities, creatures of state business laws. The primary point of a legal fictional entity is to shield the owners of the entity—shareholders or members—from personal liability for the debts, obligations, or tortious actions of the entity (Prince and Fershée, 2023; Ayotte and Hansmann, 2012; Hamilton, 1970; Hall, 1964). As a basic matter, liability is legal responsibility for acts or omissions (Legal Information Institute, “[liability](#)”). This allows, for example, investment in the entity without legal

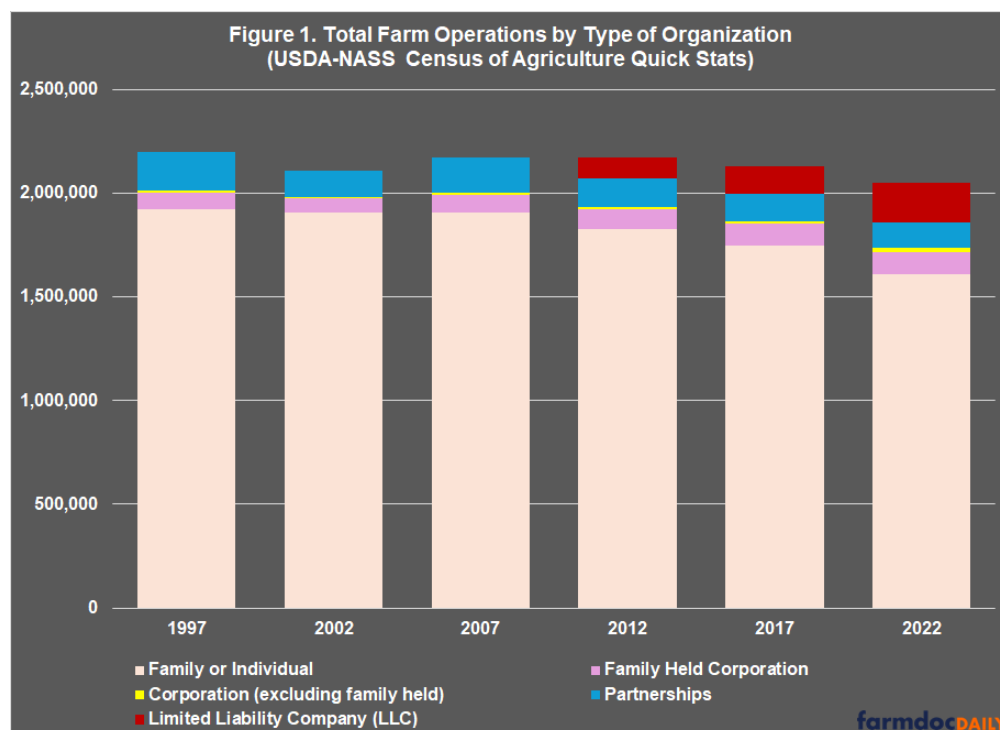
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responsibility by the individual beyond the investment, permitting the entity to raise capital and generate profits or returns for shareholders or owners. By comparison, in general partnerships all partners have personal liability for the acts and omissions of the partnership if committed in the scope of the partnership's business, including joint and several liability in which each partner can be independently liable for the entire amount of any injuries (Richardson and Geyer, 1999; Legal Information Institute, "[joint and several liability](#)").

An LLC is a legal fictional entity that provides liability protections like a corporation with partnership tax treatment, as well as creditor-protections and flexible management features. LLCs are neither corporations nor partnerships. First created in Wyoming in 1977, LLCs were given a boost by the Internal Revenue Service (IRS) in 1988 when it decided that the LLC entity could be taxed as a partnership. By 1992, eight States had enacted LLC legislation, and, by 1999, all 50 States had LLC statutes on the books. The owners of an LLC are typically called "members" and are liable for debts, obligations, or torts of the LLC only to the extent of their investment in it (Prince and Fershée, 2023; Meehan-Strub and Harris, 2004; Richardson and Geyer, 1999; Hamill, 1998; Ribstein, 1995; Legal Information Institute, "[limited liability company \(LLC\)](#)").

A corporation is also a legal fictional entity (Legal Information Institute, "[corporation](#)"), of which an S corporation is one form named for that subchapter of the Internal Revenue Code. Dating to 1958, Congress created the S corporation, or closely held corporation, to provide alternative taxation for small businesses, including family farms. As such, an S corporation is a corporation for liability purposes, but the income is passed through to the shareholders for tax purposes. An S corporation may not have more than 100 stockholders among other limitations (Beller, 2021; Esch and Spaccarotella, 1994; Hall, 1964; Kepler, 1958; Legal Information Institute, "[S corporation](#)").

As should be obvious from the above, nothing in the law prevents a farm operation from organizing as one of these pass-through, or legal fictional, entities. The Census of Agriculture data available from the Quick Stats database operated by the National Agricultural Statistics Service (NASS) proves the point further: farm operations are making increasing use of these entity options (USDA-NASS, [Quick Stats](#)). Figure 1 illustrates the census data from 1997 to 2022, although LLC data is only available in 2012, 2017, and 2022. There are challenges with the data that should be noted. A single farm could include multiple entities and types of entities, such as a general partnership in which the general partners are all LLCs or S corporations (or both). Notably, for example, the farm subsidy payment limit statute requires direct attribution through at least four levels of embedded legal entities ([7 U.S.C. §1308\(e\)\(4\)](#)). It is not clear how these are counted or reported, nor how NASS treats embedded entities in the data.

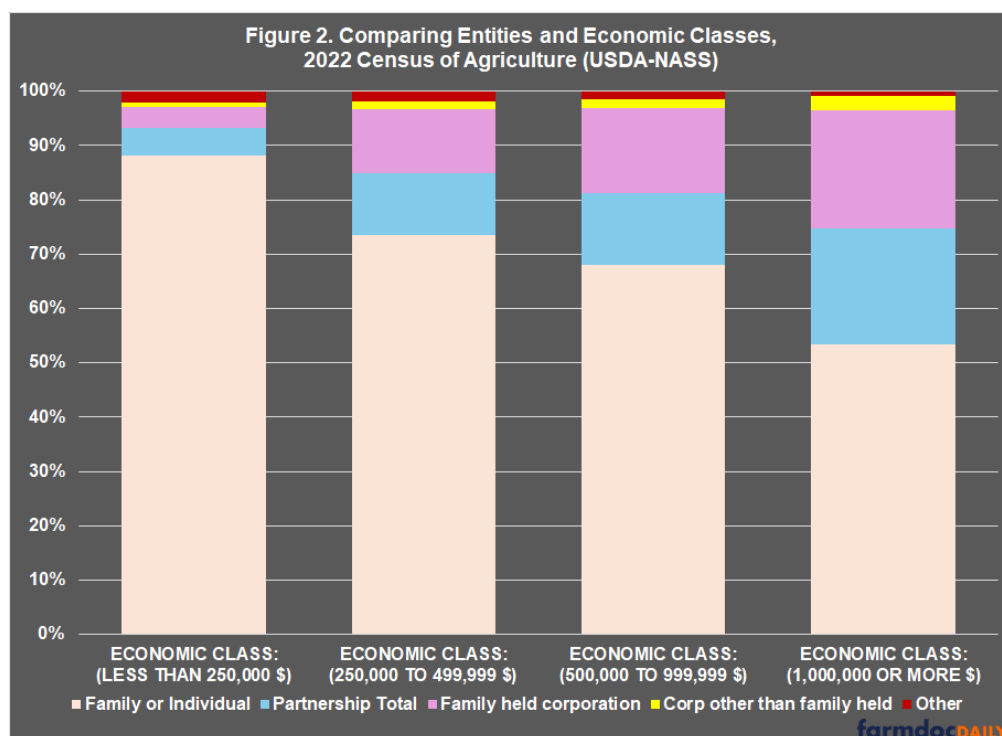


It does appear from Figure 1 that the use of legal entities is increasing, constituting an increasing share of total farm operations. For example, family held corporations (S corporations) have increased from 81,621 (3.7%) to 108,693 (5.4%) from the 1997 Census to the 2022 Census, while non-family held corporations have more than doubled from 8,811 (0.4%) to 18,955 (0.92%). LLCs have increased from 101,372 (4.7%) to 190,214 (9.3%) from the 2012 Census to the 2022 Census. By comparison, family or individual operations have decreased from 1.9 million (87.4%) to 1.6 million (78.4%) from the 1997 Census to the 2022 Census.

Clearly, farmers are not prevented from organizing their farms under one or more of these legal entities and may have legitimate business reasons to do so (Richardson and Geyer, 1999; Moore, [September 11, 2023](#)). Section 10306, therefore, is not intended to address problems with farm organizational options, a point that is reinforced by the statutory text. Section 10306 has one purpose: to permit these legal fictional entities to increase payment limits by multiplying the individual limit (\$155,000) by the number of legal fictional entities embedded in the farm. The purpose of doing so is to maximize the potential federal subsidy payments such operations can harvest.

Of course, the value or functional effectiveness of this provision depends on the size of the farming operation. A farm would need to have enough base acres to receive a sufficient amount of payments to approach the individual limit. It also depends on the expected payment rates: the higher the payment rate, the fewer the base acres needed for payments to reach the individual limit.

The 2022 Census data indicates that entity organizations are larger than non-entity farm operations. Nationally, the total acres per family or individual operation was reported as 316 on average, but 1,235 acres for family held corporations and 1,258 acres per operation for partnerships—nearly four times the size. Similarly, these farms have the highest incomes per operation, including government payments: family or individual operations were reported as having earned \$162,396 per operation; family held corporations, \$1.2 million per operation; and non-family held corporations over \$1.6 million per operation—more than seven times the income for family held and 10 times the income for non-family held corporations. Figure 2 adds further support for this point. Using the economic classes (combining all below \$250,000 into one economic class), Figure 2 illustrates the share of each economic class by entity in the 2022 Census data. Importantly, the economic classes include government program payments.



USDA analysis previously concluded that federal farm support had already shifted to larger farms with higher incomes from 1991 to 2015 (McFadden and Hoppe, [November 30, 2017](#)). This expanded loophole would accelerate that trend by allowing these larger operations to organize with liability protection,

favorable tax treatment, and the ability to increase farm subsidy payments. Everyone should expect the consequences to show up first and foremost in cash rents and land prices (*farmdoc daily*, [July 17, 2025](#)).

Concluding Thoughts

Section 10306 is poisonous policy. Through it, policymakers, goaded on by factional interests, encourage farmers to cull the young. It will benefit most the older, more established farmers with existing advantages in base acres, capital, equipment, land, and more. It will harm most the younger farmers and those in the early stages of their farm careers. Piling more financial pressure on those farmers will further (and rapidly) erode their competitive position until they are driven out of farming. Moreover, because conservation and innovation require long-term investments in place of short-term competitive advantages, while adding risk to farming along the learning curve, this provision is also how policy stifles innovation and constricts conservation. In total, this policy change represents American agriculture sacrificing the potential of a better future for the quick, cheap fix of bigger government checks.

These warnings are not new. In 1973, for example, came forth warnings that “[c]ontinuation of the trend toward larger and fewer farms can be expected,” along with “[i]ncreased control of agriculture by the food marketing and farm-supply industries, and perhaps to a lesser extent, by other nonfarm investors” (Sundquist and Guither, [1973](#)). Similarly, “[i]f nothing is done now to arrest the forces already in motion, commercial agriculture will likely be increasingly concentrated in larger, more industrialized units” (Rhodes and Kyle, [1973](#)). Of course, [premonition](#) is not [prescience](#) because no one knows what the future holds. A deficit of [clairvoyance](#) should not divert from [harbinger](#) or [portent](#), as there is little sense in ignoring obvious omens.

Looking back, the timing is notable. Earl Butz was Secretary of Agriculture under President Richard Nixon. In popular memory, former Secretary Butz is associated with the motto that farmers should get big or get out of farming regardless of whether he actually said those words (see e.g., Rosenberg and Stucki, 2017; Chen, 1995). The early 1970s were a momentous time, encompassing major legislative gains by the environmental movement, a controversial grain deal with the Soviet Union, a brief soybean embargo in the wake of a failed Peruvian anchovy harvest, the first oil embargo by OPEC, and enactment of the Agriculture and Consumer Protection Act of 1973. The latter created target price farm subsidy policy and codified the coalition between farm supports and Food Stamps. What followed in the next decade-and-a-half included a massive soil erosion crisis and an accompanying farm economic crisis that drove many farmers out of farming. Over those five decades, the coalition between farm and food assistance also delivered ten Farm Bill reauthorizations (Coppess, [2018](#); Coppess, [2024](#)).

All of which should serve a reminder that the Butzian motto—get big or get out of farming—and the binary, fork-in-the-road choice it prescribes are fallacy. Farmers do not simply get out of farming; it generally is not a choice or voluntary, they are forced out. Often the ones pushing them out are neighbors, other members of the farming community. The result is fewer farmers. To the extent that farmers are important to rural communities, fewer farmers works to the detriment of the towns they surround and beyond. Getting big may not be much of an option, however. It requires loans and more costs, additional expensive equipment and likely taking on or adding employees. It appears to require ever more federal subsidy payments. It means speeding up Cochrane’s treadmill and getting squeezed even more (Levins and Cochrane, [1996](#); *farmdoc daily*, [September 26, 2024](#); [August 31, 2023](#)). It also means driving other farmers—neighbors and community members—out of farming, often by bidding up cash rents or farmland prices. Farmers who began their careers in the early seventies and survived that era are themselves now in their seventies; with fifty years or more under their belts, they are likely retiring soon if they haven’t already. Many of them may be the last of their kind, a final, thin barrier against the more dire outcomes warned about when they were getting started.

Section 10306 in the Reconciliation Farm Bill is the most problematic change in farm policy because it encompasses and exacerbates the other problematic changes. The consequences of expanding that loophole for avoiding payment limitations will ripple through farm families and rural communities alike. The consequences will be felt throughout the food system but fall hardest on the natural resource base upon which it all depends. It also communicates that we have not learned from history, or that too many have learned the wrong lessons. It is one thing for farms to consolidate at the expense of other farmers, but quite another to weaponize public funding and federal policy to do the deed.

That is why it is important to understand that farmers were not being prevented from organizing their farms using one or more legal fictional entities. The fundamental assumption upon which this policy change is built is that farm subsidy payments are (or should be) the priority, not farmers or farming (see e.g., Farrell et al., 2023). The policy isn't about farm management, or which entity makes the most sense for the farm. The only point is to maximize payments while benefitting from liability protections and favorable tax treatment. The sole intent of Section 10306 is to increase the number of payment limits for some farm operations. It is not an accident or unintended consequence; it is a feature of the policy, not a bug. No amount of political spin can cover up that reality.

As it rolls out across the countryside, lawyers and accountants in small towns may celebrate this change—at least initially. They will have more work to do and hours to bill because they will be the ones setting up these qualified pass-through entities, helping to maximize payments while minimizing taxes. They are also likely to have work to do to help those farmers being driven out of farming, through land sales or other efforts to wind-down operations, maybe bankruptcies. Eventually, however, the ever-larger legal fictional farm entities will move on to bigger firms in bigger towns. It is a lesson that should be universal, as applicable to farming as anything else. Consolidation begets consolidation, in part because the consolidated become easier prey. For each fish proudly getting bigger, there is always a bigger fish.

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