

For: County Offices

EQIP National Conference Call Questions and Answers

Approved by: State Executive Director



1 Overview

A Background

A national EQIP conference call with FSA and NRCS national and state office personnel, involved with EQIP, was conducted March 11, 2003. The conference call discussed the implementation of EQIP with regard to the 2003 Joint Agency Memorandum transmitted to counties in OK Notice CONOP-66. Questions asked during the conference calls were composed in a question and answer document. This document confirms elements relevant to implementation of EQIP.

B Purpose

This notice provides the questions and answers in Exhibit 1 resulting from the March 11, 2003, conference call.

2 EQIP Questions and Answers

A Exhibit 1 Questions and Answers

Exhibit 1 provides questions and answers from the March 11, 2003, national EQIP conference call. County offices shall review the document and process EQIP actions accordingly and in conjunction with the 2003 Joint Memorandum transmitted in OK Notice CONOP-66.

B Filing

File the attached Exhibit 1 with the current EQIP manual.

Disposal Date:

04-01-04

04-24-03

Distribution:

County Offices

**EQIP Joint Conference Call
QUESTIONS AND ANSWERS
March 11, 2003**

8:00 a.m. EST Eastern Time Zone States

Q1. The proposed rule provides that to be eligible to participate in EQIP, all individuals and members of an entity and embedded entities must provide a Social Security Number (SSN). Is this provision expected to be in the final rule?

A. Yes.

Q2.* When NRCS approves an Error, Omission, or Appeal (EOA) for an existing contract, what documentation should be provided to FSA?

A. At the State level, provide a memorandum containing the amount of additional funds authorized to be allocated, county, producer name, and contract number. At the county level, provide a revised, approved CCC-1245 for the revised amount.

Q3. What do you mean that EQIP payment limitation is now "by attribution?"

A. The 2002 Farm Bill changed the law regarding payment limitation for EQIP. Section 1240G provides that "*an individual or entity may not receive, directly or indirectly, cost-share or incentive payments . . . that, in the aggregate, exceed \$450,000 for all contracts entered into under [EQIP] by the individual or entity during the period of fiscal years 2002 through 2007. . .*"

EQIP payments will be attributed to SSN's. If Paul Revere participates in EQIP as an individual and earns \$150,000 in cost-share, \$150,000 will be paid to him and attributed to his SSN (received directly). If Mr. Revere is a member of Patriot Farms, Inc. with 25 percent interest and Patriot Farms, Inc. participates in EQIP and earns \$300,000 in cost-share, \$300,000 will be paid to Patriot Farms, Inc. and \$75,000 attributed to Mr. Revere's SSN (received indirectly). Therefore, Mr. Revere's SSN is attributed a total of \$225,000 in EQIP payments.

Q4.* Will the revised EQIP manual contain sample letters, such as the initial notification letter that NRCS is now responsible to send to a participant who owes a refund?

A. NRCS NHQ will provide samples as necessary, either in the revised manual or by other notification.

Q5. You stated that it is anticipated that limited resource farmers and ranchers will self-certify on the revised CCC-1200. Will there be a required spot check and, if so, how much?

A. The revised EQIP manual will cover this provision.

- Q6. In the February 26, 2003, joint memorandum, under Local NRCS Office responsibilities, on page 7, 7th bullet, it provides that participants must be notified in writing of proof payment requirements. We cannot find this requirement in the NRCS contracting manual. Can you give us a reference?
- A. The provision is contained in the current EQIP manual, sections 515.113 d and e. The provision was included by FSA based on past experience in administering cost-share programs.
- Q7. Is it adequate to simply review the CCC-1200 to determine proof of payment?
- A. The revised EQIP manual will cover this provision.
- Q8. NRCS in our State wants to keep a manual count of the number of beginning and limited resource farmers and ranchers who applied for EQIP. Will FSA's software keep this count?
- A. No.
- Q9. If there are multiple owners on the property and the operator is participating in EQIP, you stated that we need to obtain the signatures of all owners. However, we understand that AGI certification is only needed for the participant receiving payment, which in this case will be the operator. If all owners sign, will all owners be required to file AGI certification? If so, why do we need to obtain the signatures of all owners?
- A. We will address our response in two parts. First, EQIP policy requires obtaining the signature of an owner as evidence of control of the land for the term of the contract or to indicate permission for installation of a structural practice if other forms of documentation have not been provided according to the current EQIP manual, section 515.111 c. For such evidence or permission to be valid, signatures of all owners of land subject to the EQIP contract must be obtained.

Second, payment limitation policy according to Notice PL-111, paragraph 2 C, provides that each entity and individual requesting payments or benefits subject to the AGI provision must provide a certification. Therefore, only individuals or entities that want to receive a payment or to whom any payment under an EQIP contract will be attributed must submit an AGI certification. However, the EQIP proposed rule provides in Section 1466.24 (b) (7) that eligibility for payments for AGI will be determined at the time of contract approval. Therefore, if an individual or entity does not submit an AGI certification at the time of contract approval, the individual or entity will be unable to earn or be attributed a payment under that EQIP contract for the life of the contract.

11:30 a.m. EST Central Time Zone States

- Q10. We are unclear why State FSA committee responsibilities provide for hearing requests for reconsideration and appeals only if FSA made initial adverse determination.
- A. FSA's Handbook 1-APP (Rev. 1), paragraph 72 provides that for appeals of NRCS technical determinations, if the county FSA committee (COC) determines the case has merit it shall refer the case through the SED to the State Conservationist. The COC must base its final decision upon the State Conservationist's determination and provide appeal rights to the National Appeals Division (NAD). The Director, FSA Appeals and Litigation Staff (ALS) has advised that NRCS non-technical determinations shall be handled in the same manner. In addition, ALS has advised that if the COC determines the appeal of an NRCS determination has no merit, the COC shall provide appeal rights to NAD and the State FSA committee.
- Q11.* For prompt payment interest, isn't it important that county FSA offices date stamp documents received from NRCS?
- A. Yes, county FSA offices shall continue to date stamp all documents when received from NRCS, including approved CCC-1245's submitted for payment.

However, under current policy prompt payment interest accrues to all payments not issued by 30 calendar days after the due date. The due date for EQIP as provided in FSA Handbook 67-FI (Rev. 2), Exhibit 4 is 30 days after the later of: (1) date producer certifies practice completion and signs an application for payment, or (2) date producer provides all necessary invoices to determine the payment. Since all of these documents will be provided to NRCS, it is important that NRCS field offices date stamp CCC-1245 and invoices when received from the producer. In the absence of a date stamp by NRCS, the due date would likely be calculated from the date the producer signed CCC-1245.

NRCS is seeking further interpretation of prompt payment regulations from the Department of Treasury and may issue revised policy for EQIP in the future.

- Q12. State FSA Office responsibilities, page 2, 9th major bullet, include controlling payment limitation for producers farming in more than one State. Shouldn't this task be performed by the county FSA office that is designated as the control county for that producer?
- A. Yes. Please make this pen-and-ink correction to the joint memorandum. A corrected joint memorandum will NOT be issued.

Q13. According to the current EQIP manual, section 515.81 j, all signatures on a CCC-1200 application must be received by the FSA office no later than COB of the application period ending date in order for the application to be processed for that application period. In some cases, tenants may have 10 owners. Does the requirement in 515.81 j still apply?

A. Yes.

Q14. For our State, the amount of unfunded contracts according to county FSA offices differs from the amount listed on NRCS's website at the following URL: http://www.nrcs.USDA.GOV/programs/eqip/2002EQIP/Unfunded/2002_Unfund_Info.html. What is the reason for this difference?

A. NRCS used the actual number of applications received and calculated the average cost per application in that State.

Q15. County FSA office responsibilities, page 3, 4th bullet, 1st sub-bullet, provides that FSA will obtain signatures on applications and CCC-1200 appendix. Does that mean all EQIP applications and appendices, or only those submitted to FSA?

A. If NRCS takes an application, it is expected that NRCS will obtain signatures at that time. If all required signatures on the application are not received when initially obtained, FSA is responsible to obtain all signatures. See Q&A 13 above.

Q16. Will there be a new EQIP manual and, if so, when will it be issued?

A. NRCS is working on a revision of the EQIP manual to be issued after publication of the final rule.

Q17. Whom should State FSA offices contact when they receive funds on a CCC-357 to ensure the allocation has been added to the e-funds ledger?

A. Contact Lynne Winemiller in FSA-CEPD on 202-720-4053 or via email at lynne_winemiller@wdc.usda.gov

Q18. State FSA Office responsibilities, page 2, 5th major bullet, provides State FSA offices will draft and publish State supplemental EQIP policy and procedure if applicable. We assume that means policy and procedure for FSA responsibilities only, right?

A. Right.

Q19. When will FSA Handbook 2-CONSV be updated?

A. We are planning to issue an update after EQIP software to control payment limitation has been tested and issued, likely in late FY 2003.

- Q20. How does the Adjusted Gross Income (AGI) limitation affect tribal joint ventures or joint ventures?
- A. AGI only applies to individuals and entities. AGI would not apply to a tribal joint venture or joint venture.
- Q21. Why are we still taking the CCC-502 if "person" determinations are no longer needed for EQIP?
- A. The information needed to verify individual and entity designation of applicants, including entity members, is contained on the CCC-502 and related forms.
- Q22. We understand that for EQIP, AGI payment eligibility will be determined at the time of contract approval. Will a new AGI certification be needed each year to issue payments under the contract?
- A. No. If a producer certifies payment eligibility according to the AGI limitation at the time of contract approval, provided COC does not determine non-compliance, then the AGI payment eligibility stands for the term of the EQIP contract.
- Q23. You stated that EQIP payments will be attributed to SSN's. What if an entity has embedded entities through the 5th level?
- A. To determine producer eligibility, FSA will look to the level necessary to find SSN's to which to attribute the EQIP contract payments. If SSN's are not provided, the entity will be determined ineligible.
- Q24. Must a producer who is applying only for EQIP complete all sections of the CCC-502?
- A. A forthcoming PL notice will provide instructions for CCC-502's obtained for EQIP participation only and other EQIP payment limitation information.
- Q25. When FSA receives a refund of EQIP cost share, we understand that for an automated payment the county office will use the automated correction process. Do they set up a receivable?
- A. Yes. The conservation system will automatically interface with accounting and allow the user to create the receivable. The county FSA office can then pay the receivable using the refund received.

3:00 p.m. EST Mountain and Pacific Time Zones, Alaska and Hawaii

- Q26. What is the reason county FSA offices are instructed to record information only by practice, not by component?

- A. To help reduce FSA workload, NRCS streamlined its process and now provides information by practice, not by component. In addition, FSA software is being changed to remove the ability to record data by component.
- Q27. Which agency determines that an applicant is an agricultural producer according to the current EQIP manual, section 515.61?
- A. County FSA Committee. This is part of determining producer eligibility.
- Q28. We heard that slippage can now be used on other contracts.
- A. After the fiscal year in which a contract is approved, slippage can only be used within an approved contract. Slippage from a contract cannot be used on any other contract, except if the funds were deobligated and reobligated on or before September 30 of the fiscal year in which the original contract was approved. This policy is unchanged from previous EQIP policy.
- Q29.* Is there a default expiration date that NRCS should use when approving contracts?
- A. The default expiration date would be one year after planned implementation of the last practice.
- Q30. Procedure in FSA's Handbook 1-PL provides that if a "person" determination is not made within 60 days then a default determination will become effective. How will we handle this provision for EQIP since you say to accept CCC-502's but COC will not make a "person" determination?
- A. See Q&A 24 above.
- Q31. Would "EQIP only" CCC-502's be included in the end of year review spot check required by Handbook 1-PL?
- See Q&A 24 above.
- Q32. Will FSA continue to follow Handbook 1-PL for determining how an entity is organized, such as acquiring the articles of incorporation, etc?
- A. Yes.
- Q33. If an EQIP participant has completed installation of the last practice on a 2002 Farm Bill contract and funds remain available on the contract, may another practice be added?
- A. No.

- Q34. Can slippage within a contract be used for an EOA on that contract?
- A. Yes.
- Q35.* What if, after NRCS has certified completion of a practice and FSA has paid, NRCS discovers that the calculation was in error and the producer should have been paid more. Can this correction be made?
- A. Yes. If the error discovered after payment is a math error and funds remain on the contract, submit a corrected and approved CCC-1245 to FSA for payment with a written explanation for the file. If an error or omission is discovered after payment, handle as an EOA.
- Q36. Should States set up State level reserves for FY 2003 contract EOA's?
- A. That decision is still under consideration.
- Q37. For Native American tribes, what is the reason that EQIP payments will be attributed to individuals?
- A. Regarding attribution of payments to individuals, it is a legal requirement. See Q&A 3 above. Regarding AGI, tribes are not subject to AGI. The Native American individual, however, is subject to AGI.
- Q38. We are concerned that payment limitation by attribution without the three permitted entities rule may result in abuse. For example, what would prevent a producer from forming multiple corporations, giving himself a small percentage in each corporation but setting them up in a manner that the EQIP benefits are funneled back to him?
- A. Such a scenario would be considered a scheme and device under 7 CFR, Part 1400 and Handbook 1-PL.
- Q39. We believe it creates a lot of unnecessary workload in our State for FSA to be required to determine producer eligibility for each application without knowing whether it will result in an approved contract. Is there anything that can be done to reduce this workload?
- A. We understand that some States are performing pre-screening of applications. FSA and NRCS in your State may wish to develop a non-discriminatory procedure through the State Technical Committee to help both agencies know upfront whether an application is likely to result in an approved contract.

- Q40. If an EQIP applicant fails to timely submit the required AD-1026, CCC-526, and CCC-502 so that FSA can determine producer eligibility, will the application be ranked at that time?
- A. No. The forms must be completed by the applicant in order for an EQIP application to be processed. See current EQIP Manual, section 515.118 d.
- Q41. Is AGI compliance required for participation in the Agricultural Management Assistance?
- A. Yes. AMA is a program specified under Subtitle F of Title II of the 2002 Farm Bill. All Title I and Title II programs are subject to the AGI limitation.
- Q42.* Will the revised EQIP Manual, when issued in final, supercede the February 26, 2003, joint memorandum?
- A. No. The February 26, 2003, joint memorandum can only be superceded by a jointly-approved document.

Additional Questions Received:

- Q43. During the conference call you stated, "delete reference to person determination from page 3." We are not sure which reference to delete.
- A. During the conference call we meant to state that, "States should note that the February 26, 2003, joint memorandum has deleted the reference to 'person determination' that was included under County FSA Committee responsibility in the August 28, 2002, joint memorandum." The second bullet now provides that COC's will "verify individual or entity designation of applicant, as necessary, for FY 2003" because the EQIP payment limitation provision was changed by the 2002 Farm Bill. Payment limitation for EQIP will now be determined by attribution, not by "person." Please see Q&A 3 above.

There is nothing you need to change on page 3 of your copy of the February 26, 2003, joint memorandum. The only two pen-and-ink changes you need to make are: (1) On page 2, 5th bullet, cross through the words "including NRCS funds slippage accounts," and (2) The correction discussed in Q&A 12 above. A corrected joint memorandum will NOT be issued.

- Q44. Will the county FSA office make a "person" determination for EQIP? We are confused because we understand that if a county FSA office accepts and processes CCC-502, they are making a "person" determination.
- A. No, County FSA Committees will no longer make "person" determinations for EQIP. EQIP payment limitation will now be determined by attribution. Please

see Q&A 3 above. Accepting CCC-502 and making a "person" determination are not the same. Please see Q&A 21 above regarding accepting CCC-502 for EQIP.

- Q45. Under 1-PL, an individual with entities could receive up to \$900,000. Is the \$450,000 EQIP limitation per individual, and does interest in entities count toward the \$450,000?
- A. Yes, the \$450,000 EQIP payment limitation is per individual or entity. Yes, an individual's interest in an entity is attributed toward the individual's payment limitation. See Q&A 3 above. Your statement that "Under 1-PL, an individual with entities could receive up to \$900,000" is not applicable to EQIP.
- Q46. As of the new Farm Bill, we understand that slippage funds from EQIP can be reobligated. 1) How will they be tracked? 2) Can they be reobligated to new contracts as well as modifications of old contracts? If obligated to new contracts, do they show up as FY 02 funds or FY 03 funds?
- A. Your understanding is not correct. At one time, it was thought that slippage funds from NRCS-apportioned EQIP funds could be reobligated. The Office of General Counsel has recently clarified that NRCS-apportioned EQIP funds shall be treated in essentially the same manner as CCC-apportioned EQIP funds. Therefore, slippage cannot be used.
- Q47. Which agency will be responsible to spot check limited resource and beginning farmer certifications?
- A. NRCS.