WEANING UNITED STATES AGRICULTURE OFF GOVERNMENT MONEY BY FOLLOWING AUSTRALIA'S SUCCESSFUL EXAMPLE

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In 2023, existing legislation providing billions in US government dollars to agricultural producers will expire. The policy underlying this legislation imposes serious harms on the agriculture industry and the nation while doing little to feed the United States healthy food.

Because of those harms, there is bipartisan support in the United States for reforming this policy by reducing financial support to producers. Those reforms would have demonstrable benefits for the environment, the economy, and the agriculture industry itself. Yet, despite the consensus for reform and the benefits that would result, it has been hard to achieve meaningful reform of the government's financial support of the industry due to several political obstacles. In deciding how to achieve and implement reform, the United States can learn valuable lessons from Australia, which successfully transitioned its agriculture industry away from government dependence using a group of temporary, government-funded programs aimed at assisting farmers.

This Article proposes a plan for reducing agricultural funding in the United States and a path to achieving that reduction by adopting a program of assistance measures modeled on those used by Australia. First, the Article proposes a plan for reducing farm subsidies that synthesizes and expands on prior proposals for piecemeal changes to the current funding policy. Second, it proposes a path to achieving this plan by adopting a group of temporary assistance measures based on ones used by Australia. Adopting this program of assistance measures would both improve the outcomes of the industry in transitioning away from government dependence and help to overcome political

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opposition to reducing government financial support of the industry.

Although Australia is often pointed to as an example of a country that successfully reduced its agricultural funding, this Article is the first to recommend that the United States use Australia's assistance measures as a template. After closely analyzing Australia's successful reform, the Article recommends specific assistance measures for the United States, with modifications and improvements based on insights gained from Australia's experience and differences in the two nations' agriculture industries.

This Article's proposal would help US policymakers to reduce the nation's funding of the agriculture industry's destructive behavior by implementing gradual reform that supports the industry's adjustment to a freer market with beneficial temporary assistance.

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INTRODUCTION

US agriculture operates in a complex mosaic of federal programs that financially support the industry ("farm funding").[1] Farm funding is provided by the Farm Bill,[2] which uses federal tax revenues to provide financial support to the agriculture industry.[3] That funding is administered by US federal government agencies, including the United States Department of Agriculture ("USDA").[4]

The purported intent of this funding is to support farmers so they can cheaply feed the nation,[5] but the funding actually harms the agriculture industry, as well as other sectors of the American economy and society. Farm funding degrades the environment, distorts free-market signals, and discourages farmers from implementing risk-management practices, while also imposing significant costs on the federal government.[6]

The US government began to prop up agriculture during the Great Depression to feed a starving nation.[7] In the decades since, policymakers have drastically expanded farm funding[8] in response to the agriculture industry's lobbying efforts.[9]

Today, experts on both sides of the political aisle decry the continued funding of agriculture.[10] Generally, liberals critique farm

1. *See generally* JIM MONKE, CONG. RSCH. SERV., R45974, AGRICULTURE AND RELATED AGENCIES: FY2020 APPROPRIATIONS 4 (2020) (reporting on the agriculture appropriations bill for 2020, which included $153 billion in various spending programs for the fiscal year); *Federal Government Direct Farm Program Payments, 2013–2022F*, U.S.D.A. (Dec. 1, 2022) [hereinafter FARM PROGRAM PAYMENTS], https://data.ers.usda.gov/reports.aspx?ID=17833 (compiling numbers for direct payment programs to farms by state and by overall federal expenditure).

2. *The Agriculture Improvement Act of 2018 (2018 Farm Bill)*, U.S.D.A., https://www.fs.usda.gov/managing-land/farm-bill (last visited Jan. 4, 2023).

3. *See* MONKE, *supra* note 1, at 1.

4. *See id.* at 4.

5. *See* Jonathan Coppess, *A Return to the Crossroads: Farming, Nutrient Loss, and Conservation*, 39 U. ARK. LITTLE ROCK L. REV. 351, 351 (2017).

6. *See infra* Subparts I.B.1–4.

7. Laurie Ristino & Gabriela Steier, *Losing Ground: A Clarion Call for Farm Bill Reform to Ensure a Food Secure Future*, 42 COLUM. J. ENV'T L. 59, 79–82 (2016); *see also* Coppess, *supra* note 5, at 351.

8. *See* FARM PROGRAM PAYMENTS, *supra* note 1 (listing the total dollar amount paid to producers each year from 1933 to 2020).

9. *See* Anthony Kammer, *Cornography: Perverse Incentives and the United States Corn Subsidy*, 8 J. FOOD L. & POL'Y 1, 8–19, 41–43 (2012).

10. *See, e.g.*, *id.* at 41–42 (noting that agriculture subsidies are unpopular with both the political right and left due to the "market distortions and inefficiencies" they cause as well as their "environmental impact").

funding for its harmful effect on the environment,[11] while conservatives attack the funding for its market-distorting effects and high cost.[12] Both sides argue that farm funding is an unnecessary relic of another era that makes farmers dependent on farm funding to succeed.[13] All of these critiques are valid. The United States must reduce its farm funding.

Fortunately, the agriculture industry can more closely align its operations with economic realities and still succeed.[14] Likewise, agricultural policymakers may continue to provide valuable support to the industry, but in a way that is less damaging to the environment and the nation and less costly to taxpayers.

In 2023, Congress will be called upon to pass a new Farm Bill.[15] It is imperative for the agriculture industry, as well as the environmental, economic, and health interests of the nation, that the United States use this opportunity to implement reforms and help the industry finally achieve sustainable, independent prosperity. To that end, this Article proposes a novel plan for reducing farm funding and its corresponding harms, as well as a new path to implement that reduction that will help overcome political roadblocks to reform and improve overall outcomes for farmers as they are weaned off federal funding.

First, this Article proposes a novel plan for reducing farm funding when the current Farm Bill expires. The proposal includes a phased-out elimination of the US government's subsidization of crop insurance, as well as a reduction in the United States' use and funding of several programs that purport to provide "disaster relief," but in fact often provide unnecessary government funds to appease industry trade groups and voter bases. Finally, the Article argues that the United States should keep the current program of conservation subsidies due to the program's environmental benefits and its political appeal.

Although there is bipartisan support for reform of agriculture subsidies, powerful lobbies and politicians stand in the way of reducing farm funding.[16] Moreover, some politicians who might

11. *See id.* at 42.

12. *See id.* at 41.

13. *Id.* at 42; Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENV'T L. & POL'Y REV. 935, 937 (2010).

14. Australia reduced government financial support for its agriculture industry, and the industry is thriving. *See infra* Subpart II.A.4.

15. *See* RENÉE JOHNSON & JIM MONKE, CONG. RSCH. SERV., RS22131, WHAT IS THE FARM BILL? 1 (2019); Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

16. *See* Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 SEATTLE UNIV. L. REV. 1271, 1288–89 (2015); Ann Jaworski, *Encouraging Climate Adaptation Through Reform of Federal Crop Insurance*

support reform in the abstract might oppose it in practice out of fear that their constituencies could view reform as detrimental to small family farms.[17] While a reduction in farm funding would in fact minimally impact family farms,[18] this political resistance presents a dilemma—how to reduce farm funding in a way that overcomes political opposition and helps farmers adjust to a freer market.

This Article argues that the path to solving this dilemma combines reductions in farm funding with the implementation of assistance measures modeled on ones used in Australia. The proposed assistance measures will smooth producers' adjustment to lower subsidies and ease political concerns about a reduction in farm funding harming producers.

Australia successfully overhauled its agricultural policy in the mid-1980s by significantly cutting government financial support to its agriculture industry.[19] Because Australia reduced agricultural funding to one of the lowest levels in the world,[20] its agriculture industry evolved into a thriving and dynamic sector.[21] A significant but overlooked factor in Australia's success was its implementation of temporary measures to assist producers in transitioning to greater independence.[22] These measures eased producers' burden in

Subsidies, 91 N.Y.U. L. REV. 1684, 1698–99 (2016); Jodi Soyars Windham, *Putting Your Money Where Your Mouth Is: Perverse Food Subsidies, Social Responsibility & America's 2007 Farm Bill*, 31 ENVIRONS: ENV'T L. & POL'Y J. 1, 29–30 (2007).

17. Jaworski, *supra* note 16, at 1698–99.

18. Katherine L. Oaks, *The Public Value of Ecological Agriculture*, 21 VT. J. ENV'T L. 544, 573 (2020) (explaining that the 2018 Farm Bill largely benefits large agribusinesses).

19. David Harris & Allan Rae, Agricultural Policy Reform and Industry Adjustment in Australia and New Zealand 2 (June 6, 2004) (unpublished manuscript) (on file with AgEcon Search), https://ageconsearch.umn.edu/record/15762?ln=en; JARED GREENVILLE, AUSTL. BUREAU OF AGRIC. AND RES. ECON. AND SCIS., ANALYSIS OF GOVERNMENT SUPPORT FOR AUSTRALIAN AGRICULTURAL PRODUCERS 9 (2020), https://www.agriculture.gov.au/abares/research-topics/trade/analysis-of-government-support-agricultural-producers; Matt Coughlan, *Australian Farmers Thrive Without Handouts*, S. COAST REG. (May 29, 2020, 12:11 AM), https://www.southcoastregister.com.au/story/6774730/australian-farmers-thrive-without-handouts/.

20. *See* GREENVILLE, *supra* note 19, at 5.

21. *See id.*; *id.* at iv ("Australia's reform experience shows that deregulating the agriculture sector and removing distorting forms of support spurs overall sector growth, increasing participation in global markets and the contribution that agriculture makes to the rural and national economy.").

22. *See generally* SENATE RURAL AND REG'L AFFS. AND TRANSP. REFERENCES COMM., RURAL ADJUSTMENT, RURAL DEBT & RURAL RECONSTRUCTION (1994) [hereinafter RURAL ADJUSTMENT] (discussing Australia's assistance measures and the benefits they provided during the transition away from heavily

transitioning from dependence on the government to self-sufficiency.[23]

Australia's assistance measures included paying producers without a viable future to leave agriculture and reestablish themselves in another industry.[24] Australia also started a savings program that incentivized producers to bolster their savings and better protect themselves against economic downturns,[25] provided training grants for producers to improve their farm-business and risk-management skills,[26] and provided financial planning assistance and farm-business advice from experts and rural counselors.[27] Australia also took several steps to help producers with debt-related concerns, including establishing a debt mediation program,[28] facilitating an informal foreclosure moratorium,[29] and encouraging alternatives to formal bankruptcy proceedings.[30]

Australia's assistance measures were vital to its successful transition to an independent, thriving agriculture industry.[31] These policies drove Australia's successful reform by encouraging the industry to make necessary changes and providing producers with the resources required to make those changes.[32] Although these measures were integral to Australia's success, no one has yet identified them as a template for the United States to use in its own reform.

This Article proposes that the United States implement assistance measures modeled after Australia's but tailored to the unique circumstances facing US agriculture. Specifically, this Article proposes six policies for the United States to pursue.

The first three proposed measures involve improving the viability of US agriculture by: (1) providing grants to nonviable producers to exit the industry and train in a new career; (2) establishing a tax-preferred savings program to help producers guard against

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subsidized agriculture); GARY BANKS, STRUCTURAL REFORM AUSTRALIAN-STYLE: LESSONS FOR OTHERS? 13–14 (2005) (same).

23. *See* sources cited *supra* note 22.

24. L. Leon Geyer, *Risk Sharing Down on the Farm: A Comparison of Farmer Bankruptcy and Insolvency Statutes or Selling the Farm*, 45 DRAKE L. REV. 331, 346 (1997).

25. B.D. Buffier & M.A. Metternick-Jones, *Income Equalisation Deposits: Enhancing Farm Viability*, 63 REV. MKTG. & AGRIC. ECON. 191, 193–94 (1995).

26. Geyer, *supra* note 24, at 346.

27. *Id.*; RURAL ADJUSTMENT, *supra* note 22, at 6; BILL MALCOLM ET AL., RURAL INDUS. RSCH. AND DEV. CORP., THE RURAL ADJUSTMENT SCHEME: ITS ROLE, OPERATION AND EFFECTIVENESS 44 (2000).

28. Geyer, *supra* note 24, at 349.

29. *See id.*

30. *Id.* at 350.

31. *See* BANKS, *supra* note 22, at 13–14.

32. *See id.*

downturns; and (3) providing viable producers with access to experts and rural counselors for skills development and training.

The next three proposed measures involve debt management tools and programs for producers who encounter financial difficulties. Those debt management tools would include: (1) a debt mediation program; (2) a government-encouraged informal moratorium on foreclosures; and (3) the use of informal alternatives to bankruptcy. These three measures would work together in preventing farm bankruptcies and providing producers time to make necessary adjustments to improve their profits.

Reducing farm funding would benefit the environment, the economy, the nation's health, and farmers themselves.[33] The proposed assistance measures would make the reform more successful by helping the industry adjust gradually to more independence after a long history of dependence. These measures would also help overcome political opposition by making it clear that the government is not abandoning farmers after propping them up with significant financial support for nearly a century.

Ultimately, after farm funding is reduced and these temporary assistance measures are implemented, US agricultural producers will emerge more efficient, more profitable, and better prepared for sustainable, independent success. And the benefits of the reforms proposed in this Article will extend beyond US producers to improve the nation's health, promote competition, reduce consumer prices, and increase government efficiency.

Part I of this Article discusses current US agricultural policy and the harms it causes, the current bipartisan support for reform of that policy, and the political obstacles blocking reform. Part II outlines this Article's proposal for reforming and reducing current farm funding and details the specific benefits of these reforms. This Part also addresses two potential concerns with reducing farm funding. Part III examines how Australia successfully reformed its agriculture industry and gives special attention to the assistance measures it implemented to ease the industry's transition away from dependence on government funding. Part IV proposes a plan of assistance measures for the United States that is modeled on the plan of assistance measures Australia implemented. This Part recommends modification of some Australian measures and avoidance of others based on Australian policy successes and the differences between the two nations' agriculture industries. A brief conclusion of the argument follows Part IV.

33. *See id.* at 8–9.

I. THE PROBLEMS WITH US FARM FUNDING

A. *The Current State of US Farm Funding*

The US government provides significant support to the agriculture industry.[34] This support takes many forms and is so expansive that scholars have coined the term "agricultural exceptionalism"[35] to describe the vast array of legal and financial support measures the United States provides to the agriculture industry.[36]

1. *History of US Farm Funding*

Farm funding began during the Great Depression[37] with the passage of the Agricultural Adjustment Act in 1933.[38] Under this act, Congress must pass new Farm Bill legislation every five to seven years.[39] Farm Bills have historically provided significant farm funding in the form of subsidies and direct payments to agribusinesses.[40] Farm Bills are the primary, though not the only, mechanism through which agriculture receives farm funding.[41]

The drafting, negotiating, and passing of Farm Bills often takes many years.[42] The current Farm Bill, the Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), expires in 2023.[43] In the next year, Congress will negotiate and draft a new Farm Bill.[44]

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34. Jason Foscolo & Michael Zimmerman, *Alternative Growth: Forsaking the False Economies of Industrial Agriculture*, 25 FORDHAM ENV'T. L. REV. 316, 316 (2014).

35. *Id.*

36. *See id.*

37. *See* Coppess, *supra* note 5, at 351.

38. William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENV'T L. REP. NEWS & ANALYSIS 10493, 10494 (2009).

39. *Id.* at 10495.

40. Foscolo & Zimmerman, *supra* note 34, at 316.

41. *See* MEGAN STUBBS, CONG. RSCH. SERV., RS21212, AGRICULTURAL DISASTER ASSISTANCE 12–15 (2022); *Farm Bill Spending*, U.S.D.A. (Sept. 19, 2022), https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/farm-bill-spending/; John Newton, *Crop Insurance Reduces the Need for Ad-hoc Disaster Payments*, AM. FARM BUREAU FED'N (Mar. 13, 2018), https://www.fb.org/market-intel/crop-insurance-reduces-the-need-for-ad-hoc-disaster-payments.

42. Jaworski, *supra* note 16, at 1698–99.

43. JOHNSON & MONKE, *supra* note 15, at 1; *see* Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

44. *See* Chad G. Marzen, *The 2018 Farm Bill: Legislative Compromise in the Trump Era*, 30 FORDHAM ENV'T L. REV. 49, 60–61 (2019).

Over the last several decades, Farm Bills have provided far more farm funding to large agribusinesses than small family farms.[45] For example, in 2000, fifteen Fortune 500 companies each received more than one million dollars in farm funding.[46] Yet the bottom 80% of recipients each received only $704 annually,[47] and most family farmers received no farm funding.[48]

Farm funding has generally been used by agribusinesses to grow commodity crops[49]—corn, soybeans, cotton, wheat, and rice[50]—using environmentally harmful methods and chemicals.[51] For example, corn, cotton, soybeans, wheat, and rice received 93% of farm funding from 2002 to 2005, but those crops only comprised 21% of the total farm cash receipts.[52]

In particular, "[c]orn farmers, which have historically used more fertilizer on their crops than the other types of commodity farmers, typically received the most [farm funding]."[53] In contrast, fruit and vegetable farmers, as well as most organic farms, have historically not been eligible to receive most farm funding.[54] Therefore, farm funding has largely neglected to assist the most nutritious crops and the most environmentally friendly farms.[55]

2. *Current Farm Bill*

Because the current 2018 Farm Bill is largely a continuation of the Agricultural Act of 2014 (the "2014 Farm Bill"),[56] it is useful to begin by explaining the 2014 Farm Bill.

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45. Erin Morrow, *Agri-Environmentalism: A Farm Bill for 2007*, 38 TEX. TECH L. REV. 345, 370 (2006); Carmen G. Gonzalez, *The Global Food System, Environmental Protection, and Human Rights*, 26 NAT. RES. & ENV'T 7, 11 (2012).

46. Windham, *supra* note 16, at 14.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Agriculture Improvement Act of 2018: Highlights and Implications*, U.S.D.A. (Aug. 20, 2019), https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/crop-commodity-programs/.

51. *See* Nicole E. Negowetti, *Exposing the Invisible Costs of Commercial Agriculture: Shaping Policies with True Costs Accounting to Create a Sustainable Food Future*, 51 VAL. U. L. REV. 447, 451–52 (2017); JAVIER MATEO-SAGASTA ET AL., FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, MORE PEOPLE, MORE FOOD, WORSE WATER? A GLOBAL REVIEW OF WATER POLLUTION FROM AGRICULTURE 182 (2018).

52. Windham, *supra* note 16, at 14.

53. *Id.*

54. *See id.*; Brian Barth, *Congress Finally Passed a New Farm Bill and It Continues to Pay Homage to the Cult of Corn and Soy*, MOD. FARMER (Jan. 7, 2019), https://modernfarmer.com/2019/01/congress-finally-passed-a-new-farm-bill-and-it-continues-to-pay-homage-to-the-cult-of-corn-and-soy/.

55. *See* sources cited *supra* note 51.

56. Donald Stotts, 2*018 Farm Bill a Lot Like the 2014 Version, but with Some Key Changes*, OKLA. STATE UNIV. (Dec. 20, 2018),

a. The 2014 Farm Bill

On its face, the 2014 Farm Bill ushered in significant change because it eliminated direct payments,[57] which are payments by the US government to producers.[58] The 2014 Farm Bill replaced direct payments with enhanced crop-insurance programs that use federal funds to subsidize the cost of crop insurance.[59]

Experts, however, criticized the 2014 Farm Bill as a "bait-and-switch."[60] The public was persuaded of the wisdom of repealing direct payments due to the significant environmental and human health harms they imposed and their cost,[61] but Congress then replaced those direct payments with costly insurance subsidies.[62] Moreover, the 2014 Farm Bill did not eliminate all direct payments to producers.[63] After the 2014 Farm Bill was implemented, the government began providing direct payments outside of the Farm Bill, largely through ad hoc disaster payments.[64] Thus, even though the 2014 Farm Bill was touted as reducing the cost of farm funding,[65] the total amount of farm funding has significantly increased since 2014.[66]

b. The 2018 Farm Bill

In 2020, farm funding of the agriculture industry totaled a record high of $45.5 billion and comprised 39% of net farm income.[67]

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https://news.okstate.edu/articles/agriculture/2018/stotts_2018-farm-bill-passage.html (explaining that outside of minor changes to existing programs, the major changes implemented by the 2018 Farm Bill involved the legalization of hemp production).

57. *See* Freeman, *supra* note 16, at 1271–72.

58. *See* ROMAN KEENEY, THE END OF THE DIRECT PAYMENT ERA IN U.S. FARM POLICY 1–2 (2013).

59. Jennifer Mosquera, *Corn, Cows, and Cash: How Farming Subsidies Work and What They Could Potentially Achieve*, 34 J. LAND USE & ENV'T L. 191, 195–96 (2018).

60. Ron Nixon, *House Approves Farm Bill, Ending a 2-Year Impasse*, N.Y. TIMES (Jan. 29, 2014), https://www.nytimes.com/2014/01/30/us/politics/house-approves-farm-bill-ending-2-year-impasse.html.

61. *See* Neil D. Hamilton, *The 2014 Farm Bill: Lessons in Patience, Politics, and Persuasion*, 19 DRAKE J. AGRIC. L. 1, 21–23 (2014).

62. *Id.* at 22–23.

63. *See* STUBBS, *supra* note 41, at 12–15; Newton, *supra* note 41.

64. *See generally* Newton, *supra* note 41 (discussing the continued occurrence of ad hoc payments).

65. *See* Carl Zulauf & David Orden, *Political Economy of the 2014 Farm Bill*, 97 AM. J. AGRIC. ECON. 1298, 1298, 1302–03 (2015).

66. *See* FARM PROGRAM PAYMENTS, *supra* note 1.

67. Scott Lincicome, *Examining America's Farm Subsidy Problem*, CATO INST. (Dec. 18, 2020), https://www.cato.org/commentary/examining-americas-farm-subsidy-problem.

Although farm funding has hit an all-time high, such funding is still largely targeted at large agribusinesses that grow commodity crops.[68] Therefore, tens of billions of dollars are given out annually to "support inefficient, nondiverse, and non-resilient production of a short list of commodity crops."[69] This results in a "[concentration of] wealth and market power amongst the largest farms,"[70] while also polluting and degrading the environment.[71]

Currently, farm funding consists of multiple programs.[72] Over 90% of the $45.5 billion the US government spent on farm funding in 2020 went to four programs—the Price Loss Coverage Program and Agriculture Risk Coverage Program (collectively referred to as the "Crop Insurance Program"); conservation subsidies; and ad hoc disaster assistance.[73] Although 2020 was an outlier year in many ways,[74] since 2015, it has been common for the US government to spend the vast majority of farm funding on these programs.[75]

The Crop Insurance Program and the conservation subsidies are authorized by the 2018 Farm Bill.[76] Ad hoc disaster assistance is provided through several federal programs, some of which are authorized through the 2018 Farm Bill and some of which are authorized through other legislation.[77]

The following sections give more detail about each of these farm funding programs.

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68. Oaks, *supra* note 18, at 573.

69. *Id.*

70. *Id.* at 577.

71. *Id.* at 572.

72. *See* FARM PROGRAM PAYMENTS, *supra* note 1.

73. *See id.*

74. The COVID-19 virus caused a pandemic that impacted most of the world in some way, including US agriculture. *Farms and Farm Households During the COVID-19 Pandemic*, U.S.D.A. (Sep. 6, 2022), https://www.ers.usda.gov/covid-19/farms-and-farm-households. US farmers received significant financial support as part of a COVID-19 relief package specifically targeted towards them. *Id.*

75. *See* FARM PROGRAM PAYMENTS, *supra* note 1. For example, in 2015, 2016, 2017, 2018, 2019, and 2020 these programs comprised 97%, 95.7%, 99.8%, 59%, 35%, and 91% of the total amount the United States spent on farm funding for each of those years respectively. *See id.* The relative cost of these four programs was diluted in 2017 and 2018 by the Trump administration's implementation of a temporary program that paid farmers for the harm caused to them by Trump's trade war with China. *See* Lincicome, *supra* note 67; FARM PROGRAM PAYMENTS, *supra* note 1.

76. The CIP is authorized under Title XI of the 2018 Farm Bill. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490, 4919 (2018). The Conservation Program is authorized under Title II of the 2018 Farm Bill. *Id.* at 4530.

77. *See generally* STUBBS, *supra* note 41.

3. *Farm Funding Programs*

a. The Crop Insurance Program

With the reduction of direct payments in 2014, the Crop Insurance Program became central to US farm policy.[78] More specifically, participation in the Crop Insurance Program increased because the 2014 Farm Bill gave more money to producers for the cost of crop insurance in lieu of the direct payments that had been made in the past.[79]

The Crop Insurance Program is typically the costliest agriculture program and often comprises approximately 50% of all farm funding.[80] Moreover, its cost has drastically increased in the last several years.[81]

The costs have increased due to the 2014 Farm Bill committing the government to paying a greater percentage of each insurance premium.[82] These "[s]kyrocketing costs have caused political voices on both the left and the right to criticize the program."[83] In addition to excoriating the rising costs, many argue there is no economic rationale for subsidizing crop insurance.[84]

The goal of the Crop Insurance Program is to protect producers from "unavoidable losses due to perils beyond the farmer's control."[85] Through this program, producers are offered agriculture insurance policies issued by private insurance companies that are heavily subsidized by the government.[86]

Under the 2014 and 2018 Farm Bills, the producer typically pays approximately 35% of the premium,[87] while the US government pays the remainder.[88] The government also pays the insurance companies' related operating and administrative costs.[89]

The Crop Insurance Program offers several different insurance products.[90] However, two types of crop insurance are by far the most

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78. Jaworski, *supra* note 16, at 1691.
79. *Id.*
80. *See* FARM PROGRAM PAYMENTS, *supra* note 1. However, during the COVID-19 Pandemic, ad hoc disaster assistance has become the most expensive program. *Id.*
81. Paul Janda, *Fire, Flood, Famine, and Pestilence: Climate Change and Federal Crop Insurance*, 26 COLO. NAT. RES., ENERGY & ENV'T L. REV. 81, 87 (2015).
82. *Id.* at 87–88.
83. *Id.* at 88.
84. Zulauf & Orden, *supra* note 65, at 1307.
85. Janda, *supra* note 81, at 87.
86. Oaks, *supra* note 18, at 578.
87. *Id.*
88. *Id.*
89. *Id.*
90. Freeman, *supra* note 16, at 1293; Janda, *supra* note 81, at 100.

popular: crop-revenue insurance and crop-yield insurance.[91] Crop-revenue insurance protects the producer when their farm revenue falls below a previously set target level and that fall is caused by a loss of crops or a drop in the crops' price.[92] The vast majority of the US government's expense from insurance subsidies stems from subsidizing these revenue insurance policies.[93] Yet only commodity crops are eligible for it,[94] and as discussed in Subpart I.B.1, commodity-crop production causes significant environmental degradation.[95]

Crop-yield policies are the second most common type of crop insurance.[96] These policies pay producers if their yield falls below their "yield guarantee"—an average calculated by the producer's production history—due to natural causes like drought, hail, and insects.[97] Irrationally, producers can exclude their worst year from this calculation.[98] This produces an underestimate of the true risk the producer faces.[99] As a result, "[t]he producer ignores the past indicator of risk when making farm management decisions, and crop insurance administrators ignore the risk in calculating premium rates, [both of which] incentiviz[e] risky and irrational market behavior."[100]

Although the 2014 Farm Bill purported to reduce favoritism toward commodity crops,[101] the Crop Insurance Program "is entirely structured around commodity crop production."[102] Commodity crops comprise over 75% of the acreage enrolled in the Crop Insurance Program and approximately 80% of the insurance claims paid under it.[103] In fact, many other crops are not even eligible to participate in the Crop Insurance Program,[104] "including many that have ecological benefits to soil and nutrition, such as most leafy greens, root crops, and many fruits."[105]

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91. *See* Freeman, *supra* note 16, at 1293; Oaks, *supra* note 18, at 579.
92. Freeman, *supra* note 16, at 1293; Janda, *supra* note 81, at 88–89.
93. FARM PROGRAM PAYMENTS, *supra* note 1; Jaworski, *supra* note 16, at 1692.
94. Oaks, *supra* note 18, at 579; Jaworski, *supra* note 16, at 1692.
95. *See infra* Subpart I.B.1.
96. Oaks, *supra* note 18, at 579.
97. *Id.*; Janda, *supra* note 81, at 88.
98. Oaks, *supra* note 18, at 579–80.
99. *See id.*
100. *Id.* at 580. Indeed, an experienced farmer stated: "All I need to do is pop the seed in the ground and raise a crop. I don't need to worry about marketing, weather, or any of the other risks that I have had in the past." Morrow, *supra* note 45, at 370.
101. Jaworski, *supra* note 16, at 1691.
102. Oaks, *supra* note 18, at 579.
103. *Id.* at 578.
104. Janda, *supra* note 81, at 87.
105. Oaks, *supra* note 18, at 579.

The Crop Insurance Program also favors large-scale farms.[106] For example, the Crop Insurance Program pays four times more per acre in insurance payouts to larger acreage farms than smaller farms.[107] Providing advantages to larger operations incentivizes monoculture and intensive production,[108] both of which are linked with impairing human health.[109]

b. The Conservation Subsidies

Generally, conservation programs fared well under the 2014 and 2018 Farm Bills.[110] Specifically, the 2018 Farm Bill added three million acres of land to the Conservation Reserve Program ("CRP").[111] The CRP pays producers annually "to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality."[112]

The 2018 Farm Bill also kept the Conservation Stewardship Program ("CSP") in operation,[113] which is the largest conservation program in the nation.[114] The CSP pays participating producers to improve their conservation performance by implementing certain conservation activities.[115]

c. The Ad Hoc Disaster Assistance Payments

Ad hoc disaster assistance payments are unplanned direct payments to "help farmers recover financially from natural disasters, including drought and floods."[116] The US government provides this assistance through an amalgam of programs, many of which exist outside of the 2018 Farm Bill.[117]

Under these programs, most producers receive mandatory amounts that are uncapped because the funding authorization sets

106. *See id.* at 578.

107. The largest farms are paid $50.00 per acre while the national average is $12.50 per acre. *Id.*

108. *Id.*

109. *Id.* at 556.

110. *See id.* at 580–81.; Zulauf & Orden, *supra* note 65, at 1300, 1308.

111. Marzen, *supra* note 44, at 81.

112. *About the Conservation Reserve Program (CRP)*, U.S.D.A., https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/ (last visited Jan. 4, 2023).

113. Marzen, *supra* note 44, at 81.

114. *Conservation Stewardship Program*, U.S.D.A., https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/ (last visited Jan. 4, 2023).

115. Emmalea Garver Ernest, *Rule Change to NRCS Conservation Stewardship Program*, WKLY. CROP UPDATE (Oct. 16, 2020), https://sites.udel.edu/weeklycropupdate/?p=15957.

116. STUBBS, *supra* note 41, at Summary.

117. *Id.* at 1.

out that money should be provided in amounts "as necessary."[118] Not only is the funding uncapped, but the government is also given significant flexibility to "address disaster issues as they arise."[119] As such, these payments are often used unnecessarily to curry favor with the industry and pro-agriculture voters.[120]

B. The Harms Caused by Farm Funding

1. Degraded Environment

The Crop Insurance Program causes and encourages environmental degradation.[121] This degradation primarily stems from the Crop Insurance Program's principally benefiting commodity-crop producers.[122]

Crop-insurance subsidies incentivize producers to grow commodity crops over other non-subsidized crops for two reasons. First, if producers elect to grow commodity crops, the US government pays most of their insurance premium; if not, the producer must bear the full cost of the premium on its own.[123] Second, depending on the insurance product chosen, commodity-crop producers are essentially guaranteed revenue through the insurance program.[124] Therefore, producers growing commodity crops save on costs and are assured receipt of revenue.[125]

The Crop Insurance Program also incentivizes production changes that increase environmental harms.[126] For example, the safety of cheap crop insurance encourages planting crops on environmentally sensitive and risky land that producers would otherwise not consider due to the risk of significant losses.[127] These areas—"brought into or retained in cultivation due to [crop insurance subsidies]"—"are, on average, less productive, more vulnerable to erosion and more likely to include wetlands and imperiled species

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118. *Id.*

119. *Id.* at 9.

120. *See* William Petit, *The Free Trade Area of the Americas: Is It Setting the Stage for Significant Change in U.S. Agricultural Subsidy Use?*, 37 TEX. TECH L. REV. 127, 133 (2004).

121. DANIEL A. SUMNER & CARL ZULAUF, ECONOMIC & ENVIRONMENTAL EFFECTS OF AGRICULTURAL INSURANCE PROGRAMS 1–2 (2012). Not only did farm funding "disproportionately benefit wealthy farmers and corporate agribusiness," it also "incentivize[d] environmentally destructive cultivation practices." Gonzalez, *supra* note 45, at 11.

122. Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy Is Destroying the Family Farm and the Environment*, 22 VILL. ENV'T. L.J. 141, 148 (2011).

123. Negowetti, *supra* note 51, at 451–52.

124. *See* Jaworski, *supra* note 16, at 1692.

125. *Id.*; Negowetti, *supra* note 51, at 451–52.

126. SUMNER & ZULAUF, *supra* note 121, at 2, 10–13.

127. *Id.* at 10.

habitats."[128] Thus, by promoting planting in these areas, crop insurance "encourages planting on marginal lands," and planting on those lands results in "environmental impacts [that] are disproportionately high."[129]

Additionally, as discussed in Subpart I.B.3, by reducing a producer's chance of financial loss, cheap crop insurance discourages the producer from implementing risk-reducing practices,[130] like planting cover crops,[131] that also improve the environment.[132]

Similarly, the Crop Insurance Program's encouraging producers to shift their production toward commodity crops often causes increased environmental damage.[133] This is because commodity crops like cotton inherently cause more environmental harm than other crops.[134] The production processes used by commodity-crop producers pollute the environment[135] because growing many of those crops necessitates the use of "a volatile cocktail of toxic chemical fertilizers" to make money.[136]

These producers use toxic fertilizers to achieve higher crop yields in the short term.[137] Those higher yields, however, come at a cost to the environment, as these dangerous fertilizers are necessary to achieve such outsized yields.[138]

These fertilizers enter water systems because crops cannot utilize all the fertilizer applied.[139] Thus, when farmlands experience saturation from rainfall, irrigation, flooding or snowmelt, unused fertilizers are carried to surface water and groundwater.[140] This

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128. *Id.* at 11.

129. *Id.* at 13.

130. *Id.* at 2, 10–13.

131. Cover crops are plants that are grown to cover soil near other crops for the purpose of reducing erosion, improving soil health, smothering weeds, suppressing pests, and controlling crop diseases. *Cover Crops – Keeping Soil in Place While Providing Other Benefits*, OWEN CNTY. SOIL & WATER CONSERVATION DIST., http://owencountyswcd.org/cover-crops/#:~:text=Decreased%20soil%20loss%20and%20runoff,a%20threat%20to%20human%20health (last visited Jan. 4, 2023). Further, the "[d]ecreased soil loss and runoff" that results from planting cover crops "translates to reduced transport of valuable nutrients, pesticides, herbicides, and harmful pathogens associated with manure from farmland that degrade the quality of streams, rivers and water bodies and pose a threat to human health." *Id.*

132. SUMNER & ZULAUF, *supra* note 121, at 2, 10–13.

133. *Id.* at 2, 10.

134. *Id.*

135. Negowetti, *supra* note 51, at 453; Oaks, *supra* note 18, at 551–52.

136. Eubanks, *supra* note 38, at 10499.

137. *Id.*

138. *Id.*

139. Negowetti, *supra* note 51, at 453–54.

140. *Id.*; *see also* Eubanks, *supra* note 38, at 10499.

causes a dangerous concentration of bacteria and synthetic compounds to develop in the aquatic ecosystem.[141]

Furthermore, commodity crops "are often grown without rotating in other crops, [which] can prevent erosion and replace vital nutrients in the soil."[142] As such, producers failing to rotate their crops contribute to water pollution because eroded soil contains pollutants that impair water quality.[143]

Overall, pollution from commodity-crop production leads to disastrous effects,[144] including increased health issues, associated healthcare expenses,[145] and filtration costs.[146] Commodity-crop production also forces many businesses that are reliant on clean water—like manufacturers, breweries, and tourism companies—to shut down.[147]

2. Distorted Free Market Signals

Signals from the market are muted by the Crop Insurance Program as producers are often more concerned with maximizing the receipt of government funds than they are with satisfying consumer demands.[148] For instance, for many years, consumers have demanded more environmentally friendly agriculture products.[149]

141. Negowetti*, supra* note 51, at 454. Moreover, "the [Environmental Protection Agency] concedes that runoff from agricultural activities is the primary culprit for 48% of the 'impaired' waters in the United States." Jan G. Laitos & Heidi Ruckriegle, *The Clean Water Act and the Challenge of Agricultural Pollution*, 37 VT. L. REV. 1033, 1045 (2013).

142. Negowetti, *supra* note 51, at 451–52.

143. *See id.* at 452.

144. Ristino & Steier, *supra* note 7, at 106. Each of these effects is discussed in more detail in Subpart II.B.

145. Shauna R. Collins, *Striking the Proper Balance Between the* Carrot *and the* Stick *Approaches to Animal Feeding Operation Regulation*, 2012 U. ILL. L. REV. 923, 932; Eubanks, *supra* note 38, at 10501; Melissa Denchak, *Water Pollution: Everything You Need to Know*, NRDC (Apr. 18, 2022), https://www.nrdc.org/stories/water-pollution-everything-you-need-know#causes; *Waterborne Disease in the United States*, CDC (Dec. 1, 2020), http://www.cdc.gov/healthywater/burden [hereinafter *Waterborne Disease*].

146. Margot J. Pollans, *Drinking Water Protection and Agricultural Exceptionalism*, 77 OHIO STATE L.J. 1195, 1207 (2016).

147. *See infra* notes 255–58.

148. Kammer, *supra* note 9, at 41; Oaks, *supra* note 18, at 575; *see also* Wayne Arnold, *Surviving Without Subsidies*, N.Y. TIMES (Aug. 2, 2007), https://www.nytimes.com/2007/08/02/business/worldbusiness/02farm.html ("[S]ubsidies, economists contend, generally encourage inefficient farmers to grow unprofitable crops far beyond what consumers actually need, secure in the knowledge that the government will help protect them from loss.").

149. Karl Plume & Rod Nickel, *North American Farmers Profit as Consumers Pressure Food Business to Go Green*, REUTERS (Dec. 3, 2020, 7:27 AM), https://www.reuters.com/article/us-usa-agriculture-climatechange-focus/north-

Yet, the Crop Insurance Program incentivizes producers to grow environmentally harmful commodity crops and implement environmentally harmful practices.[150]

The Crop Insurance Program also insulates producers from adapting their operations to relevant market signals.[151] For example, when the market price decreases because of overproduction of a crop, producers in a freer market would shift some production away from that type of crop.[152] Because of the subsidies, however, producers need not concern themselves as much with adapting to those price signals as their costs are artificially low and they are guaranteed to receive a high level of revenue.[153]

3. Distorted Risk Management

The Crop Insurance Program also distorts how producers manage agricultural risks.[154] Agriculture is inherently susceptible to risks like flooding and pest infestation, as well as price and market risks.[155] However, some of these risks can be significantly reduced with proper management.[156]

For instance, to reduce the risk of low crop yields due to low-quality soil, producers can rotate their crops to revitalize the soil.[157] And, to reduce the risk of flood, producers can build drainage systems, retaining walls, and ditches.[158] However, for a variety of reasons, the

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american-farmers-profit-as-consumers-pressure-food-business-to-go-green-idUSKBN28D1NW.

150. SUMNER & ZULAUF, *supra* note 121, at 1–2.

151. *See* Janda, *supra* note 81, at 98.

152. *See* *Equilibrium, Surplus, and Shortage*, LUMEN, https://courses.lumenlearning.com/wm-microeconomics/chapter/equilibrium-surplus-and-shortage/ (last visited Jan. 4, 2023); Economic Lowdown Podcast Series, *Market Equilibrium*, FED. RSRV. BANK OF ST. LOUIS, https://www.stlouisfed.org/education/economic-lowdown-podcast-series/episode-8-market-equilibrium (last visited Jan. 4, 2023).

153. *See* Zulauf & Orden, *supra* note 65, at 1307; Alison Acosta Winters, *How Agriculture Subsidies Are Hurting Farmers, Taxpayers*, THE HILL (Dec. 9, 2016, 12:55 PM), https://thehill.com/blogs/congress-blog/economy-budget/309575-how-agriculture-subsidies-are-hurting-farmers-taxpayers.

154. Jaworski, *supra* note 16, at 1694; Oaks, *supra* note 18, at 575.

155. *Risk in Agriculture*, U.S.D.A. (June 16, 2022), https://www.ers.usda.gov/topics/farm-practices-management/risk-management/risk-in-agriculture/.

156. *Id.*

157. John Cothren, *Advantages of Crop Rotation*, N.C. COOP. EXTENSION, https://wilkes.ces.ncsu.edu/2014/12/advantages-of-crop-rotation/ (Dec. 17, 2021).

158. Beth Baker, *How You Can Reduce Flood Risk on Your Farm*, SE. FARM PRESS (Mar. 29, 2018), https://www.farmprogress.com/land-management/how-you-can-reduce-flood-risk-your-farm; Eileen McLellan, *How Nature Can Protect Farmers Against Droughts and Floods*, ENV'T DEF. FUND (Feb. 2, 2015), http://blogs.edf.org/growingreturns/2015/02/02/.

Crop Insurance Program often disincentivizes producers from adapting to anticipate or counteract these risks,[159] especially environmental risks.[160]

First, "[the Crop Insurance Program] discourages adaptation [to risk] because it does not pass the full cost of insurance on to the producer and thus fails to send the full price signal that would properly allocate the risk."[161] In an unsubsidized market, producers are incentivized to adopt risk-mitigating practices because doing so results in cheaper crop-insurance premiums.[162] Yet, many producers in the Crop Insurance Program become complacent because the US government pays the majority of their premium.[163] As a result, there is little incentive for the producer to spend money to reduce risk when their premium is already inexpensive.[164]

Second, the formula for calculating insurance premiums "does not encourage planning for future risks" as the calculation is based solely on historical losses experienced in the area.[165] As such, producers are disincentivized from implementing procedures that could mitigate future risks because doing so will not reduce their premiums.[166] This disincentive to mitigate risk is further compounded by the fact that producers can exclude their worst prior year from the calculation of their insurance premium rate.[167]

Third, the Crop Insurance Program's subsidy payment is the same for a given crop regardless of the risk of crop loss (from weather, pests, and other potential harms) for the area where it is grown.[168] More specifically, the Crop Insurance Program does not pay a lower percentage of the subsidy to producers growing crops in areas that are riskier for that crop.[169] Therefore, this results in the US government's "blunting farmers' incentives to choose less-risky crops."[170]

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159. SUMNER & ZULAUF, *supra* note 121, at 1–2.

160. *See* Janda, *supra* note 81, at 98; Jaworski, *supra* note 16, at 1697–98.

161. Janda, *supra* note 81, at 99.

162. *Crop Insurance Basics: Risk Mitigation and Risk Management*, NAT'L CROP INS. SERVS. (June 8, 2021), https://cropinsuranceinamerica.org/crop-insurance-basics-risk-mitigation-and-risk-management/.

163. Janda, *supra* note 81, at 99–100.

164. *Id.*

165. Jaworski, *supra* note 16, at 1691.

166. *Id.*

167. Oaks, *supra* note 18, at 579–80.

168. Jaworski, *supra* note 16, at 1697.

169. *Id.*

170. *Id.* at 1697–98. The Crop Insurance Program's deterrent effect on the implementation of risk-reducing measures is demonstrated in several studies. *See, e.g.*, *id.* at 1694 (stating that a recent study concluded that commodity crop producers using the Crop Insurance Program were less likely to adapt to the risk of severe weather compared to producers with uninsured crops); Francis Annan

4. Increased Costs

The cost of farm funding is staggering. From 2015 to 2020, it was approximately $117 billion.[171] The amount spent on farm funding increased every year except for one over that period.[172] This was a drastic increase from the approximately $66.4 billion spent from 2009 to 2014.[173] Moreover, Congress estimates that federal spending for the Crop Insurance Program alone will total $80 billion from 2020 through 2028.[174]

5. Compounded Harms from Unnecessary Ad Hoc Disaster Assistance

The US government's provision of limited ad hoc relief when truly necessary helps producers remain solvent following a natural disaster.[175] Many experts suspect, however, that Congress has provided unnecessary ad hoc relief to gain favor with the agriculture industry.[176] When ad hoc relief devolves into a backdoor for Congress to consistently lavish the industry with unnecessary money,[177] those funds compound the harms discussed in the preceding sections.[178]

Further, when disaster aid becomes a cover for unnecessary government subsidies, producers return to "rent-seeking behavior,"[179] focused on maximizing their receipt of government funds rather than increasing consumer benefit.[180] Producers acted this way when they

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& Wolfram Schlenker, *Federal Crop Insurance and the Disincentive to Adapt to Extreme Heat*, 105 AM. ECON. REV. 262, 262 (2015).

171. *See* FARM PROGRAM PAYMENTS, *supra* note 1.

172. *See id.*

173. *See id.*

174. *Reduce Subsidies in the Crop Insurance Program*, CONG. BUDGET OFF. (Dec. 13, 2018), https://www.cbo.gov/budget-options/54714.

175. *See* STUBBS, *supra* note 41, at 12–15

176. *See* Petit, *supra* note 120, at 133; Véronique Bruggeman et al., *Insurance Against Catastrophe: Government Stimulation of Insurance Markets for Catastrophic Events*, 7 WASH. J. ENV'T L. & POL'Y 380, 409 (2017).

177. *See* sources cited *supra* note 176.

178. *See supra* Subparts I.B.1–4.

179. Jason Brennan, *The Right to Good Faith: How Crony Capitalism Delegitimizes the Administrative State*, 11 GEO. J.L. & PUB. POL'Y 317, 328 (2013) (defining rent seeking as an individual or organization attempting "to manipulate the political environment for its own benefit"); Richard L. Hasen, *Lobbying, Rent-Seeking, and the Constitution*, 64 STAN. L. REV. 191, 197 (2012) ("One common form of rent-seeking occurs when individuals or groups devote resources to capturing government transfers, rather than putting them to a productive use . . . .").

180. *See* Mary Beth Blauser, Note, *The 2008 Farm Bill: Friend or Foe to Conservationists and What Improvements Are Needed?*, 12 VT. J. ENV'T L. 547, 562–64 (2011); Glynn S. Lunney, Jr., *The Copyright Tax*, 68 J. COPYRIGHT SOC'Y U.S.A. (forthcoming 2022) (manuscript at 10)

were still receiving significant and consistent direct payments from the Farm Bill, which is why Congress reduced those payments.[181] Under the prior system, producers were not concerned with mitigating risk, reducing their environmental impact, or producing products that would satisfy consumer demands.[182] Instead, producers took actions that would ensure the continued receipt of government money.[183] Thus, these payments resulted in "a very distorted food system [that] sen[t] signals to farmers . . . [and] [told] farmers what [to] grow."[184] There is evidence that producers are returning to rent-seeking behavior to receive ad hoc disaster assistance.[185]

Ad hoc disaster assistance is harmful for at least two other reasons. First, "the knowledge that governments will provide disaster funding may dissuade farmers from becoming more resilient (by adjusting their [production] practices [], for example)."[186] This knowledge, in turn, makes producers more reliant on ad hoc disaster assistance.[187] Second, knowing that the government will pay when disaster strikes encourages producers to plant crops in risky areas "and creates economic disincentives to limit production losses from climate variability and other factors."[188]

C The Current US Political Climate

1. Bipartisan Support for Reform

There is bipartisan support for reducing farm funding. Politicians, academics, economists, environmentalists, and advocacy

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(https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3673949) (stating that farm funding, and subsidies in general, distort the recipients' behavior—often through their decisions as to "how much to work, what crops to grow, and whether to farm or engage in some other form of work").

181. *See* Blauser, *supra* note 180, at 562–64.

182. *See* Mary Jane Angelo, *Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in a Changing Global Environment*, 17 GEO. MASON L. REV. 593, 649–52 (2010); William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENV'T L.J. 213, 279–80 (2009); Petit, *supra* note 120, at 135, 141.

183. *See* Blauser, *supra* note 180, at 562–64; Petit, *supra* note 120, at 135, 141.

184. Eubanks, *supra* note 182, at 279–80.

185. *See* James Ming Chen, *Correlation, Coverage, and Catastrophe: The Contours of Financial Preparedness for Disaster*, 26 FORDHAM ENV'T L. REV. 56, 91–92 (2014).

186. Ryan B. Stoa, *Marijuana Agriculture Law: Regulation at the Root of an Industry*, 69 FLA. L. REV. 297, 346 (2017).

187. *See id.*

188. George B. Frisvold, *Water, Agriculture, and Drought in the West Under Changing Climate and Policy Regimes*, 55 NAT. RES. J. 293, 295 (2015).

groups on both sides of the aisle have all called for reducing this funding.[189]

For example, when he was in office, President Donald Trump twice proposed significant cuts to the Crop Insurance Program,[190] as did President George W. Bush before him.[191] Influential conservative organizations have also critiqued the Crop Insurance Program.[192] The Heritage Foundation criticized the Crop Insurance Program on the grounds that "crop risk is transferred from agricultural producers to taxpayers."[193] It also complained that "farmers have been unduly influenced by government intervention rather than adhering to the demands of the marketplace."[194]

Top Democrats and left-leaning organizations have also called for subsidy reform.[195] President Barack Obama proposed deep cuts to the Crop Insurance Program.[196] And, before him, President Clinton supported a bill that aimed to eliminate farm funding.[197] Additionally, the National Resource Defense Council critiqued the Crop Insurance Program due to its negative effect on agricultural risk management and the environment.[198]

Given this bipartisan support, it is unsurprising that Washington has been moving away from farm funding. Most recently, Congress reduced direct payments in the 2014 and 2018 Farm Bills.[199] Additionally, in 2012, the US Senate and "nearly half of the members of the Senate [A]griculture [C]ommittee," which are "traditionally the strongest supporters of farm subsidies," voted for a large-scale reduction in farm funding.[200] In these discussions, the bipartisan

189. *See, e.g.*, Kammer, *supra* note 9, at 41–42; Marzen, *supra* note 44, at 57–59.

190. Marzen, *supra* note 44, at 60–61.

191. Greg Hitt, *Bush Farm Proposal May Snag on Congressional Roadblocks*, WALL ST. J. (Feb. 1, 2007, 12:01 AM), https://www.wsj.com/articles/SB117025451426593681.

192. Marzen, *supra* note 44, at 59.

193. *Id.*

194. *Id.*

195. NATIONAL RESOURCE DEFENSE COUNCIL, COVERING CROPS: HOW FEDERAL CROP INSURANCE PROGRAM REFORMS CAN REDUCE COSTS, EMPOWER FARMERS, AND PROTECT NATURAL RESOURCES 6–7 (2017) [hereinafter COVERING CROPS], https://www.nrdc.org/sites/default/files/federal-crop-insurance-program-reforms-ip.pdf; Marzen, *supra* note 44, at 59–60; *Clinton Signs Farm Bill Ending Subsidies*, N.Y. TIMES, Apr. 5, 1996, at A22 [hereinafter *Ending Subsidies*].

196. *See* Marzen, *supra* note 44, at 59–60; Annise Maguire, *Shifting the Paradigm: Broadening our Understanding of Agriculture and its Impact on Climate Change*, 33 ENVIRONS: ENV'T. L. & POL'Y J. 275, 308 (2010).

197. *Ending Subsidies*, *supra* note 195.

198. COVERING CROPS, *supra* note 195, at 3–6.

199. Marzen, *supra* note 44, at 51–52.

200. David Ryan Quintanilla, Comment, *A Bitter Policy Shoved Down Our Throats: How a Once Admirable and Necessary Agricultural Program Has*

supporters of reform have often pointed to Australia's successful agricultural reform as a model.[201]

2. *Opposition to Reform*

Although there is bipartisan support for reducing farm funding, reform faces several political obstacles. First, there is the powerful agriculture lobby.[202] The agriculture lobby continues to have influence on Capitol Hill; for example, agriculture spent $150.88 million in 2021 on lobbying.[203] This level of spending ranks ninth in the most money spent in lobbying per sector and is greater than the defense, labor, and construction sectors.[204] Further, scholarship has shown how a dedicated, well-funded, lobby can block change even when that change is supported by most of Congress.[205]

Second, and relatedly, other sectors that benefit from current agricultural policy also lobby for continued farm funding. For example, given the 2014 Farm Bill's expansion of the Crop Insurance Program, the finance and insurance industries began funding lobbying to keep and expand government funding of the Crop Insurance Program.[206] Similarly, chemical companies selling pesticides and fertilizers to agribusinesses have a vested interest in seeing that farm funding continues to favor commodity crops.[207]

Resulted in Major Profits for Big Business and Major Frustration for Others, 15 SCHOLAR 341, 376–77 (2013) (alterations in original).

201. The following sources use Australia as an example of successfully reducing agriculture subsidies: see Harris & Rae, *supra* note 19, at 1; Alice Calder, *Agriculture Subsidies: Everyone's Doing It*, HINRICH FOUND. (Oct. 15, 2020), https://www.hinrichfoundation.com/research/article/protectionism/agricultural-subsidies/; Sara Fitzgerald, *Liberalizing Agriculture: Why the U.S. Should Look to New Zealand and Australia*, HERITAGE FOUND. (Feb. 19, 2003) [hereinafter *Liberalizing Agriculture*], https://www.heritage.org/agriculture/report/liberalizing-agriculture-why-the-us-should-look-new-zealandand-australia; Sara J. Fitzgerald, *End Farm Subsidies*, HERITAGE FOUND. (Feb. 20, 2003) [hereinafter *End Farm Subsidies*], https://www.heritage.org/agriculture/commentary/end-farm-subsidies; *see also* Arnold, *supra* note 148 (stating that Australia and New Zealand are "extolled by economists and advocates" as models to follow).

202. Jaworski, *supra* note 16, at 1698–99.

203. Erin Duffin, *Total Lobbying Expenses in the United States in 2021, by Sector*, STATISTA (Aug. 11, 2022), https://www.statista.com/statistics/257368/total-lobbying-expenses-in-the-us-by-sector/.

204. *Id.*

205. Hasen, *supra* note 179, at 226 ("Lobbyists often can block change, even change supported by a majority in Congress or the country, simply by successfully lobbying a committee chair or other legislator or member of the executive branch who controls a key aspect of the legislative agenda.").

206. Jaworski, *supra* note 16, at 1699.

207. *Id.* at 1701.

Third, although farmers represent a very small part of the US population, farm interests have outsized power because low-population rural states have the same number of senators as high-population states.[208] Moreover, some agriculture-heavy states like Iowa have had even more power due to their critical early presidential caucuses.[209]

Fourth, the public, including voters, may view reducing farm funding as harming a sympathetic group of small family farmers.[210] Thus, without providing any assistance measures, reducing farm funding "would be a potential public relations nightmare for any politician."[211]

The assistance measures proposed in this Article would likely help alleviate any public perception that reducing farm funding would be disastrous for the American family farm.[212] These measures could also help reduce pressure from farmers, and the lobbies they fund, to abandon subsidy reform, as farmers might view the measures as an opportunity to implement needed change to achieve sustainable, independent success.[213]

II. PROPOSAL: THE UNITED STATES SHOULD REFORM ITS AGRICULTURAL POLICY

Based on the harms incentivized by the current policy,[214] the United States should reduce farm funding. Concurrently, the United States should implement assistance measures, modeled after Australia's, to aid US agriculture's adjustment to reduced farm funding. This Part will focus on the Article's proposed plan to reduce farm funding; the proposed assistance measures are discussed in Part IV.

A. Reforming Farm Funding

The 2018 Farm Bill will expire in 2023, requiring Congress to decide which provisions should be kept, eliminated, or reformed for

208. *Id.* at 1698–99.

209. *Id.* at 1699 n.110 (noting that "pressure from agricultural interests in Iowa, important in presidential races because of its early caucus, might have caused noted fiscal conservative Ted Cruz to vote in favor of restoring crop insurance subsidies").

210. *See* Carla Corbin, *American National Identity and the New Landscape of Agriculture: Scale, Power, and Abundance*, 25 J. AM. & COMPAR. CULTURES 65, 65 (2002) (explaining that, although US agriculture is now dominated by corporate agribusinesses, many people think small family farms are more prevalent than they actually are).

211. Jaworski, *supra* note 16, at 1699.

212. *See id.*

213. *See id.*

214. *See supra* Subparts I.B.1–4.

the next Farm Bill.[215] Congress should use this opportunity to reform agricultural policy by eliminating the Crop Insurance Program and curtailing the amount spent in ad hoc disaster payments.[216] On the other hand, Congress should continue to provide conservation subsidies to agriculture because of their ecological and political necessity.

Given the harms caused by farm funding and the bipartisan support for reform, experts and scholars have provided a variety of specific suggestions for reducing farm funding. This Part synthesizes and expands on some of those proposals that have garnered significant support. It then details the benefits that would result from reduced farm funding and rebuts concerns related to reducing farm funding.

1. Eliminate the Crop Insurance Program

Congress should eliminate the Crop Insurance Program to eradicate the harms it causes. As shown above, this program causes environmental harms, distorts free market signals, and discourages sound risk management.[217]

Although the negative consequences of the Crop Insurance Program are expansive and potent, Congress should take caution in attempting to eliminate it too quickly. Implementing reform rapidly could cause panic and ultimately result in more government bailouts. Moreover, quick reform would make it more difficult for the industry to adapt to no longer having the Crop Insurance Program.

Instead of hasty reform, the United States should implement reform over several years. Due to the need to implement a new Farm Bill every five to seven years,[218] it is practical for Congress to steadily reduce funding of the Crop Insurance Program over that same five- or seven-year period.

2. Reform Ad Hoc Disaster Payments

In limited circumstances, the US government should be able to provide money to producers when calamitous events occur. However, the government must limit its ad hoc disaster spending. It must also begin to view these programs as a temporary solution and understand

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215. JOHNSON & MONKE, *supra* note 15, at 1.

216. Ad hoc disaster assistance is authorized through various sources including the 2018 Farm Bill and other legislation. *See* STUBBS, *supra* note 41, at 12. Therefore, the United States could make changes to the ad hoc disaster assistance programs that are outside of the scope of the Farm Bill without waiting for the 2018 Farm Bill to expire. However, because Congress will address agricultural policy when it promulgates a new Farm Bill in 2023, it would be more efficient to implement the reform enumerated in this Article at the same time Congress addresses the 2023 Farm Bill.

217. *See supra* Subparts I.B.1–3.

218. *See* JOHNSON & MONKE, *supra* note 15, at 1–3.

that maintaining increased ad hoc spending levels for prolonged periods causes serious harms.[219] Importantly, after the United States implements the proposed reform, US producers will be more disaster resistant because they will be better at risk management and have more savings in their emergency funds.[220] US legislators should adjust their view of the industry accordingly.

For these reasons, the US government should limit disbursing ad hoc disaster payments to times when natural disasters significantly impact agriculture. To do this, the government could set annual limits on the total amount of money it can provide through ad hoc disaster relief. It could also impose strict income eligibility requirements or cap the annual dollar amount each producer can receive.

3. Maintain Conservation Subsidies

Conducting agriculture operations in a sustainable manner has both economic and noneconomic benefits.[221] However, some of those benefits take years to fully materialize.[222] Therefore, continuing to incentivize producers to take environmentally friendly actions is necessary.[223]

Additionally, continuing to provide subsidies for sustainable actions would likely garner support from Democrats, and even some Republicans, for the proposed reform.[224] As such, it is essential that the 2023 Farm Bill continue to provide conservation subsidies.

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219. *See supra* Subpart I.B.5 (discussing the harms caused by ad hoc disaster assistance).

220. *See* NAT'L RURAL ADVISORY COUNCIL, REPORT ON THE EFFECTIVENESS OF THE FARM MANAGEMENT DEPOSITS SCHEME 1 (2012) [hereinafter DEPOSITS SCHEME REPORT].

221. John Ciempa, *The Benefits of Sustainable Agriculture and How We Get There*, IBM: BUSINESS OPERATIONS BLOG (Mar. 24, 2021), https://www.ibm.com/blogs/internet-of-things/the-benefits-of-sustainable-agriculture-and-how-we-get-there; Karen Wing, *Reaping the Economic Benefits of Sustainable Farming*, N.C. SOYBEAN PROD. ASS'N (Apr. 4, 2016), https://ncsoy.org/article/reaping-economic-benefits-sustainable-farming/ ("Not only does sustainability save [producers] money by saving fuel, minimizing waste and using inputs precisely, it also answers consumer demand, building relationships to ensure profitability in the future.").

222. Jaworski, *supra* note 16, at 1716.

223. Eubanks, *supra* note 38, at 10509.

224. *See* Rachel Frazin, *Trump Signs Bipartisan Bill Funding Conservation Grants*, THE HILL (Oct. 30, 2020, 2:24 PM), https://thehill.com/policy/energy-environment/523611-trump-signs-bipartisan-bill-funding-conservation-grants; Alan Neuhauser, *Land Bill's Passage Signals GOP Shift on Conservation*, U.S. NEWS & WORLD REP. (Feb. 13, 2019), https://www.usnews.com/news/national-news/articles/2019-02-13/land-bills-passage-signals-gop-shift-on-conservation (noting support from forty-five of the Senate's fifty-three Republican lawmakers for a bill to create 1.3 million acres of protected land).

B. Benefits of Reform

1. Sustainable, Independent Success

There is current economic evidence of US agriculture benefiting from decreased farm funding: the incomes of US producers of unsubsidized crops have risen much faster than producers of subsidized crops.[225] Experts credit this success with an increased incentive to innovate and a greater response to market demands.[226]

Additionally, Australia's agriculture industry exemplifies what could result in the United States if the industry is weaned off dependence on government subsidies.[227] In Australia, the long-term benefits of its agricultural reform far outweighed any short-term difficulties.[228] As is true in the United States,[229] Australia's agriculture subsidies incentivized producers to act in ways that were at odds with market conditions.[230] The reduction of those incentives forced the industry to focus on market conditions and the demands of consumers.[231]

Therefore, by reducing financial support, Australia positioned its agriculture industry for sustainable success independent from government funding.[232] And, the industry's greater responsiveness to market signals promoted diversification in response to market demands.[233] Similar reforms would likely produce similarly beneficial results in the United States.

2. Reduced Environmental Degradation

Because farm funding incentivizes environmental degradation,[234] reducing that funding will lessen resulting environmental harms.[235] There are many consequential benefits of improving the environment. A discussion of several of the most important benefits follows.

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225. Morrow, *supra* note 45, at 380.
226. *Id.*
227. *See id.*
228. *See* Coughlan, *supra* note 19.
229. *See* Kammer, *supra* note 9, at 41; Oaks, *supra* note 18, at 575.
230. *Liberalizing Agriculture*, *supra* note 201.
231. *End Farm Subsidies*, *supra* note 201; *Liberalizing Agriculture*, *supra* note 201.
232. *See generally* GREENVILLE, *supra* note 19; Coughlan, *supra* note 19.
233. *See Liberalizing Agriculture*, *supra* note 201.
234. Wender, *supra* note 122, at 148; SUMNER & ZULAUF, *supra* note 121, at 1–2.
235. Negowetti, *supra* note 51, at 479, 451–52; Wender, *supra* note 122, at 148.

a. Improved Health and Decreased Healthcare Expense

Agriculture is one of the primary contributors to water pollution in the United States.[236] Agriculture's water pollution causes many serious health effects and illnesses ranging from gastrointestinal disease to several forms of cancer.[237] Reducing farm funding would decrease producers' incentive to use harmful chemicals and fertilizers because it would disincentivize commodity-crop farming.[238] In turn, water pollution would decrease, thereby reducing the frequency and severity of illnesses caused by water pollution.[239]

In addition to the inherent concern of medical problems arising from water pollution, it is extremely expensive to treat the side effects that result from consuming polluted water.[240] One study estimated that pesticides used in crop production cause one billion dollars annually in damage to human health.[241] Healthcare expenses like these would decrease if farm funding was reduced, as the overuse of such chemicals would no longer be encouraged.[242]

b. Decreased Pollution Costs

Water pollution from agriculture increases the government's cost of delivering safe water to citizens.[243] The EPA estimates that pollution from land runoff,[244] to which agriculture is a major contributor,[245] results in approximately $21 billion in annual costs for local drinking water systems.[246]

236. Denchak, *supra* note 145.

237. *See* Charles Duhigg, *Millions in U.S. Drink Dirty Water, Records Show*, N.Y. TIMES (Dec. 7, 2009), http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html; *Waterborne Disease*, *supra* note 145.

238. SUMNER & ZULAUF, *supra* note 121, at 1–2; Eubanks, *supra* note 38, at 10499–501.

239. Duhigg, *supra* note 237; *Waterborne Disease*, *supra* note 145.

240. *See Cost-Benefit Analysis: Treat the Illness or Treat the Water?*, SAFE DRINKING WATER FOUND., https://www.safewater.org/fact-sheets-1/2017/1/23/cost-benefit-analysis (last visited Jan. 4, 2023) (estimating that water pollution-related illnesses cost the US healthcare system fifteen billion dollars annually).

241. Negowetti, *supra* note 51, at 469.

242. Emily Ratliff Farmer, *Restoring the Small Family Farm: Sustainable Practices and Sustainable Subsidy Payments*, 18 APPALACHIAN J.L. 45, 58 (2019); Negowetti, *supra* note 51, at 469.

243. Pollans, *supra* note 146, at 1205.

244. *Basic Information About Nonpoint Source (NPS) Pollution*, EPA (July 7, 2022), https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution.

245. *Nonpoint Source: Agriculture*, EPA (July 11, 2022), https://www.epa.gov/nps/nonpoint-source-agriculture.

246. Pollans, *supra* note 146, at 1221.

Additionally, many industries are reliant on clean water.[247] For example, significant portions of the tourism industry—as well as many manufacturers, restaurants, and breweries—rely on unpolluted water for their operations.[248] Water pollution imposes costs on each of these industries[249] and can even force businesses to close entirely.[250] Reducing farm funding will reduce the number of commodity crops grown, as well as the use of harmful fertilizers and production processes.[251] These reductions will decrease water pollution and thereby decrease pollution costs for businesses and governments.[252]

3. Improved Risk Management

The Crop Insurance Program deters producers from properly managing risk.[253] With the elimination of the Crop Insurance Program, producers will be better incentivized to properly manage risk.[254] Facing potential losses in income without a government-subsidized safety net will force producers to address and reduce the hazards they face.[255] Specifically, producers will have to choose the

247. Zach Bernstein, *Businesses Need Clean Water, Too: Why We Need the EPA's Help*, GREENBIZ (Apr. 23, 2014), https://www.greenbiz.com/article/businesses-need-clean-water-too-why-we-need-epas-help; Hannah Greig et al., *Three Reasons Why Businesses Win by Providing Clean Water, Taps and Toilets*, GUARDIAN (Sept. 9, 2015, 7:09 AM), https://www.theguardian.com/sustainable-business/2015/sep/09/business-private-sector-water-sanitation-hygiene-developing-countries-wateraid-unilever-coca-cola.

248. Andrew Clarke, *Businesses Depend on Strong Clean-Water Rules*, CHI. TRIB. (Oct. 1, 2015, 2:57 PM), http://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-clean-water-commentary-st-0925-20151001-story.html; *see also* Greig et al., *supra* note 247; KIMBERLY J. LASTER ET AL., TENN. DEP'T ENV'T & CONSERVATION, 2014 305(B) REPORT: THE STATUS OF WATER QUALITY IN TENNESSEE 11–12 (2014) [hereinafter WATER QUALITY].

249. *See* Clarke, *supra* note 248; Greig et al., *supra* note 247.

250. *See* Doug Stanglin, *Red Tide, the Toxic Algae Bloom that Kills Wildlife, Returns to Southwest Florida*, USA TODAY (Nov. 13, 2019, 2:56 PM), https://www.usatoday.com/story/news/nation/2019/11/13/red-tide-florida-toxic-algae-bloom-returns-southwest-beaches/4177117002/; Negowetti, *supra* note 51, at 454; Timothy Dean, *Chesapeake Bay's Decline Endangers Watermen's Livelihoods*, BALT. SUN (Mar. 21, 2019, 6:00 AM), https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0322-watermen-bay-20190319-story.html; *The Effects: Economy*, EPA (Apr. 19, 2022), https://www.epa.gov/nutrientpollution/effects-economy.

251. *See* Wender, *supra* note 122, at 148; SUMNER & ZULAUF, *supra* note 121, at 1–2; Negowetti, *supra* note 51, at 451–53.

252. *See* Negowetti, *supra* note 51, at 451–55; Oaks, *supra* note 18, at 551–52; Eubanks, *supra* note 38, at 10499.

253. Jaworski, *supra* note 16, at 1691; Ristino & Steier, *supra* note 7, at 102.

254. Jaworski, *supra* note 16, at 1691; Oaks, *supra* note 18, at 575; Ristino & Steier, *supra* note 7, at 102.

255. *See* sources cited *supra* note 251.

crop insurance product that best manages the risks facing their business or adopt risk-management practices.[256]

4. Reduced US Government Spending

Eliminating the Crop Insurance Program and limiting ad hoc disaster assistance would reduce federal spending by billions of dollars annually.[257] The US government could use the savings in a variety of ways, including by reducing the national debt or using that money to fund other government programs.

C. Rebutting Concerns with Reducing Farm Funding

1. Competitiveness in International Markets

There may be concerns that, if the United States reduces farm funding, the US agriculture industry would become less competitive in international markets.[258] Here, however, the Australian experience is instructive.

In the long term, and with the aid of the assistance measures described in the next Part, Australia's reform improved its agriculture industry's ability to compete in international markets.[259] Similarly, in the United States, the proposed decrease in farm funding, along with the proposed assistance measures, would likely improve—rather than hamper—US producers' ability to compete on the international stage.

2. Food Costs

There may also be some concern that reduced farm funding will cause US food prices to rise. This concern is unconvincing as it is largely based on a misunderstanding of the crops that are the primary beneficiaries of farm funding, a lack of knowledge of the effect farm funding has on the costs of many foods, and a lack of awareness of Australia's experience.

Farm funding primarily benefits commodity crops and, as such, incentivizes production of these crops even when there is not demand for them.[260] This results in artificially high food prices for many food products that are not commodity crops, like spinach and apples.[261]

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256. *Id.*

257. *See generally* FARM PROGRAM PAYMENTS, *supra* note 1 (compiling data for direct payment programs to farms by state and by overall federal expenditure).

258. Jeffrey J. Steinle, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOB. TRADE 333, 337–38 (1995).

259. Harris & Rae, *supra* note 19, at 2; GREENVILLE, *supra* note 19, at iv.

260. *See supra* notes 49–55 and accompanying text; SUMNER & ZULAUF, *supra* note 121, at 1–2.

261. DAVID RAPP, HOW THE U.S. GOT INTO AGRICULTURE AND WHY IT CAN'T GET OUT 151 (1988).

Farm funding increases the prices of these foods because it causes a misalignment between consumer demand and farmers' production.[262] That is, farm funding causes prices to increase because producers are not making enough of the products consumers actually want, and the low supply leads to higher prices.[263]

The proposed reform will help reduce this misalignment by forcing producers to be more responsive to market forces.[264] Therefore, cutting farm funding will likely decrease US food prices for many food products.[265]

Further, to the extent prices would rise because of the elimination of farm funding, it would likely improve the nation's health. A significant number of commodity crops are used to make unhealthy, processed foods, and those foods are extremely cheap due to farm funding.[266] If policymakers reduced farm funding, the price of processed foods containing commodity crops could increase.[267] This increase in price would reduce the price gap between these unhealthy foods and healthier food options.[268] As a result of the increased price, consumers would likely eat less unhealthy food,[269] resulting in better public health and reduced healthcare expenses.[270]

Once again, the Australian experience is instructive. Since reducing its farm subsidies, Australia's food prices are generally lower than those in the United States.[271] This is true even though the quality of Australian food is often higher than US food.[272]

As this Part has illustrated, reducing farm funding would have many desirable benefits. However, the question remains how to best achieve such a reduction—both practically and politically. The next Part proposes looking to the Australian program of assistance measures for a model.

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262. *See id.* at 151–52.

263. *See id.*; Jason Fernando, *Law of Supply and Demand*, INVESTOPEDIA (Nov. 7, 2021), https://www.investopedia.com/terms/l/law-of-supply-demand.asp.

264. *See* discussion *supra* Subpart II.B.1.

265. *See* RAPP, *supra* note 261, at 151–52.

266. Eubanks, *supra* note 182, at 280–82, 287–88.

267. *Id.* at 287–88.

268. *See* Kammer, *supra* note 9, at 32.

269. *See id.*; *see also* Adam Hayes, *Cross Elasticity of Demand*, INVESTOPEDIA (July 31, 2022), https://www.investopedia.com/terms/c/cross-elasticity-demand.asp.

270. *See* Eubanks, *supra* note 182, at 287–88.

271. *Australian Food is Probably Better and Cheaper than U.S. Food – but Australian Farmers Just Don't Tell Anyone*, AUSTL. FARM INST. (Dec. 14, 2012), https://www.farminstitute.org.au/australian-food-is-probably-better-and-cheaper-than-us-food-but-australian-farmers-just-dont-tell-anyone/.

272. *Id.*

III. EXAMINING AUSTRALIA'S AGRICULTURAL REFORM INITIATIVE

A. Australia's Current Agriculture Industry

During the mid-1980s and 1990s, Australian agriculture transformed from a weak industry, reliant on government funding to survive, into a thriving and dynamic agrarian sector.[273] Today, Australian producers are the second least subsidized producers globally, behind only New Zealand.[274] In fact, from 2016 to 2018, only 2% of the Australian agriculture industry's revenues stemmed from government support.[275] During the same period in the United States, 10% of agricultural revenues came from the government.[276]

As in the United States, the agriculture sector is an important part of Australia's economy.[277] In Australia, farm employment comprised 2.6% of employment in 2019 to 2020, and agriculture made up 1.9% of Gross Domestic Product ("GDP").[278] Over the same period, farm employment comprised 1.4% of all employment in the United States,[279] and farming made up 0.6% of the total GDP.[280] Therefore, Australia's agriculture industry is more important to its economy than the United States' agriculture industry; yet, Australia still successfully reformed the industry.

B. Australia's Path to Agricultural Reform

Australia's reformation took place over many years and was gradual.[281] During the mid-1980s, Australia still heavily supported

273. *See generally* GREENVILLE, *supra* note 19; Coughlan, *supra* note 19.

274. *See* GREENVILLE, *supra* note 19, at 5; Harris & Rae, *supra* note 19, at 2.

275. GREENVILLE, *supra* note 19, at 5.

276. *Id.*

277. *See* ARUNI WERAGODA & ANDREW DUVER, AUSTL. BUREAU OF AGRIC. AND RES. ECON. AND SCIENCES, SNAPSHOT OF AUSTRALIAN AGRICULTURE 2021, at 2 (2021), https://apo.org.au/sites/default/files/resource-files/2021-02/apo-nid312618.pdf.

278. *Id.*

279. *Ag and Food Sectors and the Economy*, U.S.D.A. (Feb. 24, 2022), https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/. This figure includes farming, forestry, fishing, and related activities, as well as food, beverage, and tobacco manufacturing. *Id.* The US government places these together in the data it provides, but it does not provide the figures for each of these subsections. *Id.* Unfortunately, the Australian government does not include these other industries in the corresponding figure discussed above.

280. Because the chart and its underlying report leave out the percentage of the US GDP that the other subgroups make up, this number only includes farming. *Id.*

281. Harris & Rae, *supra* note 19, at 1; *see* JOHN WILKINSON, NSW PARLIAMENTARY LIBR. RSCH. SERV., RURAL ASSISTANCE SCHEMES AND PROGRAMS 11–15, 18 (2005); Linda Botterill, *From Black Jack McEwen to the Cairns Group*

its agriculture sector financially.[282] Australia's agriculture subsidies peaked in 1986, when they accounted for 12.8% of total farm revenues, which is slightly more than the 11% of revenue American producers received from the US government in 2020.[283]

Beginning in 1987, Australia gradually decreased the financial support it provided to producers.[284] In conjunction with reducing financial support, Australia implemented temporary measures aimed at assisting the agriculture industry's adjustment to the new, less-subsidized market.[285] Many of Australia's assistance measures were implemented through legislation called the Rural Adjustment Scheme ("RAS").[286]

Through its assistance measures, Australia aimed to achieve two goals. First, it wanted to help producers with dim long-term prospects gracefully leave the industry.[287] Second, it wanted to help producers with brighter futures improve their performance to ensure they could succeed without government support.[288]

The RAS provided these assistance measures through a grant program to assist nonviable producers in leaving the industry.[289] It also established a grant program focused on improving viable producers' business and property-management skills.[290] Through the same program, producers could also receive personalized expert financial, business, and management advice.[291] Next, the RAS provided household income support to struggling producers.[292] Finally, the RAS created a program to subsidize half of the cost of

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Reform in Australian Agricultural Policy 12, 18 (Nat'l Eur. Ctr., Working Paper No. 86, 2003); Laura Berger-Thomson et al., Australia's Experience with Economic Reform 20 (Oct. 2018) (unpublished manuscript) (on file with Australian Treasury), https://treasury.gov.au/sites/default/files/2019-03/p2018-t332486-economic-reform-v2.pdf.

282. *See* Botterill, *supra* note 281, at 15.

283. *Agricultural Support*, ORG. FOR ECON. COOP. AND DEV., https://data.oecd.org/agrpolicy/agricultural-support.htm (last visited Jan. 4, 2023).

284. *See id.*

285. Botterill, *supra* note 281, at 18–19; *see also* Harris & Rae, *supra* note 19, at 2 ("[Australia's assistance measures] [we]re designed to facilitate longer term structural adjustment across the agricultural sector.").

286. Geyer, *supra* note 24, at 344–45. Australia replaced the RAS with the Rural Adjustment Act of 1992. MALCOLM ET AL., *supra* note 27, at 10–11. Because the two pieces of legislation are similar, differentiating between the two is unnecessary for the purposes of this Article. Therefore, this Article will refer to programs implemented in either of these legislative acts as the "RAS."

287. Geyer, *supra* note 24, at 345.

288. *Id.*

289. Botterill, *supra* note 281, at 18–19.

290. Geyer, *supra* note 24, at 346.

291. RURAL ADJUSTMENT, *supra* note 22, at 6.

292. GEOFF COCKFIELD & LINDA BOTTERILL, RURAL ADJUSTMENT SCHEMES: JUGGLING POLITICS, WELFARE AND MARKETS 74 (2006).

interest for agriculture loans so long as those loans were used to improve on-the-farm productivity.[293]

Australia implemented several other measures beyond the RAS legislation that assisted the agriculture industry in its adjustment. These included the establishment of a program called the Income Equalization Deposit ("IED") scheme that encouraged farmers to increase their savings in preparation for severe weather events, pest infestation, low crop prices, and other income-reducing events.[294] Australia also provided producers with rural counselors to give them assistance during the adjustment process, and that assistance was tailored to fit each producer's individual needs.[295] It also established a debt mediation program.[296] Moreover, the Australian financial lending industry instituted an informal moratorium on foreclosures.[297] Finally, Australia encouraged struggling farm debtors and their creditors to use arrangements outside of formal bankruptcy proceedings.[298]

Australia purposefully avoided implementing long-term assistance measures "because [long-term measures] dilute[] the incentive for change that comes from market price signals."[299] Additionally, long-term adjustment measures hamper structural adjustment within the industry, "which is a key driver of future productivity improvements and industry competitiveness."[300] Thus, most of the assistance measures Australia adopted were ended by legislation after several years.[301]

C. Australia's Post-Reform Success

After agriculture subsidies were reduced and the assistance measures were implemented,[302] the Australian agriculture industry emerged as an independent, innovative industry built for long-term sustainable success and better able to adapt to a changing global economy.[303] To improve their financial viability, many producers had

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293. RURAL ADJUSTMENT, *supra* note 22, at 6.
294. Buffier & Metternick-Jones, *supra* note 25, at 193.
295. MALCOLM ET AL., *supra* note 27, at 44.
296. Mark Hilton, *Farm Debt Mediation Act 1994 (NSW): A Different Landscape*, NORTON ROSE FULBRIGHT (July 2018), https://www.nortonrosefulbright.com/en/knowledge/publications/a7847a89/farm-debt-mediation-act-1994-nsw-a-different-landscape; *see generally Farm Debt Mediation Act 1994* (NSW) (Austl.).
297. Geyer, *supra* note 24, at 349.
298. *Id.* at 350.
299. Harris & Rae, *supra* note 19, at 3.
300. *Id.*
301. *See generally id.*
302. *Id.*
303. *See generally* GREENVILLE, *supra* note 19; Coughlan, *supra* note 19.

to adjust their operations.[304] And through that process, many of them implemented and discovered new processes to improve their competitiveness and increase their income.[305]

For example, many dairy farmers improved the quality of their land, adopted more frequent feeding of livestock, improved livestock feed quality, increased their scale of operations, and implemented new procedures to improve the genetics of their livestock.[306] These changes were implemented to improve the productivity of farmers' animals and were extremely successful. For example, five years after reform affected the dairy industry, average milk yields increased by approximately 50%.[307]

Australia has proven that reducing farm subsidies can "spur[] overall sector growth, increas[e] participation in global markets[,] and [increase] the contribution that agriculture makes to the rural and national economy."[308]

D. Australian Reform as an Overlooked Template for the United States

Those who advocate for reducing farm funding in the United States often cite Australia as a successful example of such reform and a model for reform in the United States.[309] However, those advocates rarely present the full story of the country's success. Instead, there is little, if any, mention of the influential role Australia's assistance measures had on its agriculture industry's successful transition to reduced financial support.[310]

Australia's assistance measures were instrumental to the industry's subsequent success.[311] These measures provided the industry with the time, money, and knowledge needed to adopt a new business model that no longer relied on government support.[312]

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304. Harris & Rae, *supra* note 19, at 2.
305. *Id.* at 2, 5.
306. *Id.* at 6–7.
307. *Id.*
308. GREENVILLE, *supra* note 19, at iv.
309. See the following sources all using Australia as an example of the success a country can experience if it eliminates agricultural subsidies: *Liberalizing Agriculture*, *supra* note 201; *End Farm Subsidies*, *supra* note 201; Harris & Rae, *supra* note 19, at 1; Arnold, *supra* note 148.
310. *See* Harris & Rae, *supra* note 19, at 1; Daniel Griswold, *Should the United States Cut Its Farm Subsidies?*, CATO INST. (Apr. 27, 2007), https://www.cato.org/commentary/should-united-states-cut-its-farm-subsidies; Lincicome, *supra* note 67; *Liberalizing Agriculture*, *supra* note 201; *End Farm Subsidies*, *supra* note 201; Calder, *supra* note 201; Arnold, *supra* note 148.
311. *See* RURAL ADJUSTMENT, *supra* note 22, at 13–16; BANKS, *supra* note 22, at 13–14.
312. *See generally* RURAL ADJUSTMENT, *supra* note 22.

These measures were used by producers to adjust their operations while government support was gradually reduced.[313] Thus, Australia provided temporary support to producers to help them transition from reliance on government support to independent, self-supporting, and self-sustaining success.[314]

These assistance measures are an overlooked model for the United States in implementing its own reductions in farm funding. The next Part advances a detailed proposal for the United States' adoption of a similar slate of measures. That proposal includes a detailed examination of the measures taken by Australia and suggestions for tailoring each measure to the unique needs of the United States.

IV. PROPOSAL: THE UNITED STATES SHOULD ADOPT ASSISTANCE MEASURES MODELED ON AUSTRALIA'S ASSISTANCE MEASURES

As farm funding declines, US agriculture will likely undergo a period of adjustment and adaptation as the industry transitions away from its decades-old reliance on that funding.[315] Successfully reducing farm funding in the United States will hinge on the industry's ability to become more dynamic and responsive to the market.[316] During this adjustment period, it is critical that the United States provide assistance measures.[317] Those assistance measures should focus on encouraging agricultural producers to make adjustments to their operations and products so the industry can succeed independently.

The United States should use Australia's assistance measures as a template for the measures it implements. Each of the Subparts that follow explores in detail one of Australia's assistance measures, then analyzes how the United States can adapt those measures to most effectively aid US agriculture's adjustment to reduced farm funding. The assistance measures should be implemented when the 2023 Farm Bill goes into effect and they should end when the 2023 Farm Bill

313. *See id.* (discussing the benefits assistance measures provided for Australia).

314. *See id.*

315. The following source discusses Australia's adjustment phase and the various changes producers had to make after subsidies were reduced: Harris & Rae, *supra* note 19, at 2, 3, 5, 6. It is likely US agriculture will experience a similar period.

316. The following sources discuss Australian agriculture's transformation to an innovative industry focused on meeting the demands of the market and how that transformation helped the industry succeed with little financial support: *Liberalizing Agriculture*, *supra* note 201; *End Farm Subsidies*, *supra* note 201; Calder, *supra* note 201; Harris & Rae, *supra* note 19, at 1.

317. *See* RURAL ADJUSTMENT, *supra* note 22, at 6 (discussing the benefits assistance measures provided for Australia).

expires, which would typically be five to seven years after its implementation.[318]

A. Improving Viability

1. Reestablishment Grant

a. Australia

In the 1970s, the Australian government started offering reestablishment grants.[319] These grants gave nonviable producers money to use as they left the industry and established a new career.[320] The reestablishment grant encouraged nonviable producers to swiftly leave the industry "in a financially dignified way."[321]

The 1992 version of the reestablishment grant provided $45,000 to qualifying producers electing to leave their farms.[322] In addition to this grant, each producer was allowed to leave the farm with $45,000 worth of assets.[323] Therefore, a producer could leave their farm with $90,000—$45,000 from the reestablishment grant and $45,000 in assets.[324]

In 1994, the Australian legislature tasked Australia's Senate Rural and Regional Affairs and Transport References Committee (the "Committee"), a commission of senators, with making recommendations to improve Australia's agricultural reform and the assistance measures offered.[325] The Committee recommended that the government pair reestablishment grants with a retraining component.[326] The Committee was influenced by the experience of a financial counselor who recommended that the government pay for producers leaving the industry "to [be] fully retrain[ed] into a new vocation."[327]

Several rural counseling and advisory groups provided similar opinions to the Committee.[328] Specifically, one counseling group suggested producers receiving the reestablishment grant also receive a training grant.[329] According to another advisory group, such a grant

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318. JOHNSON & MONKE, *supra* note 15, at 1.
319. *See* Botterill, *supra* note 281, at 18.
320. *See* Geyer, *supra* note 24, at 346.
321. Arnold, *supra* note 148.
322. MALCOLM ET AL., *supra* note 27, at 11.
323. Geyer, *supra* note 24, at 346.
324. *Id.*
325. *See generally Senate Standing Committees on Rural and Regional Affairs and Transport*, PARLIAMENT OF AUSTL., https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport (last visited Jan. 4, 2023).
326. RURAL ADJUSTMENT, *supra* note 22, at 46.
327. *Id.* at 45.
328. *Id.*
329. *Id.*

would ease the "fear of the unknown" for former producers embarking on new careers.[330] Heeding these recommendations, Australia amended its reestablishment grant program in 2003 to include a retraining component.[331]

b. Proposal for the United States

The United States should implement a similar reestablishment grant for individual producers. As occurred in Australia,[332] this will increase the speed at which struggling producers leave the industry and free up more resources—land, equipment, and labor—for more efficient and viable producers. This would also provide producers with money to transition into a new profession.[333]

The average family farm in the United States is struggling: the median farm income earned by farming households in the United States is typically negative,[334] and 48.6% of all family farms have a negative farm income.[335] That is, nearly half of farm households lose money by operating their farms, and the median family farm loses money. Further, the "median farm income earned by farm households was negative each year between 1996 and 2018."[336] Therefore, it is unreasonable to assume that these farmers have the resources necessary to ease their transition to another industry. As such, the United States should aid this transition by providing a reestablishment grant.

The United States should also implement the changes Australia made to later iterations of this program[337] by including a retraining component in its reestablishment grant program. As one Australian financial counselor outlined, this "would act as genuine inducement to leave the property as so many farmers are afraid to leave without some formal education and qualification that would allow them to compete in the job market."[338] Moreover, adopting this approach would smartly imitate Australia's later, experience-based decision to

330. *Id.*

331. *See Farm Household Support Amendment Act 2003* (Cth) sch 1 pt 2 paras 34–35 (Austl.).

332. Arnold, *supra* note 148.

333. *See* Geyer, *supra* note 24, at 346.

334. *Farm Sector Income & Finances: Highlights from the Farm Income Forecast*, U.S.D.A. (Dec. 1, 2021) [hereinafter *Farm Sector*], https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/highlights-from-the-farm-income-forecast/.

335. Anil K. Giri et al., *Off-Farm Income a Major Component of Total Income for Most Farm Households in 2019*, AMBER WAVES (Sept. 7, 2021), https://www.ers.usda.gov/amber-waves/2021/september/off-farm-income-a-major-component-of-total-income-for-most-farm-households-in-2019/.

336. *Farm Sector*, *supra* note 334.

337. RURAL ADJUSTMENT, *supra* note 22, at 46.

338. *Id.* at 45.

make "skills enhancement, including education [and] training" the principal component of Australia's assistance measures.[339]

In addition to helping producers, providing a reestablishment grant will likely be necessary politically. It would demonstrate to voters and the industry that Congress is not simply reducing farm funding and leaving struggling producers to falter on their own.

2. *Income Equalization Deposit Program*

a. Australia

In the early 1990s, a widespread drought affected many Australian producers.[340] When that happened, it became apparent that many producers did not have sufficient cash built up in an emergency fund.[341] Noting that "[v]ariability of income is an important issue with farm businesses and is a major source of risk to the business,"[342] the Australian government responded by establishing the IED program in 1992, which incentivized producers to save by providing them tax benefits for every dollar they saved.[343]

The purpose of the IED program was to "assist farmers to off-set [economic calamity] by building cash reserves for use during a downturn."[344] The Australian government hoped the program would "increase the financial self-reliance of Australian farmers."[345]

Under this program, producers could deposit up to a certain amount of money annually into their IED accounts.[346] Generally, the maximum annual deposit was the producer's net income from on-farm activities for the year.[347] There was also a cap on the total dollar amount producers could have in their IED account at one time.[348] Deposits were tax deductible, thus incentivizing producers to put

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339. *Id.* at 42; WARREN TRUSS, AGRICULTURE – ADVANCING AUSTRALIA 2–5 (2000).

340. Buffier & Metternick-Jones, *supra* note 25, at 191.

341. *Id.*

342. *Id.* at 193.

343. Geyer, *supra* note 24, at 347. The IED Scheme was later renamed the Farm Management Deposits Scheme. DEPOSITS SCHEME REPORT, *supra* note 221, at 1. For the sake of clarity, this Article will just refer to this as the IED scheme or program.

344. Geyer, *supra* note 24, at 347.

345. DEPOSITS SCHEME REPORT, *supra* note 220, at 1.

346. *The Income Equalisation Deposit (IED) Scheme*, CMK (Jan. 31, 2020) [hereinafter *IED Scheme*], https://cmk.co.nz/ied/; Geyer, *supra* note 24, at 347.

347. *IED Scheme*, *supra* note 346.

348. DEPOSITS SCHEME REPORT, *supra* note 220, at 13. Currently, Australia limits each producer to holding a maximum of $800,000 in their IED account. GRANT HEHIR, AUSTL. NAT'L AUDIT OFF., FARM MANAGEMENT DEPOSITS SCHEME 7 (2019) [hereinafter AUSTL. AUDIT REPORT].

money into their accounts.[349] Producers could contribute to their IED accounts so long as their off-farm income did not exceed certain amounts.[350]

For most IED accounts, the balance could only be withdrawn either after the money was deposited into the account for a certain amount of time[351] or for specific reasons, like farm maintenance.[352] For example, some IED deposits could be "withdrawn only if commodity prices f[e]ll 25% lower than the average prices received for the previous three years or if there [wa]s a hardship due to natural disasters."[353]

Participating producers benefited financially in the short-term and in the long-term. As noted, producers benefited in the short-term because deposits were tax deductible in the year the deposit was made.[354] This encouraged producers to save money in a high-income year because producers could reduce their taxable income for that year[355] and then "withdraw[] funds in a subsequent year when their income, and therefore tax liability, [was] lower."[356] In the long-term, the account provided a financial cushion when the economy declined.[357]

Producers also benefited because the money in the IED gained interest.[358] Moreover, the interest paid was only assessable as income in the year when the IED principal was paid out under the conditions described previously.[359] Producers could choose to have the interest paid to them annually or automatically reinvested into the IED account.[360] Thus, tax due on the interest income could be deferred to a later year.

349. *How Income Equalisation Schemes Work*, INLAND REVENUE [hereinafter *Equalisation Schemes*], https://www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/income-equalisation-scheme/how-the-scheme-works (last visited Jan. 4, 2023).

350. Geyer, *supra* note 24, at 347.

351. Typically, a contributing producer cannot withdraw their deposits for at least twelve months. *Tax Facts – The Income Equalisation Deposit Schemes*, CUFFS [hereinafter *Tax Facts*], http://www.cuffs.co.nz/free_stuff/other_resources/farming_resources/income_equalisation_deposits (last visited Jan. 4, 2023).

352. *Id.*

353. Geyer, *supra* note 24, at 348.

354. *Equalisation Schemes*, *supra* note 349.

355. DEPOSITS SCHEME REPORT, *supra* note 220, at 2.

356. *Id.*

357. *Id.* at 3–4.

358. Geyer, *supra* note 24, at 347.

359. *Tax Facts*, *supra* note 351.

360. Geyer, *supra* note 24, at 347.

Overall, the IED program was incredibly successful.[361] In fact, the Committee's review of the program concluded that the IED program "encourage[d] farmer self-reliance and preparedness."[362] Due to its success in increasing producer self-reliance, Australia decided to keep this program running and is still operating it today.[363]

Although the IED program was a success, early iterations of Australia's IED scheme only garnered minimal participation.[364] To increase participation, Australia amended the program to increase the tax benefits for participants by allowing all the funds invested to be tax deductible.[365] In prior years, Australia's IED scheme had only allowed producers to deduct a portion of the amount deposited into their IED accounts.[366] Moreover, to increase early participation in the program, it was recommended that the Australian government "improve understanding of [the IED scheme] as a risk management tool" by educating producers on the benefits of the program.[367]

b. Proposal for the United States

The United States should establish a similar program to improve producers' long-term savings. US producers have historically been able to rely on the government to bail them out during times of economic struggle.[368] Conversely, an IED puts the onus on producers to ensure their own future success by saving up for economic downturns.

US producers need the government to establish and incentivize participation in an IED program. USDA research shows that US producers' working capital savings—the emergency fund for

361. DEPOSITS SCHEME REPORT, *supra* note 220, at 7.

362. *Id.*

363. *See Farm Management Deposits Scheme*, AUSTL. TAX'N OFF. (Nov. 8, 2019) [hereinafter *Farm Management*], https://www.ato.gov.au/business/primary-producers/managing-varying-income/farm-management-deposits-scheme/.

364. *See generally* RURAL ADJUSTMENT, *supra* note 22.

365. *Farm Management Deposits*, DEP'T OF AGRIC., FISHERIES & FORESTRY [hereinafter *FMD*], https://www.awe.gov.au/agriculture-land/farm-food-drought/drought/assistance/fmd (last visited Jan. 4, 2023).

366. RURAL ADJUSTMENT, *supra* note 22, at 92.

367. DEPOSITS SCHEME REPORT, *supra* note 220, at 1.

368. Melissa Mortazavi, *Food, Fracking, and Folly*, 50 ARIZ. ST. L.J. 617, 630 (2018); Sonia Weil, *Big-Ag Exceptionalism: Ending the Special Protection of the Agricultural Industry*, 10 DREXEL L. REV. 183, 222–23 (2017); *see, e.g.*, Alan Rappeport, *Trump Funnels Record Subsidies to Farmers Ahead of Election Day*, N.Y. TIMES (Oct. 12, 2020), https://www.nytimes.com/2020/10/12/us/politics/trump-farmers-subsidies.html (explaining that President Trump funneled a record amount of money to producers ahead of the 2020 election "to help his core supporters who ha[d] been hit hard by the double whammy of his combative trade practices and the coronavirus pandemic").

farmers[369]—is low.[370] Over the last five years, working capital for the average US producer has hovered around three to four percent.[371]

This means that if producers were unable to receive income from their operations, their emergency cash savings could only pay for around three to four percent of their operating expenses after paying their loan payments.[372] Thus, if a region was severely impacted by a drought, pest infestation, or another harmful event, many US producers could not afford to continue their operations for very long.[373] Ensuring that producers have adequate savings is even more imperative today because climate change increases the likelihood of severe weather events.[374]

To guard against producers' initial reluctance to participate, as happened in Australia,[375] there are five lessons from Australia's experience that the United States should consider.

i. Allowing All Contributions to Be Tax Deductible

First, early iterations of Australia's IED scheme only allowed a producer to deduct 61% of the amount deposited into their IED account from their taxes.[376] Australia partially blamed this for the initial low levels of participation in this program.[377] Australia later amended this part to allow 100% of the funds invested to be tax deductible.[378] The tax benefits are likely one of the biggest incentives for producers to deposit money into this account. Given Australia's experience, the United States should allow producers to deduct all the money invested into their account from their taxable income.

ii. Promoting the Program's Benefits

Second, as recommended by Australia's National Rural Advisory Council,[379] the United States should publicize the programs' benefits

369. Kevin Bernhardt, *Don't Keep Feeding Dead-Weight Debt*, 20 PROGRESSIVE DAIRY 28, 28 (2019).

370. Carrie Litkowski, *Farm Sector Liquidity Forecast to Decline in 2021*, AMBER WAVES (March 1, 2021), https://www.ers.usda.gov/amber-waves/2021/march/farm-sector-liquidity-forecast-to-decline-in-2021/.

371. *Id.*

372. *See id.*

373. *See id.*

374. *See generally* Sandra Banholzer et al., *The Impact of Climate Change on Natural Disasters*, *in* REDUCING DISASTER: EARLY WARNING SYSTEMS FOR CLIMATE CHANGE 21 (Ashbindu Singh & Zinta Zommers eds., 2014) (explaining that climate change increases the instances and intensity of hazardous weather events).

375. *See* RURAL ADJUSTMENT, *supra* note 22, at 91–92.

376. *Id.* at 92.

377. *Id.*

378. *FMD*, *supra* note 365.

379. DEPOSITS SCHEME REPORT, *supra* note 220, at 1.

leading up to and during the first several years of its implementation. This will inform producers of the benefits of the program, which should increase participation.

iii. Paying Interest

Third, like Australia,[380] the United States should pay interest on any balance in an IED account. This should encourage participation in the program and encourage producers to save more money in their IED accounts.

iv. Rejecting an Income Cap

Fourth, Australian producers currently must "have no more than $100,000 in taxable non-primary production income in the income year [they] make the deposit."[381] Industry stakeholders have criticized this off-farm income cap,[382] but it is still an eligibility requirement in Australia.[383]

The United States should heed the Australian critics and elect not to adopt such an off-farm income cap.[384] This cap is meant to tailor the IED program to benefit producers earning most of their income from farming.[385] Thus, the program excludes farmers who earn more than $100,000 from other activities, such as farmers investing in property and hosting renewable-energy production on their farms.[386]

Receiving income from off-farm activities allows producers to "diversify[] their income streams" to avoid reliance on their farm income, which also improves their ability to "manage their businesses through downturns."[387] Thus, this eligibility requirement counteracts the purpose of the program[388]—increasing producers' ability to survive during economic downturns.[389]

Additionally, an income cap would significantly reduce participation in the US version of the program because it would make many US family farmers ineligible.[390] Most US family farms are reliant on income from off-farm sources.[391] For instance, the average

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380. Geyer, *supra* note 24, at 347.
381. *Farm Management Deposits: Eligibility*, AUSTL. TAX'N OFF. [hereinafter *Eligibility*], https://www.ato.gov.au/business/primary-producers/in-detail/farm-management-deposits-scheme/?page=1#Eligibility (last visited Jan. 4, 2023).
382. DEPOSITS SCHEME REPORT, *supra* note 220, at 14.
383. *Eligibility*, *supra* note 381.
384. *See* DEPOSITS SCHEME REPORT, *supra* note 220, at 21–22.
385. *Id.* at 1, 14.
386. *Id.* at 14.
387. *Id.* at 1.
388. *Id.* at 14.
389. Geyer, *supra* note 24, at 347.
390. Giri et al., *supra* note 335.
391. *Id.*

US family farm earns $101,638 per year from off-farm sources.[392] Thus, if the United States implemented such a requirement today, the average family farm could not take advantage of this program. Therefore, the United States should not include such a requirement in its IED scheme.

Eliminating this requirement would likely raise concerns in the United States, as it did in Australia,[393] that wealthy producers would abuse IED accounts to avoid paying taxes. The United States can adopt two limits Australia used to reduce the frequency and degree of potential abuse of this program: (1) a maximum total amount that a producer can have in its IED account, and (2) a cap on each producer's annual contribution.

Australia currently restricts producers to holding a maximum of $800,000 in their IED account.[394] Moreover, a producer may not contribute more than the producer's net income from on-farm activities for that year.[395]

While some producers may attempt to game this assistance measure by using it just to reduce their taxes, these requirements should limit such abuse. For example, if the United States instituted a similar total contribution limit to Australia's of $800,000,[396] this would prevent producers from using their IED accounts to shelter millions of dollars from taxation. Similarly, capping a producer's annual limit at its net on-farm income for the year requires that, at least in each contribution year, the producer has net income from its farming activities. This would reduce the likelihood that a producer would buy a farm simply for the tax benefits without actually using the farm for agricultural operations.

v. Continuing the Program

Finally, as Australia has done, the United States should consider continuing this program even after eliminating the other assistance measures. This measure is relatively inexpensive as the government will incur the bulk of costs in administering the program and receiving lower tax revenues.[397] As long as those costs remain low and IED accounts are successful in encouraging producers to save, there would be little reason to eliminate the program.

392. *Id.*
393. DEPOSITS SCHEME REPORT, *supra* note 220, at 1–2.
394. AUSTL. AUDIT REPORT, *supra* note 348, at 7.
395. DEPOSITS SCHEME REPORT, *supra* note 220, at 13.
396. AUSTL. AUDIT REPORT, *supra* note 348, at 7.
397. *See* DEP'T OF AGRIC., WATER AND THE ENV'T, FARM MANAGEMENT DEPOSITS SCHEME: 2021 EVALUATION 7–9 (2021) (listing administrative costs and delayed/foregone tax revenues as the Australian government's only costs from 2020 to 2021 for its IED scheme).

3. Training Grants and Rural Counselors

a. Australia

The Australian government provided training grants for producers to improve their farm-business and risk-management skills.[398] Producers used those grants to hire and obtain advice from government-approved experts in finance, marketing, business planning, and other farm-related areas.[399] In a separate but related program, the Australian government provided the services of rural counselors who gave producers individualized skill enhancement training.[400] These rural counselors were hired as government employees and were experts in a variety of farm-related skills training.[401]

The purpose of these programs was to "enhance[] farmers' ability to achieve self-reliance by improving managerial, technical, financial, and business knowledge."[402] They fulfilled that purpose.[403] Even in the face of increasing costs and decreasing commodity prices, Australian producers were able to use these programs to "improve their production and efficiency."[404] In fact, after analyzing this program's successful first few years, several industry leaders concluded that financial and environmental risks that often "cause[] poor profitability" for producers can be "overcome by improved business management performance."[405]

Indeed, government-supported improvements in producer knowledge and skill often resulted in substantial increases in farm profits—by as much as $20,000 to $40,000 annually.[406] As a result, the training programs received praise not only because they increased producer income in the short term but also because they used government funds efficiently—requiring a single, minimal government expenditure but continuing to boost producer profits into the future.[407]

Because of the success of this program, Australia revised its assistance measures to devote more money and personnel toward training and skills development.[408] Similarly, Australia expanded the reach of this program by revising the eligibility requirements such

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398. Geyer, *supra* note 24, at 346.
399. RURAL ADJUSTMENT, *supra* note 22, at 6.
400. MALCOLM ET AL., *supra* note 27, at 44.
401. *Id.*
402. RURAL ADJUSTMENT, *supra* note 22, at 6.
403. *See id.* at 40–42.
404. *Id.* at 40.
405. *Id.*
406. *Id.* at 41.
407. *See id.* at 41–42.
408. *See Farm Household Support Amendment Act 2003* (Cth) sch 1 pt 2 paras 34–35 (Austl.).

that eligibility for another assistance measure automatically qualified that producer for training grants and rural counselors.[409]

b. Proposal for the United States

The United States should establish similar programs to improve producers' financial, business, and planning skills by using grants and rural counselors. Given "the escalation in input costs, the ability to access capital, and greater volatility in [today's] commodity markets,"[410] it is imperative that US producers become proficient in these areas. Australia's experience shows that producers can acquire and improve these skills through government-paid grants and government-employed rural counselors.[411]

In implementing its programs, the United States should consider a report from Australia's Rural Industries Research and Development Corporation, a corporation operated by the Australian government to help fund research for the agriculture industry.[412] That report concluded that technical management training and information could be effectively provided to groups of producers operating similar farming systems.[413] However, the report found that financial skills were best improved on an individualized basis.[414]

Based on these findings, the United States should provide technical management information to groups of producers operating similar systems. It should also use experts to convey this information and training. It should also do so in large groups, as this proved effective in Australia[415] and would be cheaper than providing individual experts or rural counselors for each producer.

The United States should also follow the report's recommendation to provide financial training on an individual basis.[416] To give producers this help, the United States should use rural counselors or provide grants so that producers can get training from financial experts.[417] Imitating the Australian program,[418] the rural counselors and experts should focus on improving the financial skills of each producer based on their individualized needs.[419]

409. *See id.*

410. Jose G. Pena & Danny Klinefelter, *Financial Management: The Key to Farm-Firm Business Management*, TEX. A&M AGRILIFE EXTENSION (Feb. 1, 2017), https://agrilifelearn.tamu.edu/s/product/financial-management-the-key-to-farmfirm-business-management/01t4x000004OUTl.

411. *See* RURAL ADJUSTMENT, *supra* note 22, at 42, 44.

412. *See generally* MALCOLM ET AL., *supra* note 27.

413. *Id.* at 44–45.

414. *Id.*

415. *See id.*

416. *See id.* at 45.

417. *See id.* at 44–45.

418. *See* GREENVILLE, *supra* note 19, at iv.

419. *See* MALCOLM ET AL., *supra* note 27, at 44–45.

To improve upon and modernize Australia's program, the United States should focus on improving technology-related skills. In recent years, new technology in the US agriculture sector has become essential to the success of many agriculture operations.[420] Drones,[421] autonomous vehicles,[422] autonomous harvesters,[423] and blockchain ledgers[424] are now available for producers to use in their operations.[425] These technologies can lower costs while also increasing output and increasing product quality.[426] Additionally, much of this new technology provides real-time data and information.[427] Producers must not only be able to operate such technology, but they must also be able to interpret that data.[428] Thus, the United States must provide technological training in these areas, including educating producers regarding how to understand the data that these technologies can provide.[429] And, relatedly, farmers need to be able to use that data to quickly make strategic decisions about what to grow, when to plant it, and the best fertilizer to use.[430] While technology training was not a key component of the Australian program, it should be a key part of the United States' adoption of a similar assistance measure. For these reasons, the United States

420. Gregory Heilers, *A New Era of Farm Employees: Farm Technicians vs. Farm Hands?*, AGFUSE (June 4, 2018), https://agfuse.com/article/a-new-era-of-farm-employees-farm-technicians-vs-farm-hands-.

421. Alex Binkley, *New Skill Sets Needed in Farm Workers of the Future*, MANITOBA CO-OPERATOR (Sept. 9, 2019), https://www.manitobacooperator.ca/news-opinion/news/new-skill-sets-needed-in-farm-workers-of-the-future/.

422. Mike Wilson, *3 Skills Tomorrow's Farmer Will Need*, FARM PROGRESS (Oct. 11, 2017), https://www.farmprogress.com/technology/3-skills-tomorrow-s-farmer-will-need.

423. *Id.*

424. *See* Andreas Kamilaris et al., *The Rise of Blockchain Technology in Agriculture and Food Supply Chains*, 91 TRENDS FOOD SCI. & TECH. 640, 642 (2019).

425. *The Skills Needed to Manage a Farm in the Future*, AG DAILY (Apr. 19, 2021) [hereinafter *Skills*], https://www.agdaily.com/lifestyle/skills-needed-manage-farm-future/; Raviv Itzhaky, *Modern Farming Is As Much About Data As Digging. Here Are 3 Emerging Agricultural Skills*, WORLD ECON. F. (June 2, 2021) [hereinafter *Modern Farming*], https://www.weforum.org/agenda/2021/06/farming-data-new-agricultural-job-skills/.

426. *Skills*, *supra* note 425; Binkley, *supra* note 421; *Advanced Technologies*, NAT'L INST. FOOD & AGRIC., https://www.nifa.usda.gov/topics/advanced-technologies (last visited Jan. 4, 2023).

427. Wilson, *supra* note 422.

428. *Skills*, *supra* note 425.

429. *See* Wilson, *supra* note 422.

430. *Skills*, *supra* note 425; *Modern Farming*, *supra* note 425; Wilson, *supra* note 422.

should allow producers to use training grants to obtain training from data scientists about how to interpret data related to their operations.

Further, due to the interwoven nature of technology, data, and strategy on modern farms, there should be cross-collaboration among the various experts and rural counselors advising producers. This will allow producers to understand how each area of skills relates to the others and to see the synergies between them.

Finally, the United States should follow Australia's lead in allowing producers who qualify for any of the other assistance measures to receive automatic eligibility for training grants and rural counselors.[431] Given that much of the training can be conducted via large groups, the added cost of these "extra" producers will likely be low. And, most importantly, coupling assistance measures in this way will increase participation in training and counseling programs. Ultimately, this would increase the agriculture industry's ability to adjust to a freer market and become sustainable and independent.

B. Debt Management and Relief

While the preceding three measures are intended to improve the viability of producers, the following three measures are intended to help producers strategically manage debt issues while they adjust to reduced farm funding.

The Australian government implemented a debt mediation program and encouraged struggling debtors to reach loan agreements with their creditors beyond formal bankruptcy proceedings.[432] Both of these measures built on the credit industry's implementation a few years earlier of an informal moratorium on foreclosures.[433] These three measures worked synergistically to give debtors a variety of alternatives to foreclosure and bankruptcy. In the United States, they should be considered as a set of related measures and should be implemented in ways that allow them to complement each other.

1. Debt Mediation Program

a. Australia

In the 1990s, the Australian government established a debt mediation program for producers, the Farm Debt Mediation Act ("FDMA").[434] The FDMA's goal was to increase long-term success in farming by requiring mediation and thereby providing circumstances for producers and creditors to successfully resolve debt issues.[435]

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431. *See Farm Household Support Amendment Act 2003* (Cth) sch 1 pt 2 para 35 (Austl.).

432. Hilton, *supra* note 296.

433. Geyer, *supra* note 24, at 349–50.

434. *Farm Debt Mediation Act 1994* (NSW) (Austl.).

435. Hilton, *supra* note 296; *Farm Debt Mediation Act 1994* pt 1 para 3.

Australia was able to achieve this goal by requiring the producer and creditor to attend one mediation before the creditor could take any enforcement action on a delinquent farm-related mortgage.[436] Under this program, a producer and creditor split the cost to hire a private mediator to help them resolve loan payment issues.[437] Australia imposed penalties on parties violating the one-mediation requirement.[438]

Under the FDMA, mediators were often able to get parties to agree to a mutually beneficial "interest-relief package."[439] Or, for producers who did not have a viable future in agriculture, the mediator would negotiate a "workable exit package."[440]

Such negotiations are beneficial because they provide the producer and creditor flexibility in negotiating an alternative to the producer's debt obligations.[441] For example, they could negotiate a short-term reduction in payment amounts to alleviate the producer's immediate financial burden. This reduction could provide producers with flexibility to focus their resources on making necessary adjustments to their operations. Although the creditor would receive reduced payments in the short term, providing such a short-term concession would also likely increase the long-term viability of the producer, which would also improve the creditor's outlook.

Throughout the lifetime of the FDMA, Australia made amendments to the program to improve its success.[442] Amendments made in 2018 extended the scope of the type of farm machinery covered by the program.[443] The expanded definitions "extend[ed] coverage to a broader range of farm mortgages" to include any machinery commonly used on farms.[444]

Another helpful 2018 amendment involved a producer's proactive request to mediate with a creditor before defaulting on a loan.[445] Prior to the 2018 amendments, a mediation that occurred due to such a proactive request from a producer did not satisfy the one-mediation requirement of the FDMA.[446] The 2018 amendments changed this by

436. Hilton, *supra* note 296.
437. *Id.*
438. *Id.*; *Farm Debt Mediation Act 1994* pt 1A div 1 para 8.
439. Geyer, *supra* note 24, at 349.
440. *Id.*
441. Hilton, *supra* note 296.
442. *Id.*
443. *See Farm Debt Mediation Amendment Act 2018* (NSW) sch 1 para 2 (Austl.) (amending section 4(1) of the FDMA); *id.* sch 1 s 5 (inserting new sections 4AA and 4AB into the FDMA); Foez Dewan, *Farm Debt Mediation Amendment Bill 2018 (NSW): What Do the Changes Mean for You?*, MCCABES (May 8, 2018), https://mccabes.com.au/7270-2/#_ednref6.
444. Dewan, *supra* note 443; *see Farm Debt Mediation Amendment Act 2018* sch 1 para 2.
445. Hilton, *supra* note 296.
446. *See id.*

considering the one-mediation requirement to be satisfied when a mediation happened under those circumstances.[447] This amendment encouraged producers to proactively ask a creditor to participate in mediation before defaulting on a loan. Australia wanted to promote such proactivity because these earlier mediations typically led to more successful mediated agreements.[448]

The 2018 amendments also increased producers' protection from creditors attempting to enforce a debt before conducting mediation by creating new offenses and escalating the corresponding penalties for such creditors.[449]

Overall, the FDMA has been very successful.[450] In fact, it was so successful that it is still in effect and being used today.[451]

b. Proposal for the United States

Currently, bloated loan payments are a major hindrance to success for many producers.[452] Many debtors agreed to these loans decades ago, when producers were benefiting from greater direct payments from the federal government.[453] Under those circumstances, producers could generally rely on the government to ensure their success.[454] Because the federal government no longer provides such extensive security, it is easy to understand why a producer who agreed to a loan fifteen years ago might be struggling.[455]

Therefore, the United States should implement a debt mediation program requiring producers and creditors to attend one mediation before the creditor can take an adverse action on a delinquent farm-related loan. The aim of this program should be for the producer and creditor to come up with a mutually beneficial arrangement that better reflects today's agricultural reality. By requiring mediation, the United States would be encouraging and facilitating the achievement of this goal.

Given the continued success of Australia's FDMA, the United States should also incorporate in its program the amendments made

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447. *Id.*

448. *Id.*

449. *See* Dewan, *supra* note 443; Hilton, *supra* note 296; *Farm Debt Mediation Act 2018 (NSW) – Overview of Amendments*, RURAL ASSISTANCE AUTH., https://www.raa.nsw.gov.au/__data/assets/pdf_file/0007/809557/Overview-of-Amendments.pdf (last visited Jan. 4, 2023).

450. Hilton, *supra* note 296.

451. *See Farm Debt Mediation Amendment Act 2018* (NSW) (Austl.)

452. *See* Roxana Hegeman, *Farm Loan Delinquencies Highest in 9 Years As Prices Slump*, ASSOCIATED PRESS (Feb. 28, 2019), https://apnews.com/article/7881b72df9aa41c28900acba09558e5e.

453. *See* Foscolo & Zimmerman, *supra* note 34, at 316.

454. *See id.* at 316–17.

455. *See* KEENEY, *supra* note 58, at 1–2.

in Australia. First, the United States should establish broad definitions of the type of loans covered by the mediation program. US producers get loans for an expansive list of things. For example, in addition to loans for the purchase of real estate, equipment, seeds, fertilizers, and livestock,[456] US producers can also receive loans for the costs of building hydroponic, aquaponic, and vertical growing operations, starting plant nurseries, establishing farmers' markets, and training young people who are participating in educational farming projects.[457] Adopting a broad definition of covered loans will likely result in more producers and their lenders reaching a mutually beneficially agreement.

Next, the United States should copy Australia's recent amendments that encourage producers to proactively request a mediation.[458] Many US producers are struggling, but that does not necessarily mean they have already defaulted on their loans.[459] The United States should recognize that some producers are currently keeping up with loan payments, but do not have a viable future in the industry unless they modify the terms of their loan. Allowing producers to request mediations will likely result in fewer loan defaults and more successful long-term loan agreements.

As stated previously, prior to Australia's most recent amendments, the one-mediation requirement was not satisfied if a mediation occurred due to a producer's proactive request. As a result, the parties had to mediate again when the producer was actually delinquent on their loan payments.[460] Interestingly, researchers found that when parties conducted more than one mediation, it often led to "a worsening position for farmers in the long run as their debt [was] usually compounded."[461] Therefore, as Australia's 2018 amendments stipulate,[462] if a mediation occurs in the United States because of a producer's request to mediate prior to defaulting, that mediation should satisfy the one-mediation requirement.

Third, it is also important for the United States to implement penalties harsh enough to dissuade creditors from failing to mediate

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456. *Types of Ag Loans*, TEX. FARM CREDIT (Dec. 5, 2020), https://www.texasfcs.com/resources/articles/types-of-ag-loans.

457. *Id.*; *Farm Loan Programs*, FARM SERV. AGENCY, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index (last visited Jan. 4, 2023); *Microloan Programs*, FARM SERV. AGENCY, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/microloans/index (last visited Jan. 4, 2023).

458. *See* Hilton, *supra* note 296.

459. Karen Stabiner & Dan Barber, *Nearly a Third of Small, Independent Farmers are Facing Bankruptcy by the End of 2020, New Survey Says*, COUNTER (May 18, 2020, 7:00 AM), https://thecounter.org/covid-19-dan-barber-resourced-small-farmer-survey/.

460. *See id.*

461. *Id.*

462. *See id.*

when required. Some creditors in the Unites States are willing to skirt regulations and rules.[463] Moreover, it is not uncommon for a party to participate in a mandatory mediation with no real intent to resolve the issue in mediation.[464] In response, the United States should impose a "good faith" requirement on all parties participating in the mediation and impose hefty monetary penalties if the parties fail to comply with "mandatory mediation" in good faith.[465] Many creditors would likely benefit from this mediation, yet compliance with mandatory mediation "cannot be assured unless there is some threat of punishment for violations."[466]

Finally, as Australia has done, the United States should consider continuing this program indefinitely. It can assess the wisdom of so doing based on the mediation program's success once the program is implemented.

Although Australia's FDMA has been successful, the United States should consider altering Australia's requirement that the producer and creditor pay an equal share of the mediator's fees.[467] Given that producers participating in this program are generally delinquent on their payments, the United States should consider requiring creditors to pay the full costs of the mediator. Alternatively, the United States should also consider paying for some or all of the producer's half of the fees.

2. *Informal Moratorium on Foreclosures*

a. Australia

In the 1980s and 1990s, many Australian producers were experiencing financial hardship due to decreased crop prices and increased interest rates.[468] As a result, many producers were unable to make their loan payments.[469] In response, several large agriculture groups collaborated with influential credit organizations to impose an informal moratorium on agriculture-related

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463. *See* Hannah Costigan-Cowles, *Negotiations for the Home: A Balanced Approach to Good Faith in Foreclosure Mediation*, 2013 U. ILL. L. REV. 1571, 1589 (explaining that instances of creditor misconduct often occur).

464. *See generally* Tucker Ellis, *Good Faith, Bad Faith, No Faith: Will a Subjective Good Faith Standard Influence How Litigants Approach Mediation?*, LEXOLOGY (Nov. 16, 2017), https://www.lexology.com/library/detail.aspx?g=8712baad-b0e5-47a4-bb1b-ab49bf2bf1a9.

465. A "good faith" requirement would impose a duty on the producer and creditor to engage in the mediation with a genuine attempt to successfully negotiate a mediated agreement. *See* Costigan-Cowles, *supra* note 463, at 1608.

466. *Id.* at 1611.

467. *See* Hilton, *supra* note 296.

468. *See* Geyer, *supra* note 24, at 349.

469. *Id.* at 350.

foreclosures.[470] This moratorium lasted for a few years until prices improved and interest rates declined.[471]

It appears that the creditors agreed to the informal moratorium for two reasons. First, Australian political leaders, including then-prime minister of Australia Paul Keating, publicly pressured the industry to impose a moratorium through press releases and interviews.[472] For example, prior to creditors implementing the moratorium, the Prime Minister accused large banks of ignoring rural Australia and publicly stated that the industry should help struggling farmers.[473] Second, creditors wanted to avoid attracting adverse publicity that would have resulted from foreclosures on a large number of struggling farmers.[474]

b. Proposal for the United States

The US government should attempt to persuade agriculture creditors to impose a similar informal moratorium. If the creditors do not, the US government should impose a formal moratorium. Ideally, a moratorium would be imposed after the United States begins to reduce its farm funding because producers will likely go through an adjustment period during that time.

Imposing such a moratorium is often mutually beneficial for producers and creditors.[475] Foreclosure on agriculture-related loans "is often not in the [creditor's] interest."[476] Agriculture creditors benefit more when producers succeed and can make their payments, even if concessions are made by the creditor in the short term.[477] Conversely, if creditors choose to foreclose on many producers at the same time, the value of the farmland drops as an increased supply of farms for sale causes a decline in the price of individual farms.[478] And, "[s]ince farmland is used as collateral for most large rural loans, a sudden drop in land values would be catastrophic for [creditors]."[479]

Moreover, a moratorium would likely allow producers to focus on making necessary long-term adjustments that would improve the viability of their operations without concern of impending foreclosure. Knowing their creditors would not foreclose on their loans would liberate producers to expend funds on necessary improvements. Conversely, believing their property's foreclosure was imminent

470. *Id.*
471. *Id.*
472. *See id.*
473. *Id.* at 350 n.177.
474. *Id.* at 350.
475. *See id.* at 349.
476. *Id.*
477. *Id.*
478. *See id.*
479. *Id.*

would likely discourage producers from spending resources to improve it.

While the United States could enact legislation providing for a formal moratorium on farm foreclosures, it would be more beneficial if the industry chose to implement a moratorium informally. This would give creditors and producers more control over the terms and duration of a moratorium. The specter of a government-imposed moratorium might help motivate creditors to agree voluntarily to a moratorium on their own.

To persuade the credit industry to impose a moratorium, US government leaders should meet with the leaders of the largest creditors of agricultural debt to inform them of a moratorium's long-term benefits. If the industry is unpersuaded, political leaders could use media avenues to publicly encourage the industry to impose a moratorium. And, before doing so, legislators could privately use the threat of such a public campaign as a stick to incentivize major creditors to adopt the moratorium before incurring criticism in the press. Legislators could also use the threat of implementing a formal moratorium to persuade lenders to adopt their own.

Moreover, US lenders should view a self-imposed moratorium as an opportunity to improve the industry's public reputation.[480] Creditors willing to implement an informal moratorium on foreclosures could present themselves as choosing to help family farms transition to sustainable, independent success. US consumers increasingly prefer small family farms with environmentally friendly operations.[481] Creditors could use this measure to claim public credit for supporting these types of farms and could thereby increase their goodwill with consumers, as well as improve their bottom lines.[482]

Further, like Australian creditors,[483] US lenders should understand the potential negative ramifications on their image if they foreclose on farms during this transition period away from reliance on farm funding. If a particular creditor is seen as foreclosing on "mom and pop" farms during a time of need, the creditor's public image would likely be tarnished.[484] This is especially true given the increase in consumers' preferences for spending their dollars with socially responsible businesses.[485]

480. *See* Terrance Gallogly, Comment, *Enforcing the Clawback Provision: Preventing the Evasion of Liability Under Section 954 of the Dodd-Frank Act*, 42 SETON HALL L. REV. 1229, 1235 (2012) (stating that a significant majority of Americans have a negative view of lending institutions).

481. Chuck Ross & Marli Rupe, *Agricultural Sources of Water Pollution: How Our History Informs Current Debate*, 17 VT. J. ENV'T L. 811, 841 (2016).

482. *See* Windham, *supra* note 16, at 23.

483. Geyer, *supra* note 24, at 350.

484. *See* Windham, *supra* note 16, at 23.

485. *See id.*

Finally, an informal moratorium could work well with the proposed mediation program. While the moratorium is in effect, producers and creditors could mediate an interest-relief package for those producers who will be viable post-reform but need short-term relief from their debt obligations while they make necessary adjustments.

3. Alternatives to Formal Bankruptcy Proceedings

a. Australia

In separate legislation from the RAS, Australia encouraged the resolution of issues among debtors and creditors "outside of the rigid and strict [formal bankruptcy laws]" via several different informal arrangements.[486] One of those arrangements was a deed of composition, under which a creditor could stipulate that they would "accept payment by installments of the debts due to them."[487] Under a deed of composition, creditors could also "agree to accept, in full satisfaction of the debts due to them, less than the full amount of those debts."[488]

A second instrument, called a deed of arrangement, gave the producer more time to pay the debt owed without reducing the amount of that debt.[489] These two informal alternatives were used throughout Australia.[490]

The government's encouragement of these alternatives to formal bankruptcy appears to have helped the industry adapt and producers avoid bankruptcy.[491] In 1992, for example, only .0004% of producers filed for bankruptcy.[492]

b. Proposal for the United States

The United States should encourage struggling producers and their creditors to resolve their issues outside of formal bankruptcy proceedings. Such informal measures have been attempted before in the United States, but they have suffered in comparison to the Australian model from overly strict requirements and too high a degree of legal formality. Specifically, in 1986, in the middle of an agriculture crisis, the US Congress amended bankruptcy laws by passing the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 ("Chapter 12").[493]

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486. Geyer, *supra* note 24, at 350–51.
487. *Id.* at 351.
488. *Id.*
489. *Id.* at 350–51.
490. *Id.*
491. *See id.* at 352.
492. *Id.*
493. *Id.* at 333–34.

Chapter 12 "enables financially distressed family farmers [] to propose and carry out a plan to repay all or part of their debts."[494] The intent of Congress in drafting Chapter 12 was to enable producers to reorganize their business debt so they could repay their debts while also continuing to operate their farm.[495]

But, while Chapter 12 was designed to be quick, simple, and inexpensive, it has strict eligibility requirements that can be complicated for a producer to decipher.[496] Moreover, any plan to which a producer and creditor agree must be submitted to a bankruptcy court for approval.[497] Also, Chapter 12 requires that the producer pay all of the payments owed under the repayment plan within three years unless a bankruptcy court approves a longer term.[498] Finally, Chapter 12 only applies to producers meeting the bankruptcy code's strict definition of a "family farmer."[499]

For example, under Chapter 12, producers who need more than three years to make necessary adjustments to their operations before becoming viable would have to submit a proposal to a bankruptcy court and then persuade the court that it needs the extra time.[500] This is the case even if the creditor agrees with the extension.[501] Moreover, because of the strict eligibility requirements, fewer producers are eligible for this program than the alternatives used in Australia.[502]

In short, compared to Australia's informal arrangements,[503] there is much more "red tape" surrounding Chapter 12 proceedings. This red tape not only adds complications for producers and creditors but also makes creating and implementing a repayment plan more time consuming and expensive. Further, the relatively formal bankruptcy proceedings in Chapter 12 were not created for an industry transitioning away from dependence on government funding.

Reducing farm funding is a necessary action, but it will likely cause many producers to go through an adjustment phase. During

494. *Chapter 12 – Bankruptcy Basics*, U.S. CTS. [hereinafter *Bankruptcy Basics*], https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-12-bankruptcy-basics (last visited Jan. 4, 2023).

495. *Id.*

496. *See id.* For example, "[m]ore than 50% of the gross income of the individual or the individual and spouse for the preceding tax year (or, for family farmers only, for each of the [second] and [third] prior tax years) must have come from the farming . . . operation." *Id.*

497. *Id.*

498. *Id.*

499. *Id.*

500. *See id.*

501. *See id.*

502. *Compare id.*, *with* Geyer, *supra* note 24, at 350–52.

503. Geyer, *supra* note 24, at 350–51.

that time, the United States should encourage producers and their creditors to seek out mutually beneficial alternatives to bankruptcy that more closely align with the unique transition and adjustment many producers will experience. Similar to the proposal for encouraging the credit industry to impose a moratorium on farm foreclosures, US government leaders should meet with leading creditors of agricultural debt to persuade them of the mutual benefits of these informal alternatives. Political leaders could also publicly encourage the industry to use informal alternatives to bankruptcy while also publicizing the benefits of these alternatives to heighten producer awareness.

The following alternatives provide producers and creditors flexibility to successfully adjust without going through a resource-consuming formal bankruptcy. There are several less formal alternatives to filing for bankruptcy currently recognized by US bankruptcy law that would likely help producers as they adjust to the freer market[504]—most notably, composition agreements and extension agreements.[505]

Composition agreements and extension agreements are types of agreements that modify the terms of debts in lieu of formal bankruptcy proceedings.[506] Under a composition agreement, the debtor and creditor come to an agreement that reduces the amount owed on the loan.[507] This is similar to the deed of composition used in Australia.[508]

Under an extension agreement, a creditor typically agrees to simply extend the amount of time the debtor has to pay an amount owed.[509] In this type of agreement, the amount the debtor owes is not changed.[510] Extension agreements are similar to the deeds of arrangement used in Australia.[511]

Generally, there are numerous advantages for both producers and their creditors to resolving their issues outside of formal bankruptcy proceedings. First, it would allow producers to avoid the stigma of bankruptcy.[512] When a producer files for bankruptcy, it is common for customers, creditors, and suppliers to stop conducting

504. *See* James L. Ryan, *Considering Non-Bankruptcy Alternatives in the Wake of the Revised Bankruptcy Code*, 20 DCBA BRIEF 24, 26 (2008).

505. Additional options include arbitration, mediation, and early neutral evaluation. Nancy A. Welsh, *Integrating "Alternative" Dispute Resolution into Bankruptcy: As Simple (and Pure) As Motherhood and Apple Pie?*, 11 NEV. L.J. 397, 397 (2011).

506. Ryan, *supra* note 504, at 26.

507. *Id.*

508. *See* Geyer, *supra* note 24, at 351.

509. Ryan, *supra* note 504, at 26.

510. *Id.*

511. *See* Geyer, *supra* note 24, 350–51.

512. *See id.* at 350.

business with the seemingly defunct producer.[513] This causes even more financial distress to the producer.[514] Therefore, by avoiding that stigma, producers could continue their operations and avoid added financial distress.[515] Additionally, by not disrupting the producer's business operations, the creditor has a better chance of the producer making their loan payments to the creditor.[516]

Second, such informal proceedings might result in absolving the producer from some of its debt.[517] And, although the creditor would lose the amount it absolves, it might increase the total amount of money it would otherwise receive from the producer—since creditors usually are not fully repaid in a bankruptcy.[518]

Third, creditors and producers willing to use informal proceedings could save money when compared to a formal bankruptcy because informal proceedings are often cheaper than the cost of a formal bankruptcy.[519] Fourth, the creditor might be able to maintain its preferential payments, which it could lose under formal bankruptcy proceedings.[520]

Last, informal proceedings could provide faster resolutions between creditors and producers[521] when (as now) bankruptcy courts are extremely busy.[522] Further, resolution outside of bankruptcy might promote a better ongoing business relationship than going through arduous bankruptcy proceedings.[523] Finally, using alternatives to formal bankruptcy could give the producer time to utilize the proposed assistance measures, make needed adjustments, and return to making on-time payments to the creditor.

The United States should encourage and promote these alternatives as a refuge for producers as they adjust to a freer market.

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513. *See* Robert I. Sutton & Anita L. Callahan, *The Stigma of Bankruptcy: Spoiled Organizational Image and Its Management*, 30 ACAD. MGMT. J. 405, 407, 416 (1987).

514. *See id.* at 416.

515. *See id.*

516. Ryan, *supra* note 504, at 26.

517. *See id.*; Geyer, *supra* note 24, at 350.

518. Lindsey Simon, *Chapter 11 Shapeshifters*, 68 ADMIN. L. REV. 233, 234 (2016) (explaining that creditors often only receive "pennies on the dollar" for the amount they are owed in bankruptcy proceedings).

519. *See* Geyer, *supra* note 24, at 350; David P. Bart & Scott Peltz, *Rethinking the Concept of "Success" in Bankruptcy and Corporate Recovery*, 17 AM. BANKR. INST. J. 1, 36 (May 1998).

520. *See* Geyer, *supra* note 24, at 350.

521. *See id.*

522. Steven Church, *Bankruptcy Courts Gear Up, Dress Down with Filings Surge to Come*, BLOOMBERG (Apr. 14, 2020, 8:45 AM), https://www.bloomberg.com/news/articles/2020-04-14/bankruptcy-courts-gear-up-dress-down-with-filings-surge-to-come.

523. *See* Geyer, *supra* note 24, at 350.

While many US producers and creditors currently have access to these alternatives, as in Australia, government encouragement is needed to increase participation.[524] And such encouragement would doubtless have the same effect as in Australia—reducing the number of farm bankruptcies overall.[525]

C. Assistance Measures the United States Should Not Implement

1. Household Income Support

a. Australia

As part of the RAS, Australia established the Farm Household Support program ("FHS").[526] This program provided financial support to struggling Australian producers by paying their daily living expenses.[527] FHS's funds were provided to eligible producers for two years to give them the opportunity to determine whether they would sell their farms.[528]

If producers chose to keep their farm, the funds they received from FHS became a loan repayable with interest.[529] Producers choosing to sell "received the first nine months of [the FHS funds] as a grant and the balance as a loan."[530]

Although this program sounded promising, it was "a total failure."[531] In fact, one rural counselor informed the Committee that the scheme had been "the greatest failure" of any of Australia's assistance measures.[532]

The FHS program floundered for several reasons.[533] First, its operating guidelines were ill-defined, and the eligibility requirements were difficult to understand.[534] For example, it was unclear how a producer's eligibility for FHS was impacted, if at all, by receiving other assistance measures offered by the Australian government.[535]

Next, the FHS hurt many producers financially because of the requirement that they repay at least some of the FHS funds they received.[536] For example, producers who attempted to leave the industry but could not sell their farm had to payback all the FHS

524. *See id.* at 343–52.
525. *Id.* at 352.
526. COCKFIELD & BOTTERILL, *supra* note 292, at 79–81.
527. MALCOLM ET AL., *supra* note 27, at 11.
528. *Id.*
529. *Id.*
530. *Id.*
531. RURAL ADJUSTMENT, *supra* note 22, at 58.
532. *Id.*
533. *See id.*
534. *Id.*
535. *Id.*
536. *Id.*

funds received, plus interest.[537] This often "result[ed] in 'desperate families' accumulating another loan they [could not] repay."[538]

b. Proposal for the United States

Given Australia's experience, the United States should not implement a similar program. However, decreasing farm funding could be viewed as pulling the rug out from under farmers.[539] As such, there might be some pressure to provide household income support to producers as the industry adjusts to reduced farm funding. If such a program were adopted out of political necessity, the United States should guard itself against making the same mistakes as Australia.

The United States could do this by clearly writing its operating guidelines and eligibility requirements. In particular, the United States should aim to have objective eligibility requirements that producers can apply on their own.

For example, the income requirements for this program could state that producers are eligible if their total monthly income, including on-farm and off-farm income sources, is lower than their monthly household bills. Additionally, the requirements could state that a producer's eligibility for this program is not affected by any other assistance measures the producer may receive. For instance, a farmer who received grant money to hire a farm expert would not count that as income under this program.

Further, the United States could consider forgiving the repayment requirement for those producers who fail to leave agriculture. By doing so, the United States would avoid burdening struggling farmers with more debt.

2. Interest Subsidies for Agricultural Loans

a. Australia

In 1993, Australia also implemented a program that paid subsidies to producers for up to 50% of the cost of interest on agriculture-related loans.[540] The loan typically had to be used to improve productivity or sustainability.[541] The goal of this program was to encourage producers to swiftly adjust to the new, freer market

537. *Id.*
538. *Id.*
539. *See* Eubanks, *supra* note 38, at 10506.
540. Geyer, *supra* note 24, at 344–46; RURAL ADJUSTMENT, *supra* note 22, at 6.
541. Geyer, *supra* note 24, at 346.

by "adopting technological developments [and] enhancing resource use."[542] However, it did not accomplish these goals.[543]

Instead, this program failed to benefit producers and was riddled with issues. First, the program was expensive for producers due to loan fees charged by creditors, which often eroded any cost reduction obtained from the subsidies.[544]

Second, because the subsidies were only given to those producers with debt, the interest subsidies did not facilitate industry-wide adjustment.[545] Instead, only producers with significant debt were helped by this program.[546]

Third, one eligibility requirement of this program required that at least 50% of a producer's total income stem from on-farm activities.[547] This requirement disqualified many producers from participating.[548]

Overall, the Australia Bureau of Agricultural and Resource Economics ("ABARE") concluded that this program hampered the adjustment process and that there were better ways for the government to help facilitate adjustment.[549] Similarly, several Australian state governments and agencies determined that it was difficult to justify the use of this program.[550]

Further, ABARE suggested that Australia should use the funds appropriated for these subsidies to pay all producers a lump sum to improve their operations.[551] This suggestion was never adopted.[552]

b. Proposal for the United States

Given Australia's experience, the United States should avoid implementing a similar program. Instead, as Australia did,[553] the United States should focus its resources on training and education. Yet, given the rise of the importance of technology in agriculture,[554] the United States might feel pressure to provide a similar assistance measure. In that case, the United States should learn from Australia's mistakes.

First, as suggested in Australia,[555] the United States could use the money it would otherwise provide in these subsidies as a lump-

542. RURAL ADJUSTMENT, *supra* note 22, at 5–6.
543. *Id.* at 37–40.
544. *Id.* at 37.
545. *Id.* at 38.
546. *See id.*
547. *Id.*
548. *See id.*
549. *Id.* at 39.
550. *Id.* at 40.
551. *Id.* at 38.
552. *See id.* at 38–40.
553. *See id.* at 38–39.
554. *See supra* notes 420–30 and accompanying text.
555. RURAL ADJUSTMENT, *supra* note 22, at 38.

sum payment to all producers to improve their operations.[556] This was suggested as an alternative by ABARE because it would better facilitate industry-wide adjustment as all producers—not just those with debt or access to credit—would benefit.[557] This would likely also be true in the United States.

Failing that, if the United States were to stick with an interest subsidy, it could make several alterations to the program based on Australia's experience. It could mandate a fee structure that is less than producers' cost savings. It could also cap the fees creditors could charge, like the United States has already done with automobile loans[558] and some home loans.[559] Or, the United States could pay for part of or all of the costs, like it currently does for the Crop Insurance Program.[560]

Next, the United States should abolish the requirement that participating producers derive at least 50% of their income from agriculture operations. This would allow for more industry-wide adjustment as more producers would have access to this program. Moreover, the average total income of a family farm in the United States is $123,368 and only $21,730 of that income is derived from agriculture.[561] Clearly, the average family farm in the United States would be ineligible to participate if the United States enacted the same requirement as Australia. By eliminating this requirement, the United States would facilitate greater adjustment and help more family farms.

CONCLUSION

The lavish farm funding provided by current US agricultural policy degrades the environment, distorts free market signals, disincentivizes risk-management practices, and drains government funds. Scholars have identified these harms and have proffered various reforms of US agricultural policy to reduce the effects of those harms. Many of those proposals identify Australia—and its successful reduction of farm subsidies—as an example of successful reform. However, these proposals have neglected to recognize the

556. *See id.*

557. *See id.*

558. Ryan Felton, *A New Lending Law Could Protect Car Buyers from High Fees*, CONSUMER REPS. (July 22, 2021), https://www.consumerreports.org/consumer-protection/new-lending-law-could-protect-car-buyers-from-high-fees-a6234751396/.

559. *My Lender Says It Can't Lend to Me Because of a Limit on Points and Fees on Loans. Is This True?*, CONSUMER FIN. PROT. BUREAU (Feb. 22, 2017), https://www.consumerfinance.gov/ask-cfpb/my-lender-says-it-cant-lend-to-me-because-of-a-limit-on-points-and-fees-on-loans-is-this-true-en-1795/.

560. Oaks, *supra* note 18, at 578.

561. Giri et al., *supra* note 335.

integral role Australia's assistance measures had on Australian agriculture's successful transformation to an independently successful industry.

This Article has made two proposals. The first is a proposal for reducing US farm funding that synthesized and expanded on existing recommendations. The second is a novel proposal for US adoption of assistance measures modeled on the successful ones used by Australia.

Specifically, in the 2023 Farm Bill, the United States should cut farm funding by eliminating the Crop Insurance Program, curtailing the ad hoc disaster programs, and keeping the conservation subsidies. The 2023 Farm Bill should also adopt assistance measures modeled on Australia's, both to overcome political resistance and to smooth the transition of US agriculture to an independent, sustainable industry. These proposed assistance measures would help viable producers to become independently successful and would enable nonviable producers to smoothly transition to a career in a new industry. The Article has explored in detail the assistance measures adopted in Australia and made specific proposals to modify and adopt Australia's measures as part of reform in the United States.

If the proposed reform and assistance measures are implemented, US agriculture will emerge with the tools and knowledge to achieve independent success, curb its degradation of the environment, and adopt appropriate risk-management practices. The benefits of this reform will transcend the industry and improve the environment, the national economy, and public health.