



**DRAKE JOURNAL**  
*of*  
**AGRICULTURAL**  
**LAW**

The 2014 Farm Bill: Lessons in Patience,  
Politics, and Persuasion

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# THE 2014 FARM BILL: LESSONS IN PATIENCE, POLITICS, AND PERSUASION†

*Neil D. Hamilton\**

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† This Article was prepared for and presented at the American Agricultural Law Association’s annual meeting in early November 2013 and focuses on the political developments up to that time for what was to be the 2013 Farm Bill. Congress took no action on the legislation during 2013, but finally, in late January and early February 2014, the House and Senate passed the compromise bill that emerged from the negotiations of leaders of the Conference Committee. The Agricultural Act of 2014 was signed by President Obama on February 7, 2014. *See Agricultural Act of 2014*, Pub. L. No. 113-79, 128 Stat. 649 (2014). The Conference Committee report reflects the choices made when consolidating the House and Senate bills. *See H.R. REP. NO. 113-333 (2014) (Conf. Rep.)*. For purposes of this Article, the focus remains on the political process under which the much-delayed legislation was considered and finally passed. A thorough review of the final bill is beyond the scope of this Article, but the discussion has been modified in a number of places to reflect the final action taken by Congress on the key issues discussed.

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#### I. INTRODUCTION: COULD A FARM BILL PROCESS BE ANY MORE COMPLICATED?

What did a chemical weapon attack in Syria, an early fall blizzard in the Black Hills, funding for the Affordable Care Act, and raising the nation's debt ceiling have in common? They were all hurdles and complications that arose on the path toward the consideration and passage of the 2014 (formerly 2012, then 2013) Farm Bill. While these unrelated and often unpredictable events posed challenges to the legislative process, they were not the only obstacles on the journey that, in early February 2014, finally resulted in the passage of a new comprehensive farm bill. A number of other events can be added to the list, including the following: the refusal of House leadership to bring the Agriculture Committee-passed bill to the floor for consideration during the last half of 2012; the House's unexpected and shocking floor defeat of the Committee-passed bill in June 2013; the House action to separate the farm and nutrition portions and then pass them as separate bills in July and September; the unprecedented expiration of the existing farm bill authority twice without Congressional action or extension (in 2012 and 2013); and the sixteen-day government shutdown that shuttered USDA offices, darkened web sites and suspended program delivery in October 2013. But the good news is things got back on track in late fall—the House rejoined the nutrition and farm portions of the bill so the legislation could be negotiated with the Senate,<sup>1</sup> conferees in the House and Senate were appointed,<sup>2</sup> the

1. Derrick Cain, *House Moves Closer to Farm Bill Conference*, AGRI-PULSE (Sept. 28, 2013), <http://www.agri-pulse.com/House-moves-closer-to-farm-bill-conference-09282013.asp>.

2. Press Release, House Comm. on Agric., *Farm Bill Process Moves Forward with House Conferee Appointments* (Oct. 12, 2013), available at <http://agriculture.house.gov/press-release/farm-bill-process-moves-forward-house-conferee-appointments>; *Senate Names Negotiators for U.S. Farm Bill Stuck in House*, REUTERS (Aug. 2, 2013), <http://www.reuters.com/article/2013/08/02/usa-agriculture-farm-bill-idUSL1N0G30XB20130802>.

government reopened,<sup>3</sup> the President urged Congress to pass a farm bill before the year's end,<sup>4</sup> and a meeting of the forty-one member Conference Committee was held.<sup>5</sup> Congress did not act before the end of the year, but for almost three months, until late January 2014, the four leaders of the House and Senate agriculture committees and their staffs carried on extensive, secret negotiations designed to reconcile the significant differences between the bills passed earlier by the House and Senate.<sup>6</sup> During much of this period, the fate of the farm bill, let alone its final content, was very much in doubt. But through a combination of shrewd political negotiations, strong leadership, especially by Senate Chair Stabenow, and growing political fatigue and frustration, a compromise bill was finally passed by Congress and signed by the President.<sup>7</sup>

There are many ways to approach discussing the 2012–2014 Farm Bill process. The twists and turns, political surprises, legislative maneuvers, and the ideological gamesmanship make the story ready-made for “horse race” journalistic treatment—who did what to whom, when, and why. This approach is rich

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3. Lori Montgomery et al., *Government Reopens After Congress Passes Budget Deal, Raises Debt Limit*, WASH. POST, Oct. 17, 2013, [http://www.washingtonpost.com/politics/government-reopens-thursday-after-congress-passes-budget-deal-raises-debt-limit/2013/10/17/dbc7889a-371b-11e3-80c6-7e6dd8d22d8f\\_story.html](http://www.washingtonpost.com/politics/government-reopens-thursday-after-congress-passes-budget-deal-raises-debt-limit/2013/10/17/dbc7889a-371b-11e3-80c6-7e6dd8d22d8f_story.html).

4. See President Barack Obama, Statement by the President of the United States (Oct. 16, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/10/16/statement-president-united-states>. In his statement, the President said, “We still need to pass a farm bill.” *Id.* He returned to the topic the next day, identifying issues Congress could address in the next few months while the budget negotiations took place. See President Barack Obama, Remarks by the President on the Reopening of the Government (Oct. 17, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/10/17/remarks-president-reopening-government>. His comments included, “we should pass a farm bill, one that American farmers and ranchers can depend on; one that protects vulnerable children and adults in times of need; one that gives rural communities opportunities to grow and the long-term certainty that they deserve.” *Id.*

5. See Jerry Hagstrom, *Farm Bill Conference Begins with Members Determined to ‘Show how to Govern,’* NAT’L J., Oct. 30, 2013, <http://www.nationaljournal.com/daily/farm-bill-conference-begins-with-members-determined-to-show-how-to-govern-20131030>; Press Release, House Comm. on Agric., First Public Meeting for 2013 Farm Bill Conference Committee Announced, (Oct. 23, 2013), available at <http://agriculture.house.gov/press-release/first-public-meeting-2013-farm-bill-conference-committee-announced> (announcing the date for the first Conference Committee meeting).

6. Christopher Doering, *House Passes Five-Year Farm Bill*, USA TODAY, Jan. 29, 2014, <http://www.usatoday.com/story/news/politics/2014/01/29/farm-bill-house/5022949/>.

7. See Doering, *House Passes Five-Year Farm Bill*, *supra* note 6; *Senators Praise Chairwoman Stabenow’s Leadership, Tenacity and Commitment to Bipartisanship in the 2014 Farm Bill*, DEBBIE STABENOW: U.S. SENATOR FOR MICH. (Feb. 11, 2014), [http://www.stabenow.senate.gov/?p=press\\_release&id=1264](http://www.stabenow.senate.gov/?p=press_release&id=1264); see generally, e.g., Ron Nixon, *House Approves Farm Bill, Ending a 2-Year Impasse*, N.Y. TIMES, Jan. 29, 2014, [http://www.nytimes.com/2014/01/30/us/politics/house-approves-farm-bill-ending-2-year-impasse.html?\\_r=1](http://www.nytimes.com/2014/01/30/us/politics/house-approves-farm-bill-ending-2-year-impasse.html?_r=1); Ron Nixon, *Senate Passes Long-Stalled Farm Bill, with Clear Winners and Losers*, N.Y. TIMES, Feb. 4, 2014, <http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html>.

with legislative insight, as well as suspense and excitement for the spectators, but in legislation, as in horse races, the betting public is really most interested in the ultimate outcome. In that regard, a second productive approach to discussing this saga is to identify the critical issues involved and to explain how they shaped the final outcome—or winners of the race—to understand the ultimate impacts on agricultural and food policy. From this perspective, it is possible to identify a key set of proposals under consideration in the farm bill deliberations, in particular those for which the House and Senate bills took different or varying approaches, and to use them as the structure for the discussion. In addition, there are many other issues addressed by the House and Senate of interest to those practicing agricultural law and assisting clients in understanding what finally emerged from Congress for the President's signature. This Article's discussion focuses primarily on the legislative history and the resolution of a set of key issues. Part II will set the legislative stage for the farm bill process. Part III will give a condensed discussion of the political and legislative actions that resulted in the final act. Part IV will discuss in detail how a select set of farm bill issues were resolved. Finally, Part V will discuss the lessons to be learned from the 2014 Farm Bill process.

## II. SETTING THE LEGISLATIVE STAGE

To understand what was involved in the farm bill conference negotiations, it is important to have in mind the three key pieces of legislation that were before the committee. These bills set the landscape for the deliberations—though it is important to remember that under Congressional rules, the conferees were not controlled or restrained by what was included in or excluded from the floor votes on either side—as reflected in the decision to jettison much of the reforms on payment limitations that had been agreed to by both sides.<sup>8</sup> The three key legislative acts were: (1) the Senate version of the farm bill, managed by Senator

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8. See ELIZABETH RYBICKI, CONG. RESEARCH SERV., 96-708, CONFERENCE COMMITTEE AND RELATED PROCEDURES: AN INTRODUCTION 6 (2013) (discussing how conference agreements are not supposed to go beyond disagreements but the House and Senate use procedural devices to get around the rule).

Stabenow and passed by the Senate on June 10, 2013, with strong bipartisan support;<sup>9</sup> (2) the House “farm” portion of the bill, passed on July 11, 2013;<sup>10</sup> and (3) the House “nutrition” portion of the bill, H.R. 3102, passed on September 19, 2013.<sup>11</sup>

Several fundamental policy questions made the farm bill debate difficult and helped illuminate the differences not just between the parties in the Senate and House, but also between the different stakeholders in America’s food and agriculture system. The key issues included:

- Reforming the direct payment system that began in 1996 under “Freedom to Farm” but was increasingly seen as the unnecessary and indefensible annual spending of five billion dollars;<sup>12</sup>
- Replacing the direct payment system with expanded and more robust forms of crop insurance, with added revenue insurance enhancements, such as the supplemental or “shallow loss” program, advocated by some commodity organizations;<sup>13</sup>
- Addressing the regional variations in the value of crop insurance or direct payments, reflected in a debate over whether to use planted acres or historic base acres as a way to calculate program participant benefits;<sup>14</sup>

9. See Agriculture Reform, Food, and Jobs Act of 2013, S. 954, 113th Cong. (1st Sess. 2013) (as passed by Senate, June 10, 2013); see generally *U.S. Senate Roll Call Votes 113<sup>th</sup> Congress – 1<sup>st</sup> Session*, U.S. SENATE, [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=113&session=1&vote=00145](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00145) (last visited Aug. 23, 2014) (listing the political affiliation and vote of each senator). The Senate Agriculture Committee released a very helpful 158 page committee report providing a textual explanation of their version of the farm bill. See S. REP. NO. 113-88 (2013).

10. See Federal Agriculture Reform and Risk Management Act of 2013, H.R. 2642, 113th Cong. (1st Sess. 2013) (as passed by House, July 11, 2013). This action, excluding the nutrition title, was necessitated by the House’s surprising vote of 206 to 218 to reject the Committee version of the bill on June 20, 2013. H.R. 1947, 113th Cong. (1st Sess. 2013).

11. Nutrition Reform and Work Opportunity Act of 2013, H.R. 3102, 113th Cong. (1st Sess. 2013) (as passed by House, Sept. 19, 2013). In a subsequent floor action, the House passed a resolution to rejoin the two bills so it could ask the Senate to begin the conference process. H.R. Res. 361, 113th Cong. (as passed by House, Sept. 28, 2013).

12. See generally *Farm Bill Conference Issues*, FARMDOCDAILY (Aug. 22, 2013), <http://farmdocdaily.illinois.edu/2013/08/farm-bill-conference-issues.html> (describing the reforms to direct payments under the bills).

13. See Emily Goff, *Shallow Loss: The 2012 Farm Bill’s New Subsidy Program*, HERITAGE FOUND. (July 10, 2012), <http://www.heritage.org/research/reports/2012/07/shallow-loss-the-2012-farm-bill-s-new-subsidy-program> (describing the added protection farmers would receive through replacement of current subsidies with the shallow loss program).

14. See generally David Rogers, *The Farm Bill is Back*, POLITICO (Sept. 15, 2013), <http://dyn.politico.com/printstory.cfm?uuid=E8AAB1AD-CA4A-4AD3-90DF-8E26F9AE81D6> (describing the debate and analyzing regional data).

- Obtaining budget reforms to meet the sequester spending cuts and to respond to a deficit driven budget climate and demands from critics on both sides—Tea Party types and the progressives—who argue farm programs cost too much;<sup>15</sup>
- Re-linking conservation compliance requirements to crop insurance eligibility;<sup>16</sup>
- Adopting a new system of dairy price supports;<sup>17</sup> and
- Reforming the Supplemental Nutrition Assistance Program (SNAP) to limit participation and reduce program costs.<sup>18</sup>

As this list reveals, both Agriculture Committees had a lot on their plates to consider without the complications caused by larger national and international events.

Before turning to a discussion of farm bill politics and individual farm bill issues, it is important to consider the sources of information available to those interested in following farm bill developments. The single best source of information for farm bill developments—and many other issues involving federal agriculture and food issues—is the daily newsletter, Farm Policy.<sup>19</sup> Another source of timely news stories on agricultural policy is the daily news feed from AGree, published by the Meridian Institute.<sup>20</sup> For accurate and up to date—and unbiased—discussions of federal farm policy issues, the reports from the Congressional Research Service set the gold standard.<sup>21</sup>

15. See Agriculture Committee Chairwoman Debbie Stabenow (D., Mich.) Conference Call with Reporters – Sequestration Issues, FARM POL'Y (Feb. 14, 2013), <http://farmpolicy.com/wp-content/uploads/2013/02/ChairStabenowConferenceCallSequester13Feb14.pdf>.

16. See ROGER CLAASSEN, ECON. RESEARCH SERV., THE FUTURE OF ENVIRONMENTAL COMPLIANCE INCENTIVES IN U.S. AGRICULTURE: THE ROLE OF COMMODITY, CONSERVATION, AND CROP INSURANCE PROGRAMS 5 (2012); see also *Farm Bill Conference Issues*, supra note 12.

17. See *Farm Bill Conference Issues*, supra note 12.

18. *Id.*

19. This invaluable source of timely information, including links to other newsletters, government reports, news articles, and studies comes out early every morning, five days a week. Farm Policy is written by Keith Good from Champaign, Illinois, and is made possible by the support of McLeod, Watkinson & Miller, a Washington D.C. law firm, well-known for their work on agricultural policy issues. To subscribe to Farm Policy, send an email to [farmpolicy-on@list.farm-policy.com](mailto:farmpolicy-on@list.farm-policy.com).

20. To subscribe, visit [www.foodandagpolicy.org](http://www.foodandagpolicy.org).

21. See, e.g., RALPH M. CHITE, CONG. RESEARCH SERV., R43076, THE 2013 FARM BILL: A COMPARISON OF THE SENATE-PASSED (S. 954) AND HOUSE-PASSED (H.R. 2642, H.R. 3102) BILLS WITH CURRENT LAW (2013). The CRS reports can be found by visiting the CRS web site or at the National Ag Law Center. See *Congressional Research Service Reports*, NAT'L AGRIC. LAW CTR., <http://nationalaglawcenter.org/crs> (last visited Aug. 23, 2013).

## III. EIGHT STAGES OF FARM BILL FRUSTRATION: 2012 TO 2014

A. *The Lessons from 2012*

The Farm Bill was supposed to be renewed in 2012,<sup>22</sup> and in the first half of the year, this looked possible. The Senate Agriculture Committee considered and passed a bill that was taken to the floor and passed by the full Senate.<sup>23</sup> The House Agriculture Committee deliberated over proposed legislation and also passed a farm bill in early June.<sup>24</sup> However, for the next six months, the House leadership, for a variety of political reasons, refused to bring the House committee bill to the floor for debate.<sup>25</sup> To further complicate matters, the 2008 Farm Bill expired on September 30, 2012, and the House took no action to extend its provisions.<sup>26</sup> It was not until the very end of 2012, when faced with the prospect of reverting to the permanent language of the 1938 and 1949 farm laws, that Congress acted.<sup>27</sup> In the first days of January 2013, a farm bill extension was crafted and included in the budget resolution funding the government through the end of September 2013.<sup>28</sup> In an interesting political step, Senate Minority Leader McConnell crafted the extension without the participation of agriculture committee leaders.<sup>29</sup> The failure of Congress to pass a new farm bill meant the new 113th Congress had to go back to the drawing board and start with a “clean slate,” although one clouded by the failings of 2012 and the underlying political tensions that made action then impossible.

22. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 1664.

23. Sarah Gonzalez, *Senate Ag Committee Passes Bipartisan Farm Bill with Regional Differences*, AGRI-PULSE (Apr. 26, 2012), <http://www.agri-pulse.com/Senate-Ag-Committee-passes-bipartisan-Farm-Bill-regional-differences-04262012.asp>; Ron Nixon, *Senate Passes Farm Bill with Bipartisan Support*, N.Y. TIMES, June 21, 2012, [http://www.nytimes.com/2012/06/22/us/politics/senate-passes-farm-bill-but-tougher-road-seen-in-house.html?\\_r=0](http://www.nytimes.com/2012/06/22/us/politics/senate-passes-farm-bill-but-tougher-road-seen-in-house.html?_r=0).

24. See Press Release, House Comm. on Agric., House Ag Committee Advances Farm Bill (July 12, 2012), available at <https://agriculture.house.gov/press-release/house-ag-committee-advances-farm-bill>.

25. See JIM MONKE ET. AL., CONG. RESEARCH SERV., R42442, EXPIRATION AND EXTENSION OF THE 2008 FARM BILL 1 (2013).

26. *Id.*

27. See *id.* (discussing the extension of 2008 farm bill provisions through the American Taxpayer Relief Act of 2012).

28. American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 701, 126 Stat. 2313, 2362-63 (2013).

29. Daniel Looker, *McConnell Plunges into Milk Policy*, AGRICULTURE.COM (Dec. 31, 2012, 9:45 PM), [http://www.agriculture.com/news/policy/mcconnell-plunges-into-milk-policy\\_4-ar28530](http://www.agriculture.com/news/policy/mcconnell-plunges-into-milk-policy_4-ar28530).



From a historical perspective, the enactment of farm bills has never been easy, but it has always happened eventually. On several occasions, the deadlines have slipped into the next year. For example, the 2008 Farm Bill started as the 2007 Farm Bill,<sup>30</sup> and there have been presidential vetoes with overrides necessary.<sup>31</sup> Several issues are perennially difficult, such as reform of the dairy program,<sup>32</sup> the sugar program,<sup>33</sup> and the costs of direct payments.<sup>34</sup> As a result, the ideals of compromise and moderation have always been present in farm bill debates, as well as the need for political trade-offs. For example, in 2002, the Conservation Security Program was retained in Conference Committee, in part in exchange for removing limits on captive supplies of livestock.<sup>35</sup> The reality is that farm bills have historically involved regional differences in addition to partisan divides and the 2014 bill proved to be no different.

The 2014 Farm Bill debate was made much more complicated by the divisions within the Republican Party, especially in the House where major divisions between the “tea party” right wing of the party and the House Republican leadership complicated action on many issues. The “revolution in the ranks” delayed action on the legislation, led to a bitter fight over separating the nutrition and farm portions, and ultimately closed the government for over two weeks in a futile attempt to defund the Affordable Care Act.<sup>36</sup> These political issues made it difficult to predict when floor action would take place let alone when the possible outcome would come about, and also illuminated what appeared to be divisions

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30. E.g., *2007 Farm Bill Issues and Analysis*, PURDUE UNIV., <http://www.agecon.purdue.edu/farmbill/> (last visited Aug. 23, 2014).

31. See, e.g., Charles Abbott, *House Overrides Bush Veto of U.S. Farm Bill*, REUTERS (May 21, 2008), <http://www.reuters.com/article/2008/05/21/us-bush-farmbill-idUSWBT00902120080521>.

32. See Press Release, John Boehner, Speaker of the House, *Boehner Urges Reform of Federal Dairy Programs in Farm Bill* (June 20, 2013), available at <http://www.speaker.gov/press-release/boehner-urges-reform-federal-dairy-programs-farm-bill>.

33. Kim Geiger, *U.S. Sugar Program Pitting Growers Against Soda and Candy Firms*, L.A. TIMES, July 6, 2012, <http://articles.latimes.com/2012/jul/06/business/la-fi-sugar-program-20120706>.

34. See generally Sara Sciammacco, *The Downfall of Direct Payments*, ENVTL. WORKING GRP. (May 1, 2013), <http://www.ewg.org/downfall-direct-payments> (describing the timeline of events in the historical controversy over direct farm payments).

35. See Press Release, Tom Harkin, U.S. Senator (May 1, 2002), available at <http://www.harkin.senate.gov/press/release.cfm?i=183257>.

36. See Brett LoGiurato, *Inside the GOP Civil War that Could Turn into a Debt Ceiling or Government Shutdown Disaster*, BUS. INSIDER (Sept. 17, 2013), <http://www.businessinsider.com/debt-ceiling-government-shutdown-obamacare-gop-fight-2013-9>; Ron Nixon, *Time Short, House Says It Seeks a New Farm Bill*, N.Y. TIMES, Sept. 24, 2013, [http://www.nytimes.com/2013/09/25/us/politics/time-short-house-says-it-seeks-new-farm-bill.html?\\_r=0](http://www.nytimes.com/2013/09/25/us/politics/time-short-house-says-it-seeks-new-farm-bill.html?_r=0).

within the House leadership between the Speaker and the Majority Leader.<sup>37</sup> The political irony in all of the House's inability to act on farm legislation for almost two years is that commodity and agriculture groups, for the most part, uniformly support Republicans for Congress (and President). However, the support, votes, and contributions from agriculture were insufficient to motivate Republicans to take action for two years on the most important farm legislation, or to avoid a costly shutdown of the government that had significant costs and impact on farmers and ranchers across the country.<sup>38</sup>

### B. 2013 Farm Bill Discussion Derailed in House

In a pattern reminiscent of 2012, the House Agriculture Committee, under the leadership of Chairman Lucas from Oklahoma, was able to take action and pass through committee a version of a farm bill. That version, H.R. 1947, passed on May 15, 2013 with a vote of thirty-six to ten.<sup>39</sup> The Senate Agriculture Committee, under the leadership of Chairman Stabenow from Michigan, passed its legislation, S. 954, on May 14, 2013 on a vote of fifteen to five.<sup>40</sup> The full Senate considered and passed S. 954 on June 10, 2013, on a vote of sixty-six to twenty-seven, leaving the ball once again in the House's court.<sup>41</sup>

What happened next was another of the unprecedented aspects of this farm bill's tortured path. When the House bill came up for floor consideration in mid-June, it was the subject of dozens of proposed amendments, some made in good faith to improve the bill and others arguably made in an effort to derail its passage.<sup>42</sup> After several days of legislative debate to consider and clear the

37. See Elyse Siegel, *John Boehner, Eric Cantor Split on Fiscal Cliff Deal*, HUFFINGTON POST (Jan. 2, 2013), [http://www.huffingtonpost.com/2013/01/02/john-boehner-eric-cantor\\_n\\_2395593.html](http://www.huffingtonpost.com/2013/01/02/john-boehner-eric-cantor_n_2395593.html) (providing an example of the divisions between the House leadership earlier in the year).

38. E.g., *Agribusiness Sector: PAC Contributions to Federal Candidates*, OPENSECRETS.ORG, <http://www.opensecrets.org/pacs/sector.php?txt=A&cycle=2014> (last visited Aug. 23, 2014).

39. *H.R. 1947 – Federal Agriculture Reform and Risk Management Act of 2013*, CONGRESS.GOV, <https://beta.congress.gov/bill/113th-congress/house-bill/1947/all-actions/?q=%7B&22search%22%3A%5B%22HR+1947%22%5D%7D> (last visited Aug. 23, 2014); see H.R. 1947, 113th Cong. (1st Sess. 2013).

40. *Senators Praise Stabenow and Cochran for Bipartisan 2013 Farm Bill*, U.S. SENATE COMM. ON AGRIC., NUTRITION & FORESTRY (May 21, 2013), <http://www.ag.senate.gov/newsroom/press/release/senators-praise-stabenow-and-cochran-for-bipartisan-2013-farm-bill->; see Agriculture Reform, Food, and Jobs Act of 2013, S. 954, 113th Cong. (1st Sess. 2013) (as passed by Senate Agriculture Committee and sent to full Senate).

41. 159 CONG. REC. S4043, S4051–52 (daily ed. June 10, 2013); see S. 954.

42. See, e.g., Billy House, *House Farm Bill Suffers Stunning Defeat as Finger Pointing Begins*, NAT'L J., June 20, 2013, <http://www.nationaljournal.com/congress/house-farm-bill-suffers-stunning-defeat-as-finger-pointing-begins-20130620>.

amendments approved for a vote under the rule by the Rules Committee regulating floor consideration, the matter came down to a series of critical amendments relating to the “reform” of the SNAP program.<sup>43</sup> These amendments included a proposal to require drug testing for participants<sup>44</sup> and the Southerland amendment to allow states to reestablish pilot programs to require SNAP recipients to seek work or job training.<sup>45</sup> The amendments passed, after bitter floor debate, but led Democrat leaders, such as Representative Peterson, ranking member and former Chair of the Agriculture Committee, to warn the majority that many Democrats—who had formerly indicated a willingness to vote for the bill on final passage—would not support it with the Tea Party-driven SNAP reforms.<sup>46</sup> His warning was born out when, to the surprise of most people, including Chairman Lucas, the House farm bill failed on the vote for final passage 195 to 234.<sup>47</sup> Of the sixty-two Republicans who voted against final passage, all had voted to approve the SNAP reforms, most notably the Southerland Amendment authorizing states to reestablish work requirements.<sup>48</sup> This fact infuriated many members who believed the action—encouraged by Majority Leader Cantor who took to the floor in a last minute effort to endorse Southerland’s amendment—led directly to defeat of the bill.<sup>49</sup>

Headlines over the next few days reflected the disbelief in what had just happened and in the House’s ability to snatch defeat from the jaws of victory.<sup>50</sup> The question then became what would happen next to try to salvage some action on the farm bill, with some even suggesting the House go to conference with the Senate on the Senate bill.<sup>51</sup>

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43. See H.R. REP. NO. 113-117, at 1–13 (2013) (summarizing the clearance of the amendments for a vote under the rules and listing the amendments to be considered).

44. See *id.* at 38 (containing House Amendment 196, the Hudson Amendment, numbered as amendment number 22).

45. See *id.* at 95 (containing House Amendment 231, the Southerland Amendment, numbered as amendment number 102).

46. Michael McAuliff et al., *Food Stamp Cuts Derail Farm Bill*, HUFFINGTON POST (June 20, 2013), [http://www.huffingtonpost.com/2013/06/20/food-stamp-cuts\\_n\\_3474102.html](http://www.huffingtonpost.com/2013/06/20/food-stamp-cuts_n_3474102.html).

47. Christopher Doering, *House Votes Down Farm Bill*, DES MOINES REG., June 21, 2013, at 9B.

48. See *id.*

49. See generally House, *supra* note 42.

50. E.g., Ron Nixon, *Farmers Say Bill’s Defeat Complicates Planning for Planting Season*, N.Y. TIMES, June 21, 2013, [http://www.nytimes.com/2013/06/22/us/farmers-say-defeat-of-house-bill-complicates-planning-for-planting-season.html?\\_r=0](http://www.nytimes.com/2013/06/22/us/farmers-say-defeat-of-house-bill-complicates-planning-for-planting-season.html?_r=0).

51. Christopher Doering, *GOP Faces Farm Bill Quandary*, DES MOINES REG., June 27, 2013, at 8B.

*C. House Salvages “Farm Bill” by Jettisoning Nutrition Title*

Once House leaders came out of the shock of failing to pass the farm bill, the issue then became what to do next.<sup>52</sup> At this point, another Tea Party-originated idea emerged as the possible lifeline for those promising to reform the “bloated” farm bill—separating the farm provisions from the nutrition and food stamp related sections.<sup>53</sup> The simplistic argument made for the action was that the cost of food stamps had grown to almost eighty percent of the cost of the farm bill and that this was somehow too much, although no explanation was given concerning the basis for an “equitable” allocation of spending; for example, why did this not mean more needed to be spent on the farm part?<sup>54</sup> The sad reality was that by 2013 the recession had driven food stamp, or SNAP, enrollments to 47.8 million people, an increase of seventy percent since 2008.<sup>55</sup> Households receiving the benefits often include children, the elderly, or people with disabilities.<sup>56</sup> But the idea of this “reform” was the only exit available to the House leadership, so on July 11, 2013, the full House considered and passed H.R. 2642.<sup>57</sup> It was a straight party line vote with all Democrats voting against the legislation because it failed to include a nutrition title.<sup>58</sup>

*D. What to Do Next: Going to Conference with the Senate*

The idea of separating the nutrition program and farm related programs was widely criticized as a bad idea from almost all fronts—including the farm and agriculture community, the hunger community, and political observers—who

52. *Id.*

53. Jonathan Weisman & Ron Nixon, *House Republicans Push Through Farm Bill, Without Food Stamps*, N.Y. TIMES, July 11, 2013, <http://www.nytimes.com/2013/07/12/us/politics/house-bill-would-split-farm-and-food-stamp-programs.html?pagewanted=all>.

54. *Id.*; Brad Plumer, *Is It Time For Food Stamps to Come Out of the Farm Bill?*, WASH. POST, July 10, 2013, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/10/is-it-time-for-food-stamps-to-come-out-of-the-farm-bill/>.

55. Aimee Picchi, *More Americans Than Ever Using Food Stamps*, MSN MONEY (Mar. 28, 2013), <http://money.msn.com/now/more-americans-than-ever-using-food-stamps>; see also *SNAP Annual Persons Participating—Average*, Food & Nutrition Serv., USDA, <http://www.fns.usda.gov/pd/15SNAPpartPP.htm> (last visited Aug. 23, 2014).

56. See, e.g., *Overview*, USDA, <http://www.fns.usda.gov/pd/overview> (last modified June 6, 2014).

57. *Farm Bill*, HOUSE COMM. ON AGRIC., <http://agriculture.house.gov/farmbill> (last visited Aug. 23, 2014).

58. *H.R. 2642 – Agricultural Act of 2014*, CONGRESS.GOV, <https://beta.congress.gov/bill/113th-congress/house-bill/2642/actions?q=%7B%22search%22%3A%5B%22H.R.+2642%22%5D%7D> (last visited Aug. 23, 2014); Christopher Doering, *House OKs Smaller Farm Bill*, DES MOINES REG., July 12, 2013, at 8B.

noted the combination of the two components since the 1970s had created a shared political justification for farm bill support in rural and urban districts.<sup>59</sup> The Senate leadership said it would not consider a farm bill that did not include a nutrition title, and the Administration noted the same, with the President promising to veto any farm bill that did not include food stamps.<sup>60</sup> The Senate appointed conferees for a farm bill conference, prior to the August recess, and encouraged the House leaders to do the same so staff negotiations could begin.<sup>61</sup> The necessity of action was heightened because there were only nine working legislative days scheduled for September prior to the end of the current farm bill extension.<sup>62</sup> Rather than appoint conferees or take any action to make use of the August recess, House leadership, primarily through Majority Leader Cantor, promised that when the House returned in early September, it would consider a nutrition-only bill—thus completing the other half of the farm bill.<sup>63</sup> However, the Tea Party budget-driven reform demands were reflected when Cantor made a new promise to seek forty billion dollars in cuts to SNAP over ten years, doubling the twenty billion dollars included in the first House bill, and ten times the four billion dollars in cuts in the Senate bill.<sup>64</sup> Predictably, this doubling down of proposed nutrition cuts led to outcries the Senate would never accept this heartless and illogical response to the hunger situation in America.<sup>65</sup> The extent of America's food insecurity was illustrated in early September when the USDA released its annual report "Household Food Security in the United States in 2012,"

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59. Editorial, *Farm, Food Bills Both Need Debate: GOP Must Square Rising Ag Subsidies with Food Stamp Cuts*, DES MOINES REG., July 21, 2013, at 10P.

60. See CHN: *House Removes SNAP and Other Nutrition Programs from Farm Bill to Enable Passage; Senate Sends Its Bill to House to Try to Force Conference Committee Action*, COAL. ON HUMAN NEEDS (July 22, 2013), [http://www.chn.org/human\\_needs\\_report/chn-house-removes-snap-and-other-nutrition-programs-from-farm-bill-to-enable-passage-senate-sends-its-bill-to-house-to-try-to-force-conference-committee-action/](http://www.chn.org/human_needs_report/chn-house-removes-snap-and-other-nutrition-programs-from-farm-bill-to-enable-passage-senate-sends-its-bill-to-house-to-try-to-force-conference-committee-action/).

61. See *Senate Names Negotiators*, supra note 2; Doering, *GOP Faces Farm Bill Quandry*, supra note 51.

62. Ed O'Keefe, *2013 House, Senate Calendars Released*, WASH. POST, Nov. 30, 2012, <http://www.washingtonpost.com/blogs/2chambers/wp/2012/11/30/2013-house-calendar-slightly-longer-than-2012/>.

63. See Memorandum from Eric Cantor, House Majority Leader, U.S. House of Representatives, to House Republicans (Sept. 6, 2013), available at <http://gretawire.foxnewsinsider.com/2013/09/06/click-to-read-the-memo-from-majority-leader-cantor-to-the-house-republicans-about-the-upcoming-legislative-agenda/>; see also *What's On Deck this Fall for Farm Bill and Appropriations*, NAT'L SUSTAINABLE AGRIC. COAL. (Sept. 6, 2013), <http://sustainableagriculture.net/blog/fall-congressional-preview/>.

64. See Editorial, *Mindlessly Gutting Food Stamps*, N.Y. TIMES, Sept. 8, 2013, <http://www.nytimes.com/2013/09/09/opinion/mindlessly-gutting-food-stamps.html>.

65. See generally *id.*

documenting that almost fifteen percent of Americans routinely experience difficulty affording food—the problem SNAP is designed to address.<sup>66</sup>

#### E. *Can the Situation Be Any More Complicated?*

In light of this political history, farm bill consideration and passage in September was considered by many an unreachable goal. This led some observers to suggest Congress just replay the 2012 action of extending the existing legislation—perhaps for two years this time.<sup>67</sup> The idea of an extension had been rejected previously by Senate leaders and by Secretary Vilsack.<sup>68</sup> Observers noted an extension would capture none of the budgetary reforms (or program improvements) made in earlier legislative efforts.<sup>69</sup> However, even in the face of the political opposition, the potential for an extension was real, both as a practical and perhaps necessary political step. Other complicating factors made Congressional consideration less likely, adding to the support for an extension, including the impending debate over the funding of the government and the need to raise the debt ceiling to avoid a government shutdown and default. As events in late September would reveal, the price being demanded by Tea Party members for either of these actions was the defunding or repeal of healthcare reforms.<sup>70</sup> These budgetary issues served as a reminder that action on the farm bill is always part of the larger legislative agenda.

If the legislative schedule for September was not already full enough, the political crisis involving Syria and the use of chemical weapons added another complication and consumed several days of limited time in September for floor action.<sup>71</sup> But the Russian-brokered and United Nations-supported compromise

66. ALISHA COLEMAN-JENSEN ET AL., ECON. RESEARCH SERV., USDA, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2012, at 6 (2013), available at <http://www.ers.usda.gov/publications/err-economic-research-report/err155.aspx#.U7SMYig8nfB>.

67. Allison Floyd, *Lawmakers Must Decide Whether to Extend Farm Bill*, GROWING GEORGIA (Dec. 10, 2013), <http://growinggeorgia.com/features/2013/12/lawmakers-must-decide-whether-extend-farm-bill/>.

68. See, e.g., Ed O'Keefe, *Farm Bill Won't be Approved Until January*, WASH. POST, Dec. 11, 2013, <http://www.washingtonpost.com/blogs/post-politics/wp/2013/12/11/farm-bill-wont-be-approved-until-January/>.

69. Diane Katz & Emily Goff, *Farm Bill Extension: Dodging Agriculture Reform Will Not Do*, HERITAGE FOUND. (Aug. 1, 2012), <http://www.heritage.org/research/reports/2012/08/farm-bill-extension-dodging-agriculture-reform-will-not-do>.

70. Fredreka Schouten, *Tea Party Groups Take Aim at Farm Bill, Republicans*, USA TODAY, Oct. 23, 2013, <http://www.usatoday.com/story/news/politics/2013/10/23/tea-party-farm-bill-showdown/3172141/>.

71. See generally Larry Dreiling, *Congress, Primed on Syria, Readies for Farm Bill Fight*, HIGH PLAINS J., Sept. 16, 2013, <http://www.hpj.com/archives/2013/sep13/sep16/0910Farm-BillwrapupLDdbsr.cfm#.U7ST-yg8nfA>.

relieved Congress from days of debate over the President's request for a vote on his proposed military action.<sup>72</sup> The issue still absorbed considerable legislative energy, further delaying action on domestic legislation, like the farm bill—a reminder that domestic issues often take a backseat to international affairs.

#### F. *The House Passes a Nutrition Bill*

The farm bill got back on track when, as promised, the House leadership brought to the floor, in mid-September, a nutrition bill developed by a team assembled by Majority Leader Cantor.<sup>73</sup> The bill included the various amendments that had sunk the House farm bill in June, such as drug testing and work requirements, repeal of categorical eligibility provisions, and a restriction on the ability of governors to seek waivers from the time limits on SNAP eligibility when faced with high unemployment rates.<sup>74</sup> The bill also imposed thirty-nine billion dollars in cuts for the SNAP program over ten years.<sup>75</sup> It passed September 19 on a vote of 217 to 210, with no Democrats voting for passage.<sup>76</sup>

#### G. *Tea-Party Extremists Shut Down the Government and the Farm Bill Expires*

As if the political situation in Washington was not complicated enough, a small group of Republicans undertook a futile effort to defund the President's healthcare reforms, and in the process, blocked Congressional efforts to pass a Continuing Resolution to fund the government after September 30, resulting in a government shutdown.<sup>77</sup> Lost in most of the news coverage over the shutdown was the fact that the extension of the farm bill also expired on September 30, meaning that when October started there was no continuation authority for many

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72. See, e.g., Terry Atlas et al., *Obama Delays Syria Strike, Heading Off Fight in Congress*, BLOOMBERG (Sept. 12, 2013), <http://www.bloomberg.com/news/2013-09-11/obama-calls-for-pause-in-authorizing-military-strikes-on-syria.html>; Michael D. Shear et al., *Obama Backs Idea for Syria to Cede Control of Arms*, N.Y. TIMES, Sept. 9, 2013, [http://www.nytimes.com/2013/09/10/world/middleeast/obama-embraces-russian-proposal-on-syria-weapons.html?hp&\\_r=0](http://www.nytimes.com/2013/09/10/world/middleeast/obama-embraces-russian-proposal-on-syria-weapons.html?hp&_r=0).

73. Peter Kasperowicz & Erik Wasson, *House Votes to Cut Food Stamps by \$39 Billion*, HILL (Sept. 19, 2013, 10:09 PM), <http://thehill.com/blogs/floor-action/house/323511-house-votes-to-cut-39-billion-from-food-stamp-program>.

74. Nutrition Reform and Work Opportunity Act of 2013, H.R. 3102, 113th Cong. (1st Sess. 2013).

75. Kasperowicz & Wasson, *supra* note 73.

76. *Id.*

77. See Schouten, *supra* note 70.

farm-related programs.<sup>78</sup> The failure of Congress to extend the farm bill authority meant a number of programs, such as export promotion and some conservation initiatives, were unfunded.<sup>79</sup> Failure to fund the government also meant the United States had to stop making payments to Brazil which it had negotiated in an earlier World Trade Organization cotton dispute.<sup>80</sup> The government shutdown lasted for sixteen days and was further complicated by being linked with the debate over increasing the nation's debt ceiling.<sup>81</sup> Action was needed by October 17 to prevent an unprecedented U.S. government default.<sup>82</sup> As part of the House Republicans' strategy to address the effects of the shutdown, they proposed and passed a series of small funding bills to address topics on which the public had expressed concern.<sup>83</sup> The impact of the shutdown on the availability of funding for the Women, Infants, and Children program and the impact of mothers having no funds to buy baby formula was an example of this approach, as the House considered and passed House Joint Resolution 75, sponsored by Representative Aderholt of Alabama, only to have it rejected by the Senate Democrats.<sup>84</sup>

Fortunately for the nation, leaders in the Senate were able to craft a last minute compromise to fund the government until mid-January and increase the debt limit until mid-February.<sup>85</sup> The Senate passed the bill by a vote of eighty-

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78. Christopher Doering, *Farm Bill Expires Today; Frustration Persists*, DES MOINES REG., Oct. 1, 2013, at 7B.

79. See EXEC. OFFICE OF THE PRESIDENT, THE ECONOMIC IMPORTANCE OF PASSING A COMPREHENSIVE FOOD, FARM, AND JOBS BILL 3-4 (2013), available at [http://www.whitehouse.gov/sites/default/files/docs/farm\\_bill\\_report\\_11202013.pdf](http://www.whitehouse.gov/sites/default/files/docs/farm_bill_report_11202013.pdf) (describing the programs which depended on the passage of a farm bill).

80. Tom Murphy, *Brazil Initiates New Study on Possible Trade Retaliation Against U.S.*, WALL ST. J., Oct. 3, 2013, <http://online.wsj.com/article/BT-CO-20131003-711389.html>. Brazil created a task force to examine its options for trade retaliation against the U.S. in connection with the cotton program, both because the U.S. stopped making the negotiated \$147 million annual payments and also because the new farm bill proposals did not make any significant changes in the cotton program (or made it worse) in terms of whether it is World Trade Organization-compliant. *Id.*

81. See Tim Cohen et al., *Obama Signs Bill to End Partial Shutdown, Stave Off Debt Ceiling Crisis*, CNN POLITICS (Oct. 17, 2013), <http://www.cnn.com/2013/10/16/politics/shutdown-showdown/>.

82. See *id.*

83. See, e.g., Pete Kasperowicz, *House Passes 6th, 7th 'Mini' Spending Bills*, HILL (Oct. 4, 2013), <http://thehill.com/blogs/floor-action/house/326707-house-sends-sixth-mini-spending-bill-to-the-senate-funding-fema>.

84. See *id.*; see also H.R.J. Res. 75, 113th Cong. (1st Sess. 2013) (“[m]aking continuing appropriations for the Special Supplemental Nutrition Program for Women, Infants, and Children for fiscal year 2014”).

85. Jonathon Weisman & Ashley Parker, *Republicans Back Down, Ending Crisis Over Shutdown and Debt Limit*, N.Y. TIMES, Oct. 16, 2013, <http://www.nytimes.com/2013/10/17/us/congress-budget-debate.html?pagewanted=all>.



one to eighteen, and Speaker Boehner, to his credit, allowed the bill to come to the floor where it received strong bipartisan support, though over 140 Republicans voted against it.<sup>86</sup> As a result, government offices reopened on October 17 and the work of the nation was able to resume—for a few months.<sup>87</sup>

*H. House Conferees Appointed, Three Months of Negotiations Begin, and a Bill Emerges*

While the government was shut down and the Senate, House, and President were engaged in fierce talks about resolving the mess, there was promising action on the farm bill.<sup>88</sup> On October 12, the Speaker and Minority Leader appointed the House farm bill conferees.<sup>89</sup> The committee was unusually large because, in addition to twelve members from the House Agriculture Committee, the Speaker also appointed two members from the House Foreign Affairs and Ways and Means Committees, as well as Representative Southerland as a leadership appointee.<sup>90</sup> The Democrats appointed twelve members to the conference, including Representative Fudge of Ohio, a fierce advocate for SNAP, who had managed the Democratic opposition to the House passage of a separate nutrition bill.<sup>91</sup> Her addition was seen as an effort to counterbalance the inclusion of Representative Southerland, whose controversial amendments to restrict SNAP access were credited with the defeat of the original House farm bill in June.<sup>92</sup>

The conferees were faced with resolving a series of critical differences between the House and Senate bills, and the negotiations were complicated by

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86. *See id.*

87. Michael D. Shear, *Government Gets Back to Business, but Effects of the Shutdown Linger*, Oct. 17, 2013, N.Y. TIMES, [http://www.nytimes.com/2013/10/18/us/politics/government-reopens.html?\\_r=1&](http://www.nytimes.com/2013/10/18/us/politics/government-reopens.html?_r=1&).

88. *See* Press Release, House Comm. on Agric., *supra* note 2 (announcing the appointment of Conference Committee members); *see also* *Boehner, Pelosi Name Farm Bill Conferees*, HAGSTROM REPORT (Oct. 12, 2013, 1:31 PM), [http://www.hagstromreport.com/2013news\\_files/2013\\_1012\\_boehner-pelosi-name-farm-bill-conferees.html](http://www.hagstromreport.com/2013news_files/2013_1012_boehner-pelosi-name-farm-bill-conferees.html).

89. *See* Press Release, House Comm. on Agric., *supra* note 2; *see also* *Boehner, Pelosi Name Farm Bill Conferees*, *supra* note 88.

90. *See* Press Release, House Comm. on Agric., *supra* note 2; *see also* *Boehner, Pelosi Name Farm Bill Conferees*, *supra* note 88.

91. *See* Press Release, House Comm. on Agric., *supra* note 2; *see also* *Boehner, Pelosi Name Farm Bill Conferees*, *supra* note 88.

92. Keith Good, *Sunday Update: Farm Bill-House Names Conferees*, FARMPOLICY.COM (Oct. 13, 2013, 5:43 AM), <http://farmpolicy.com/2013/10/13/sunday-update-farm-bill-house-names-conferees/> (describing the reasoning behind the appointment of Representative Fudge); *see also* Jerry Hagstrom, *Ready to Rumble Over the Farm Bill*, NAT'L J., Oct. 20, 2013, <http://www.nationaljournal.com/outside-influences/ready-to-rumble-over-the-farm-bill-20131020>.

the acrimony remaining from the October government shutdown. Another significant factor in the discussions was the overarching budget concerns and the expectations as to the type of budget savings that might be possible from the farm bill.<sup>93</sup> In early October, the Congressional Research Service issued a report concerning how the Congressional Budget Office had scored the savings from the House and Senate bills.<sup>94</sup>

The Conference Committee held what proved to be its only public meeting on October 30, which provided the members the opportunity to make statements concerning their respective priorities.<sup>95</sup> What happened over the next three months reflects the broad authority delegated to committee leaders. The committee chairs, Representative Lucas and Senator Stabenow, and the ranking members, Representative Peterson and Senator Cochran, along with their staffs engaged in closed-door discussions, negotiations, and deliberations.<sup>96</sup> Periodically, one leader would issue a statement to the effect that progress was being made and the Conference Committee should be prepared to vote.<sup>97</sup> But as December faded away and a new year loomed—meaning the possible need for another extension of the previous law—no announcements were forthcoming from the conference leaders. In fact, if anything, the process appeared to become more controversial as new issues and obstacles arose, such as the growing resistance to any meaningful reform in the actively engaged payment limitation language—which both bodies had previously accepted—and Speaker Boehner noting there would be no action unless the “Soviet-style” dairy program in the Senate bill was removed.<sup>98</sup> As January slipped away, a sense of fatigue and frustration seemed to seep in—not just to Congress but to the farm community which began looking forward to spring planting. But in the last week of January, Conference Committee leaders finally revealed their compromise, with both sides scheduling votes in short order with little time for debate or reflection.<sup>99</sup> On January 29, 2014, the House took

93. See JIM MONKE, CONG. RESEARCH SERV., R 42442, BUDGET ISSUES SHAPING A FARM BILL IN 2013, at 1 (2013).

94. See *id.* at 12–14.

95. Hagstrom, *Farm Bill Conference Begins*, *supra* note 5; see also Christopher Doering, *Grassley Expects Farm Bill Before Year's End*, DES MOINES REG., Oct. 30, 2013, at 8B.

96. See Doering, *House Passes Five-Year Farm Bill*, *supra* note 6; see also Ron Nixon, *No Deal, but Hint of Progress as Lawmakers Seek Farm Bill*, N.Y. TIMES, Dec. 12, 2013, at A18.

97. See, e.g., Nixon, *No Deal*, *supra* note 96.

98. See, e.g., Brett Neely, *Dispute Between Peterson and Boehner Part of Latest Farm Bill Snag*, MPR NEWS (Jan. 10, 2014), <http://blogs.mprnews.org/capitol-view/2014/01/dispute-between-peterson-and-boehner-part-of-latest-farm-bill-snag/>; Jesse Newman, *Agriculture Groups Fight Farm Bill's Subsidy Limits*, WALL ST. J., Dec. 10, 2013, <http://online.wsj.com/news/articles/SB1000142405270230330204579248530580248424>.

99. E.g., Ed O'Keefe, *Negotiators Unveil New Farm Bill; Vote Expected This Week*, WASH. POST, Jan. 27, 2014, <http://www.washingtonpost.com/blogs/post-politics/wp/2014/01/27/>

up for consideration and passed the compromise bill by a vote of 251 to 166.<sup>100</sup> On February 3, 2014, the Senate began its deliberations<sup>101</sup> and passed the bill the next day by a vote of sixty-eight to thirty-two.<sup>102</sup> On February 7, 2014, the President flew to East Lansing, Michigan, and in a ceremony at Michigan State University, with Democratic leaders including Senate Chair Stabenow at his side, signed Public Law Number 113-333 into law; the farm bill saga was over.<sup>103</sup>

#### IV. TWELVE KEY PROVISIONS IN THE 2014 FARM BILL DEBATE

Identifying the key issues in the farm bill debate is, in part, an exercise in highlighting the legislative differences to be resolved and, in part, a reflection of what the observer feels is most important. The range and diversity of issues considered in the farm bill cover the breadth of America's food system and contribute to the political challenges of its consideration. This diversity also means an issue important in one region or to one reader may not be significant to others. With that in mind, the following discussion of issues selected as important is not meant to be exclusive or to minimize issues not discussed. Those interested in seeing the priorities of the major farm organizations on the issues before the Conference Committee should look at the letters released on October 15 by the National Farmers Union (NFU)<sup>104</sup> and the American Farm Bureau Federation (AFBF).<sup>105</sup> The letters provide detailed lists of the farm bill topics on which the organizations took positions, with specific requests of the conferees as to which version of legislation to support.<sup>106</sup>

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negotiators-unveil-new-farm-bill-vote-expected-this-week/

100. See 160 CONG. REC. H1485-1500 (daily ed. Jan. 29, 2014) (including the discussion on H.R. 2642 and the vote taken).

101. 160 CONG. REC. S665 (daily ed. Feb. 3, 2014) (statement of Sen. Harry Reid).

102. See 160 CONG. REC. S736 (daily ed. Feb. 4, 2014) (including the vote taken).

103. Christopher Doering, *Delayed Farm Bill Signed in Michigan*, DES MOINES REG., Feb. 7, 2014, <http://www.desmoinesregister.com/story/money/agriculture/2014/02/08/delayed-farm-bill-signed-in-michigan/5300639/>; Lindsay Holst, *The President Signs the Farm Bill: "A Jobs Bill, an Innovation Bill, a Research Bill, and a Conservation Bill,"* WHITE HOUSE BLOG (Feb. 7, 2014, 3:00 PM), <http://www.whitehouse.gov/blog/2014/02/07/president-signs-farm-bill-jobs-bill-innovation-bill-research-bill-and-conservation-b>.

104. See Letter from Roger Johnson, President, Nat'l Farmers Union, to Senator Debbie Stabenow, Chairwoman, Senate Comm. on Agric., Nutrition & Forestry, et al. (Oct. 15, 2013), available at <http://www.agri-pulse.com/uploaded/NFU-FarmBill-Conference-10-15-2013.pdf>.

105. See Letter from Bob Stallman, President, Am. Farm Bureau Fed'n, to Members of the Farm Bill Conference Comm. (Oct. 15, 2013), available at <http://www.agri-pulse.com/uploaded/AFBF-farmbill-conference-10-15-2013.pdf>.

106. See Letter from Roger Johnson, *supra* note 104; see also Letter from Bob Stallman, *supra* note 105.

A. *Re-linking Crop Insurance to Conservation Compliance*

Without question, the most significant farm bill issue relating to soil conservation and environmental issues concerned the fight over re-linking conservation compliance with eligibility for the extensive public subsidies of crop and revenue insurance.<sup>107</sup> The Senate bill included the linkage, and Chair Stabenow noted it as a key priority for the final bill.<sup>108</sup> On the other hand, the House bill did not include any reference to cross compliance and Chairman Lucas, who led the conference discussions, is a strong opponent of the provision.<sup>109</sup> Conservation compliance is much more than a philosophical issue about stewardship—it goes to the heart of the public justifications for providing billions of dollars of support to agriculture. If the 2014 Farm Bill ended farm direct payments and did not re-link compliance to crop insurance, it would mean there would be no provision under federal farm law requiring those who obtain subsidized crop insurance to take any measures relating to soil conservation to be eligible—no more sod-buster, no more swampbuster, and no more required conservation plans on highly erodible land. The concerns of many groups—farmers and conservationists alike—is that the lack of connection would mean crop insurance eligibility would drive both the conversion of grasslands to row crops and soil exploitation. Early in the summer of 2013, an unusual coalition of conservation and farm groups entered into a peace treaty of sorts under which the groups—including the AFBF—agreed to support a modified version of cross compliance in exchange for a commitment that the members would not support efforts to further restrict crop insurance eligibility—such as means testing or stronger payment limitations.<sup>110</sup> The Senate bill was still amended to include a limited form of means testing.<sup>111</sup>

107. See MEGAN STUBBS, CONG. RESEARCH SERV., R42459, CONSERVATION COMPLIANCE AND U.S. FARM POLICY 9–10 (2013) (describing the general background of the debate over linking crop insurance to conservation compliance).

108. *Historic Farm Bill Conservation Pact Adopted by Senate Agriculture Committee with Overwhelming Support*, U.S. SENATE COMM. ON AGRIC., NUTRITION & FORESTRY (May 15, 2013), <http://www.ag.senate.gov/newsroom/press/release/historic-farm-bill-conservation-pact-adopted-by-senate-agriculture-committee>.

109. Press Release, House Comm. on Agric., Lucas Applauds American Farm Bureau's Opposition to Linking Conservation Compliance to Crop Insurance (Oct. 9, 2013) [hereinafter Press Release, *Lucas Applauds AFB*], available at <http://agriculture.house.gov/press-release/lucas-applauds-american-farm-bureaus-opposition-linking-conservation-compliance-crop>.

110. STUBBS, *supra* note 107, at 9 (citing *Groups Call for Conservation Compliance Compromise*, NAT'L ASS'N OF CONSERVATION DISTS. (May 6, 2013), <http://www.nacdnet.org/news/newsroom/2013/groups-call-for-conservation-compliance-compromise>).

111. See Nancy Marshall-Genzer, *The Meaning Behind Means Testing for Crop Insurance*, MARKETPLACE (June 11, 2013), <http://www.marketplace.org/topics/sustainability/meaning-behind-means-testing-crop-insurance>; see also, discussion Part IV.8, *infra*.

When the House farm bill was first considered in June, Congressman Fortenberry introduced conservation cross compliance, Amendment No. 13, and it was subsequently approved for floor debate.<sup>112</sup> After some very brief remarks, what happened next is somewhat mysterious, but undoubtedly reflects Chairman Lucas' opposition to the amendment and his desire to avoid a floor vote.<sup>113</sup> Congressman Fortenberry said:

In addition, conservation compliance has resulted in a significant reduction in the annual loss of wetlands. I believe this is a strategy that has worked. Given some late-hour complications that have arisen, I'm going to ask that the amendment be withdrawn; but I hope that we can look forward to continuing dialogue with the chairman, particularly since this is in the underlying Senate bill.<sup>114</sup>

No vote was taken on the amendment, and it was never heard from again.

In another turn of events relating to conservation compliance, both the Farm Policy and the AGree newsletter reported that the board of the AFBF voted to remove itself from the highly publicized coalition of farm and environmental groups formed in May.<sup>115</sup> In explaining the action, the AFBF said that this was an "evolving issue" and that they had changed their mind.<sup>116</sup> Chairman Lucas received the AFBF reversal on conservation compliance as great news and it was greeted as support for his opposition to the idea.<sup>117</sup> Secretary Vilsack stated the Administration's strong support for including conservation compliance in the bill. In an interview he noted,

We have got to have a deal between producers and the taxpayer, which is the taxpayer is willing to provide help and assistance on crop insurance and to provide a safety net, but in exchange they have to be assured that farmers will continue to be good stewards and continue to be focused on conservation. We've had that deal for many, many, many years with direct payments. We had that

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112. 159 CONG. REC. H3868-70 (daily ed. June 19, 2013) (introducing Amendment No. 13).

113. See *id.* at H3870 (noting the withdrawal of the amendment).

114. *Id.*

115. Keith Good, *Farm Bill-Budget Issues; and, Biofuels*, FARMPOLICY.COM (Oct. 10, 2013, 3:35 AM), <http://farmpolicy.com/2013/10/10/farm-bill-budget-issues-and-biofuels-thursday/#more-13888>; *AFBF Walks Away from Conservation Compliance Coalition—Agri-Pulse*, AGREE (Oct. 9, 2013), <http://foodandagpolicy.org/news/story/afbf-walks-away-conservation-compliance-coalition-agri-pulse>.

116. See *AFBF Walks Away from Conservation Compliance Coalition—Agri-Pulse*, *supra* note 115.

117. See Press Release, *Lucas Applauds AFB*, *supra* note 109.

deal before direct payments with crop insurance. It seems to me that we need to continue that arrangement.<sup>118</sup>

When the conference bill was released, the big news was that conservation compliance for crop insurance had survived and was included.<sup>119</sup> The new provision, which includes a modified process for determining violations and penalties—a compromise crafted to respond to the concerns of farmers in the Dakotas—is found at Section 2611 of the Act.<sup>120</sup>

### B. Expanding Crop and Revenue Insurance

Whether from the perspective of producers or government expenditures, the most significant issues in the farm bill debate concerned the provisions relating to expanding and modifying crop insurance and the related changes made in direct farm program payments. In simplest terms, the 2014 Farm Bill is designed to end direct payments—thus saving approximately five billion dollars per year—and complete the shift of government support for commodity production to a “safety net” constructed of an expanded and enriched set of crop insurance policies.<sup>121</sup> Of course this simple explanation cannot capture the nuance and regional differences reflected in these actions. It is on these issues that the differences between the Senate and House bills were perhaps most significant, in large part, because the bodies chose to follow different approaches in structuring the programs, meaning the benefits are experienced differently depending on the crop or region involved. An explanation of these differences is beyond the scope of this Article, but in a nutshell, here is what is going on in the legislation.

Both the Senate and House repealed the current system of counter-cyclical payments and replaced them with new counter-cyclical price programs.<sup>122</sup> In the Senate, they were replaced with adverse market payments while in the House they were replaced by price loss coverage.<sup>123</sup> Both the House and Senate re-

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118. Keith Good, *Farm Bill Issues: Water Resources Bill; and, Immigration*, FARMPOLICY.COM (Oct. 21, 2013, 3:19 AM), <http://farmpolicy.com/2013/10/21/farm-bill-issues-water-resources-bill-and-immigration-monday/>.

119. See H.R. REP. NO. 113-333, at 419–20 (2014) (Conf. Rep.) (describing the adoption of the Senate amendment requiring conservation compliance on highly erodible lands and wetlands).

120. See generally *id.* at 116 (stating the amendments to the statutory provisions regarding violations and penalties).

121. Doering, *House Passes Five-Year Farm Bill*, *supra* note 6.

122. H.R. REP. NO. 113-333, at 11; see also Sciammacco, *supra* note 34.

123. FOOD & AGRIC. POL’Y RESEARCH INST., UNIV. OF MO., FAPRI-MU REPORT NO. 06-13, IMPACTS OF SELECTED PROVISIONS OF THE HOUSE AND SENATE FARM BILLS 5, 7 (2013), available at [http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI\\_MU\\_Report\\_06\\_13.pdf](http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI_MU_Report_06_13.pdf).

placed the current Average Crop Revenue Election with new revenue-based programs also known as shallow loss coverage.<sup>124</sup> In the Senate, it was replaced with agricultural risk coverage.<sup>125</sup> In the House, it was replaced with revenue loss coverage.<sup>126</sup> In the Senate, the payments were based on historical planting or base acres, while in the House, the payments were based on planted acreage.<sup>127</sup> In addition, both the House and Senate bills included a new Supplemental Coverage Option (SCO), an additional protection producers can purchase to cover the deductible under shallow loss programs, with payments based on county yields.<sup>128</sup>

In late September, the Food Policy Research Institute at the University of Missouri issued a detailed report comparing the House and Senate proposals with a great deal of detail and estimates on the costs of the various forms of crop and revenue insurance.<sup>129</sup> The estimated costs from the report revealed the significant cost differences and the regional variations as to how various crops were treated under the different proposals.<sup>130</sup> One key issue in resolving the differences between the House and Senate versions of the expanded crop insurance provisions related to the costs of the programs.<sup>131</sup> Critics of crop insurance argued the proposals were a bait-and-switch—with the bait being the repeal of the now unpopular direct payments and the switch being their replacement with expanded crop insurance programs—which may cost even more than direct payments did. That was the conclusion of an Environmental Working Group report, “Pumped Up: How Supplemental Insurance Could Bulk Up Farm Subsidies,” released in October 2013.<sup>132</sup> Dr. Bruce Babcock, a respected agricultural economist from Iowa State University prepared the report.<sup>133</sup> He concluded that if the 2013 proposed

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124. *Id.* at 6.

125. *Id.*

126. *Id.*

127. *Id.* at 7.

128. *Id.*

129. *See generally id.*

130. *See generally id.*

131. *See* Letter from Douglas W. Elmendorf, Dir., Cong. Budget Office, to Frank D. Lucas, Chairman, Comm. on Agric., U.S. House of Representatives (Jan. 28, 2014), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr2642LucasLtr.pdf>. A key ingredient in consideration and passage of the farm bill was the “scoring” from the Congressional Budget Office as to how much the bill would cost—and save—over previous programs, with the projected costs of the price support and crop insurance programs being central to the discussion. *See id.*

132. *See* CRAIG COX, BAIT AND SWITCH ON STEROIDS, *Preface* to BRUCE BABCOCK, ENVTL. WORKING GRP., PUMPED UP: HOW SUPPLEMENTAL INSURANCE COULD BULK UP FARM SUBSIDIES 3 (2013), available at [http://static.ewg.org/pdf/2013\\_sco\\_crop\\_insurance\\_final.pdf](http://static.ewg.org/pdf/2013_sco_crop_insurance_final.pdf).

133. BRUCE BABCOCK, ENVTL. WORKING GRP., PUMPED UP: HOW SUPPLEMENTAL INSURANCE COULD BULK UP FARM SUBSIDIES 4 (2013), available at [http://static.ewg.org/pdf/2013\\_sco\\_crop\\_insurance\\_final.pdf](http://static.ewg.org/pdf/2013_sco_crop_insurance_final.pdf).

SCO had been in place in 2012, it would have added another \$6.8 billion in payments to farmers in addition to the \$17 billion in crop insurance payouts they received, with most of the additional funds coming directly from taxpayers.<sup>134</sup>

The 2014 Farm Bill includes a carefully crafted compromise of the Senate and House provisions, designed to give producers the ability to choose which system of price and income support they feel is best for their farms. The Conference Report includes a detailed description of the compromise and what it means.<sup>135</sup> The financial considerations and price projections involved in making these farm determinations are beyond the scope of this Article—if not the limits of my comprehension—but will be a primary activity of farmers and their advisors over the next year in deciding what irrevocable choice to make.

### C. Adding a “New” Permanent Authority Provision

The issue of what would happen if the farm bill was not passed was an important issue facing Congress. In simplest terms, Congress either needed to pass a new law, or extend the existing farm bill provisions, and if they did not, some programs, in particular the commodity and price supports, would have resorted to 1938 and 1949 provisions, known as permanent law.<sup>136</sup> This provision is one factor that imposed discipline on Congress to act. One major difference between the House and Senate bills was that the House bill repealed the reversion to permanent law, making the provisions of the 2014 legislation the new permanent law.<sup>137</sup> The Senate did not include any language like this.<sup>138</sup> Both the AFBF and the NFU opposed the House approach and supported maintaining the current law, listing this as one of their main priorities.<sup>139</sup> The issue of “permanent” law was the subject of a House floor debate on October 11, 2013, in connection with consideration of several resolutions on a “Motion to Instruct Conferees on H.R. 2642, Federal Agriculture Reform and Risk Management Act of 2013.”<sup>140</sup> The motion instructing the House conferees to “recede to section 1602 of the Senate amendment” was not adopted, but the floor debate gave a sense of the different

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134. *Id.* at 16–18.

135. *See generally* H.R. REP. NO. 113-333, at 11–40 (2014) (Conf. Rep.).

136. *See* MONKE, *supra* note 25, at 7–8; *see also* JASPER WOMACH, CONG. RESEARCH SERV., RL34154, POSSIBLE EXPIRATION OF THE 2002 FARM BILL 2–3 (2008) (discussing the possibility of reversion to 1938 and 1949 provisions in the context of the 2002 Farm Bill).

137. *See* Sara Wyant, *More Than 250 Groups Rally Behind Permanent Law, Nutrition Title in Farm Bill*, AGRI-PULSE (Oct. 29, 2013), <http://www.agri-pulse.com/More-than-250-groups-rally-behind-permanent-law-nutrition-title-in-farm-bill-10292013.asp>.

138. *See id.*

139. *Id.*

140. *See* 159 CONG. REC. H6514 (daily ed. Oct. 11, 2013).



perspectives on the issue.<sup>141</sup> The principle argument for those wanting to replace the older permanent law with the House language is that if in future years Congress cannot or will not pass a new farm bill, the generous provisions of the most recent farm bill would suffice.<sup>142</sup> The concern of opponents was that change would make it harder to obtain periodic reform of farm programs—and even more important, this change did not include any protections for a wide range of other farm bill subjects, such as conservation, rural development, energy, trade, and research.<sup>143</sup> The 2014 Farm Bill followed the Senate approach and rejected the House effort to make the new act the permanent law. This means when the 2014 Farm Bill expires in 2018, Congress will again confront the opportunity—and need—to consider the farm bill.<sup>144</sup>

#### D. Synchronizing the Nutrition and Farm Bill Authorities

As discussed below, a major disagreement between the House and Senate concerned the provisions of the Nutrition title; particularly, the funding levels and program requirements for the SNAP program. Another important difference relating to nutrition was the House provision authorizing the Nutrition title for only three years as opposed to the five year term of the farm bill.<sup>145</sup> This provision was designed to extend the House's earlier action separating the two programs.<sup>146</sup> While the nutrition and farm portions had to be reunited for purposes of the conference, the inclusion of different times meant the Nutrition title, and thus SNAP and related programs, would have to be revisited in just three years and not in the context of a unified farm bill debate.<sup>147</sup> This provision was also the subject of the House motion on October 11 on instructing the conferees, and the debate over it was combined with the discussion of permanent law.<sup>148</sup> While the motion was not adopted, the vote was closer than anticipated—195 to 204—and

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141. *Id.*

142. *See id.* at H6507 (statement of Rep. Virginia Foxx), H6517 (statement of Rep. Frank Lucas).

143. *See id.* at H6515 (statement of Rep. Collin Peterson).

144. *See* H.R. REP. NO. 113-333, at 390 (2014) (Conf. Rep.).

145. *See* RANDY ALISON AUSSENBERG, CONG. RESEARCH SERV., R43332, REAUTHORIZATION OF SNAP AND OTHER NUTRITION PROGRAMS IN THE NEXT FARM BILL: ISSUE FOR THE 113TH CONGRESS 4, 9 (2013).

146. *Id.* at 9.

147. *See* 159 CONG. REC. H6515 (statement of Rep. Collin Peterson).

148. *See generally id.* at H6505–20 (including debate over permanent law and separation of the nutrition and farm portions).

illustrated the serious reservations many members had to separating the two historic components of farm bills.<sup>149</sup> The letter from the AFBF to the conferees addressed the issue and listed re-synchronizing the two subjects as a priority.<sup>150</sup> The 2014 Farm Bill rejected the House attempt to put nutrition programs and farm-related programs on different tracks and extends all programs through fiscal year 2018.<sup>151</sup>

#### *E. Preempting State and Local Food Regulations: The King Amendment*

The House bill included a controversial amendment offered by Representative King of Iowa to pre-empt the application of state and local laws to agriculture.<sup>152</sup> The proposal was motivated by the California legislation which will require all eggs produced in other states but imported into California to meet the same humane production standards as established under Proposition 2 passed in 2010.<sup>153</sup> Iowa is the nation's largest egg producing state and farmers there believe it violates the constitutional protection of interstate commerce to allow California to impose its rules on Iowa producers.<sup>154</sup> The amendment provides:

Sec. 11312. Prohibition Against Interference by State and Local Governments with Production or Manufacture of Items in Other States.

(a) In General.—Consistent with Article I, section 8, clause 3 of the Constitution of the United States, the government of a State or locality therein shall not impose a standard or condition on the production or manufacture of any agricultural product sold or offered for sale in interstate commerce if—

(1) such production or manufacture occurs in another State; and

(2) the standard or condition is in addition to the standards and conditions applicable to such production or manufacture pursuant to—

(A) Federal law; and

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149. See 159 CONG. REC. H6557 (daily ed. Oct. 12, 2013) (including the vote taken).

150. Letter from Bob Stallman, *supra* note 105.

151. H.R. REP. NO. 113-333, at 439 (2014) (Conf. Rep.).

152. See Federal Agriculture Reform and Risk Management Act of 2013, H.R. 2642, 113th Cong. § 11312 (1st Sess. 2013) (as passed by House, July 11, 2013).

153. See Editorial, *Iowa Rep. Steve King Lays an Egg on the Farm Bill*, L.A. TIMES, Jan. 23, 2014, <http://www.latimes.com/opinion/editorials/la-cd-king-amendment-farm-bill-20140123-story.html>.

154. See *e.g., id.*; see also Press Release, Office of the Governor of Iowa, Gov. Branstad Joins Lawsuit Opposing a California Law that Discriminates Against Iowa Egg Producers (Mar. 6, 2014), available at <https://governor.iowa.gov/2014/03/gov-branstad-joins-lawsuit-opposing-a-california-law-that-discriminates-against-iowa-egg-producers/>.

(B) the laws of the State and locality in which such production or manufacture occurs.

(b) Agricultural Product Defined.—In this section, the term “agricultural product” has the meaning given such term in section 207 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1626).<sup>155</sup>

The Senate bill did not include any comparable provision and the issue proved to be one of the more controversial in the conference process.<sup>156</sup> Groups of Republican and Democratic Representatives, led by many from California, sent letters to the House leadership objecting to the amendment, and many state and local food and agricultural organizations also came out in opposition, in part because they feared the widespread impact the provision may have, potentially threatening the enforcement of hundreds of state and local laws across a range of topics from food safety to puppy mills.<sup>157</sup> On the other side, in its letter to conferees, the AFBF noted its support for the idea.<sup>158</sup>

In the conference compromise released and enacted, the King amendment disappeared and the new law does not include any language on the issue.<sup>159</sup> This does not mean the opposition to the California egg legislation disappeared. While the New York Times highlighted the effect of the law in a front-page story about how it was improving the lives of laying hens,<sup>160</sup> the Missouri Attorney General filed a lawsuit, joined by several other states, including Iowa, challenging the law as an unconstitutional burden on interstate commerce.<sup>161</sup>

155. H.R. 2642, § 11312.

156. Compare, e.g., Editorial, *So, King Likes Federal Regulation of States?*, DES MOINES REG., Dec. 13, 2013, at 10A (opposing the idea and noting the irony of it being championed by a Tea Party leader who usually supports states' rights and smaller federal government), with Bill Northey, Editorial, *King Amendment is Vital to Iowa Agriculture*, DES MOINES REG., Dec. 18, 2013, at 9A.

157. See, e.g., Letter from The Pew Charitable Trusts et al. to Frank Lucas, Representative, U.S. House of Representatives (Oct. 22, 2013), available at <http://www.pewtrusts.org/en/about/news-room/letters/letters/2013/10/23/letter-to-farm-bill-conferees-opposing-delayed-implementation-of-food-safety-law>; see also Wayne Pacelle, *Reject King Amendment to the Farm Bill*, HILL (Aug. 16, 2013, 6:00 PM), <http://thehill.com/blogs/congress-blog/economy-a-budget/317325-reject-king-amendment-to-the-farm-bill>.

158. Letter from Bob Stallman, *supra* note 105.

159. See H.R. REP. NO. 113-333, at 563 (2014) (Conf. Rep.).

160. See Stephanie Strom, *Wishing They All Could Be California Hens*, N.Y. TIMES, Mar. 3, 2014, [http://www.nytimes.com/2014/03/04/business/theyre-going-to-wish-they-all-could-be-california-hens.html?\\_r=1](http://www.nytimes.com/2014/03/04/business/theyre-going-to-wish-they-all-could-be-california-hens.html?_r=1).

161. See Christopher Doering, *Branstad Joins Challenge of Controversial California Egg Law*, DES MOINES REG., Mar. 7, 2014, <http://www.desmoinesregister.com/story/money/agriculture/2014/03/07/branstad-joins-challenge-of-controversial-california-egg-law/6154909/>; see also Editorial, *California's Smart Egg Rules*, N.Y. TIMES, Mar. 8, 2014, <http://www.nytimes.com/2014/03/09/opinion/sunday/californias-smart-egg-rules.html>.

F. *Repealing USDA Authority to Regulate Livestock and Poultry Contracts*

Another example of a controversial idea included in the House bill, but not in the Senate legislation, relates to efforts to repeal the 2008 Farm Bill provisions on contracting and promoting fair markets. The USDA and Grain Inspection, Packers and Stockyards Administration (GIPSA) spent several years developing rules to implement these provisions, and finally issued the proposed rules on June 22, 2010.<sup>162</sup> Section 11102 of the House bill had the somewhat innocent title, “Repeal of Certain Regulations Under the Packers and Stockyards Act, 1921,” but it would have repealed the 2008 law and prohibited the USDA from implementing or finalizing rules on the issues covered in that law and directed the Department to not “issue regulations or adopt a policy similar to the provisions.”<sup>163</sup> The House included a similar prohibition on the USDA implementing the fair contract rules as part of the Continuing Appropriations Act, passed in March 2013.<sup>164</sup> No comparable provision was in the Senate bill. The House effort to repeal the GIPSA contracting protections, which were a major 2008 Farm Bill accomplishment for progressive farm groups, predictably resulted in serious opposition by these groups.<sup>165</sup> In a letter to lawmakers, the groups noted, “Section 11102 of the House version of the 2013 Farm Bill would greatly limit the authority of the Secretary to address deceptive, fraudulent, retaliatory, and anti-competitive practices by meatpackers and poultry companies in their dealings with livestock and poultry farmers and ranchers.”<sup>166</sup>

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162. Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 Fed. Reg. 35,338 (proposed June 22, 2010) (to be codified at 9 C.F.R. pt. 201); *see generally* CHRISTOPHER LEONARD, *THE MEAT RACKET: THE SECRET TAKEOVER OF AMERICA’S FOOD BUSINESS* 279–303 (2014) (discussing the Congressional action and USDA’s effort to implement the new GIPSA rules, including the vigorous campaign waged by the livestock industry to weaken and delay their implementation).

163. *See* Federal Agriculture Reform and Risk Management Act of 2013, H.R. 2642, 113th Cong. § 11102 (1st Sess. 2013) (as passed by House, July 11, 2013).

164. *See, e.g.*, Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, § 742, 127 Stat. 198, 233; *see also* Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 Fed. Reg. at 35,338.

165. *Groups Urge Ag Leaders to Reject Restrictive House Language Regarding Fair Markets and Contracts*, NAT’L SUSTAINABLE AGRIC. COAL. (Sept. 9, 2013), <http://sustainableagriculture.net/blog/fair-markets-letter/>.

166. Letter from Agricultural Missions, Inc. et al. to Agriculture Committee Leaders (Sept. 9, 2013), *available at* <http://sustainableagriculture.net/wp-content/uploads/2013/09/Joint-Letter-to-Agriculture-Leaders-Opposing-GIPSA-Farm-Bill-Restrictions-updated1.pdf>.

On October 11, a bipartisan group of senators sent a letter to the Committee leadership opposing the House provision on the contracting rules.<sup>167</sup> In that letter, they noted:

We believe regulation should be limited in a marketplace, but we also believe having little to no regulation in place is problematic, especially in our concentrated livestock and poultry industries. Section 11102 of the House Farm Bill would leave small producers vulnerable against concentrated market forces. We strongly urge the Senate to reject the House's provision in its entirety.<sup>168</sup>

The 2014 Farm Bill enacted by Congress did not include the House provision relating to the GIPSA rules,<sup>169</sup> meaning the opponents of this approach prevailed. The fact that the rules were not impacted in the farm bill does not mean opponents will discontinue using the Congressional appropriation process to defund the rules.<sup>170</sup>

#### G. *Limiting Payments to Active Farmers and Only One Manager Allowed*

The Senate farm bill made a significant change in the rules determining who is eligible to participate in the various price support programs, by amending the rules on active engagement.<sup>171</sup> The committee report describes the purpose of the change as follows:

Finally, the requirement that an individual be "actively engaged in farming" to be eligible to receive payments has been reformed by eliminating the "active personal management" provisions that allowed multiple individuals to claim eligibility by only providing management to the operation. The legislation strikes the phrase "active personal management" and creates a specific class of actively engaged that permits a single individual to be actively engaged as the manager for a farm. Only one person in a farm operation can be eligible for providing management and not labor to the farm and that person cannot qualify

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167. Letter from Senator Jon Tester et al. to Senator Debbie Stabenow, Chairwoman, Senate Comm. on Agric. & Thad Cochran, Ranking Member, Senate Comm. on Agric. (Oct. 11, 2013).

168. *Id.*

169. See H.R. REP. NO. 113-333, at 556 (2014) (Conf. Rep.).

170. See, e.g., Fredreka Schouten, *Hidden Spending Measures Playing Chicken With Shutdown: Farmers' Advocates Are Lobbying Lawmakers to Kill Provision in Stopgap Spending Bill*, USA TODAY, Oct. 7, 2013, <http://www.usatoday.com/story/news/politics/2013/10/06/shut-down-continuing-resolution-interest-groups/2927421/>.

171. Agriculture Reform, Food, and Jobs Act of 2013, S. 954, 113th Cong. § 1604 (1st Sess. 2013) (as passed by Senate, June 10, 2013).

other farm operations as actively engaged or permit the farm operation to exceed the \$50,000 payment limitation.<sup>172</sup>

The issue of payment limits, and Senator Grassley's campaign on the issue of abuse of the "actively engaged" issue, received significant new fuel in early October. At this time, the Government Accountability Office (GAO) released a report it completed, at Senator Grassley's request, on the issue of the abuses in Farm Service Agency (FSA) determinations on who is engaged in the farm operation for purposes of payments.<sup>173</sup> A comparable provision was found in the House bill, known as the Fortenberry amendment, which was added from the floor.<sup>174</sup>

While the deliberations of the Conference Committee are secret, it is believed the idea of reforming payment limitation rules was one of the most hotly contested issues.<sup>175</sup> When the final compromise bill emerged, the reforms agreed to by the House and Senate had largely disappeared. The Conference report contains a lengthy description of the compromise that emerged, which is in part premised on the U.S. developing rules to more strictly enforce the active engagement requirement,<sup>176</sup> an action that enraged Senator Grassley, who argued that it violated Congressional rules on the work of conference committees, leading him to vote against the bill on final passage.<sup>177</sup>

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172. S. REP. NO. 113-88, at 28 (2013).

173. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-781, FARM PROGRAMS: CHANGES ARE NEEDED TO ELIGIBILITY REQUIREMENTS FOR BEING ACTIVELY INVOLVED IN FARMING 1, 5 (2013) (responding to Senator Grassley's request); see also Christopher Doering, *Grassley Tries to Narrow 'Actively Involved' Farmer Definition*, DES MOINES REG., Oct. 9, 2013, at 10B.

174. See Federal Agriculture Reform and Risk Management Act of 2013, H.R. 2642, 113th Cong. § 1603A (1st Sess. 2013) (as passed by House of Representatives on July 11, 2013). The October 1, 2013 edition of Farm Policy has a story about Senator Grassley and the effort to include payment limits in the Farm Bill, in which he is noted as saying that the Fortenberry provision in the House bill is identical, and argues that this means the topic should not be part of conference deliberations. Keith Good, *Budget Issues: Farm Bill; and, the Ag Economy*, FARMPOLICY.COM (Oct. 1, 2013, 3:11 AM), <http://farmpolicy.com/2013/10/01/budget-issues-farm-bill-and-the-ag-economy-tuesday/>. Of course, the political reality is anything can be considered in conference, and some observers believe the two provisions are not identical.

175. See, e.g., Keith Good, *Weekend Update: Farm Bill Developments*, FARMPOLICY.COM (Jan. 25, 2014, 4:04 AM), <http://farmpolicy.com/2014/01/25/weekend-update-farm-bill-developments/>.

176. See H.R. REP. NO. 113-333, at 391-93 (2014) (Conf. Rep.).

177. See Christopher Doering, *Grassley to Vote 'No' on Farm Bill*, DES MOINES REG., Jan. 31, 2014, at 7B.

#### H. Means Testing for Crop Insurance Eligibility and Premium Subsidies

Another issue related to the eligibility for farm program participation concerns including some version of means testing, in particular the level of subsidy producers receive for buying crop insurance.<sup>178</sup> The main idea Congress considered was to increase the cost of crop insurance for producers with adjusted gross incomes (AGI) above a certain amount. In the 2012 Senate version of the bill, an amendment was adopted during the floor debate reducing the crop insurance subsidies for producers with AGI above \$750,000 by fifteen percent—from a sixty-two percent subsidy to a forty-seven percent subsidy.<sup>179</sup> The provision was not in the version of the bill passed by the Senate Agriculture Committee in 2013, but was added on the Senate floor by a vote of fifty-nine to thirty-three.<sup>180</sup> The House considered and passed a floor amendment to the first farm bill, H.R. 1947, to add a similar means testing provision for crop insurance, but that bill was ultimately defeated on the vote for final passage.<sup>181</sup>

The issue of means testing for crop insurance reemerged on the House floor in early October 2013 in connection with debate over the proposed instructions to the farm bill conferees. Representative Ryan proposed that the means testing idea originally included in the Fortenberry amendment be endorsed by the House and communicated to the House conferees as instructions for the negotiations.<sup>182</sup> The proposal was the subject of a spirited floor debate with Representative Ryan leading the support and Chairman Lucas leading the opposition.<sup>183</sup> The

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178. The cost of the crop insurance programs and the lack of restraints on participation generated significant attention. *See, e.g.*, Ron Nixon, *Income Guarantee Swells Crop Insurance*, N.Y. TIMES, May 1, 2013, [http://www.nytimes.com/2013/05/02/us/crop-insurance-swells-beyond-disaster-aid-study-says.html?\\_r=0](http://www.nytimes.com/2013/05/02/us/crop-insurance-swells-beyond-disaster-aid-study-says.html?_r=0); Ron Nixon, *Record Taxpayer Cost is Seen for Crop Insurance*, N.Y. TIMES, Jan. 15, 2013, <http://www.nytimes.com/2013/01/16/us/politics/record-taxpayer-cost-is-seen-for-crop-insurance.html>; James B. Stewart, *Richer Farmers, Bigger Subsidies*, N.Y. TIMES, July 19, 2013, <http://www.nytimes.com/2013/07/20/business/richer-farmers-bigger-subsidies.html?pagewanted=all>.

179. *See* Agriculture Reform, Food, and Jobs Act of 2013, S. 954, 113th Cong. § 11033 (1st Sess. 2013) (as passed by Senate, June 10, 2013).

180. CHITE, *supra* note 21, at 18; *see also* Press Release, Senator Tom Coburn, Senate Votes to Reduce Crop Insurance Subsidies, Save Taxpayer Dollars (May 23, 2013), available at [http://www.coburn.senate.gov/public/index.cfm/pressreleases?ContentRecord\\_id=b643a991-9793-4308-9a7b-6e3b387dee61&ContentType\\_id=d741b7a7-7863-4223-9904-8cb9378aa03a&Group\\_id=41cf7e93-d82e-44c6-b4fb-f686b568e689](http://www.coburn.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=b643a991-9793-4308-9a7b-6e3b387dee61&ContentType_id=d741b7a7-7863-4223-9904-8cb9378aa03a&Group_id=41cf7e93-d82e-44c6-b4fb-f686b568e689).

181. CHITE, *supra* note 21, at 18; *see also* 159 Cong. Rec. H3963–64 (daily ed. June 20, 2013) (stating the vote on Fortenberry Amendment No. 100, concerning crop insurance means testing, which passed the House on a vote of 230 to 194).

182. *See* H.R. Res. 379, 113th Cong. (2013); *see also* 159 CONG. REC. H6527 (daily ed. Oct. 11, 2013).

183. *See* 159 CONG. REC. H6527–32.

provision was adopted by voice vote, meaning the House was also on record supporting the means testing.<sup>184</sup> Including any form of means testing for crop insurance was controversial with many farm groups. For example, the AFBF letter to conferees states:

Farm Bureau has a long history of opposing means testing of farm program benefits, regardless of the program in question. These kinds of arbitrary tests are just that, arbitrary limits placed on productive farmers and ranchers that are often among the most innovative and progressive producers in agriculture. Adjusting these structures as Congress continually revises the limits just adds meaningless cost factors and undermines sound farm management.<sup>185</sup>

The compromise farm bill passed by Congress did not include the Senate language, meaning no means testing was added for crop insurance subsidies.<sup>186</sup>

#### I. *Consolidating Conservation Easement Programs*

Both the House and Senate bills, in Title II on conservation, provided for the continuation of a strong and diverse range of conservation programs, including easements for land protection. Programs such as the Conservation Reserve Program, the Environmental Quality Incentives Program, and the Conservation Stewardship Program were all reauthorized, although with significant reductions in mandatory funding.<sup>187</sup> One reform found in both bills was the consolidation of many of the Natural Resources Conservation Service (NRCS) easement programs into one program, the Agricultural Conservation Easement Program.<sup>188</sup> The consolidation is included in the 2014 Farm Bill as enacted.<sup>189</sup>

#### J. *Delaying Food Safety Modernization Act Regulations*

In 2010, Congress enacted the Food Safety Modernization Act (FSMA), and since then the FDA has been slowly developing and unveiling the regulations needed to implement the complicated legislation.<sup>190</sup> Many parties in agriculture, especially those involved in direct farm marketing and fruit and vegetable production, are concerned about what the FDA may propose, and whether the regulations will also impose significant costs and compliance burdens on farmers,

184. H.R. REP. NO. 113-244, at 1 (2013).

185. See Letter from Bob Stallman, *supra* note 105.

186. See H.R. REP. NO. 113-333, at 554 (2014) (Conf. Rep.).

187. CHITE, *supra* note 21, at 8.

188. *Id.*

189. H.R. REP. NO. 113-333, at 85–98.

190. See FDA Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2011).



perhaps beyond what the legislation might suggest.<sup>191</sup> The House farm bill includes an amendment addressing the implementation of the FSMA, essentially delaying the enforcement of any new regulations until the FDA makes a report to Congress on the impacts of such rules. The new provision, for which there was no counterpart in the Senate bill, provides:

Sec. 11321. Scientific and Economic Analysis of the FDA Food Safety Modernization Act

(a) In General.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) may not enforce any regulations promulgated under the FDA Food Safety Modernization Act (Public Law 111-353) until the Secretary publishes in the Federal Register the following:

(1) An analysis of the scientific information used in the final rule to implement the FDA Food Safety Modernization Act with a particular focus on—

- (A) agricultural businesses of a variety of sizes;
- (B) regional differences of agriculture production, processing, marketing, and value added production;
- (C) agricultural businesses that are diverse livestock and produce producers; and
- (D) what, if any, negative impact on the agricultural businesses would be created, or exacerbated, by implementation of the FDA Food Safety Modernization Act.

(2) An analysis of the economic impact of the proposed final rules to implement the FDA Food Safety Modernization Act with a particular focus on—

- (A) agricultural businesses of a variety of sizes; and
- (B) small and mid-sized value added food processors.

(3) A plan to systematically evaluate the regulations by surveying farmers and processors and developing an ongoing process to evaluate and address business concerns.<sup>192</sup>

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191. See, e.g., Helena Bottemiller, *FDA Expands Outreach to Farmers Concerned About FSMA Rules*, FOOD SAFETY NEWS (July 17, 2013), <http://www.foodsafetynews.com/2013/07/fda-expands-outreach-to-farmers-concerned-about-fsma-rules/#.U79O1cg8nfB>.

192. Federal Agriculture Reform and Risk Management Act of 2013, H.R. 2642, 113th Cong. § 11321 (1st Sess. 2013) (as passed by House, July 11, 2013).

The section also requires the FDA to provide an annual report on these same impacts to the House and Senate Agriculture Committees.<sup>193</sup>

The compromise bill enacted by Congress includes the House amendment but with one very important modification: the conference amendment eliminated the prohibition on the FDA enforcing the regulations and, instead, requires the FDA to include the required analysis when promulgating the final rules.<sup>194</sup>

#### K. Reform of the Dairy Program

A major issue for dairy farmers and their representatives concerns the proposals for reform of the federal dairy programs. Both the Senate and House bills make significant reforms to those programs.<sup>195</sup> The issue of how to reform dairy policy was a major source of contention in the House with the champions of different ideas being Representative Peterson and Representative Goodlatte.<sup>196</sup> Representative Peterson believed that Speaker Boehner's opposition to the dairy reform ideas—which was ultimately adopted in the House bill—was responsible for the Speaker appointing an unusually high number of members to the Conference Committee.<sup>197</sup> The Speaker did this to insure enough votes to oppose the Peterson-supported reforms.<sup>198</sup> Representative Peterson's concerns about Speaker Boehner proved accurate because the opposition of the Speaker to the proposed dairy resulted in the Conference Committee making new and significant modifications in the reforms already considered.<sup>199</sup>

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193. *Id.*

194. *See* H.R. REP. NO. 113-333, at 565–66.

195. *See, e.g.*, Agriculture Reform, Food, and Jobs Act of 2013, S. 954, 113th Cong. §§ 1411, 1431, 1471 (1st Sess. 2013) (as passed by Senate, June 10, 2013) (establishing the dairy production margin protection and dairy market stabilization programs and repealing the current dairy price support program).

196. SCOTT BROWN & DANIEL MADISON, AGRIC. MKTS. & POL'Y DIV. OF APPLIED SOC. SCIS., UNIV. OF MO., A COMPARISON OF 2013 DAIRY POLICY ALTERNATIVES ON DAIRY MARKETS I (2013), available at <http://www.nmpf.org/files/AMAP2013DSADFA.pdf>.

197. Sally Jo Sorenson, *Walz on Farm Bill Conference Committee: Southerland Nod Appeals Cantor's Rads*, BLUESTEM PRAIRIE (Oct. 12, 2013), <http://www.bluestemprairie.com/bluestemprairie/2013/10/walz-on-farm-bill-conference-committee-southerland-nod-appeases-cantors-rads.html>.

198. *Id.*

199. *See* H.R. REP. NO. 113-333, at 380–87. Over thirty years ago the author took a vow to never try to understand U.S. dairy policy and, in honor of that vow, will not attempt any further explanation of the topic.

### L. *Reforming the Supplemental Nutrition Assistance Program*

As noted above, debate over the nation's food assistance programs proved to be among the most contentious and critical in developing the 2014 Farm Bill. Issues of program costs and reforming and restricting access to SNAP led to the defeat on the floor of the first House Agriculture Committee farm bill in June; led the Republican leaders in the House to take the radical step of dividing the farm bill into two parts; and necessitated the House to pass a separate nutrition bill in September.<sup>200</sup> The bill that was ultimately passed in the House, with no Democrat votes, which would have cut thirty-nine billion dollars from SNAP over ten years, far exceeding the four billion dollars in proposed Senate cuts, understandably generated significant opposition and criticism.<sup>201</sup> Critics charged that the House reforms would have resulted in nearly four million people being removed from SNAP enrollment as states were prevented from seeking waivers from limits on recipient participation, as categorical eligibility was limited, and as states implemented new work requirements for able-bodied participants.<sup>202</sup>

The compromise bill that emerged from the Conference Committee, and was subsequently enacted into law, is largely seen as a victory for those who were concerned about the potential impact of the House proposals.<sup>203</sup> For the most part, all of the "poison pill" reforms were rejected and the final level of

200. See 159 CONG. REC. H3959 (daily ed. June 20, 2013) (statement of Rep. Eric Cantor) (considering the Federal Agriculture Reform and Risk Management Act of 2013, with the floor remarks of Majority Leader Cantor in support of the Southerland Amendment No. 102, giving states the ability to impose work requirements for SNAP recipients under section 4033). Under § 4033n(7)(B)(ii)-(iii), as part of the pilot program, states were allowed to keep one-half of the "accumulated supplemental nutrition assistance benefit dollars saved over each consecutive 12-month period" as bonus grants and the funds could be used for "any State purpose, not to be restricted to the supplemental nutrition assistance program or its beneficiary population." See *id.* at H3958. This provision allowed critics to argue that the amendment created a perverse incentive for states to aggressively remove people from the SNAP rolls because the state gets to keep one-half the savings as a bounty to be used for any purpose.

201. See, e.g., Paul Krugman, Op-Ed, *Free to be Hungry*, N.Y. TIMES, Sept. 22, 2013, [http://www.nytimes.com/2013/09/23/opinion/krugman-free-to-be-hungry.html?\\_r=0](http://www.nytimes.com/2013/09/23/opinion/krugman-free-to-be-hungry.html?_r=0); Editorial, *Food Stamp Regression in the Statehouse*, N.Y. TIMES, Sept. 26, 2013, <http://www.nytimes.com/2013/09/27/opinion/food-stamp-regression-in-the-statehouse.html>.

202. See generally DOROTHY ROSENBAUM ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, CUTS CONTAINED IN SNAP BILL COMING TO THE HOUSE FLOOR WOULD AFFECT MILLIONS OF LOW-INCOME AMERICANS (2013), available at <http://www.cbpp.org/files/9-6-13fa.pdf>.

203. See ED BOLEN ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, SUMMARY OF THE 2014 FARM BILL NUTRITION TITLE: INCLUDES BIPARTISAN IMPROVEMENTS TO SNAP WHILE EXCLUDING HARSH HOUSE PROVISIONS 2 (2014) available at <http://www.cbpp.org/files/1-28-14fa.pdf>.

SNAP budget reductions amounted to approximately eight billion dollars.<sup>204</sup> Most of the savings or reductions in SNAP spending are to be achieved over ten years by limiting the ability of states to provide a small heating assistance as a way to obtain SNAP benefits—known as “heat and eat.”<sup>205</sup> However, the projected savings may prove somewhat elusive; by early March 2014, several states had determined that by making a modest increase in state heating assistance expenditures so that participants could meet the twenty dollar threshold, the states could avoid losing hundreds of millions in SNAP benefits.<sup>206</sup>

#### V. CONCLUSION: WHAT LESSONS CAN BE LEARNED FROM THE 2014 FARM BILL SAGA?

The good news for most people involved in agriculture and farming in the U.S. is that the 2014 Farm Bill was enacted. Now the heavy lifting of implementing the new provisions begins, with the USDA facing a particularly difficult job in 2014 as it prioritizes which programs to begin to implement immediately, such as the livestock disaster assistance program, and which rules can be placed further back in the queue. For the stakeholders—ranging from farmers to advocacy groups to the businesses that serve agriculture and rural America—the farm bill will create new opportunities and challenges. While it is too early to predict if the bill will be just the latest installment in America’s unfolding list of periodic farm bills or the last of the line, it is possible to consider what transpired and to draw some lessons from it. From my perspective, here are some lessons of the 2014 Farm Bill:

For the Tea Party members who believed the farm bill process could be used to gain major reforms, the final bill was a disappointment. The lesson may be that Tea Party supporters showed the ability to overreach, because the reality is the final bill contained much smaller SNAP cuts and fewer “reforms” when compared to the original House bill the Tea Party helped defeat.

The action to re-link soil conservation standards for farmers and land-owners who participate in crop insurance demonstrates that soil conservation is still a relevant and powerful concept in federal farm policy.

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204. *Id.*

205. See, e.g., Bill Tomson, *GOP Memo Says SNAP Cuts Will Stand*, POLITICO (Mar. 21, 2014, 12:48 PM), <http://www.politico.com/story/2014/03/food-stamp-cuts-republicans-104900.html>.

206. See Stephen Singer, *States Increasing Home Heating Assistance to Avoid Cuts in Food Stamps*, WASH. POST, Mar. 2, 2014, [http://www.washingtonpost.com/politics/states-increasing-home-heating-assistance-to-avoid-cuts-in-food-stamps/2014/03/02/fd39a3e8-a250-11e3-84d4-e59b1709222c\\_story.html](http://www.washingtonpost.com/politics/states-increasing-home-heating-assistance-to-avoid-cuts-in-food-stamps/2014/03/02/fd39a3e8-a250-11e3-84d4-e59b1709222c_story.html).

The final bill demonstrates that state and local governments and their leaders have a voice and role to play in the farm bill, and the idea of states' rights is still important, as reflected in the defeat of the King amendment.

There are clear signs of growing support in Congress, across both parties, for greater diversity in American agriculture as seen in the support for "specialty crops," an ironic farm bill term describing the types of foods people actually eat—fruits, vegetables, and other produce.<sup>207</sup> The 2014 Farm Bill includes a variety of progressive programs: support for alternative forms of production, such as organic farming; innovative programs to support new farmers; promotion of local and regional food systems as part of the Nation's nutrition programs;<sup>208</sup> and programs to encourage young people to seek public service in food and agriculture, such as the new FoodCorps program.<sup>209</sup> With the exception of the National Sustainable Agriculture Coalition—which played a critical role in promoting many of these programs—the reality is the network of groups and organizations supporting progressive change in America's food system remain largely unorganized, at least from a national political perspective. The willingness of Congress to continue to make slow but steady progress in shifting farm and food policy to be more inclusive—beyond just the reach of the traditional commodities and farm groups—reflects the continued growth of the principles of food democracy at work in our nation.<sup>210</sup>

Senate Committee Chair Stabenow proved to be a powerful force and skilled negotiator.<sup>211</sup> In the end, she got almost everything she and the Senate wanted, and history will prove she was the key reason why the 2014 Farm Bill was finally passed.

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207. See Jennifer Steinhauer, *Farm Bill Reflects Shifting American Menu and a Senator's Persistent Tilling*, N.Y. TIMES, Mar. 8, 2014, [http://nytimes.com/2014/03/09/us/politics/farm-bill-reflects-shifting-american-menu-and-a-senators-persistent-tilling.html?\\_r=0](http://nytimes.com/2014/03/09/us/politics/farm-bill-reflects-shifting-american-menu-and-a-senators-persistent-tilling.html?_r=0).

208. See *Agricultural Act of 2014: Highlights and Implications*, ECON. RESEARCH SERV., USDA, <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications.aspx#.U79jNCg8nfA> (last updated Apr. 29, 2014).

209. See Agricultural Act of 2014, Pub. L. No. 113-79, § 4209, 128 Stat. 649 (2014) (authorizing twenty-five million dollars in appropriations for USDA to use to create the "Food and Agriculture Service Learning Program"). The Food and Agriculture Service Learning Program is patterned largely after the successful model of Food Corps. See FOOD CORPS, <https://foodcorps.org> (last visited Aug. 23, 2014). For those interested in agricultural law, it is significant that the Farm Bill even includes a new section to support these efforts.

210. See generally Neil D. Hamilton, Essay, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117 (2011) (discussing the principles of food democracy).

211. See, e.g., Jerry Hagstrom, *Stabenow Harvests Fresh Clout from Farm-Bill Success*, NAT'L J., Mar. 2, 2014, <http://www.nationaljournal.com/outside-influences/stabenow-harvests-fresh-clout-from-farm-bill-success-20140302>.

For farmers and commodity groups, their patience and continued focus on a limited set of priorities—namely, improvements in the safety net—were ultimately rewarded.

Finally, while the prediction may be premature, it is possible the political power of the major commodity organizations and farm groups is on the wane and increasingly less important, as reflected in the extended period of collective impotency and uncertainty over the very fate of the farm bill. The new law does contain many of the price support and crop insurance programs desired by the groups, undoubtedly a success and credit to their lobbying efforts.<sup>212</sup> Only time will tell, but the important issues to unfold over the next few years may relate to how the new set of complex and largely untested farm programs work—both in the costs to the public and their adequacy as a safety net for farmers—who face projected and extended periods of declining commodity prices.

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212. See *Making Sense of the 2014 Farm Bill*, FARM FUTURES (Feb. 6, 2014), [http://farmfutures.com/story-making-sense-2014-farm-bill-0-108367-spx\\_0](http://farmfutures.com/story-making-sense-2014-farm-bill-0-108367-spx_0).