



Payment Eligibility and Limitations

Overview

A limitation on the total annual payments that a “person” may receive under agricultural programs has been in effect since enactment of the Agricultural Act of 1970. The Farm Security and Rural Investment Act of 2002 authorized payments to which payment limitation and payment eligibility provisions are applicable and added a \$2.5 million average adjusted gross income (AGI) limitation.

Applicable Rules

The following two tables summarize the applicability of rules for USDA-administered programs. Other payments and benefits may also be subject to some or all of these rules. (See Tables 1 and 2.)

“Person” Determinations

A “person” for payment limitation purposes may be many things, including an individual; a limited liability partnership; a limited liability company; a corporation; a joint stock company; an association; a limited stock company; a limited partnership; an irrevocable trust; a revocable trust together with the grantor of the trust, an estate; a charitable organization; and a State, political subdivision, or agency thereof.

Program or Payment	Person	Actively Engaged in Farming	Cash-Rent Tenant	Permitted Entity	Foreign Persons	Adjusted Gross Income
Direct / Counter-cyclical	X	X	X	X	X	X
Marketing Assistance Loans					X	
Loan Deficiency Payments and Marketing Loan Gains	X	X	X	X	X	X
EQIP						X
CRP Rental Payments	X	X	X	X	X	X
NAP	X					

Payment or Benefit	Limitation Per Person
Conservation Programs	
Rental payments including incentive payments made under CRP.	\$50,000 per Fiscal Year
Cost-share and incentive payments under EQIP	\$450,000 per individual or entity EQIP payments are not limited on a per “person” basis. Instead, an individual or entity may not receive, directly or indirectly, cost-share or incentive payments under EQIP that exceed \$450,000, in aggregate, for all contracts entered into during FY’s 2002 through 2007, regardless of the number of contracts entered into by the individual or entity.

Table 2 Continued	
Direct and Counter-cyclical Payment	
Direct payments for the following covered commodities: barley, corn, grain, oats, other oilseeds, rice, sorghum, soybeans, upland cotton, and wheat	\$40,000 per crop year
Direct payments for peanuts	\$40,000 per crop year
Counter-cyclical payments for the following covered commodities: barley, corn, grain, oats, other oilseeds, rice, sorghum, soybeans, upland cotton, and wheat	\$65,000 per crop year
Counter-cyclical payments on peanuts	\$65,000 per crop year
Price Support	
Any gain realized from repaying a marketing assistance loan for one or more of the following loan commodities at a lower level than the original loan rate established for the loan commodity. Any LDP's received for one or more of the following loan commodities. Loan commodities include the following: barley, corn, grain, oats, other oilseeds, rice, sorghum, soybeans, upland cotton, and wheat	\$75,000 per crop year
Any gain realized from repaying a marketing assistance loan for honey, peanuts, mohair or wool at a lower level than the original loan rate established for the loan commodity. Any LDP's received for one or more of the following loan commodities, including: honey, peanuts, mohair or wool.	\$75,000 per crop year
NAP	
NAP payments	\$100,000 per crop year

For an individual or entity to be considered a separate "person," the individual or entity must have a separate and distinct interest in the land or crop involved, exercise separate responsibility for this interest, and maintain funds or accounts separate from that of any other individual or entity for this interest.

Status Date

The status of an individual or entity on April 1 of the applicable program year is the basis for determining the number of "persons" for payment limitation purposes for that year. Actions taken by an individual or entity after that date to increase the number of "persons" will not be recognized for the current program. For example, if an individual holds more than 50 percent interest in a corporation, as of the status date, the individual and entity will be considered one "person" for the applicable year.

Husband and Wife

The general rule is that a husband and wife are considered one "person" for payment limitation purposes. However, they may be considered separate "persons" if they request to be considered separate "persons" if they request to be considered separate "persons" and one of the following exceptions applies:

- Neither spouse holds, directly or indirectly, a substantial beneficial interest in more than one entity receiving payment as a separate "person" (including an interest as an individual), and they meet

all other requirements to be considered separate “persons.”

- Both spouses were separately engaged in unrelated farming operations before their marriage and the farming operations of both spouses have been maintained as totally separate and distinct farming operations after their marriage.

Minor Children

Parents of minor children (or the court appointed person responsible for the minor) with farming interests are generally combined as one “person” with their minor children.

Corporations, Limited Partnerships, Limited Liability Companies and Similar Entities

A stockholder or member of a corporation or similar entity that owns more than 50 percent interest in the entity will be combined as one “person” with the entity. Also, any two or more stockholders, partners, or members that own more than 50 percent of the interest in each of two or more corporations, limited partnerships, limited liability companies, or other similar entities with farming interests will be combined as one “person.”

Trusts

A sole beneficiary of a trust will be combined as one “person” with the trust, as will the grantor of a revocable trust. Any two or more trusts in which the same two or more beneficiaries hold more than 50 percent of each trust will be combined as one “person.” Trust

agreements will be scrutinized to determine if the trust contains provisions, which would require the trust to be considered revocable for payment limitation purposes.

Estates

A sole heir of an estate will not be combined as one “person” with the estate simply because the individual or entity is the sole heir. However, any individual or entity that would have been combined as one “person” with a now deceased individual will also be combined as one “person” with the estate of that deceased individual, regardless of their share in the estate.

Actively Engaged in Farming

A producer must be considered “actively engaged in farming” to be eligible for payments and benefits under some programs. Generally, in order to be considered “actively engaged in farming,” the producer must provide significant contributions to the farming operation, which are commensurate to the claimed share of the farming operation and the contributions must be at risk.

General Rules

A producer must make a significant contribution of capital land, and/or equipment to their farming operation as well as a significant contribution of active personal labor and/or active personal management. “Active personal labor” and “active personal management” are labor and management that are actually performed by the individual in question. The contribution of

active personal management must be critical to the profitability of the farming operation, taking into consideration the individual’s or entity’s commensurate share in the farming operation.

Commensurate and At Risk Contributions

The individual or entity must make contributions to the farming operation that are at least commensurate with the claimed share of the profits or losses from the farming operation. Contributions must also be at risk. In other words, the individual or entity cannot be claiming a greater share of the profits or losses of the farming operation than is supported by the contributions the individual or entity makes to the farming operation.

Exceptions

While the general requirements for “actively engaged in farming” demand inputs of capital, land, or equipment and inputs of active personal labor or active personal management, certain exceptions to these requirements are permitted.

These exceptions are:

■ **Landowners**

A landowner may be considered “actively engaged in farming” with respect to owned land if the following requirements are met:

- The landowner contributes owned land to the farming operation for which the landowner receives rent or

income for use of the land based on the land's production or the operation's operating results.

- The landowner's share of the profits or losses from the farming operation is commensurate with the landowner's contributions to the operation and the contributions are at risk.

■ **Sharecroppers**

A sharecropper must meet the following requirements to be considered "actively engaged in farming":

- The sharecropper makes a significant contribution of active personal labor to the farming operation for which the sharecropper receives a specified share of the crop produced on the farm.
- The sharecropper's share of the profits or losses from the farming operation is commensurate with the sharecropper's contributions to the operation, and the contributions are at risk.

Cash-Rent Tenant Rule

A cash-rent tenant will be ineligible to receive payment on the cash-rented land unless the tenant makes either a significant contribution of active personal labor, or if labor is not provided, a significant contribution of management together with a significant contribution of equipment to the farming operation.

Permitted Entities

No person may receive payments subject to these rules from more than three entities in which the person holds substantial beneficial interest, generally 10 percent or more. If an individual receives payments as an individual, the individual may not also receive payment from more than two entities that receive payment as a separate "person." If an individual does not receive payment as an individual, the individual may not receive payment from more than three entities that receive payment as a separate "person."

For example, if an individual has a farming interest as an individual and also owns stock in six corporations that also farm, the individual must select just two of those corporations through which the individual may indirectly receive payments. The payments to the other four corporations will be reduced by the same percentage that the individual owns in each of the other four corporations. If the individual did not have an individual farming interest, three of the corporations could be selected as "permitted entities."

Any person who owns 10 percent or more of a corporation or other entity that is earning payments subject to these rules, either directly or indirectly, will be required to select that interest as "permitted" before that share of the payment may be paid to the entity.

Notification

All entities earning payment subject to these rules must report to their local FSA committee the name and social security number of each individual that owns, either directly or indirectly, any interest in such entity. A contract to participate in the applicable programs will not be considered complete until this information is provided.

The entity also is required to inform all members of the entity of the rules regarding payment eligibility and permitted entities.

Foreign Persons

In addition to the "person" and "actively engaged in farming" requirements, foreign persons, other than individuals lawfully admitted into the United States (registered aliens), are not eligible to receive any program benefits, including commodity loans, unless that foreign person provides significant contribution of capital, land, and active personal labor to the farming operation.

Average Adjusted Gross Income Limitation

■ **Rule**

Effective for 2003 through 2007, an individual or entity shall not be eligible for certain program benefits during a crop, program, or fiscal year, if both of the following apply:

- the three-year average of the adjusted gross income (AGI) for the individual or entity

- exceeds \$2.5 million;
- less than 75 percent of the average AGI is derived from farming, ranching or forestry operations.

Terms and Definitions

Adjusted gross income is the amount of AGI the individual reported to the Internal Revenue Service (IRS) on the appropriate tax filing documents or if AGI was not reported to the IRS, a comparable measure of income as determined by FSA.

Average adjusted gross income for the individual or entity is the average of the adjusted gross income, or comparable measure, of the individual or entity over the three tax years immediately preceding the year for which program benefits are requested.

Income from farming, ranching or forestry operations generally means income derived from producing crops, livestock, or unfinished raw forestry products.

Certification and Compliance

The determinations necessary for compliance with the average AGI limitation will be generally based on Internal Revenue Service concepts and information included on final tax filings for an individual. Comparable measures for AGI have been developed for entities, partnerships, and for organizations that do not have such a line item on tax filings, that are non-profits, or are not required to file tax information.

Certification will be accomplished through the submission of the form CCC-526, Average Adjusted Gross Income Certification, or a statement by a certified public accountant or an attorney that the average adjusted gross income for the applicable time period does not exceed the limitation.

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