United States Government Accountability Office

Report to the Ranking Member, Committee on the Judiciary, U.S. Senate

September 2013

FARM PROGRAMS

Changes Are Needed to Eligibility Requirements for Being Actively Involved in Farming

GAO Highlights

Highlights of GAO-13-781, a report to the Ranking Member, Committee on the Judiciary, U.S. Senate

September 2013

FARM PROGRAMS

Changes Are Needed to Eligibility Requirements for Being Actively Involved in Farming

Why GAO Did This Study

Agricultural producers receive about $5 billion annually in farm program payments for which being actively engaged in farming is required by the Farm Program Payments Integrity Act. GAO was asked to review FSA's processes for implementing actively engaged in farming regulations to determine payment eligibility.

This report examines, among other things, (1) FSA's compliance reviews of farming operation members' claimed contributions of active personal management and personal labor and (2) FSA state offices' timeliness in completing and reporting compliance reviews and their results. GAO reviewed FSA regulations and procedures, examined compliance review files in five states selected based on the number of assigned 2009 and 2010 compliance reviews (the latest available), analyzed compliance review data for those years, and interviewed FSA officials.

What GAO Recommends

Congress should consider modifying the definition of significant contributions of management activities, either as it did in recent deliberations on reauthorizing the Farm Bill, or in other ways designed to make contributions more clear and objective. GAO recommends that FSA establish a plan and a time frame for using its new database to monitor the status of compliance reviews. FSA concurred with GAO's findings and recommendation.

View GAO-13-781. For more information, contact Anne-Marie Fennell at (202) 512-3841 or FennellA@gao.gov.

What GAO Found

Compliance reviews conducted by the U.S. Department of Agriculture's Farm Service Agency (FSA) to determine if farming operation members (individuals and entities) meet the payment requirements for being actively engaged in farming are hindered by broad and subjective requirements and difficulty in verifying individuals' evidence of claimed contributions. To be actively engaged in farming, an individual is to make significant contributions to that operation in personal labor or active personal management (or both). However, the definition of active personal management in FSA regulations is broad and can be satisfied by an individual performing at least one of eight services representing categories such as supervision of activities necessary in the farming operation. Also, FSA regulations allow farming operation members to make contributions of management without visiting the operation, enabling individuals who live significant distances from an operation to claim such contributions. An FSA state official said that the agency finds problems with management contributions more often for those who live significant distances from an operation. FSA officials have also noted that the requirements for what constitutes a management contribution are subjective. FSA's handbook states that it is difficult to measure what constitutes a management contribution and that such a contribution must be critical to the profitability of a farming operation. FSA officials said that making such a determination is difficult and subject to interpretation. Also, officials from FSA headquarters and state offices GAO visited said that verifying evidence of management contributions is challenging, in part due to the extent to which compliance reviews must rely on interviews with payment recipients. FSA recognizes that it has the authority to change the definition of what constitutes a significant contribution of management in its regulations. However, as FSA stated in 2010 final regulations for farm program eligibility and as a senior FSA official told GAO in August 2013, FSA does not plan to change the regulatory definition of active personal management without direction from Congress. In recent congressional deliberations on reauthorizing the Farm Bill, statutory changes were considered that would allow one person per farming operation to contribute management activities satisfying the criteria for being actively engaged in farming. The timeline for Farm Bill reauthorization is unclear.

Most FSA state offices did not complete and report their assigned 2009 and 2010 compliance reviews within FSA's expected time frame (i.e., within 12 months of being notified by FSA headquarters of which farming operations to review). FSA state offices completed and reported about 24 percent of their assigned 2009 compliance reviews and 14 percent of their 2010 compliance reviews on time. In addition, FSA headquarters did not always know the status and results of the 2009 and 2010 reviews for oversight purposes when GAO discussed this issue with them in November 2012. With a delayed awareness of several years, FSA cannot reasonably assess the level of recipients' compliance with the act and may be missing opportunities to recapture payments that were made to ineligible recipients. To improve its monitoring of compliance reviews, FSA in May 2013 implemented a database for state and county FSA officials to electronically report their assigned compliance reviews' status and results. However, FSA has not developed a time frame or plan for using the database and until the agency does so it cannot fully utilize the database and realize its intended benefits.

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Abbreviations

ACRE	Average Crop Revenue Election
EYRT	End-of-Year Review Tracking
FSA	Farm Service Agency
USDA	U.S. Department of Agriculture

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

September 26, 2013

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Dear Senator Grassley:

From 2009 through 2012, agricultural producers participating in U.S. Department of Agriculture (USDA) farm programs collectively received an average of approximately $5.2 billion per year in total payments for which being actively engaged in farming is a requirement. These payments went to producers, both individuals and entities, such as partnerships, corporations, and trusts (app. I describes common types of farming operation entities).[1]

Following publicized instances of farm payments going to individuals not involved in farming, Congress enacted the Agricultural Reconciliation Act of 1987, commonly referred to as the Farm Program Payments Integrity Act. Among other things, the act established eligibility criteria that limit payments to individuals and entities that are "actively engaged in farming."[2] It also established criteria that discourage farming operations from avoiding program payment limits by adding individuals or entities to their operation.[3] Proponents of payment limits, however, have expressed concerns about the effectiveness of actively engaged in farming

[1]Entities also include other legal organizations such as joint ventures, limited liability companies, limited partnerships, limited liability partnerships, estates, and charitable organizations.

[2]The Agricultural Reconciliation Act of 1987, was enacted as title I of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No.100-203 101 Stat. 1330. The relevant provisions of the act became effective in the 1989 crop year.

[3]Congress approved statutory limits for certain farm program payments thereby establishing, for various program payment types, the maximum amount that an individual or entity can receive each year. Current payment limits were set in the Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill (Pub. L. No. 110-246, 122 Stat. 1651). For example, the maximum amount that an individual or entity can receive each year for a type of payment known as direct payments is $40,000. The USDA farm program payment types for which being actively engaged in farming is a requirement are discussed in the Background of this report.

requirements and the potential for individuals, whose claims of eligibility are questionable because they may have little involvement in a farming operation, to receive farm program payments. Congress and others' scrutiny of farm program payments has intensified in recent years in light of federal budget pressures and record farm income.

For an individual to meet the criteria for being actively engaged in farming, he or she must make significant contributions to a farming operation[4] in two areas: (1) capital, land, or equipment (or some combination of the three) and (2) personal labor or active personal management (or a combination of the two).[5] For an entity, such as a corporation, to meet the criteria for being actively engaged in farming, it must separately make a significant contribution of capital, land, or equipment, and its members must collectively make a significant contribution of personal labor or active personal management to the farming operation. For both individuals and entities, their share of a farming operation's profits or losses must be commensurate with their contributions to the farming operation and those contributions must be at risk.[6]

USDA's Farm Service Agency (FSA), which reports having 2,170 state and county offices, is responsible for (1) administering the Farm Program Payments Integrity Act and (2) ensuring that farming operation members meet the actively engaged in farming criteria and that they do not receive payments in excess of program payment limits. In particular, FSA state or county officials examine the operating plans of all farming operations applying for farm program payments and make an initial determination of whether individuals, legal entities, and/or members of general

[4]A farming operation is a business enterprise engaged in the production of agricultural products that is operated by an individual or an entity. Throughout this report, we often use the terms *farming operation members* and *entity members.* A member can be either an individual or an entity.

[5]USDA regulations define active personal management to include such tasks as arranging financing for the operation, supervising the planting and harvesting of crops, and marketing the crops. A landowner may be considered actively engaged in farming with respect to the owned land, without providing a significant contribution of personal labor or active personal management so long as he or she received rent or income based on the land's production or the farming operations results, his or her share of the profits is commensurate with the landowner's contributions, and those contributions are at risk.

[6]For such contributions to be considered at risk, there must be a possibility that the individual or member of an entity could suffer a financial loss.

partnerships or joint ventures meet the requirements for being actively engaged in farming.[7] In addition, FSA headquarters annually selects certain farming operations for compliance reviews[8] to determine whether they carried out their operating plans as represented when FSA made its initial determination of whether farming operation members satisfied actively engaged in farming requirements. Appendix II shows the number of farming operations that FSA headquarters selected for 2009 and 2010 compliance reviews by state.[9] According to an FSA official, these years were the most recent for which compliance review information was available at the time of our review.

We have previously questioned the adequacy of the current actively engaged in farming requirements, particularly the definition of active personal management, and we have reported that farming operation members may be receiving payments despite questionable evidence to support claims of active personal management contributions. For example, in April 2004, we reported that the lack of a measurable standard for what constitutes a significant contribution of active personal management allows individuals and entities who may have little involvement in a farming operation to be eligible for payments.[10] We recommended that USDA develop and enforce measureable requirements defining a significant contribution of active personal management. However, USDA disagreed with our recommendation and stated that its regulations and procedure for determining what constitutes a significant contribution of active personal management were consistent with the intent of Congress in the Farm Program Payments Integrity Act.

[7]The farm operating plan documents, among other things, the name of each farming operation member, the number of members applying for payments, the members' share of profits and losses, and the members' claimed contributions.

[8]The criteria that FSA headquarters uses to select farming operations for compliance reviews include whether a farming operation has undergone an organizational change in the past year and are discussed in the Background of this report.

[9]FSA uses the term "end-of-year reviews." Consistent with prior GAO reports, however, we use the term "compliance review" when discussing FSA's annual reviews of select farming operations for the purpose of determining whether the farming operations were conducted consistent with their operating plans as presented when FSA made its initial determination regarding actively engaged in farming requirements.

[10]GAO, *Farm Program Payments: USDA Needs to Strengthen Regulations and Oversight to Better Ensure Recipients Do Not Circumvent Payment Limitations*, GAO-04-407 (Washington, D.C.: Apr. 30, 2004).

USDA wrote new regulations for farm program payment limits and payment eligibility to be consistent with provisions of the 2008 Farm Bill.[11] FSA issued new regulations in 2008, which it subsequently amended to address comments and make minor technical corrections in 2010.[12] According to FSA's summary of the more than 5,000 public comments on the proposed regulations, 73 percent stated that payment eligibility rules needed to be made more restrictive, particularly in the area of the requirements for active personal management. FSA's summary of these comments said in part that "A more rigorous definition of active personal management is needed; too many people per legal entity are qualifying for payment eligibility based on only active personal management." In responding to these public comments in the Federal Register, FSA stated the following:[13]

> The definition of what constitutes a significant contribution is provided by regulation, not by statute and therefore could be changed. We recognize the difficulty in determining the significance of a management contribution under the current definition and the appeal of a measurable, quantifiable standard. However, unlike labor, the significance of a management contribution is not appropriately measured by the amount of time a person spends doing the claimed contribution. The current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years; Congress has not mandated a more restrictive definition during that time, including in the 2008 Farm Bill.

Most recently, as Congress deliberated the reauthorization of the 2008 Farm Bill, it considered changing the statute governing actively engaged in farming. A provision in farm bill legislation approved by the Senate in June 2013 would remove active personal management as a condition that would satisfy the criteria for actively engaged in farming and would require members of farming operations to make a significant contribution of personal labor to be eligible for payments, with an exception that would allow one farm manager per farming operation to provide management activities.[14] The House of Representatives approved farm bill legislation

[11]Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651.

[12]73 Fed. Reg. 79, 267 (Dec. 29, 2008) (codified as amended by 75 Fed. Reg. 887 (Jan. 7, 2010), at C.F.R. pt. § 1400.

[13]75 Fed. Reg. 887, 893.

[14]S. 954, 113th Cong. (2013).

that included a similar provision in July 2013.[15] The timeline for the reauthorization of the Farm Bill is unclear.

You asked us to review FSA's processes for implementing actively engaged in farming regulations to determine payment eligibility. Our objectives for this report were to examine (1) FSA's compliance reviews of farming operation members' claims of significant active personal management and personal labor contributions to meet actively engaged in farming requirements, (2) the extent to which FSA state offices completed and reported compliance reviews within expected time frames and the results of reported reviews of management and personal labor contributions, and (3) the distribution and amount of payments to farming operations by type of entity and members' claims of active personal management or personal labor contributions.

To address the first objective, we reviewed the 2008 Farm Bill provisions on actively engaged in farming, relevant USDA regulations, and FSA's handbook on payment eligibility and payment limits.[16] We also interviewed FSA state and county officials in five states— Arkansas, Kansas, Louisiana, Mississippi, and Texas. We selected the states for site visits based on the number of 2009 and 2010 compliance reviews that FSA headquarters had assigned to them and the diversity of crops produced in the states.[17] In each of these states, we visited the FSA state office and one or two county offices. We selected county offices for site visits based on the number of 2009 and 2010 compliance reviews that FSA headquarters had assigned to them and the county offices' physical location to limit travel costs. During these visits to FSA state and county offices, we discussed compliance review processes and results with FSA officials and examined examples of 2009 and 2010 compliance review files.[18] These files included supporting documents submitted by farming operations that described their members' contributions to the farming

[15]H.R. 2642, 113th Cong. (2013).

[16]Farm Service Agency handbook, *Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income*, 4-PL, Amendment 10.

[17]We also used these criteria to select two additional states—California and Illinois—for state office interviews. We contacted these state offices to broaden our scope with respect to diversity of crops produced.

[18]These years were the most recent for which compliance reviews were to have been completed when we conducted our review.

operation in the areas of active personal management and personal labor and FSA forms documenting compliance review processes and results. We selected compliance reviews for examination based on the number of farming operation members and the organizational complexity of the farming operations that were reviewed. Information collected from the site visits and derived from the compliance review files is illustrative and not generalizable to all FSA offices or compliance review files for 2009 and 2010.

To address the second objective, we interviewed an FSA headquarters official in charge of selecting farming operations for compliance reviews, and we obtained and reviewed relevant documents related to compliance reviews. For example, we obtained and reviewed FSA headquarters' memos that notified states of the 2009 and 2010 selection of farming operations and expected states to complete and report the respective reviews by August 1, 2011 and December 1, 2012. We also obtained and reviewed state offices' hard copies of 2009 and 2010 compliance review summary documents submitted to FSA headquarters. Further, we obtained and analyzed 2009 and 2010 FSA electronic data on the results of state offices' compliance reviews of farming operations and their members as of April 30, 2013. We examined data on the results of the 2009 compliance reviews of 11 FSA state offices and the 2010 compliance reviews of 9 FSA state offices that reported the results of 70 percent or more of their assigned reviews. We chose to examine data on the compliance review results only for those state offices that reported at least 70 percent of their 2009 and 2010 assigned reviews because examining compliance reviews from state offices with lower completion and reporting rates would not be representative of those offices' compliance reviews.[19] In particular, we analyzed the data to determine the number of total members in the farming operations, the number and percentage of members' claiming contributions of active personal management only, personal labor only, or a combination of both active personal management and personal labor, and the number and

[19]We excluded the results of compliance reviews from state offices that reported less than 70 percent of their 2009 and 2010 assigned reviews because the results of their reported reviews may not be representative of those offices' compliance reviews. For example, the reviews for which the results were reported may have been more likely to find that farming operation members had made their claimed contributions. Relative to the compliance reviews that were not reported, the results of reviews that were reported may have been from compliance reviews that were easier to complete because the evidence that farming operation members were making their claimed contributions was unambiguous.

percentage of members meeting these claimed contributions. The results of this analysis are limited to farming operations selected by FSA headquarters and do not include results from farming operations selected as spot checks or added by FSA state committees or county committees. In addition, the results are not generalizable to the results of all 2009 or 2010 compliance reviews or the results of all states. To assess the reliability of the data, we (1) interviewed FSA agency officials knowledgeable about FSA's database, (2) performed logic tests of relevant data elements, and (3) reviewed related documentation. We determined that the data elements related to the assigned and waived compliance reviews were sufficiently reliable for the purposes of determining the number of compliance reviews assigned to states in 2009 and 2010, the number of compliance reviews that were waived, and the number of compliance reviews that states were directed to complete and report to FSA headquarters after waivers were granted. We also determined that the data were sufficiently reliable for the purposes of showing the results of members' contributions across 202 compliance reviews from 11 states for the 2009 review year and the results of members' contributions' across 119 compliance reviews from 9 states for the 2010 review year.

To address the third objective, we obtained and analyzed 2009 through 2012 FSA data on applicable farm program payments made to entities. We also analyzed 2012 data on entity members' contributions of active personal management, personal labor, and a combination of both to farming operations to meet the requirements to be actively engaged in farming and 2012 FSA data on applicable farm program payments attributed to these members. We analyzed the data to determine the distribution and amount of payments made based on individual members' claims of active personal management or personal labor contributions categorized by the number of members in various entities. To assess the reliability of both FSA datasets, we (1) performed electronic tests of pertinent data elements, (2) reviewed information about the data, and (3) interviewed agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of determining the distribution and amount of payments to types of farming operations based on individual members' claims of active personal management or personal labor contributions. This analysis is limited to only those farm program payments that could be attributed to individual members' contributions and were recorded in FSA's database. Appendix III presents a more detailed discussion of our objectives, scope, and methodology.

We conducted this performance audit from May 2012 to September 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In 1987, Congress enacted what is commonly known as the Farm Program Payments Integrity Act, requiring that an individual or entity be actively engaged in farming to receive farm program payments. To be considered actively engaged in farming, the act requires an individual or entity to provide the farming operation with a significant contribution of inputs of capital, land, or equipment, as well as a significant contribution of services of personal labor or active personal management. Table 1 shows the input and service contribution requirements that farming operation members must meet to be considered actively engaged in farming.

Table 1: Input and Service Contribution Requirements for Farming Operation Members to Be Considered Actively Engaged in Farming

Input contribution	Service contribution
Significant contribution to the farming operation of one or a combination of • capital, • land, or • equipment.	Significant contribution to the farming operation of one or a combination of • personal labor or • active personal management.

Sources: GAO analysis of the Farm Program Payments Integrity Act of 1987 and FSA's handbook on payment eligibility and payment limits.

More specifically, as stated in FSA's handbook, to satisfy the actively engaged in farming criteria, an active personal management contribution must, among other things, be critical to the profitability of the farming operation. For personal labor, the contribution is to be an amount that is the smaller of 1,000 hours annually or 50 percent of the total hours that would be required to conduct a farming operation comparable in size to the individual's or legal entity's commensurate share in the farming operation.

In addition to meeting the input and services requirements, a farming operation member's contributions to the farming operation must be in proportion to his or her share of the operation's profits and losses, and the contributions must be "at risk." For a member's contribution to be considered at risk, there must be a possibility that the member could suffer a financial loss. For example, if a member of a general partnership or joint venture receives a guaranteed payment for any part of a contribution of labor or management, that contribution is not at risk, and the contribution is to be excluded in determining whether that member is actively engaged in farming.

In addition to the requirements specified in the act, FSA's handbook on payment eligibility and payment limits provides direction for actively engaged in farming determinations involving spouses. According to the handbook, if spouses are farming together in a general partnership or joint venture and one spouse is determined to be making a significant contribution of active personal management, the other spouse is credited with a significant contribution of active personal management. The other spouse would still have to meet other requirements, such as making a significant contribution of land, capital, or equipment.

Types of Payments and Payment Limits Subject to Actively Engaged in Farming Requirements

In accordance with the 2008 Farm Bill, to receive certain farm program payments—that is, direct payments, counter-cyclical payments, and Average Crop Revenue Election (ACRE) payments—a farming operation member must be actively engaged in farming. Each of these types of payments and their payment limits are described as follows:

- *Direct payments:* Direct payments are fixed annual payments based on a farms' historical crop production. FSA calculates potential direct payments using a formula that factors in "base acres," a measure of a farm's crop production history based on the number of acres planted on the farm during certain past years. The term base acres refers to a farm's average planted acreage of eligible crops during those years. The direct payment formula uses base acres and multiplies that number by the farm's historical crop yield and a statutorily fixed payment rate for each crop. The percentage and payment rates for each crop are specified in farm bills. For 2009 through 2011, this percentage was set at 83.3 percent; for 2012, it was set at 85 percent.[20] The direct payment limit for general partnerships and joint ventures is $40,000 per member or partner who meets payment eligibility requirements.[21] The direct payment limit for corporations, limited liability companies, and other entity types is $40,000 per entity that meets payment eligibility requirements. According to USDA data, total direct payments from 2009 through 2012 averaged $4.7 billion annually.

- *Counter-cyclical payments:* Counter-cyclical payments are price support payments that are made when the actual price of an eligible crop falls below a legislatively determined target price. Like direct payments, potential counter-cyclical payments are calculated using the historical base acres and crop yields established for a farm. The counter-cyclical payment limit for general partnerships and joint ventures is $65,000 per member or partner who meets payment eligibility requirements including being actively engaged in farming. The counter-cyclical payment limit for corporations, limited liability companies, and other entity types is $65,000 per entity that meets payment eligibility requirements. According to USDA data, total counter-cyclical payments from 2009 through 2012 averaged $348 million annually.

- *ACRE payments:* An ACRE payment is a revenue-support payment that is available as an alternative to counter-cyclical payments and offered for certain crops if (1) actual state revenue (i.e., crop yield multiplied by market price) is less than a guaranteed state level for the crop and (2) the individual farm's actual farm revenue for a crop is less than the farm's benchmark revenue for the crop. The acreage on which ACRE payments are made cannot exceed a farm's historical base acres. For members of farming operations that elect to enroll in ACRE, direct payments are reduced by 20 percent. The ACRE

[20]In 2012, the direct payment for 100 base acres of corn that had a historical yield of 110 bushels of corn per acre would be 100 multiplied by 110 multiplied by 85 percent (the fixed percentage of the base acres) multiplied by 28 cents per bushel (the statutorily fixed payment rate for corn). Thus, the payment for these 100 base acres would have been $2,618.

[21]According to FSA's handbook, a general partnership is composed of two or more individuals or entities, formed under State law, and subject to the terms of a formalized agreement. In a general partnership, responsibility for management, profits, and, the liability for debts is shared by the members. A joint venture is defined by FSA as a short-term association of individuals or entities, where the association exists without an actual partnership. The liability for debts is shared by the joint venture's members.

payment limit for general partnerships and joint ventures is $65,000 per member or partner who meets payment eligibility requirements including being actively engaged in farming. The ACRE payment limit for corporations, limited liability companies, and other entity types is $65,000 per entity that meets payment eligibility requirements. According to USDA data, total ACRE payments from 2009 through 2012 averaged $120 million annually.

Potential for Farming Operations to Receive Payments Above the Payment Limit

As we reported in 2004,[22] it is possible for farming operations organized as general partnerships or joint ventures to receive payments above the payment limit. For a farming operation with a large number of base acres of crops, especially crops that garner higher payment rates per acre, such as rice, peanuts, and cotton, the base acres and payment rates per acre are large enough to result in potential direct payments that are substantially more than the $40,000 payment limit for direct payments. The actual direct payments would depend on the number of farming operation members who meet payment eligibility requirements.[23] For example, a farming operation that was organized as a general partnership or joint venture and had about 4,200 base acres of rice with an annual direct payment rate of $96 per acre has the potential to receive up to about $400,000 annually in direct payments, if it had 10 members who met payment eligibility requirements (i.e., $40,000 for each of the 10 members). By contrast, if this farming operation had only 2 members who met payment eligibility requirements, it would receive only $80,000 annually in direct payments (i.e., $40,000 for each of the 2 members). In 2004,[24] we reported that some farming operations may have been organized to overcome program payment limits and maximize the amount of their farm program payments. One of the examples we cited was a general partnership consisting of 11 members, several of whom appeared to have little involvement in farming operations that received $1 million in farm program payments on its 11,900 cropland acres in 2001.

[22]GAO-04-407.

[23]These payment eligibility requirements include meeting requirements for being actively engaged in farming.

[24]GAO-04-407.

In June 2013, the Senate approved farm bill legislation that would repeal direct payments, counter-cyclical payments, and ACRE payments, while creating new farm programs.[25] In July 2013, the House of Representatives approved farm bill legislation that included similar provisions. Some of these farm programs would have payment limits. Therefore, if this farm bill legislation is enacted into law, payment limits may continue to be a financial consideration for farming operations.

FSA's Process for Reviewing Farms' Operating Plans

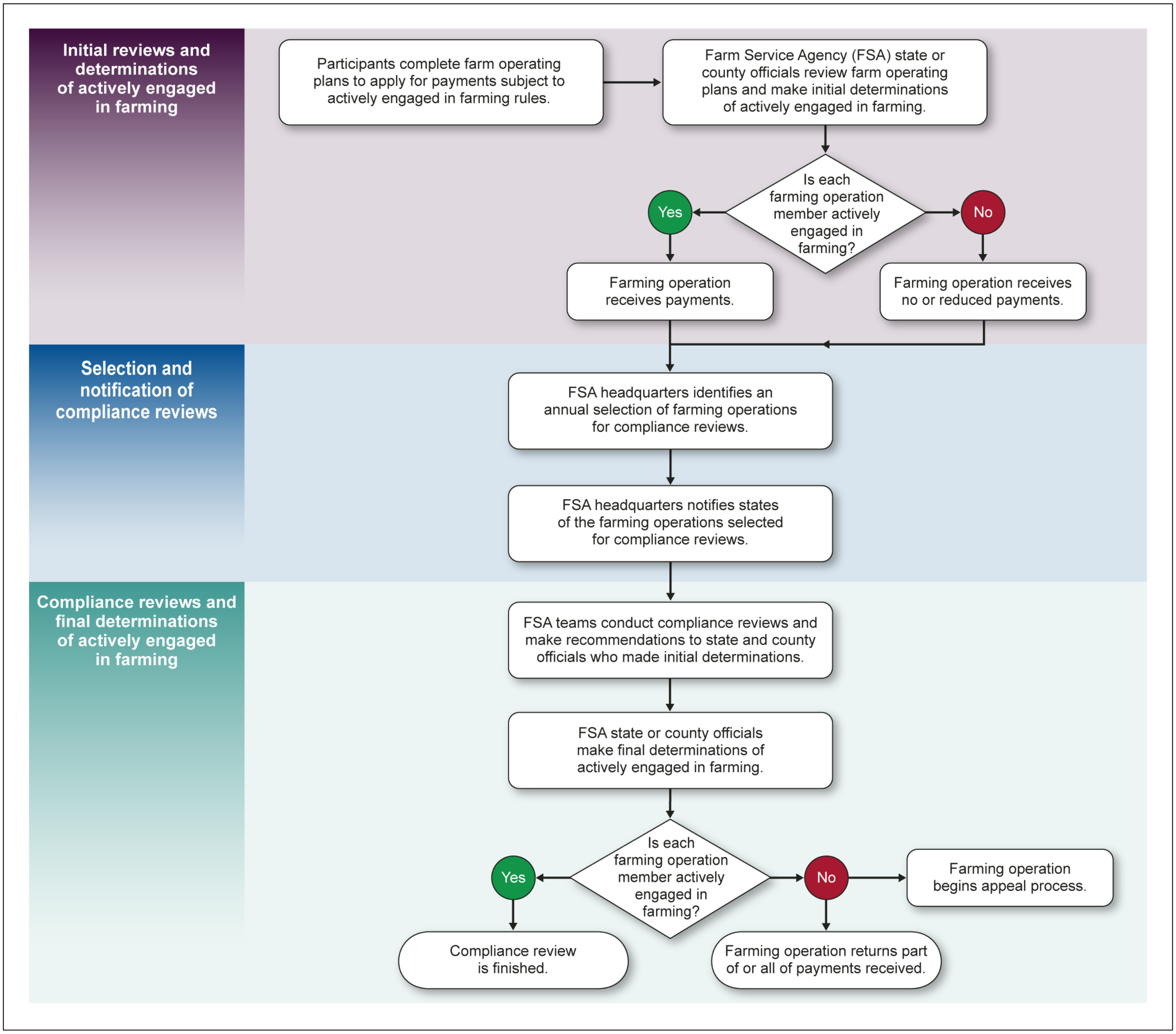
All participants in programs subject to the actively engaged in farming requirements must complete a USDA form known as a farm operating plan, either for an individual or legal entity.[26] The information disclosed about the farming operation on this form becomes the basis for the determination of payment eligibility.[27] The farm operating plan documents the name of each farming operation member, the number of members applying for farm payments, the members' shares of profits and losses, and the members' roles in the farming operation and their claimed contributions. FSA's process for reviewing farm operating plans is shown in figure 1.

[25] S. 954, 113th Cong.

[26] USDA revised the regulations for payment limits and payment eligibility to be consistent with provisions of the 2008 Farm Bill. FSA directed all farming operations to provide updated farm operating plans for 2009. For 2010 and subsequent years, FSA directs farming operations that underwent an organizational change during the year to provide updated farm operating plans.

[27] As defined by the Improper Payments Information Act of 2002, as amended, a payment to an ineligible recipient is an improper payment.

Figure 1: FSA's Process to Review Farm Operating Plans



Source: GAO.

Note: For farming operations that have six or more members, an FSA state office makes the initial determination of whether the members meet requirements for being actively engaged in farming. For farming operations that have fewer than six members, an FSA county office makes the initial determination. According to FSA officials, after FSA headquarters selects certain farm operations for compliance reviews, FSA state offices then establish review teams composed of state or county officials to conduct the reviews.

After farming operations submit completed farm operating plans for farm program payments, officials from FSA state or county offices examine the operating plan and make an initial determination of the number of farming operation members that qualify for payments and whether the members meet requirements for being actively engaged in farming. For farming operations that have six or more members, an FSA state office makes the initial determination. For farming operations that have fewer than six members, an FSA county office makes the initial determination.

Each year, FSA headquarters selects certain farm operations for a more detailed examination, called an “end-of-year review” (i.e., compliance review) to evaluate whether farming operations were conducted as represented in the operating plan, including determining whether each of the members of the selected farming operation was actively engaged in farming. FSA headquarters selects farming operations for compliance reviews based on, among other criteria, whether the operation (1) has undergone an organizational change in the past year and (2) received payments greater than a specified amount.[28] FSA headquarters selected 1,213 and 312 farming operations for 2009 and 2010 compliance reviews, respectively.[29] According to FSA officials, given resource constraints, FSA limits the number of farming operations selected for compliance reviews to better enable state offices to be more thorough in conducting assigned reviews.

FSA headquarters then notifies FSA state offices of the farming operations selected for compliance reviews. According to FSA’s handbook, state offices may waive compliance reviews under certain circumstances. For example, a waiver may be granted if a farming operation selected for a compliance review involved only a husband and a wife. FSA state offices then establish review teams composed of state and county officials to conduct the compliance reviews, according to FSA

[28]According to an FSA official, this amount was $80,000 for 2009 and 2010. In addition to FSA headquarters’ selection of farming operations, FSA state and county offices may also choose to conduct additional compliance reviews of other farming operations in certain situations, such as when FSA has reason to believe a farm operating plan was not followed as represented.

[29]As a point of reference, about 103,000 entities received payments that were subject to actively engaged in farming requirements in 2012, according to our analysis of FSA data.

officials. FSA headquarters expects state offices to complete and report their assigned compliance reviews within 12 months of being notified by FSA headquarters of which farming operations to review.

In performing compliance reviews, FSA's handbook on payment eligibility and payment limits directs FSA staff to inspect key documents provided by farming operations, such as partnership agreements, canceled checks and loan documents showing the signature of the applicable farming operation members, and narrative summaries of the members' management duties. If the documents provided do not adequately establish a significant management contribution for a member, FSA staff are to interview the member to assess the member's knowledge of the farming operation and their claimed contribution of management. According to FSA officials, to assess claims of significant contributions of personal labor, FSA staff are to determine whether the member lived near the farming operation and could have provided the claimed labor, as well as review documents such as records of hours worked. In addition, FSA staff are to review evidence supporting members' claims of the other types of contributions: capital, equipment, and land.

If any partner, stockholder, or member with an ownership interest in a farming operation does not meet the actively engaged in farming requirements, farm program payments are to be reduced by the corresponding share held by that partner, stockholder, or member. FSA is then responsible for recovering the payments that are subject to actively engaged in farming requirements.

FSA Compliance Reviews Are Hindered by Broad and Subjective Eligibility Requirements and Difficulty Verifying Evidence of Members' Claimed Contributions

FSA compliance reviews of farming operation members' claims of eligibility to receive payments for being actively engaged in farming are hindered by (1) a broad definition of active personal management, (2) subjective requirements of what constitutes significant contributions of management, and (3) difficulty in verifying individuals' evidence of claimed contributions of active personal management and personal labor. Combined, these factors make it difficult for FSA to determine whether an individual had made a significant contribution of active personal management, potentially allowing individuals who may have had limited involvement in a farming operation to receive payments.

Broad Definition of Active Personal Management Makes It Difficult for FSA to Determine Significant Contributions in Compliance Reviews

Based on our review of FSA's regulations, its handbook on payment eligibility and limitations, and a sample of 2009 and 2010 compliance review files and interviews with FSA officials, we found that the definition of active personal management is broad and makes it difficult for FSA to determine whether an individual had made a significant contribution of active personal management.

Under FSA's regulatory definition, a person is considered to be providing active personal management with respect to a farming operation if that person is personally providing and participating in (1) the general supervision and direction of activities and labor involved in the farming operation or (2) services (whether performed on-site or off-site) reasonably related and necessary to the farming operation. These services may include any of the following:

- supervision of activities necessary in the farming operation,
- business-related actions that include discretionary decision making,
- evaluation of the financial condition and needs of the farming operation,
- assistance in structuring or preparing financial reports or analyses for the farming operation,
- consultations in or structuring of business-related financing arrangements for the farming operation,
- marketing and promotion of agricultural commodities produced by the farming operation,
- acquiring technical information used in the farming operation, or
- any other management functions reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Similarly, in the FSA handbook, the definition of active personal management is broad and can be satisfied by providing any one of the eight services identified in the regulations.[30] This broad range of active personal management services makes it possible for farming operations to claim payment eligibility for multiple individuals based on their management contributions. In some instances, these individuals may have little involvement in the farming operation. Management responsibilities can be distributed among farming operation members so as to increase the number of individuals who can claim eligibility for payments based on management contributions. According to FSA officials, a farming operation may have a primary manager who makes the key decisions with various personal management services being the responsibilities of other farming operation members. For example, one individual may be responsible for crop insurance and land conservation issues, a second individual may be responsible for equipment needs and human resources, a third may be responsible for seed and fertilizer purchases, and a fourth may be responsible for land acquisition and landlord relations.

The FSA regulations are also broad in that they allow farming operation members to make significant contributions of active personal management without physically visiting the farming operation. This allows individuals who live significant distances from the farming operation to claim that they made significant contributions of management. According to an FSA state office official, compliance reviews find problems with management contributions more often for individuals who live significant distances from the farming operation than they find for individuals who live near the farming operation. We examined address data from FSA's database to review the distances between the addresses of farming operations and those of their individual members for the 50 farming operations that received the highest payments subject to actively engaged in farming requirements in 2012.[31] We found that some of the individual members who claimed contributions of active personal management had addresses that were hundreds of miles from the address of the farming operation.

[30]FSA's regulations and handbook on payment eligibility and payment limits define active personal management broadly, in part according to FSA officials, because of how USDA interprets congressional intent behind the Farm Program Payments Integrity Act.

[31]The 50 farming operations consisted of 49 general partnerships and 1 joint venture. When we examined individual members' address data for the top 50 farming operations, we excluded 3 farming operations because we could not find payments based on individual members' contributions of active personal management in FSA's database.

In addition, we found that the address data for farming operation members are not always accurate in FSA's database. We compared the addresses for individual members with publicly available sources of address data and found that a number of these individual members had addresses that did not match the address shown in FSA's database. For example, 14 of the 50 farming operations in FSA's database showed that most or all of the individual members had the same address as the farming operation, but our analysis of publicly available sources of address data found that for all of these 14 farming operations, some of the individual members' addresses did not match the address shown in FSA's database. Based on these publicly available sources, some of these individual members' addresses were hundreds of miles from the farming operation address. One of these farming operations, located in a Midwestern state, received payments of about $400,000 in 2012, according to our analysis of FSA data, and farmed about 25,000 acres, according to FSA officials. This farming operation, organized as a general partnership, included 6 corporations and 11 individual members of the same family who ranged in age from 18 to 88. According to the publicly available sources, 2 of the individuals, including the 88-year-old, had addresses in south Florida. According to an FSA official, these 2 individuals claimed contributions of active personal management only, and the other 9 individuals claimed contributions of a combination of active personal management and personal labor. In addition, according to the FSA official, the individual whose age was 18 in 2012 first received payments in 2010. A compliance review of this farming operation for 2010 found that all of the members were making their claimed contributions. According to an FSA official, the broad definition of active personal management is difficult for FSA to apply in compliance reviews of such farming operations.

According to an FSA headquarters official, the agency has not formally considered changing the definition of active personal management since FSA issued final regulations for farm program payment limits and payment eligibility in 2010. At that time, FSA stated in responding to the public comments in the *Federal Register* to its interim regulations: "The definition of what constitutes a significant contribution is provided by regulation, not by statute and could be changed." Thus, FSA recognizes that it has the authority to change the definition of what constitutes a significant contribution for active personal management. And according to FSA's summary of the majority of the over 5,000 public comments on the proposed regulations, "A more rigorous definition of active personal management is needed; too many people per legal entity are qualifying for payment eligibility based on only active personal management." Furthermore, without additional criteria or restrictions on the use of management contributions to qualify for payments for which being actively engaged in farming is required, the reliability and integrity of FSA's compliance reviews will continue to be uncertain, and the federal government risks distributing millions of dollars to individuals who may have little actual involvement in farming operations. In April 2004, we reported that the lack of a measurable standard for what constitutes a significant contribution of active personal management allows individuals and entities who may have little involvement in a farming operation to be eligible for payments. USDA disagreed with our recommendation, saying that its regulations and procedure for determining what constitutes a significant contribution of active personal management were consistent with the intent of Congress in the Farm Program Payments Integrity Act. Thus, no action has been taken to address this issue.

In this report, we have some findings that are similar to those we made in 2004. However, it appears unlikely that FSA will change its regulatory definition of active personal management in view of its 2010 statements in the *Federal Register* that the "current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years" and that "Congress has not mandated a more restrictive definition during that time." In August 2013, a senior-level FSA headquarters official said that the agency does not plan to change the regulatory definition of active personal management without direction from Congress. In deliberations on reauthorizing the 2008 Farm Bill, Congress has recently considered statutory changes that would affect the use of active personal management. A provision in farm bill legislation approved by the Senate in June 2013 would remove active personal management as a condition that would satisfy the criteria for actively engaged in farming and would require each member of a farming operation to make a significant contribution of personal labor to be eligible for payments, with an exception that would allow one farm manager per farming operation to provide management activities.[32] The House of Representatives approved farm bill legislation that included a similar provision in July 2013.[33] The timeline for the reauthorization of the Farm Bill is unclear.

[32]S. 954, 113th Cong. (2013).

[33]H.R. 2642, 113th Cong. (2013).

Subjective Eligibility Requirements Hinder FSA's Ability to Evaluate Claimed Contributions of Management

In reviewing FSA's regulations, its handbook on payment eligibility and limitations, and a sample of 2009 and 2010 compliance review files and interviewing FSA officials, we found that the requirements for what constitutes a significant contribution of active personal management are subjective. Our findings are consistent with what we reported in 2004[34] when we stated that FSA officials acknowledged, that under current regulations, only land, equipment, capital, and labor are measurable, and that enforcing the current management contribution standard is difficult because of its subjective nature.

FSA's handbook acknowledges that it is difficult to measure what constitutes a significant active personal management contribution. According to the handbook, an individual's or legal entity's contribution of active personal management is to be "critical to the profitability of the farming operation, taking into consideration" the individual's or legal entity's commensurate share in the farming operation. Officials we interviewed from several FSA state offices said that determining whether a management contribution is critical to the profitability of a farming operation is difficult and subject to interpretation.

Such a subjective criterion makes it difficult for FSA to determine whether an individual had made a significant contribution of active personal management. To demonstrate this issue, an FSA state office official cited a 2009 compliance review of a farming operation that consisted of eight individual members: an elderly married couple, their three children, and the children's spouses. The parents were the only members who lived near the farming operation, which had about 10,000 acres of crops. While all eight of the individual members claimed contributions of active personal management, the farming operation also employed three paid farm managers. FSA compliance reviewers found that the three paid farm managers provided the majority of the operation's management and concluded that the eight individuals did not provide significant contributions of active personal management. The farming operation appealed the compliance review determination to the FSA state committee, which upheld the determination. The farming operation then appealed to the National Appeals Division, which overturned the compliance review determination. According to FSA documentation, the National Appeals Division hearing officer stated that the compliance

[34] GAO-04-407.

review determination was erroneous because (1) while one full-time paid farm manager and other employees implemented the farming operation members' decisions and performed "routine day-to-day farming operation functions," the eight individual members collectively made the significant management decisions and (2) the full-time farm manager's salary in 2009 was about 42 percent of what a third-party vendor would charge for the same management services, leaving more than 50 percent to be contributed by the farming operation's eight members.[35] FSA appealed this decision to the National Appeals Division Director. Among other things, FSA stated that "There is no regulatory basis or evidence in the record to support using this dollar value basis comparison for which the hearing officer uses it as a basis for the decision." In addition, FSA stated that "there is nothing that demonstrates exactly what each of these supposed members who are seeking to qualify themselves as actively engaged separate persons individually decided or actually did that impacted the profitability of the farming operation." However, the National Appeals Division Director found the hearing officer's findings were supported by substantial evidence and rejected FSA's arguments regarding the members' contributions of active personal management. FSA stated that it did not agree with the Director's determination.

Members' Claimed Management Contributions Are Often Difficult to Verify

In 2003, a USDA commission established to look at the impact of changes to payment limitations concluded that determining active personal management is very difficult, and lack of clear criteria likely facilitates the creation of persons for payment limit purposes. The commission's report stated the following:[36]

> The Commission is concerned that some individuals may become eligible for payments even when their active personal management is not contributing in a meaningful way to the farming operation. This may occur because of the difficulty of measuring management and determining compliance. Hence, the criterion of providing management may present a very low threshold for qualifying for payments, thus facilitating creation of persons for payment limit purposes.

[35] The National Appeals Division hearing officer's analysis did not include two employees who were considered to have provided management by FSA's compliance review.

[36] U.S. Department of Agriculture, Office of the Chief Economist, Commission on the Application of Payment Limitations for Agriculture, *Report of the Commission on the Application of Payment Limitations for Agriculture* (Washington, D.C.: August 2003).

FSA headquarters and officials from the five state offices we visited consistently said that verifying evidence of significant contributions of active personal management is challenging. One of the reasons for this difficulty is the extent to which compliance reviews must often rely on interviews with individual payment recipients. For example, when compliance reviewers do not find sufficient documentation to support an individual's claim of a significant contribution of active personal management, reviewers should interview the individual to determine his or her knowledge of the farming operation and the claimed personal management contribution, as outlined in FSA's handbook. If, following the interview, FSA officials determine that an individual did not make a significant contribution of active personal management, the individual can appeal the decision to the FSA state committee, which may entail, among other things, the individual being interviewed for a second time. Furthermore, even if the FSA state committee also concludes that the individual did not make a significant contribution of management, the individual can appeal the decision to USDA's National Appeals Division, which may result in the individual being interviewed a third time. According to FSA officials, during appeal interviews, individuals with little involvement in farming operations can overstate their management contributions by giving rehearsed answers or providing new information that has not been verified, often with assistance of hired consultants. For example, in a case file document responding to a National Appeals Division decision to overturn a compliance review determination, FSA stated the management contributions were not accurately represented. In addition, FSA stated the farming operation had "hired a representative who has now come up with an entirely different explanation of each partner's actual duties and activities." This indicates the concern of some FSA officials that the characterization of management contributions can change over time, making it difficult for them to verify claims of such contributions.

In another example cited by an FSA state official, FSA did a compliance review of a farming operation that had eight individual members from the same family who each claimed to be making a significant contribution of active personal management. The compliance review determined that four of the individuals did not make a significant contribution. According to an FSA official, this determination was based in part on interviews of these four individuals who appeared to have limited knowledge of the farming operation and did not provide information that confirmed their personal management contributions. In addition, the four individuals did not live close to the farming operation. The farming operation appealed the compliance review determination to the FSA state committee, and the four individuals were interviewed again. Based on these interviews and the individuals' written statements, the FSA state committee overturned the compliance review's determination for three of the individuals and upheld the compliance review's determination for the fourth individual. The farming operation then appealed the determination on the fourth individual to USDA's National Appeals Division, and the fourth individual was interviewed for a third time. In the third interview, according to the FSA official, the individual demonstrated more knowledge of the farming operation and provided more information about the claimed management contribution. Based on the interview and the individual's written statement, the National Appeals Division overturned the determinations of the compliance review team and the FSA state committee and found that the individual had made a significant management contribution. According to the official, these changes in both the written statements and interviews show how the characterization of management contributions can change over time, making it difficult for FSA to verify them.

Members' Claimed Contributions of Personal Labor Can Be Difficult for FSA to Verify

Even with FSA's regulations providing a quantifiable standard of a significant contribution of personal labor, it can be difficult for FSA officials to verify farming operation members' claims of personal labor contributions.[37] While FSA compliance review staff who are located near a farming operation can generally determine whether an individual lived near a farming operation and could have provided the claimed personal labor, those review staff may not be able to verify that the individual actually performed the required hours of labor. For example, the evidence available to review staff may be limited to reviewers' own anecdotal observations of the individual's activities throughout the year. Furthermore, if the review staff were not located near the farming operation, they may not have access even to such anecdotal observations.[38]

In addition, it may be difficult for compliance reviewers to verify that an individual's labor contribution is "at risk," as described in FSA's handbook.

[37]According to FSA's handbook, the quantifiable standard of a significant contribution of personal labor is an amount that is the smaller of 1,000 hours annually or 50 percent of the total hours that would be required to conduct a farming operation comparable in size to the individual's or legal entity's commensurate share in the farming operation.

[38]FSA staff who perform reviews may be located in another part of the state.

That is, there must be a possibility that the individual could suffer a financial loss.[39] However, according to an FSA official, it may be difficult for compliance reviewers to determine that an individual was not compensated for labor because the individual could receive compensation from arrangements established outside of the farming operation. For example, some large farming operations engage in transactions with nonfarming operations that may be owned or have close ties to the farming operation’s partners. These transactions include activities such as purchasing the farming operation’s goods and services—including land, equipment, and capital—and also selling the farming operation’s crops. Such business arrangements may enable nonfarming operations to compensate an individual for labor provided to a farming operation.

Most State Offices Did Not Complete and Report Compliance Reviews in a Timely Manner, and Almost Always Found That Members Made Their Claimed Contributions

Most state offices did not complete and report their assigned 2009 and 2010 compliance reviews within FSA’s expected time frame (i.e., within 12 months of being notified by FSA headquarters of which farming operations to review), according to our analysis of compliance review summary documents that state offices submitted to FSA headquarters. FSA headquarters did not always know the status and results of the reviews for oversight purposes. For those reviews reported in 2009 and 2010 in FSA’s compliance review database, FSA almost always determined that individual members of farming operations met the standards for a significant contribution of active personal management or personal labor as claimed.

[39] An individual could suffer a financial loss if the farming operation lost money and he or she had provided unpaid labor as a partner in the farming operation.

Most State Offices Completed and Reported Compliance Reviews Late, and Headquarters Did Not Always Know the Reviews' Status

Most state offices exceeded FSA's expected time frame in completing and reporting the results of their assigned 2009 and 2010 compliance reviews.[40] Some state offices did not report compliance review results on time because they waited to submit reports to FSA headquarters until they had completed all of their assigned reviews, according to an FSA headquarters official. Thus, some reviews were completed but not reported.

FSA expects state offices to complete and report their assigned compliance reviews within 12 months of being notified by FSA headquarters of which farming operations to review, according to an FSA headquarters official. The 2009 and 2010 assigned reviews were to be completed and reported by August 1, 2011, and December 1, 2012, respectively. According to our analysis of compliance review summary documents that state offices submitted to FSA headquarters, state offices completed and reported about 24 percent of their 889 assigned 2009 compliance reviews and about 14 percent of their 305 assigned 2010 compliance reviews within FSA's expected time frame.[41] At the state office level, 12 of the 33 state offices with assigned 2009 compliance reviews completed and reported their reviews on time, and 21 did not. For 2010 reviews, 7 of the 26 state offices with assigned compliance reviews completed and reported their reviews on time, and 19 did not.[42] Furthermore, as of June 2013, 13 state offices had not completed and reported the results of the compliance reviews assigned in 2009, and 15 state offices had not completed and reported the results of the compliance reviews assigned in 2010. In this regard, as of June 2013, about a third of compliance reviews assigned in 2009 had been completed and reported by state offices, meaning that 70 percent had not been completed and reported. Compliance reviews assigned in 2010

[40]According to an FSA official, assigned compliance reviews are those reviews that remain after FSA state offices waive reviews of some farming operations.

[41]FSA headquarters selected 1,213 and 312 farming operations for 2009 and 2010 compliance reviews, respectively. According to FSA's handbook, FSA state offices could waive compliance reviews of farming operations that met certain criteria. After waivers were granted, the assigned compliance reviews that remained were 889 reviews for 2009 and 305 reviews for 2010. As a point of reference, about 103,000 entities received applicable payments in 2012, according to our analysis of FSA data.

[42]According to an FSA headquarters official, FSA headquarters does not always assign compliance reviews to every FSA state office for each year because some states do not have any farming operations that meet FSA's selection criteria.

fared slightly better, as of that date, with 40 percent having been completed and reported by state offices. Table 2 shows the extent to which state offices completed and reported the results of their 2009 and 2010 compliance reviews within FSA's expected time frame as of June 2013.

Table 2: Status of Assigned Compliance Reviews of Farming Operations within the Farm Service Agency's (FSA) Expected Time Frame, 2009 and 2010

Review year	Reviews assigned to state offices by headquarters	Assigned reviews completed and reported by state offices within FSA's time frame[a]: Number	Assigned reviews completed and reported by state offices within FSA's time frame[a]: Percentage	Assigned reviews completed and reported by state offices as of June 2013: Number	Assigned reviews completed and reported by state offices as of June 2013: Percentage
2009	889	215	24.2	261	29.4
2010	305	44	14.4	120	39.3

Source: GAO analysis of FSA data.

Note: According to FSA officials, the large difference between the number of reviews assigned in 2009 and 2010 was because 2009 was the first year after the 2008 Farm Bill was enacted, necessitating USDA's revisions of its regulations for payment limits and payment eligibility. As a result, FSA directed all farming operations to provide updated farm operating plans for 2009. FSA officials said that, after 2009 and subsequent years, FSA only required updated farm operating plans from farming operations that underwent an organizational change during the year.

[a]FSA's expected time frame is within 12 months of being notified by FSA headquarters of which farming operations to review.

Moreover, in our interviews with FSA officials, we found that FSA headquarters did not always know the status and results of state offices' 2009 and 2010 assigned compliance reviews for oversight purposes. In some cases, FSA headquarters was not aware that state offices had not started their assigned 2009 and 2010 compliance reviews. For example, when we first contacted one state office in October 2012, it had not yet begun conducting its 2009 and 2010 compliance reviews. Until we brought this matter to FSA headquarters' attention, they were unaware that the office had not started its reviews. Similarly, FSA headquarters did not know the status of 2009 and 2010 compliance reviews assigned to several other state offices when we discussed this issue with them in November 2012. This finding is consistent with what we found in our April 2004 report, where FSA headquarters officials were also not aware of some state offices not conducting compliance reviews for several years. With a delayed awareness of several years, FSA cannot reasonably assess the level of recipients' compliance with the act and may be missing opportunities to recapture payments that were made to ineligible recipients. Officials in the five state offices we visited cited travel budget constraints and competing priorities as the main reasons why compliance reviews were not completed and reported on time. In addition, FSA headquarters officials said that budget constraints in recent years affected state offices' staffing levels and may have also affected their ability to start and in turn complete 2009 and 2010 compliance reviews on time.[43] For example, budget cuts in fiscal years 2011 and 2012 resulted in a 12.5 percent reduction of field office staff, according to FSA headquarters officials.

To improve its ability to monitor the status and results of compliance reviews, in May 2013, FSA implemented the End-of-Year Review Tracking System, a database available to state and county FSA officials to electronically report their assigned compliance reviews' status and results. Prior to the database's implementation, states would mail or fax to FSA headquarters the results of their assigned compliance reviews, according to an FSA official. An FSA headquarters official said FSA expects to use the database to collect, track, and analyze compliance reviews. The official told us that FSA also foresees using the database to conduct various analyses, including of compliance review results to enforce program payment limits. However, the database does not have the capacity to generate reports from specific queries, such as those related to individual farming operation members' claimed contributions. Without the capacity to generate queries related to farming operation members' contributions of management and labor, the analyses that FSA can conduct for oversight purposes are limited. Moreover, as of July 2013, FSA had not developed a time frame or specific plan for using the End-of-Year Review Tracking System to conduct oversight and support programmatic decisions. FSA officials cited competing priorities, such as conducting other payment eligibility oversight responsibilities, as reasons why the agency had not developed a time frame and plan for using the database. In the absence of a specific plan and time frame for using the database, however, there is no guarantee that FSA will fully utilize the End-of-Year Review Tracking System and realize the intended benefits of the database.

FSA's handbook highlights the importance of compliance reviews in the oversight of implementation of payment eligibility provisions. More

[43]According to FSA officials, completing compliance reviews is labor intensive. FSA officials generally said they do not track the staff days used to complete reviews. One official estimated that completing one compliance review generally takes about 2 staff days but could take more if a farming operation has many members or appeals a review determination.

specifically, FSA's handbook states that compliance reviews help maintain the integrity of farm program payment eligibility provisions. For example, in its 2009 and 2010 compliance reviews, one state office said it identified potential fraud in eight related farming operations with members who were related and referred them to USDA's Office of Inspector General for further investigation. Compliance reviews serve as FSA's internal control for its farm program payments and safeguard the agency's assets by preventing and detecting errors and fraud. According to the federal standards of internal control, such control should be designed to provide reasonable assurance regarding the prevention of or prompt detection of unauthorized acquisition, use, or disposition of an agency's assets. The substantial delays we identified in state offices' completing and reporting compliance reviews to FSA headquarters and FSA headquarters' not being aware of the status of compliance reviews in some state offices weakens the reviews' effectiveness as an oversight tool and as internal control. This undermines FSA's ability to identify fraud, waste, and abuse and avert potential improper payments, as well as enforce farm program legislation and related regulations.

Compliance Reviews from Most Selected State Offices Found That Members Had Made Their Claimed Contributions

Our analysis of 2009 and 2010 compliance reviews reported by selected FSA state offices (11 and 9, respectively)[44] found that farming operation members in most of these states always met the requirements for a significant contribution of active personal management or personal labor as they had claimed.[45]

Table 3 shows the results of the 2009 compliance reviews that were completed by 11 selected state offices and reported to FSA's End-of-Year Review Tracking System, as of April 2013. These compliance reviews covered 202 farming operations and included a total of 775 members.

[44]The results for 2009 are from 11 states with 202 farming operations. The results from 2010 from 9 states are from 119 farming operations.

[45]These results are not generalizable to all compliance reviews that were completed and reported for all state offices for 2009 and 2010. As of April 30, 2013, 33 and 26 FSA state offices, respectively, reported 2009 and 2010 compliance review results in FSA's End-of-Year Review Tracking System. However, we examined compliance review results for 11 and 9 FSA state offices, respectively, for 2009 and 2010 because these state offices completed and reported at least 70 percent of their assigned reviews. As noted, we excluded the results of compliance reviews from state offices that completed and reported less than 70 percent of their assigned reviews because those results would not be representative of those offices' compliance reviews results.

The compliance reviews reported by 10 of the 11 state offices found that farming operation members always met the requirements for making a significant contribution of active personal management, personal labor, or a combination of active personal management and personal labor as they had claimed. In total, 688 out of 775 farming operation members claimed contributions of active personal management, either active personal management only, or a combination of active personal management and personal labor, and the compliance reviews found that 684 of these 688 members made the contribution they claimed.[46] As we mentioned earlier, an FSA official said the broad definition of active personal management is difficult for FSA to apply in compliance reviews of farming operations.

Table 3: Members' Contributions in Farming Operations Reported by 11 Farm Service Agency (FSA) State Offices, 2009

		Active personal management contribution (only)		Personal labor contribution (only)		Combination of active personal management and personal labor contribution	
State	**Number of members**	**Members claiming**	**Members meeting**	**Members claiming**	**Members meeting**	**Members claiming**	**Members meeting**
Arkansas	429	304	304	57	57	68	68
Alabama	53	29	29	21	21	3	3
Georgia	55	48	48	0	0	7	7
Iowa	34	0	0	0	0	34	30[a]
Louisiana	77	58	58	0	0	19	19
Michigan	29	9	9	0	0	20	20
Nebraska	74	15	15	9	9	50	50
Nevada	8	0	0	0	0	8	8
Utah	3	0	0	0	0	3	3
Virginia	7	7	7	0	0	0	0
Wisconsin	6	0	0	0	0	6	6
Total	**775**	**470**	**470**	**87**	**87**	**218**	**214**

Source: GAO analysis of FSA data.

Note: This table includes compliance review results for the 11 state offices that completed and reported 70 percent or more of their assigned 2009 reviews to FSA's End-of-Year Review Tracking System, as of April 2013.

[46]If any partner, stockholder, or member with an ownership interest in a farming operation does not meet the actively engaged in farming requirements, farm program payments are to be reduced by the corresponding share held by that partner, stockholder, or member. FSA is then responsible for recovering the payments that are subject to actively engaged in farming requirements.

[a]For instances in which FSA compliance reviewers determined that a member had not made the claimed contribution, FSA's End-of-Year Review Tracking System does not specify why the member did not meet the claimed contribution and does not include information on subsequent actions, such as whether the member appealed the compliance review's determination.

Table 4 shows the results from the 2010 compliance reviews that were completed by 9 selected state offices and reported to FSA's End-of-Year Tracking System, as of April 2013. These compliance reviews covered 119 farming operations and included a total of 831 members. Similar to the 2009 compliance review results, results from the 2010 compliance reviews show that most states found that farming operation members always met the requirements for making a significant contribution of active personal management, personal labor, or a combination of active personal management and personal labor as they had claimed.

Table 4: Members' Contributions in Reviewed Farming Operations Reported by 9 Farm Service Agency (FSA) State Offices, 2010

		Active personal management contribution (only)		Personal labor contribution (only)		Combination of active personal management and personal labor contribution	
State	**Number of members**	**Members claiming**	**Members meeting**	**Members claiming**	**Members meeting**	**Members claiming**	**Members meeting**
Alabama	37	37	37	0	0	0	0
Arizona	122	109	103	0	0	13	6[a]
Arkansas	431	217	217	160	160	54	54
Colorado	14	8	8	0	0	6	6
Indiana	60	45	45	0	0	15	15
Iowa	32	12	12	0	0	20	20
Kansas	27	21	17	0	0	6	5[a]
Missouri	71	52	51	7	7	12	6[a]
Tennessee	37	33	33	0	0	4	4
Total	**831**	**534**	**523**	**167**	**167**	**130**	**116**

Source: GAO analysis of FSA data.

Note: This table includes compliance review results for the 9 state offices that completed and reported 70 percent or more of their assigned 2010 reviews to FSA's End-of-Year Review Tracking System, as of April 30, 2013.

[a]For instances in which FSA compliance reviewers determined that a member had not made the claimed contribution, FSA's End-of-Year Review Tracking System does not specify why the member did not meet the claimed contribution and does not include information on subsequent actions, such as whether the member appealed the compliance review's determination.

General Partnerships Received the Highest Payments and Had the Highest Percentage of Payments Based on Members' Claims of Active Personal Management

In examining the distribution and amount of FSA's 2012 farm payments to farming operations by type of entity, general partnerships received both the highest total and average payments. General partnerships received most of their total payments based on individual farming operation members' claims of contributing active personal management. Moreover, general partnerships' percentage of payments based on individual members' claims of contributing active personal management were highest for those general partnerships with the greatest number of individual members.

Among Entities, General Partnerships Received the Highest Total and Average Payments

In 2012, approximately $1.5 billion in federal farm program payments subject to actively engaged in farming requirements were distributed to 103,235 entities. Among these entities, general partnerships received the highest total and average payments. Of these entities, 27,515 general partnerships received $736 million or about half of the total payments made to entities, and an average payment of approximately $27,000, as shown in table 5. Joint ventures received an average payment of about $21,000. Corporations and limited liability companies received average payments of about $12,000 and $7,000, respectively. Other entities, such as limited partnerships, received an average payment of about $3,700.

These results are consistent with the findings of our 2004 report.[47] In 2004, we analyzed 2001 farm program payments subject to actively engaged in farming requirements by type of entity, and we found that general partnerships received higher average total payments relative to the other entity types. One reason general partnerships receive higher payments is that they can receive a payment amount up to the applicable payment limit for each member—individual or entity—who meets payment eligibility requirements.[48] In contrast, corporations, limited liability companies, and other entity types can only receive a payment amount up to the applicable payment limit.

[47]GAO-04-407.

[48]This also applies to joint ventures.

Table 5: Distribution and Amount of Farm Program Payments by Type of Entity, 2012

	Entities		Payments		
Type of entity	Number	Percentage	Total	Percentage	Average (per entity)
General partnerships	27,515	26.7	$735,957,088	49.6	$26,747
Joint ventures	6,010	5.8	125,396,872	8.5	20,865
Corporations	35,695	34.6	433,437,040	29.2	12,143
Limited liability companies	19,067	18.5	132,557,639	8.9	6,952
Other[a]	14,948	14.5	55,337,128	3.7	3,702
Total	**103,235**	**100.0**[b]	**$1,482,684,635**	**100.0**[b]	**$14,363**

Source: GAO analysis of FSA data.

Note: The farm program payments in this table are the payments that are subject to actively engaged in farming requirements and farm program payments to individuals are not included in this table.

[a]Includes limited partnerships, irrevocable and revocable trusts, estates, and individuals operating as a small business. Individuals operating as a small business are considered an entity type and are not individuals.

[b]Percentages may not total to 100 because of rounding.

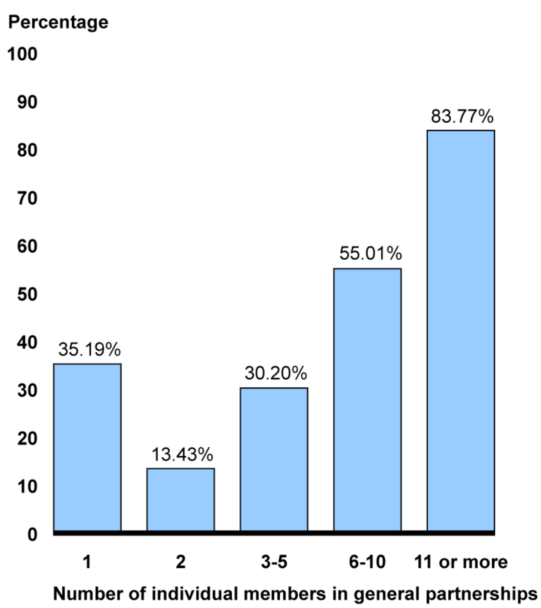
General Partnerships and Joint Ventures Received Most of Their Payments Based on Individual Members' Claims of Active Personal Management

General partnerships received a high proportion of their farm program payments subject to actively engaged in farming requirements based on individual members' claims of contributing active personal management, either active personal management only or active personal management in combination with personal labor. Our analysis of FSA's 2012 farm program payments found that general partnerships received 97 percent of their total farm program payments based on individual members' claims of contributing active personal management, either active personal management only (27 percent) or active personal management in combination with personal labor (70 percent). Of general partnerships' total farm program payments, 3 percent were based on individual members' claims of contributing personal labor only.[49] (See app. IV for additional information on payments to general partnerships.) Furthermore,

[49]Our analysis of farm program payments based on individual members' claims of contributing active personal management only, personal labor only, or a combination of active personal management and personal labor is limited to those payments associated with recipients' contributions that were included in FSA's contributions database. For example, our analysis of general partnerships includes approximately 90 percent of the payments distributed to general partnerships because (1) at the time of our analysis these data were continuing to be updated and were gradually becoming more complete and (2) not all payment recipients are flagged for contributions of active personal management, personal labor, or a combination in FSA's contributions database.

general partnerships with the highest number of individual members received the greatest percentage of total farm program payments based on individual members' claims of contributing only active personal management. For example, as shown in figure 2, general partnerships with two individual members received approximately 13 percent of their total farm program payments based on such members' claims of contributing only active personal management. However, general partnerships with 11 or more individual members received approximately 84 percent of their total farm program payments based on individual members' claims of contributing only active personal management.

Figure 2: Percentage of General Partnerships' Farm Program Payments That Were Based on Claims of Active Personal Management Only, Categorized by Number of Individual Members in the General Partnerships, 2012



Source: GAO analysis of Farm Service Agency data.

We found similar results for joint ventures, which received 99 percent of their total farm program payments based on individual members' claims of contributing active personal management, either active personal management only or active personal management in combination with personal labor, and 1 percent of their payments based on individual members' claims of contributing personal labor only.[50] (See app. V for additional information on payments to joint ventures.)

The 50 entities receiving the highest farm program payments in 2012 had an average of about $395,000 in payments and about 10 individual members claiming contributions. Table 6 shows a selection of entities across different states that were among these 50 entities, listing their payments as well as their number of members, and the number of individuals claiming significant contributions of active personal management, personal labor, or a combination of active personal management and personal labor. As shown in this table, each of these entities had 6 or more individuals claiming contributions, and for all but 1 of the entities, the payments were based on all individuals' claiming contributions of only active personal management. For example, the farming operation that received the highest payments subject to actively engaged in farming requirements in 2012 was a general partnership that received $651,910 based on 16 individual members' claims of contributing only active personal management. A compliance review of this farming operation for 2010 found that all members had made their claimed contributions of active personal management.

[50]Footnote 49 also applies to our analysis of joint ventures.

Table 6: Farm Program Payments and Claimed Contributions of Active Personal Management, Personal Labor, or a Combination for Selected Examples of General Partnerships, 2012

Entity example	Payments	State	Number of members[a]	Number of individual members[b]	Number of individual members claiming active personal management (only)	Number of individual members claiming personal labor (only)	Number of individual members claiming combination of active personal management and personal labor
1	$651,910	Louisiana	22 (all limited liability companies)	20 (includes 4 spouses)	16 (plus 4 spouses)	0	0
2	$582,876	Arkansas	26 (all corporations)	26 (includes 5 spouses)	6 (plus 1 spouse)	0	15 (plus 4 spouses)
3	$440,000	Mississippi	11 (all individuals)	11 (includes 5 spouses)	6 (plus 5 spouses)	0	0
4	$399,027	Arizona	10 (9 corporations and 1 general partnership)	11	11	0	0
5	$376,610	Indiana	11 (7 corporations and 4 individuals)	11 (includes 1 spouse)	10 (plus 1 spouse)	0	0
6	$372,365	California	15 (all individuals)	15 (includes 5 spouses)	10 (plus 5 spouses)	0	0

Source: FSA state office officials.

Notes:

From the 50 entities that received the highest payments subject to actively engaged in farming in 2012, we selected examples from 6 states to reflect geographic diversity. Each of these selected entities is a general partnership.

Members of a general partnership can be individuals or entities (e.g., corporations or limited liability companies). Each member represents one limitation for payment limitation purposes.

Spouses may both be considered "actively engaged in farming" and qualify for farm program payments if one spouse makes the requisite contributions to meet the actively engaged in farming requirements.

[a]The number of members consists of the number of entities and individuals who are members of the general partnership.

[b]The number of individual members includes individuals who are members of the general partnership as well as individuals who are members of entities within the general partnership.

Conclusions

The Farm Program Payments Integrity Act established eligibility criteria that limit payments to individuals and entities that are actively engaged in farming while allowing farming operations to maximize the receipt of farm program payments as long as all farming operation members meet eligibility requirements. FSA administers the act and exercises oversight of the over $5 billion annually distributed in farm program payments, which is challenging, as well as time and resource-intensive. Nevertheless, as federal fiscal pressures continue, it is important to ensure that farm program payments do not go to individuals or entities with little involvement in farming. FSA's compliance reviews of individuals' and entities' eligibility to receive payments for being actively engaged in farming are complicated by broad and subjective criteria for what constitutes "significant" contributions of active personal management and difficulty in verifying individuals' evidence of their claimed management contributions. FSA recognizes that it has the authority to change the definition of what constitutes a significant contribution for active personal management, but, as stated in its 2010 rulemaking, FSA also believes that the current statute does not support a change in its regulations to create a more restrictive definition of management contributions. Without modification of the definition of management contributions to qualify for being actively engaged in farming, the reliability and integrity of FSA's compliance reviews will continue to be uncertain, and the federal government risks distributing millions of dollars to individuals who may have little actual involvement in farming operations at a time of fiscal constraints. In April 2004, we reported that the lack of a measurable standard for what constitutes a significant contribution of active personal management allows individuals and entities who may have little involvement in a farming operation to be eligible for payments. However, USDA disagreed with our recommendation, saying that its regulations and procedures for determining what constitutes a significant contribution of active personal management were consistent with the intent of Congress in the Farm Program Payments Integrity Act. Thus, no action has been taken to address this issue. In this report, we made findings that are similar to those we made in 2004. In deliberations on reauthorizing the 2008 Farm Bill, both the Senate and the House of Representatives have recently considered statutory changes that would allow one person per farming operation to contribute management activities as a condition that would satisfy the criteria for actively engaged in farming. The timeline for the reauthorization of the Farm Bill is unclear. In August 2013, a senior-level FSA headquarters official said that the agency does not plan to change the regulatory definition of active personal management without direction from Congress.

Moreover, FSA headquarters did not always know the status and results of the completion and reporting of state offices' 2009 and 2010 assigned compliance reviews for oversight purposes, when state offices completed and reported only 24 percent and 14 percent, respectively, of their reviews within FSA's expected time frame. To the extent that FSA headquarters is not aware of state offices' delays in completing and reporting reviews, the effectiveness of its compliance reviews as an oversight tool is weakened. To its credit, in May 2013 FSA implemented a database (End-of-Year Review Tracking System) that it intends to use for improving its ability to monitor the status of compliance reviews and analyzing their results. However, as of July 2013, FSA had not developed a time frame or specific plan for using the database to conduct oversight and support programmatic decisions, and the database does not have the capacity to generate reports from specific queries, such as those related to individual farming operation members' claimed contributions. Until FSA develops a plan and time frame for using the database, including using it to generate specific queries, however, there is no guarantee that FSA will fully utilize the database and realize its intended benefits, including to generate reports from specific queries.

Matter for Congressional Consideration

To reduce the risk that individuals who have little involvement in a farming operation use the active personal management provision to qualify for farm program payments, Congress should consider modifying the definition of contributions of management activities as a condition that would satisfy the criteria for being actively engaged in farming, either as both the Senate and the House of Representatives did in recent deliberations on reauthorizing the Farm Bill, or in other ways designed to make the criteria for such contributions more clear and objective.

Recommendation for Executive Action

To better monitor the status of compliance reviews and analyze their results to ensure the integrity of farm program payment limitations and payment eligibility provisions, we recommend that the Secretary of Agriculture direct the Administrator of the Farm Service Agency to establish a plan and a time frame for using the End-of-Year Review Tracking System database to conduct oversight and support programmatic decisions, including to generate reports from specific queries.

Agency Comments

We provided the Secretary of Agriculture with a draft of this report for review and comment. In an e-mail received September 12, 2013, the

Farm Service Agency's Director, Operations and Analysis Staff, stated that the Farm Service Agency concurred with our report's findings and recommendation and had no other comments.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Agriculture, the appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.

Sincerely yours,

Anne-Marie Fennell

Anne-Marie Fennell
Director, Natural Resources and Environment

Appendix I: Common Ways Farmers Organize Their Farming Operations

Farmers organize their farming operations in various ways to reduce their exposure to the financial risks of farming. For example, certain business structures may limit a farmer's liability when the farming operation has legal problems or debt that cannot be paid from its farm earnings. Some of the most common ways farmers organize their business and how these business organizations are treated under payment limitation rules are as follows:

- *Sole proprietorship.* Most farming operations are owned, operated, and managed by a single individual. A sole proprietorship has no legal existence independent of its owner, which means that only the owner, not the farming operation, can be sued. Owners of sole proprietorships are personally liable for all their farm's debts.

- *Joint ventures.* A joint venture is defined by the Farm Service Agency (FSA) as a short-term association of individuals or entities, where the association exists without an actual partnership. As with sole proprietorships, joint operations have no legal existence independent of their owners. The liability for debts is shared by the joint venture's members

- *General partnerships.* A general partnership is composed of two or more individuals or entities, formed under state law, and subject to the terms of a formalized agreement. In a general partnership, responsibility for management, profits, and, the liability for debts is shared by the members. FSA makes farm program payments directly to the partnership rather than to the individual partners, which may be individuals or entities. Each partner may be able to qualify the general partnership for additional payments equal to the applicable payment limit. Each partner is personally liable for his or her own conduct and for the conduct of those under his or her direct supervision, as well as negligence, wrongful acts, and misconduct of other partners and partnership employees. Partners are personally liable for partnership commercial obligations such as loans or taxes.

- *Corporations.* Corporations have a separate legal existence from their owners, meaning that the corporation rather than the owners is ordinarily responsible for farm business debts, and the corporation can be sued. As a result, some individuals may choose the corporate form of farm business organization to protect their personal assets in case of farm financial difficulties.

- *Limited liability companies.* Limited liability companies are a hybrid form of business entity because they have the limited liability feature of a corporation and the income tax treatment of a general partnership. Their owners are called members.

- *Limited liability partnerships.* Limited liability partnerships, another hybrid organizational form, eliminate the liability of an individual partner for negligence, wrongful acts, and misconduct of other partners and partnership employees. Each partner remains personally liable for his or her own conduct and for the conduct of those under his or her direct supervision. Partners remain personally liable for partnership commercial obligations such as loans or taxes.

- *Limited partnerships.* Limited partners in a limited partnership are investors whose liability for partnership financial obligations is only as great as the amount of their investment. A limited partnership must have at least one general partner who manages the farm business and who is fully liable for partnership financial obligations to be considered eligible for farm program payments.

- *Other.* Other types of entities that may qualify as one member under current payment limitation rules include an irrevocable trust, a revocable trust combined with the grantor of the trust, an estate, or a charitable organization.

Appendix II: Farming Operations That Farm Service Agency Headquarters Selected for 2009 and 2010 Compliance Reviews, by State

FSA headquarters annually selects certain farming operations for compliance reviews to determine whether they carried out their operating plans as represented when FSA made its initial determination of whether farming operation members satisfied actively engaged in farming requirements. To select farming operations for compliance reviews, FSA uses various criteria, such as whether a farming operation underwent an organizational change in the past year. Table 7 shows the number of farming operations by state that FSA headquarters selected for 2009 and 2010 compliance reviews. (According to an FSA official, these are the most recent years for which state office compliance reviews had been completed and reported to FSA headquarters at the time of our review.) The 2009 and 2010 assigned reviews were to be completed and reported by August 1, 2011, and December 1, 2012, respectively.

Table 7: Farming Operations that Farm Service Agency (FSA) Headquarters Selected for 2009 and 2010 Compliance Reviews, by State

State	Number of farming operations selected by Farm Service Agency headquarters for 2009 compliance reviews	Number of farming operations selected by Farm Service Agency headquarters for 2010 compliance reviews
Alabama	24	7
Arizona	47	18
Arkansas	185	64
California	40	28
Colorado	0	3
Delaware	1	0
Florida	1	0
Georgia	19	11
Idaho	11	5
Illinois	83	4
Indiana	26	7
Iowa	47	4
Kansas	71	5
Kentucky	0	2
Louisiana	51	22
Michigan	7	1
Minnesota	15	5
Mississippi	211	69
Missouri	63	10
Nebraska	51	4
Nevada	1	0

State	Number of farming operations selected by Farm Service Agency headquarters for 2009 compliance reviews	Number of farming operations selected by Farm Service Agency headquarters for 2010 compliance reviews
New Mexico	1	0
New York	3	0
North Carolina	4	1
North Dakota	11	0
Ohio	13	3
Oklahoma	7	1
Oregon	3	1
South Carolina	0	2
South Dakota	14	0
Tennessee	16	6
Texas	134	27
Utah	1	0
Virginia	1	0
Washington	50	2
Wisconsin	1	0
Total	**1, 213**	**312**

Source: GAO analysis of Farm Service Agency's End-of-Year Review Tracking System.

Notes:

According to the Farm Service Agency's handbook on payment eligibility and payment limits, Farm Service Agency state offices waived compliance reviews of farming operations that met certain criteria. After waivers were granted, the assigned compliance reviews that remained were 889 reviews for 2009 and 305 reviews for 2010.

FSA officials said that for the 14 states not listed, FSA selected no compliance reviews for either 2009 or 2010.

Appendix III: Objectives, Scope, and Methodology

Our objectives were to examine (1) the U.S. Department of Agriculture's (USDA) FSA's compliance reviews of farming operation members' claims of significant active personal management and personal labor contributions to meet actively engaged in farming requirements; (2) the extent to which FSA state offices complete and report compliance reviews within expected time frames, and the results of reported reviews of management and labor contributions; and (3) the distribution and amount of payments to farming operations by type of entity and members' claims of active personal management or personal labor contributions.[1]

To examine FSA's compliance reviews of farming operation members' claims of significant active personal management and personal labor contributions to meet actively engaged in farming requirements, we reviewed (1) the relevant law and regulations, including the Food, Conservation, and Energy Act of 2008, known as the 2008 Farm Bill, and USDA's regulations on payment eligibility and limitations[2]; (2) FSA's policies and guidance, including FSA's handbook on payment eligibility and limitations, known as 4-PL[3]; (3) legislation, such as the Senate and House of Representative bills to reauthorize the 2008 Farm Bill[4]; and (4) past GAO work on actively engaged in farming requirements.[5] We also interviewed FSA officials at headquarters and state and county offices and examined compliance review files. We visited FSA state and county offices in five states—Arkansas, Kansas, Louisiana, Mississippi, and Texas.[6] In each of these states, we visited the FSA state office and one or two county offices. During these visits, we discussed compliance review processes and results with FSA officials and examined examples of 2009 and 2010 compliance review files because these years are the

[1]A farming operation is a business enterprise engaged in the production of agricultural products that is operated by an individual or an entity. A farming operation member or entity members can be an individual or an entity.

[2]7 C.F.R. pt. 1400.

[3]Farm Service Agency handbook, *Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income*, 4-PL (2010).

[4]S. 954, 113th Cong. (2013), and H.R. 2642, 113th Cong. (2013).

[5]GAO, *Farm Programs: Direct Payments Should Be Reconsidered,* GAO-12-640 (Washington, D.C.: July 3, 2012) and GAO-04-407.

[6]Although the information from these interviews is not generalizable to all FSA offices, it provides illustrative information.

most recent for which compliance reviews were to have been completed when we conducted our review. In particular, we examined files' supporting documents submitted by farming operations that described their members' contributions to the farming operation in the areas of active personal management and personal labor and FSA forms documenting compliance review processes and results. Some examples of supporting documents we reviewed include loan documents, work activity ledgers, and signed canceled checks. We selected the states for site visits based on the number of 2009 and 2010 compliance reviews that FSA headquarters had assigned to them and the diversity of crops produced.[7] Within the states we visited, we selected county offices for site visits based on the number of 2009 and 2010 compliance reviews that FSA headquarters had assigned to them and the county offices' physical locations to limit travel costs. We selected compliance reviews for examination based on the number of farming operation members and the organizational complexity of the farming operations that were reviewed. Information collected from the site visits and derived from the compliance review files is illustrative and not generalizable to all FSA offices or compliance review files for 2009 and 2010.

To determine the extent to which FSA state offices completed and reported compliance reviews within expected time frames, we interviewed an FSA headquarters official in charge of choosing the annual nongeneralizable selection of farming operations for compliance reviews, and we obtained and reviewed relevant documents related to compliance reviews, such as FSA headquarters' memoranda notifying states of time frames for completing and reporting the results of 2009 and 2010 compliance reviews. According to the memoranda, FSA headquarters notified states of the 2009 nongeneralizable selection of farming operations on August 19, 2010, and expected states to complete and report the reviews' results by August, 1, 2011. For 2010 compliance reviews, FSA headquarters notified states of the nongeneralizable selection of farming operations on November 30, 2011, and expected states to complete and report the reviews' results by December 1, 2012. We also obtained and analyzed 2009 and 2010 compliance review data reported to FSA's End-of-Year Review Tracking (EYRT) System as of April 30, 2013. FSA's EYRT is a web-based system to which state and

[7]We also used these criteria to select two additional states—California and Illinois —for interviews.

county FSA offices report information and results related to annual compliance reviews. In particular, we analyzed the data to determine the number of farming operations selected by FSA headquarters for 2009 and 2010 compliance reviews, the number of reviews that were waived, and the number and percentage of compliance reviews (after waivers) reported to FSA headquarters by state offices within FSA's expected time frame. If a farming operation was listed in the EYRT for 2009, we included it in 2009 compliance reviews. If a farming operation was listed in the EYRT for 2010, we included it in 2010 compliance reviews. We did not include three farming operations for either 2009 or 2010 because they were not associated with a year in the EYRT, and FSA officials could not determine the year to which they belonged. We then determined the number of selected farming operations that were waived for compliance reviews. If a farming operation was flagged in the EYRT as waived, we counted it as waived in its corresponding year. We then subtracted the waived farming operations from those selected by FSA headquarters to determine the number of assigned farming operations that remained and that states were required to complete and report to FSA headquarters for 2009 and 2010. The results of this analysis are limited to compliance reviews selected by FSA headquarters and did not include those compliance reviews added as required by spot checks or those added by state offices or state and county committees.[8] To assess the reliability of relevant EYRT data elements, such as those related to assigned, waived, completed, and reported compliance reviews, we (1) interviewed FSA agency officials knowledgeable about the database; (2) reviewed related documentation; and (3) performed logic tests of relevant data elements. We determined that the data elements related to the assigned and waived compliance reviews were sufficiently reliable for the purposes of determining the number of compliance reviews assigned to states in 2009 and 2010, the number of compliance reviews that were waived, and the number of compliance reviews that states were required to complete and report to FSA headquarters after waivers were granted. However, the EYRT data element related to completion of compliance reviews was not sufficiently reliable for determining the number of 2009 and 2010

[8]Spot checks are compliance reviews of farming operations involving FSA employees that received an initial determination that differed from the default determination or interim determination that was made because FSA officials did not complete the initial review on time. FSA state and county offices may also choose to conduct additional compliance reviews of other farming operations in certain situations, such as when FSA has reason to believe a farming operations plan was not followed as represented.

compliance reviews that state offices completed and reported to FSA headquarters within the expected time frame after waivers were granted for two reasons. First, as of April 30, 2013, not all states reported the completion status of compliance reviews to the EYRT. Second, some states may have completed their assigned 2009 or 2010 compliance reviews but may have not reported them in EYRT as completed.

Because not all state offices reported the completion status of their assigned compliance reviews in the EYRT, we instead obtained and reviewed hard copies of FSA forms submitted by state offices to FSA headquarters for review years 2009 and 2010. We reviewed state offices' forms because they summarize compliance review results, list the number of compliance reviews selected by FSA headquarters that were assigned and completed and reported by state offices, and the date that state offices reported their results. If a state office's hard copy form indicated that the state office reported to FSA headquarters the results of their assigned 2009 and 2010 compliance reviews on or before August 1, 2011, and December 1, 2012, respectively, then we included that state and its number of completed compliance reviews assigned by FSA headquarters in the total count of completed and reported compliance reviews that were reported to FSA within the expected time frame. We compared the total count of completed and reported compliance reviews within FSA's expected time frame with the number of total assigned compliance reviews after waivers to derive the percentage of 2009 and 2010 compliance reviews that states completed and reported in a timely manner. The results of this analysis are limited to compliance reviews selected by headquarters and did not include those compliance reviews added as spot checks or those added by state offices or state and county committees. We assessed the reliability of hard copies of state offices' forms submitted to FSA headquarters by interviewing agency officials knowledgeable about the forms and who received the forms from the state offices. We determined that the data in the forms were sufficiently reliable for the purposes of determining the number and percentage of 2009 and 2010 compliance reviews that states completed and reported to FSA headquarters within FSA's expected time frame.

To determine the results of personal management and personal labor contributions in reported reviews, we also obtained and analyzed selected 2009 and 2010 compliance review data from FSA's EYRT as of April 30, 2013. We examined only the results of the 2009 compliance reviews of 11

FSA state offices and the 2010 compliance reviews of 9 FSA state offices that reported the results of 70 percent or more of their assigned reviews.[9] We chose to examine the compliance review results only for those state offices that reported at least 70 percent of their 2009 and 2010 assigned reviews because examining compliance reviews from state offices with lower completion and reporting rates might not be representative of those offices' compliance reviews. Reviews for which the results were reported may have been more likely to find that farming operation members had made their claimed contributions, for example, if the offices employed a strategy of pursuing easier or more clear-cut cases first. Similarly, relative to the compliance reviews that were not reported, the results of reviews that were reported may have been from compliance reviews that were easier to complete because the evidence that farming operation members were making their claimed contributions was unambiguous, and therefore allowed offices to complete these faster, for example. In examining the results of the 2009 compliance reviews of 11 FSA state offices and the 2010 compliance reviews of 9 FSA state offices, we determined the number of total members in the farming operations, the number and percentage of members' claiming contributions of active personal management only, personal labor only, or a combination of both active personal management and personal labor, and the number and percentage of members meeting these claimed contributions. The results of this analysis do not include results from farming operations selected as spot checks or those added by FSA state committees or county committees. In addition, the results are not generalizable to the results of all 2009 or 2010 compliance reviews or the results of all states. We assessed the reliability of relevant data EYRT elements or those related to members' contributions of active personal management, personal labor or a combination of both by (1) interviewing agency officials knowledgeable about the data, (2) performing logic tests of relevant data elements, and (3) reviewing related documentation on the data. We determined that the data in these data elements were sufficiently reliable for the purposes of showing the results of members' contributions across 202 compliance reviews from 11 states for the 2009 review year and the results of members' contributions' across 119 compliance reviews from 9 states for the 2010 review year.

[9]For 2009 compliance reviews, the results are from Arkansas, Alabama, Georgia, Iowa, Kansas, Michigan, Nebraska, Nevada, Utah, Virginia and Wisconsin. For 2010 compliance reviews, the results are from Alabama, Arizona, Arkansas, Colorado, Indiana, Iowa, Kansas, Missouri, and Tennessee.

To determine the distribution and amount of payments to farming operations by type of entity, we obtained FSA's Direct Attribution Payment and Business Party Share databases, and we analyzed 2009 through 2012 data on applicable farm program payments made to entities. These applicable payments—direct, counter-cyclical, and Average Crop Revenue Election—are subject to actively engaged in farming requirements. When analyzing FSA's data, we determined the total, percentage and average of applicable payments distributed by type of entity. The entities in FSA's database included the following:

- general partnerships,
- joint ventures,
- corporations,
- limited liability companies,
- limited partnerships,
- estates,
- revocable trusts,
- irrevocable trusts, and
- individuals operating as a small business.

In our report, we consolidated limited partnerships, estates, irrevocable and revocable trusts, and individuals operating as a small business into a separate entity category called "other" because these entities individually represented a smaller number of entities, and because the focus of our analysis was on the other types of business entities. We further analyzed the distribution of payments made to entity types by their number of members. For each type of entity, we analyzed the distribution of payments when the entity type consisted of 2, 3 through 5, 6 through 10, and 11 or more members. We assessed the reliability of FSA's 2009 through 2012 data on applicable farm program payments made to entities by (1) performing electronic tests of pertinent data elements, (2) reviewing information about the data, and (3) interviewing and communicating with agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of reporting on the distribution and applicable 2012 farm program payments made to farming operations by type of entity and their number of members.

To determine the distribution and amount of payments made based on members' claims of active personal management or personal labor contributions by entity type, we obtained the information from FSA's Business File system of files and we used that in combination with the Direct Attribution Payment data for 2012. We analyzed 2012 FSA data on members' contributions of active personal management, personal labor, and a combination of both to a type of farming operation or entity, and 2012 FSA data on applicable farm program payments attributed to these members. In our analysis, when we linked the Business File and Direct Attribution Payment databases, we attributed individual's contributions— not member's contributions— of active personal management, personal labor, and a combination of both to applicable farm program payments made.[10] Using these data, we analyzed the distribution and amount of payments made based on individual members' claims of active personal management or personal labor contributions. We analyzed these results by type of entity. As with previous analysis on FSA data, these types of entities included general partnerships, joint ventures, corporations, limited liability companies and five other types that we consolidated into an "other" category. We further analyzed the distribution of payments to individual members and linked them to information on their contributions to farming operations; we classified each entity type by size category; that is, entity types were divided into those with 1, 2, 3 through 5, 6 through 10, and 11 or more individual members. When we matched the Business Party Share data and Direct Attribution Payment data, we were able to match approximately 91 percent of the total payment dollars to their farm contribution record. We spoke with FSA officials who explained that these data are continuing to be updated and are gradually becoming more complete as all the individual records migrate into the Business Party Share File database. As a result, our analysis is limited to only those farm program payments that could be attributed to individual members' contributions that were recorded in the Business Party Share File. We assessed the reliability of both FSA datasets by (1) performing electronic tests of pertinent data elements, (2) tracing a sample of the data to their original source, (3) reviewing information about the data, and (4) interviewing and communicating with agency officials knowledgeable

[10]A farming operation member can be an individual or an entity with an ownership interest.

about the data. We determined that the data were sufficiently reliable for the purposes of determining the distribution and amount of payments to types of farming operations based on members' claims of active personal management or personal labor contributions for only those farm program payments that could be attributed to individual members' contributions that were recorded in the Business Party Share File.

From the 50 entities that received the highest payments subject to actively engaged in farming requirements in 2012, we selected entities from a variety of states and contacted FSA state office officials to confirm the number of members (i.e., individuals and entities) claiming contributions of active personal management, personal labor, or a combination of active personal management and personal labor. In addition, we examined address data from FSA's database to review the distances between farming operation addresses and individual members' addresses for the 50 entities. We also compared the addresses for individual members with publicly available sources of address data with their addresses shown in the FSA database.

We conducted our review from May 2012 to September 2013 in accordance with the generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix IV: Distribution and Amount of Farm Program Payments in General Partnerships, Categorized by Number of Individual Members and Grouped by Type of Contribution, 2012

			Type of contribution					
			Active personal management only		Personal labor only		Combination of active personal management and personal labor	
Number of individual members	Number of entities	Payments	Payments	Percentage	Payments	Percentage	Payments	Percentage
1	379	$2,725,034	$958,340	35.2	$4,439	0.2	$1,762,255	64.7
2	12,321	247,882,491	33,300,257	13.4	3,937,162	1.6	210,645,072	85.0
3-5	8,521	264,161,288	79,772,879	30.2	8,579,874	3.2	175,808,535	66.6
6-10	1,179	68,596,754	37,736,861	55.0	2,459,919	3.6	28,399,974	41.4
11 or more	147	9,512,916	7,969,093	83.8	640,192	6.7	903,631	9.5
Total	**22,547**	**$592,878,483**	**$159,737,430**	**26.9**	**$15,621,586**	**2.6**	**$417,519,467**	**70.4**

Source: GAO analysis of Farm Service Agency data.

Notes:

The farm program payments in this table are the payments that are subject to actively engaged in farming requirements.

This table contains approximately 89 percent of the payments distributed to general partnerships that were found to be based on individual members' contributions in FSA's contributions database. At the time of our analysis, these data were continuing to be updated and were gradually becoming more complete.

Not all payment recipients and their related contributions data are included in the Farm Service Agency's contributions database. For some of the payment recipients included in the Farm Service Agency's contributions database, no contribution was identified. We did not include these payments in this table.

Total percentage of payments based on contributions in this table may not total to 100 because of rounding.

Appendix V: Distribution and Amount of Farm Program Payments in Joint Ventures, Categorized by Number of Individual Members and Grouped by Type of Contribution, 2012

			Type of contribution					
			Active personal management only		Personal labor only		Combination of active personal management and personal labor	
Number of individual members	Number of entities	Payments	Payments	Percentage	Payments	Percentage	Payments	Percentage
1	70	$562,389	$173,766	30.9	0	0.0	$388,623	69.1
2	3,531	80,189,843	6,802,765	8.5	503,217	0.6	72,883,861	90.9
3-5	1,101	21,734,252	4,230,053	19.5	325,783	1.5	17,178,416	79.0
6-10	209	3,035,955	1,089,830	35.9	3,605	0.1	1,942,520	64.0
11 or more	28	905,234	587,466	64.9	0	0.0	317,768	35.1
Total	**4,939**	**$106,427,673**	**$12,883,880**	**12.1**	**$832,605**	**0.8**	**$92,711,188**	**87.1**

Source: GAO analysis of Farm Service Agency data.

Notes:

The farm program payments in this table are the payments that are subject to actively engaged in farming requirements.

This table contains approximately 94 percent of the payments distributed to joint ventures that were found to be based on individual members' contributions in the Farm Service Agency's contributions database. At the time of our analysis, these data were continuing to be updated and were gradually becoming more complete.

Not all payment recipients and their related contributions data are included in the Farm Service Agency's contributions database. For some of the payment recipients included in the Farm Service Agency's contributions database, no contribution was identified. We did not include these payments in this table.

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Thomas M. Cook (Assistant Director), Kevin Bray, Gary Brown, John Delicath, Michael Kendix, Anne Rhodes-Kline, Carla Rojas Paz, Dan Royer, and Vasiliki Theodoropoulos made key contributions to this report.

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