



## **ARKANSAS FARM SERVICE AGENCY - - STATE OFFICE**

**November 2011**

### **SPECIAL EDITION**

#### **2012 ACTIVELY ENGAGED IN FARMING, PAYMENT LIMITS AND AVERAGE ADJUSTED GROSS INCOME PROVISIONS**

Many FSA programs administered under the 2008 Farm Bill require that a producer be actively engaged in farming before payments can be issued. In addition producer's adjusted gross income cannot exceed the allowable exceptions. Below are some of the provisions concerning 2012 payment eligibility, payment limitations, and average adjusted gross income. Additional information may be obtained at the FSA county office.

#### **Overview**

For more than 20 years, Congress and USDA have worked to ensure that farm program benefits only go to farmers who are actively engaged in farming. The 2008 Farm Bill required program participants to meet specific provisions to receive farm program benefits. Here is a summary of the provisions producers need to meet to be eligible for payments.

#### **Actively Engaged in Farming**

To be eligible for payments and benefits under specified programs, all program participants, either individuals or legal entities, must provide significant contributions to the farming operation to be considered as "actively engaged in farming." Contributions can consist of capital, land, and/or equipment, as well as active personal labor and/or active personal management. The management contribution must be critical to the profitability of the farming operation and the contributions must be at risk.

#### **Additional Payment Eligibility Requirements**

Each partner, stockholder or member with an ownership interest must contribute active personal labor and/or active personal management to the farming operation on a regular basis. The contribution must be identifiable and documentable; as well as separate and distinct from the contributions made by any other partner, stockholder or member. If any partner, stockholder or member with an ownership interest fails to meet this requirement, program payments will be reduced by the corresponding share held by that partner, stockholder or member. There is an exception allowed for legal entities, such as corporations, if total direct payments received both directly and indirectly, by the legal entity and its members do not exceed \$40,000.

#### **Exceptions to These General Requirements**

**Landowners** may be considered "actively engaged in farming" if they contribute the owned land to the farming operation and in return, receive rent or income for the use of the land. The landowner's share of the profits or losses from the farming operation must also be commensurate with the landowner's contributions to the farming operation and the contributions must be at risk.

### **Exceptions to These General Requirements Continued:**

**Spouses** may both be considered “actively engaged in farming” if one spouse makes all of the requisite and at-risk contributions.

**Sharecroppers** may be considered “actively engaged in farming” if the sharecropper makes a significant contribution of active personal labor to the farming operation and in return, receives a specified share of the crop(s) produced on the farm. The sharecropper’s share of the profits or losses from the farming operation must be commensurate with the sharecropper’s contributions and the contributions must be at risk.

### **Cash-Rent Tenant**

A cash-rent tenant will be ineligible to receive payments on the cash-rented land unless the tenant makes a significant contribution of active personal labor. If the cash-rent tenant does not provide labor, then they must make a significant contribution of both active personal management and equipment to the farming operation. All other “actively engaged in farming” requirements apply as well.

### **Foreign Persons**

Foreign persons, other than registered aliens, are not eligible to receive any program benefits including commodity loans, unless that a significant contribution of capital, land, and active personal labor are provided to the farming operation. If an entity comprised of foreign persons or non-resident aliens, the members of the entity must make significant contributions of active personal labor to the farming operation of the legal entity requesting benefits under programs subject to the foreign person rules.

### **Notification Requirements**

Every legal entity earning payment subject to these rules must report to their local FSA committee the name and social security number of each person who owns, either directly or indirectly, any interest in such legal entity. The legal entity is also required to inform all members of the rules regarding payment eligibility and payment limitation.

### **Direct Attribution**

The 2008 Farm Bill establishes a maximum dollar amount for each program that can be received annually, directly or indirectly, by each person or legal entity. Such limitations on payments are controlled by direct attribution. Program payments made directly or indirectly to a *person* are combined with the pro rata interest held in any legal entity that received payment, unless the payments to the legal entity have been reduced by the pro rata share of the person.

Program payments made directly to a *legal entity* are attributed to those persons that have a direct and indirect interest in the legal entity, unless the payments to the legal entity have been reduced by the pro rata share of the person. Payment attribution to a legal entity is tracked through four levels of ownership. If any part of the ownership interest at the fourth level is owned by another legal entity, a reduction in payment will be applied to the payment entity in the amount that represents the indirect interest of the fourth level entity in the payment entity.

### **Common Attribution**

Common attribution is crediting payments made to a person or legal entity collectively to one limitation due to a unique or specific relationship between the persons or legal entities. Common attribution applies to a minor child and a parent or legal guardian; and a parent organization over a secondary organization when the parent organization exercises control over the secondary organization.

### **Ownership Interest for Direct Attribution**

For the purposes of the direct attribution of payments, ownership interest that a person or legal entity holds in a legal entity on June 1 of the current year is used. Direct attribution of payments is not applicable to cooperative associations of producers. The payments will instead be attributed to the members of the association that produced the commodities marketed by the association on behalf of the members.

### **Minor Child Rules**

June 1 of the current year is the date by which a child is considered to be a minor for payment attribution purposes. Payments received both directly and indirectly by a minor child are attributed to the parent or legal guardian.

### **Person**

Payments made directly or indirectly to a person cannot exceed the annual amounts specified in Table 1.

### **Joint Operations and General Partnerships**

Payments made, directly or indirectly, to a joint operation such as a general partnership, cannot exceed, for each payment specified in Table 1, the amount determined by multiplying the maximum payment amount specified for a program by the number of persons and legal entities that comprise the ownership of the joint operation. Payments to the joint operation will be reduced by an amount that represents the direct or indirect ownership in the joint operation by any person or legal entity that has reached the maximum limitation.

### **Legal Entities**

Payments made directly or indirectly to a legal entity cannot exceed the annual amounts specified in Table 1. Payments made to a legal entity will be reduced by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has reached the maximum limitation.

### **Payment Limits (Table 1)**

Program Payment Type	Limitation (In Dollars)			
	2009	2010	2011	2012
Commodity Programs				
Direct payments on covered commodities except peanuts	40,000/1			
Direct payments on peanuts	40,000/1			
Counter-Cyclical and ACRE payments on covered commodities except peanuts	65,000/2			
Counter-Cyclical and ACRE payments on peanuts	65,000/2			
Price Support Programs	No limits			
Conservation programs				
CRP Annual Rental Payment	50,000			
EQIP (all contracts for FY 2009-12).	300,000			
CSTP (all contracts for FY 2009-12)	200,000			
GRP	50,000			
WRP	50,000			
WHIP	50,000			
Disaster and Livestock Assistance Programs				
NAP	100,000			
SURE, LIP, LFP and ELAP	100,000			
TAP	100,000			
Other Programs				
TAAF	10,000 /3			

**Payment Limits (Table 1) continued:**

/1 if the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.

/2 Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.

/3 TAAF payments and counter-cyclical payments received by a person or legal entity for the same program or fiscal year are limited to a combined total of \$65,000 if counter-cyclical payments are received for covered commodities or peanuts, or a total of \$130,000 if counter-cyclical payments are received for both covered commodities and peanuts.

**Farm Operating Plans (CCC-902)**

Yearly producers are required to review their previously filed Farm Operating plan and make necessary updates before payments can be issued. If the form is not on file or there are changes that would affect a previous determination, a new farm operating plan must be executed. Farm Operating Plans are subject to a spot check through an end-of-year review process. Producers who do not farm according to the submitted farm operating plan and the applicable COC determinations will be required to refund the payments with possible penalties.

**Average Adjusted Gross Income**

The Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) provides that individuals and legal entities with average AGI in excess of a specified average AGI limitation are ineligible for payments subject to that limitation. The 2008 Farm Bill specified that there would be three qualifying levels for Adjusted Gross Income (AGI). The levels are as follows:

1. **\$500,000 Non Farm Income** – if a person or legal entity has average adjusted gross nonfarm income that exceeds \$500,000, the person or legal entity is ineligible for all commodity program payments and benefits,
2. **\$750,000 Farm Income** – if a person or legal entity has an average adjusted gross farm income that exceeds \$750,000, the person or legal entity is ineligible for Direct and Counter-Cyclical Program payments (DCP) direct payments only,
3. **\$1,000,000 Nonfarm Income** – if a person or legal entity has average adjusted gross nonfarm income that exceeds \$1,000,000 the person or legal entity is ineligible for all conservation program benefits unless at least 66.66% of total AGI is average adjusted gross farm income.

There is a special rule for determining the average AGI which provides if at least 66.66 percent of a person's or legal entity's average AGI is derived from certain sources of farm income, then income from the following shall also be considered as farm income:

- a. Sale of equipment to conduct farm, ranch and forestry operations
- b. Provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

**Applicable Years**

AGI is determined by looking at the 3 taxable years, preceding the most immediate complete taxable year. For 2012 program payments eligibility, the applicable 3-year period for calculation of the average AGI will be the taxable years for 2008, 2009, and 2010.

### **Adjusted Gross Income Certification (CCC-931)**

Producers must certify to their AGI annually. They can do this on form CCC-931 or by an acceptable statement from a CPA or attorney. Persons, members of joint operations or general partnerships, entities, and members of entities through the fourth level of ownership in an entity must certify compliance. A commensurate reduction of payment will be applied to the payment entity if the fourth level is not held by a natural (real) person. The certification by producers is subject to compliance rules. For 2012, the compliance/verification process identified below will be utilized by FSA.

### **Adjusted Gross Income Verification Process**

To assist producers, IRS will check each participant's AGI compliance by performing computerized calculations that indicate whether or not a producer exceeds average AGI limitations if requested by the producer. Producers whose average AGI appears to be in excess of the statutory AGI limitations will be notified in writing of the results, and provided the opportunity to make available within 30 days to the applicable FSA State Office, a third party verification from a certified public accountant or attorney of their AGI that demonstrates AGI limits have not been exceeded.

By signing the CCC-931 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information, FSA will forward a copy to IRS where they will conduct a search and verify the average adjusted gross income is within the claimed limits. The power of attorney currently used by FSA will not be honored for the CCC-931.

---

“The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance programs. (Not all prohibited bases apply to all programs.). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202)-720-6382 (TDD). USDA is an equal opportunity provider and employer.”

Linda Newkirk, State Executive Director  
Dianna Shook, Administrative Officer  
Tony Franco, Chief, Price Support/Conservation

Sharon Baker, Chief, Prod Adj/Compliance  
James Culpepper, Chief, Farm Loans  
Phone (501) 301-3000  
Website: [www.fsa.usda.gov/ar](http://www.fsa.usda.gov/ar)