

Direct Attribution and Payment Limitations

The final regulations for the 2009 Direct & Counter Cyclical Program (DCP) are expected in late January. This will coincide with 30-day public comment period announced just prior to Christmas for the USDA's announced changes to the Adjusted Gross Income (AGI) qualifications, program payment limitations, and direct attribution. The programs to be administered by the Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), will then become effective in accordance with the 2008 Food, Conservation and Energy Act.

For commodity and disaster programs, the AGI limitation was reduced from the 2002 law's \$2.5 million from all sources to a three-year average non-farm AGI of \$500,000. For 2009, those 3 years will consist of taxable years 2005, 2006 and 2007. An individual or entity that exceeds this \$500,000 non-farm AGI average shall not be eligible for such programs. Also, under the new regulations, an individual or entity must have a 3-year average AGI less than or equal to \$750,000 per year from farm income in order to qualify for direct payments issued under the Direct and Counter-cyclical Program.

The definition of income derived from farming, ranching and forestry operations was expanded to include such items as the packing, storing and transporting of agricultural commodities; production of livestock products; farm-based production of renewable bio-energy; and in some instances, the providing of operational inputs to farmers, ranchers and foresters.

FSA to Collect Information on New Financial Forms

Along with the 2009 Direct & Counter-Cyclical Program sign-up at County FSA Offices, new financial forms will be completed in order to determine direct attribution by individuals and entities, as well as payment limitation information.

Form Number	Description
CCC-902I	Farm Operating Plan for Individual To be used to collect information used by FSA. Note this form is still under the Federal Register public comment period.
CCC-902E	Farm Operating Plan for Entity To be used to collect information used by FSA. Note that this form is still under the Federal Register public comment period.
CCC-926	Average Adjusted Gross Income (AGI). Describes process for collecting Payment Limitation information. Note that this form is still under the Federal Register public comment period.

Conservation Program Payment Limitations

For conservation programs, the average nonfarm AGI limitation is \$1 million or less for eligibility. However, an individual or entity who has non-farm AGI in excess of \$1 million remains eligible for conservation programs only if 66.66 percent or more of the total AGI is derived from farming, ranching and forestry operations. In addition, the AGI limitation for conservation programs may be waived on a case-by-case basis if it is determined that environmentally sensitive land of special significance would be protected.

Program payments are limited by direct attribution to individuals or entities. A legal entity is defined as an entity created under Federal or State law that owns land or an agricultural commodity, product or livestock. Through direct attribution, payment limitation is based on the total payments received by the individual, both directly and indirectly. Qualifying

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spouses are eligible to be considered separate persons for payment limitation purposes, rather than being automatically combined under one limitation.

State and local governments, political subdivisions, and other agencies were eligible for payments prior to enactment of the 2008 Act. The 2008 Act and this rule make such jurisdictions ineligible for payments unless such payments are earned on State-owned land and are used to support public schools. Payments under this exception are limited to \$500,000 annually; the limitation is waived for a State that has a population of less than 1.5 million.

Individuals and entities must be "actively engaged in farming" with respect to a farming operation in order to be eligible for specified payments and benefits. To be "actively engaged in farming," the individual or entity must make significant contributions to the farming operation of: (1) capital, equipment, land, or a combination; and (2) personal labor or active personal management, or a combination.

Under rules in effect since 1988, not every member of an entity had to contribute active personal labor or management. The interim final rule requires each partner, stockholder, or member with an ownership interest to make a contribution of active personal labor or active personal management. The contribution must be regular and substantial, and documented as well as separate and distinct from any other member's contribution. The rule limits the ability of passive stockholders to continue to realize benefits from the entity.

Conclusion

Beginning in 2009, the addition of individuals or entities to an existing operation to qualify for additional payments is more restrictive than under previous regulations. The prior rule in effect since 1988 said the acquisition of new cropland to the farming operation of at least 20 percent qualifies for the increase of an unlimited number of new persons and/or legal entities as eligible for payment. The rule changes the 20-percent increase requirement from cropland to base acres and only allows for the addition of one new person to the operation. However, based on the magnitude and complexity of the change in the farming operation, the State FSA Office may approve additional persons or legal entities for payment in the farming operation. The change eliminates the loophole that previously allowed an unlimited increase in the number of limitations that could accompany a 20 percent increase in eligible land area that meets the definition of cropland.

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