

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income 4-PL	Amendment 13
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Approved by: Acting Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 186 B has been amended to remove the reference to “three AGI limitations” and to instead state, “AGI limitations”.

Subparagraph 186 D and paragraph 203.5 have been amended to clarify, without change of policy, that direct, counter-cyclical, and ACRE payments are included in the term, “commodity programs”.

Subparagraph 189 E has been amended to include that CCC-931 must be submitted before issuing program benefits subject to AGI provisions.

Subparagraph 191 F has been amended to update the paragraph reference.

Subparagraph 193 B has been amended to specify that information submitted by participants to verify compliance with average AGI provisions will **not** be released to others seeking such under FOIA.

Paragraph 197 has been amended and paragraph 203.8 has been added to move and revise procedure for documenting and calculating average AGI for 2009 and subsequent years.

Paragraph 200.5 has been amended to incorporate policy for filing CCC-931’s for a deceased person.

Paragraph 203.7 has been amended to authorize SED’s to perform average AGI reviews and to incorporate procedure for average AGI reviews and decisions.

Paragraph 203.8 has been amended to incorporate new procedure for documenting and calculating average AGI for 2009 and subsequent years.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Paragraph 203.9 has been added because of changes to paragraph 203.8.

Paragraph 204 has been amended to revise example letters for average AGI activities consistent with the other changes made in this amendment.

Paragraph 216 has been amended to incorporate new delegations for AGI.

Paragraph 217 has been amended to remove the reference to meritorious relief consistent with 7-CP.

Exhibit 2 has been amended to add a definition for enrolled agent.

Page Control Chart		
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Part 6 Adjusted Gross Income (AGI)

186 Average AGI Limitations

A Rule

[7 CFR 1400.500] A person or legal entity shall **not** be eligible to receive certain program benefits during the 2009 through 2012 crop, program, or FY if the average AGI exceeds specified amounts.

B * * * AGI Limitations

The AGI limitations are as follows. See Exhibit 9.

IF average adjusted gross...	THEN the person or legal entity is ineligible for...
nonfarm income exceeds \$500,000	commodity (DCP and ACRE), price support, and disaster assistance program benefits listed in subparagraph D. Note: A person or legal entity with average adjusted gross nonfarm income that exceeds \$500,000 is not eligible for marketing loan gains and LDP's. However, the person or legal entity is eligible for MAL's, but the loans must be repaid at principal plus interest, or commodity certificates may be exchanged for loan collateral.
farm income exceeds \$750,000	*--2009 through 2012 DCP direct payments.
income (both farm and nonfarm) exceeds \$1 million	2012 direct payments.--*
nonfarm income exceeds \$1 million	conservation program benefits listed in subparagraph D, unless 66.66 percent or more of the average AGI was derived from activities related to farming, ranching, and forestry operations.

186 Average AGI Limitations (Continued)

C Quick Reference for AGI Amounts

This is a quick reference for determining AGI amounts.

<p>Average AGI <i>minus the</i> Average Adjusted Gross Farm Income <i>equals the</i> Average Adjusted Gross Nonfarm Income</p>

D Quick Reference for Programs and Applicable AGI Provisions

This is a quick reference for programs and applicable AGI limitations.

Program	Less Than \$500,000 Nonfarm AGI	Greater Than \$750,000 Farm AGI	Greater Than \$1 Million Total AGI	Less Than \$1 Million Nonfarm AGI	Greater Than \$1 Million Nonfarm AGI and at Least 66.66 Percent of AGI Is Derived From Farming	Greater Than \$1 Million Nonfarm AGI and Less Than 66.66 Percent of AGI Is Derived From Farming
--Commodity Programs (including direct, counter-cyclical, and ACRE payments)--	Eligible					
Direct Payments	Eligible	Ineligible	Ineligible			
ELAP, LFP, LIP, NAP, SURE, and TAP	Eligible					
CCC-580's, MLG's, and LDP's	Eligible					
CRP, ECP <u>1</u> , EQIP, and all other Conservation				Eligible	Eligible	Ineligible
All other.	As determined by regulation for each program.					

1/ If applicable, see subparagraph 11 A.

189 Average AGI Certification

A Certifying Compliance

To comply with the AGI requirement for the applicable crop year, program, or FY, an individual or entity shall provide **1** of the following:

- statement from a certified public accountant or an attorney that the average AGI does **not** exceed the applicable limitation and agreement with all requirements of information disclosure
- CCC-931 applicable to the year that program benefits are requested.

***--Note:** In addition to the statement, CCC-931, items 1 through 4 and 8 through 10 must be completed and **signed by the participant** for consent to disclosure of tax information. See paragraph 200.--*

B Statements From CPA's or Attorneys

Statements from CPA's or attorneys certifying AGI compliance **must** include the following:

- name of the individual or entity to which the certification applies
- program year for which the certification applies
- the 3 years used to calculate average AGI
- AGI limitations with which the individual or entity is in compliance
- that the individual or entity agrees to **all** requirements of information disclosure for AGI verification purposes under 7 CFR Part 1400 regulations
- that **all** definitions and requirements of AGI in 7 CFR Part 1400 regulations have been reviewed.

C Required AGI Certifications for Payment Eligibility

AGI compliance certifications are required for payment eligibility for **all**:

- persons
- legal entities
- interest holders in a legal entity, including embedded entities to the fourth level of ownership interest, regardless of the level of interest held
- members of a general partnership or joint venture, regardless of the number of members
- Indians and Native Americans represented by BIA.

189 Average AGI Certification (Continued)**D Verifying AGI Certifications**

COC or reviewing authority may do the following:

- question all or part of an AGI certification provided by an individual or entity
- request documentation, such as tax records, from the individual or entity
- use requested information to verify certifications made by the individual or entity for AGI certification purposes.

COC or reviewing authority shall record the following in COC or STC minutes:

- individuals and entities reviewed
- findings and results of reviews
- determinations of compliance or noncompliance with each AGI limitation.

COC or reviewing authority shall provide the following:

- written notice to the individuals and entities of results
- appeal rights according to 1-APP, if any determination is considered adverse.

E Deadline for AGI Certifications and Consents to Disclose

AGI certification and consent to disclose **must** be submitted:

- according to the deadlines established by the applicable programs
- **before * * *** issuing any program benefit subject to AGI provisions.

F Multi-County Producers

Individuals or legal entities with multi-county farming interests will submit the required AGI certifications and consents to disclosure only in the recording county.

The recording county will do the following:

- make any AGI compliance determinations, if necessary
- set values in the eligibility files reflective of the certification or determination
- share the information with other counties according to paragraphs 228 and 229.

191 Determining AGI and Average AGI (Continued)

D Determining Average AGI (Continued)

Determine the average AGI according to the following table.

IF determination is for a...	THEN average AGI is the average...
<ul style="list-style-type: none"> • person • legal entity in business for all of the applicable 3-year period 	of AGI, including losses, for the 3 taxable years preceding the most immediately preceding complete taxable year. Note: This includes legal entities not required to file an IRS tax return or legal entities that did not have taxable income in 1 or more years of the applicable 3-year period.
legal entity not in business for all of the applicable 3-year period	AGI, including losses for only the years in the base period that the new legal entity was in business.

E Average Nonfarm AGI's Exceeding \$1 Million Limitation

When the average nonfarm AGI is greater than \$1 million, a comparison **must** be made to determine if less than 66.66 percent of the average AGI was derived from farming, ranching, forestry operations, and related activities.

IF...	THEN see IRS Form...
corporation	<ul style="list-style-type: none"> • 1120; compare the 3-year average of line 10 (other income per Schedule F) with the average AGI determined for the same time period • 1120S; compare the 3-year average of line 5 (other income) with the average AGI determined for the same time period.
estate or trust	1041; compare the 3-year average of line 6 (farm income or loss) with the average AGI determined for the same time period.
LLC, LLP, LP, or other similar organization	1065; compare the 3-year average of line 5 (farm income or loss) with average AGI determined for the same time period.
person	1040; compare the 3-year average of line 18 (farm income or loss) with the average AGI determined for the same time period.
tax-exempt or charitable organization	990-T; compare the 3-year average of line 8 (interest, annuities, royalties, and rents per Schedule F) with the average AGI determined for the same time period.

Note: Exceptions may be applicable to the 3-year base period.

F AGI Compliance Worksheet

--For AGI compliance determinations, use worksheet in paragraph 203.8.--

191 Determining AGI and Average AGI (Continued)**G Rule for New Entity**

A new legal entity shall **not** be considered new to the extent that it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or persons and legal entities, with an interest in the old legal entity.

The income of the old legal entity will be averaged with the income of the new legal entity for the base period if any of the elements of commonality are present.

Example for 2009: Twin Falls Corporation is comprised of Joe Plummer (50 percent) and John Plummer (50 percent).

The average AGI from the 3 complete taxable years 2005, 2006, and 2007 for Twin Falls Corporation was \$1.1 million. Less than 66.66 percent was derived from farming, ranching, forestry operations, and related activities. Twin Falls Corporation had \$3 million AGI in 2008.

Twin Falls Corporation exceeded the average \$1 million nonfarm AGI limitation, and; therefore, was determined ineligible for 2009 conservation program benefits.

Example for 2010: Plummer LLC is comprised of Joe Plummer (5 percent), John Plummer (5 percent), and Twin Falls Corporation (90 percent).

Plummer LLC takes over the farming operation previously represented as Twin Falls Corporation.

The average AGI for Plummer LLC for 2010 payment eligibility purposes will be \$1.73 million, the average of AGI of Plummer LLC and Twin Falls Corporation for the years 2006, 2007, and 2008. Plummer LLC is ineligible for 2010 conservation program benefits because of the average \$1 million nonfarm AGI limitation.

193 Average AGI Compliance Reviews

A Selecting Cases

Reviews for compliance with average AGI provisions may be:

- initiated by a COC or STC representative
- selected on a nationwide basis by DAFP.

B Verifying Compliance

Information necessary to verify compliance with the average AGI provisions includes, but is not limited to, the following:

- balance sheets
- financial statements
- information prepared for a private lender
- Federal and State income tax returns
- reports prepared for other Government agencies
- other credible information of income for the qualification period
- statement prepared by a certified public accountant or an attorney on behalf of the individual or legal entity that verifies compliance of the individual or legal entity with average AGI provisions for the applicable qualification period.

Note: Federal and State income tax information may be requested by the reviewing authority if that is the only means to establish compliance with the average AGI provisions.

The reviewing authority must safeguard the confidentiality of the information provided.

***--Note:** Ensure that information provided by program participants to verify compliance with average AGI provisions is **not** released to others or in response to requests under FOIA.--*

--193 Average AGI Compliance Reviews (Continued)*C Notification**

Program participants selected for review shall be notified in writing of the following:

- nature and reason for the review
- suggested sources and types of information most descriptive and illustrative
- established deadline to provide the information to the reviewing authority
- identity of the reviewing authority
- mailing address of the reviewing authority
- consequences of the failure to timely provide the requesting information.

D Failure to Provide Information

Failure to timely provide correct and accurate information to establish compliance with the average AGI provisions will result in any or all of the following:

- ineligibility for all program payments and benefits subject to the average AGI requirements for the applicable years
- required refund of these program payments and program benefits
- possible prosecution under civil or criminal statutes.

E Written Notice of Ineligibility

If requested information is **not** timely provided to the reviewing authority:

- notify the program participant of their ineligibility for payments and benefits from the applicable programs

Note: See example notification letters in paragraph 204.

- include appeal rights according to 1-APP.--*

197 Calculating Average AGI for 2009 and Subsequent Years

* * *

A Special Rule for Average AGI Determination

If at least 66.66 percent of a person's or legal entity's average AGI is derived from all other sources of farm income, income from the following, if applicable, shall **also** be considered as farm income:

- sale of equipment to conduct farm, ranch, and forestry operations
- *--compensation for providing inputs and services to farmers, ranchers, foresters, and--* farm operations.

B Applying the Special Rule for Determining the Average AGI

The following are examples of applying the rule in subparagraph B.

Example 1: Jake has requested 2009 DCP benefits. Jake's total average AGI was \$900,000. His farm AGI was \$650,000 from the production of crops and livestock. His nonfarm AGI was comprised of \$150,000 from his aerial spraying service and \$100,000 from oil and gas royalties.

Facts and figures: Over 66.66 percent of Jake's total AGI was from the production of crops (\$650,000 divided by \$900,000 times 100 equals 72.22 percent). Jake also has nonfarm AGI from his aerial spraying; a custom service to farmers and ranchers, that now **must** be considered farm AGI for payment eligibility purposes.

The result: Jake's farm AGI is now \$800,000 (the total of \$650,000 and \$150,000); nonfarm AGI is \$100,000. Jake's farm AGI exceeds \$750,000. Jake is eligible for 2009 DCP benefits, **except** for direct payments.

Example 2: Wanda has requested 2009 DCP, NAP, and EQIP benefits. Wanda's total AGI was \$3 million. Her farm AGI was \$2.25 million from the production of crops and livestock. Her nonfarm AGI was \$750,000; comprised of \$500,000 for livestock equipment sales and \$250,000 from commercial real estate rental.

Facts and figures: Over 66.66 percent of Wanda's total AGI was from the production of crops and livestock (\$2.25 million divided by \$3 million times 100 equals 75 percent). Wanda also has nonfarm AGI of \$500,000 from livestock equipment sales that now **must** be considered average farm AGI for payment eligibility purposes.

The result: Wanda's farm average AGI is now \$2.75 million (\$2.25 million and \$500,000); nonfarm AGI is \$250,000. Wanda's farm AGI still exceeds \$750,000, but her nonfarm AGI is now less than \$500,000. Wanda is eligible for all program benefits requested, **except** for 2009 DCP direct payments.

198 (Withdrawn--Amend. 12)

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)

C Signature Authority for CCC-931's (Continued)

The following table provides the authorizations that are compatible and acceptable to **both** FSA and IRS for CCC-931.

Authority/Authorization	Acceptable for CCC-931	Explanation, Comments, and Restrictions
Individual for a legal entity.	Yes	Relationship to the legal entity must be included in the signature block. See 1-CM, paragraph 711.
Parent or legal guardian for a minor child.	Yes	Relationship to minor child must be included in the signature block. See 1-CM, paragraph 677.
Durable power of attorney.	Yes	FSA accepts a durable power of attorney for FSA program-related purposes on review and approval of OGC. See 1-CM, paragraphs 728, 729.4, and 729.6. IRS accepts durable powers of attorney for tax filing and related purposes, if the attorney-in-fact has full authority to represent the grantor in all Federal tax matters. Copies of durable powers of attorney must be attached to CCC-931's when submitted to IRS.
FSA-211.	No	Not acceptable to IRS.
Living spouses for each other.	No	Not acceptable to IRS.
***	***	***
IRS-2848.	No	Not acceptable to FSA.

***--D Filing CCC-931's for Deceased Persons**

CCC-931 for a program participant, now deceased, may be filed by any of the following:

- surviving spouse
- individual other than surviving spouse who is authorized to represent the deceased individual
- entity responsible for filing, or will cause the filing, of the final Federal tax return for the deceased individual.--*

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)***--D Filing CCC-931's for Deceased Persons (Continued)**

Proof of authorization **must** be provided by all individuals and entities, **except** the surviving spouse. Proof of authorization includes, but is **not** limited to, the following:

- court order of appointment
- trust agreement
- will.

Proof of authorization to represent the deceased individual **must** be attached to CCC-931 when referred to the IRS.

Consult with the regional attorney on all questionable cases.

This policy is applicable **only** to CCC-931's because filing CCC-931's:

- will ordinarily be a 1-time occurrence
- is compatible with the IRS requirements applied to tax and related forms filed with the IRS on behalf of deceased individuals
- is consistent with the regulation at 7 CFR Part 707 in that the claimant for such payment or benefit earned by the deceased individual when living now has authority to seek or apply for the decedent's payment.

Policy in this subparagraph is for CCC-931's **only**. Follow 1-CM for signature authority and processing all other forms for FSA and CCC program purposes.--*

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)**E Completing CCC-931's for 2009 and Subsequent Years**

Complete CCC-931's according to the following table.

Item	Instruction
1	Enter name and address of the FSA County Office or Service Center of the recording county of the producer.
2	<p>Enter the name and address of the person or legal entity that is requesting benefits under any of the commodity, price support, conservation, or disaster assistance programs.</p> <p>Note: Enter the same name and address as used on filed tax returns if the name and address on record at FSA is different.</p>
3	Enter complete SSN or TIN of the person or legal entity represented in item 2.
4	<p>Select the year for which program benefits are being requested. Select only 1.</p> <p>Note: The year selected determines the 3-year period that will be used in the calculation of the applicable average AGI for payment eligibility.</p>
5	Select the response that describes the average AGI (all income from both farm and nonfarm sources) for the applicable 3-year period selected in item 4. Select only 1.
6	<p>Select the appropriate response that describes whether or not the average adjusted gross farm income for the applicable 3-year period selected in item 4 was at least 66.66 percent of the average AGI, both farm and nonfarm income. This AGI is the amount of AGI reported to IRS.</p> <p>If "YES" is selected, and if income includes the sale of farm equipment or production inputs and services to farmers, ranchers, foresters and farming operations, review the definition of farm income on CCC-931, page 2.</p> <p>Example: Jake has requested 2012 DCP benefits. Jake's average AGI was \$900,000. His farm AGI was \$650,000 from the production of crops and livestock.</p> <p>His nonfarm AGI was comprised of \$150,000 from his aerial spraying service and \$100,000 from oil and gas royalties.</p> <p>Over 66.66 percent of Jake's total AGI was from the production of crops (\$650,000 divided by \$900,000 times 100 equals 72.22 percent). Jake also has nonfarm AGI from his aerial spraying; a custom service to farmers and ranchers, that now must be considered farm AGI for payment eligibility purposes.</p> <p>Jake's farm AGI is now \$800,000 (the total of \$650,000 and \$150,000); nonfarm AGI is \$100,000. Jake's farm AGI exceeds \$750,000. Jake is eligible for 2012 DCP benefits, except for direct payments.</p>

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)

E Completing CCC-931's for 2009 and Subsequent Years (Continued)

Item	Instruction
7	<p>Select the response that describes the average adjusted gross farm income for the applicable 3-year period for the program year selected in item 4. Adjusted gross farm income is determined separately for each of the 3 years and then averaged to determine the average adjusted gross farm income used on CCC-931.</p> <p>Note: Adjusted gross farm income is not the same as the gross farm income reported to IRS. Adjusted gross farm income for FSA purposes is comparable to the net income from farming and related operations. In many cases, this may be the same as the “Net Farm Profit” or “Loss” determined on Schedule F of IRS-1040. However, FSA’s definition of adjusted gross farm income also includes income from the sale of items such as agricultural related land, breeding livestock, and agricultural/conservation easements. Additionally, it is important to consider if income was received from the sale of farm related equipment and/or if income was received from the sale of production inputs and services before answering this question. Usually, income from these items is not considered farm income. However, if the income from farming is at least 66.66 percent of the total AGI from all sources, both farm income and nonfarm income, a special rule applies and income from these items must be included in the adjusted gross farm income. See the definition of farm income on CCC-931, page 2 for full details of what to include in adjusted gross farm income.</p>
8	<p>Select the response that describes the average adjusted gross nonfarm income for the applicable 3-year period for the program year selected in item 4. Adjusted gross nonfarm income is determined separately for each of the 3 years and then averaged to determine the average adjusted gross nonfarm income used on CCC-931.</p> <p>Adjusted gross nonfarm income is determined by subtracting the adjusted gross farm income for a tax year from the AGI as reported to IRS for the tax year.</p>
9	<p>Read the acknowledgments, responsibilities and authorizations, before affixing signature.</p> <p>For all types of entities, CCC-931 must be signed by a duly authorized representative.</p>
10	Enter the title or relationship if signing in a representative capacity.
11	Enter the signature date in month, day, and year format.

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)

F Example of CCC-931

The following is an example of a completed CCC-931.

<p>This form is available electronically.</p> <p>CCC-931 U.S. DEPARTMENT OF AGRICULTURE (12-07-11) Commodity Credit Corporation</p> <p>AVERAGE ADJUSTED GROSS INCOME (AGI) CERTIFICATION AND CONSENT TO DISCLOSURE OF TAX INFORMATION</p>		<p>1. Return completed form to:</p> <p>Front County FSA Office 1234 Dodge Rd. Somewhere, OK XXXXX-XXXX</p> <p>(Name and address of FSA county office or USDA Service Center)</p>								
<p>NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 1400, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et. seq.), and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to determine eligibility for program benefits. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information collection is exempted from the Paperwork Reduction Act, as it is required for the administration of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, Title I, Subtitle F - Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided: PLEASE RETURN COMPLETED FORM TO FSA AT THE ABOVE ADDRESS.</p>										
<p>2. Name and Address of Individual or Legal Entity (Including Zip Code)</p> <p>Wildcat Land and Livestock LLC 9650 Circle Rd. Some Town, OK XXXXX-XXXX</p> <p>(Enter the same name and address as used for the tax return specified in Part B.)</p>	<p>3. Taxpayer Identification Number (TIN) (Social Security Number for Individual; or Employer Identification Number for Legal Entity)</p> <p>XX-XXXXXXX</p>									
<p>PART A - CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME</p>										
<p>4. Select the program year for payment eligibility (Check only one)</p> <table border="0"> <tr> <td>A. <input type="checkbox"/> 2009</td> <td>The 3-year period for calculation of the average AGI will be the taxable years of 2007, 2006 and 2005.</td> <td>C. <input type="checkbox"/> 2011</td> <td>The 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.</td> </tr> <tr> <td>B. <input type="checkbox"/> 2010</td> <td>The 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007 and 2006.</td> <td>D. <input checked="" type="checkbox"/> 2012</td> <td>The 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.</td> </tr> </table>			A. <input type="checkbox"/> 2009	The 3-year period for calculation of the average AGI will be the taxable years of 2007, 2006 and 2005.	C. <input type="checkbox"/> 2011	The 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.	B. <input type="checkbox"/> 2010	The 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007 and 2006.	D. <input checked="" type="checkbox"/> 2012	The 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.
A. <input type="checkbox"/> 2009	The 3-year period for calculation of the average AGI will be the taxable years of 2007, 2006 and 2005.	C. <input type="checkbox"/> 2011	The 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.							
B. <input type="checkbox"/> 2010	The 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007 and 2006.	D. <input checked="" type="checkbox"/> 2012	The 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.							
<p>5. I certify that the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4) was:</p> <p>A. <input checked="" type="checkbox"/> Less than (or equal to) \$1,000,000</p> <p>B. <input type="checkbox"/> More than \$1,000,000</p>	<p>6. Of the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4), was at least 66.66 percent from farming, ranching or forestry operations?</p> <p>A. <input checked="" type="checkbox"/> YES B. <input type="checkbox"/> NO</p>	<p>NOTE: If at least 66.66 percent of the average adjusted gross income of the individual or legal entity is derived from farming, ranching or forestry operation, then income from the sale of farm equipment or production inputs and services to farmers, ranchers and foresters must be included as farm income.</p>								
<p>7. I certify that the average adjusted gross farm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:</p> <p>A. <input checked="" type="checkbox"/> Less than (or equal to) \$750,000 B. <input type="checkbox"/> More than \$750,000</p>										
<p>8. I certify that the average adjusted gross nonfarm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:</p> <p>A. <input checked="" type="checkbox"/> Less than (or equal to) \$500,000 B. <input type="checkbox"/> More than \$500,000 but less than (or equal to) \$1,000,000 C. <input type="checkbox"/> More than \$1,000,000</p>										
<p>PART B - CONSENT TO DISCLOSURE OF TAX INFORMATION</p>										
<p>Pursuant to 26 U.S.C. §6103, I hereby authorize the Internal Revenue Service (IRS) to review the following items of "return information" (as defined in 26 U.S.C. §6103(b)(2)) from the returns (as specified below) of the individual or legal entity identified in Item 2 for the taxable years indicated in Item 4:</p> <table border="0"> <tr> <td>Form 1040 and 1040NR filers; farm income or loss; adjusted gross income</td> <td>Form 1120, 1120A, 1120C filers; charitable contributions, taxable income</td> </tr> <tr> <td>Form 1041 filers; farm income or loss, charitable contributions, income distribution deductions, exemptions, adjusted total income; total income</td> <td>Form 1120S filers; ordinary business income</td> </tr> <tr> <td>Form 1065 filers; guaranteed payments to partners, ordinary business income</td> <td>Form 990T; unrelated business taxable income</td> </tr> </table> <p>I understand the IRS will review these items of return information in order to perform calculations, the results of which I authorize to be disclosed to officers and employees of the United States Department of Agriculture (USDA) for use in determining the individual's or legal entity's eligibility for specified payments for various commodity and conservation programs. The calculations performed by the IRS use a methodology prescribed by the USDA. In addition, I am aware that the USDA may use the information received for compliance purposes related to this eligibility determination, including referrals to the Department of Justice.</p> <p>Specially, the IRS will disclose to the USDA the individual's or legal entity's name and TIN, and inform the USDA if, pursuant to its calculations, the average Adjusted Gross Income (AGI) is above or below eligibility requirements as prescribed by the Food, Conservation and Energy Act of 2008. The IRS will also disclose to the USDA the type of return from which the information used for the calculations was obtained.</p> <p>If the IRS is unable to locate a return that matches the taxpayer identity information provided above, or if IRS records indicate that the specified return has not been filed, for any of the taxable years indicated, the IRS may disclose that it was unable to locate a return, or that a return was not filed, for those years, whichever is applicable.</p> <p><u>An approved Power of Attorney (Form FSA-211) on file with USDA cannot be used as evidence of signature authority when completing this form.</u></p> <p>By signing this form:</p> <ul style="list-style-type: none"> - I acknowledge that I have read and reviewed all definitions and requirements on Page 2 of this form; - I certify that all information contained within this certification is true and correct; and is consistent with the tax returns filed with the IRS; - I agree to authorize CCC to obtain tax data from the IRS for AGI compliance verification purposes by filing this form; - I am aware that without this consent to disclosure, the returns and return information of the individual or legal entity identified in Item 2 are confidential and are protected by law under the Internal Revenue Code; - I certify that I am authorized under applicable state law to execute this consent on behalf of the legal entity identified in Item 2 (for legal entity only). 			Form 1040 and 1040NR filers; farm income or loss; adjusted gross income	Form 1120, 1120A, 1120C filers; charitable contributions, taxable income	Form 1041 filers; farm income or loss, charitable contributions, income distribution deductions, exemptions, adjusted total income; total income	Form 1120S filers; ordinary business income	Form 1065 filers; guaranteed payments to partners, ordinary business income	Form 990T; unrelated business taxable income		
Form 1040 and 1040NR filers; farm income or loss; adjusted gross income	Form 1120, 1120A, 1120C filers; charitable contributions, taxable income									
Form 1041 filers; farm income or loss, charitable contributions, income distribution deductions, exemptions, adjusted total income; total income	Form 1120S filers; ordinary business income									
Form 1065 filers; guaranteed payments to partners, ordinary business income	Form 990T; unrelated business taxable income									
<p>9. Signature (By)</p> <p>/s/ William A. Farmer</p>	<p>10. Title/Relationship of the Individual if Signing in a Representative Capacity for a legal entity</p> <p>President, Wildcat Land and Livestock LLC</p>	<p>11. Date (MM-DD-YYYY)</p> <p>02-10-2012</p>								
<p>The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (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 to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.</p>										

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)

F Example of CCC-931 (Continued)

CCC-931 (12-07-11) Page 2 of 2

GENERAL INFORMATION ON AVERAGE ADJUSTED GROSS INCOME – PART A

Individuals or legal entities that receive benefits under most commodity and conservation programs administered by CCC cannot have incomes that exceed certain limits set by law. For entities, both the entity itself, and its members cannot exceed the income limitations. If a member, whether an individual or an entity, of an entity exceeds the limitations, payments to that entity will be commensurately reduced according to that member's direct or indirect ownership share in the entity. (All members of the entity must also submit this form to verify income limitations are met.)

Adjusted Gross Income is the individual's or legal entity's IRS-reported adjusted gross income consisting of both farm and nonfarm income. A three year average of that income will be computed for the three years of the relevant base period identified on the first page of this form to determine eligibility for the applicable program year. **For 2012 only**, individuals or legal entities with average **adjusted gross income** greater than \$1 million shall be ineligible for direct payments under the Direct and Counter-cyclical Program

Adjusted Gross Farm Income is the part of the yearly adjusted gross income that is farm income. The amount is computed separately for each year and then averaged. **Farm income means income** related to the following: production of crops, livestock, fish and aquaculture for food; the feeding and rearing of livestock; products produced or derived from livestock; production of specialty crops and unfinished raw forestry products; processing packing, storing and transporting farm, ranch and forestry commodities including renewable energy; production of farm-based renewable energy; the sale of land used for agriculture; sale of land or sale of easements and development rights to agricultural land, water and hunting rights, and environmental benefits; rental or lease of land or equipment used in farming, ranching, forestry operation; payments and benefits from risk management practices, crop insurance indemnities, catastrophic risk protection plans, conservation program and government farm program payments. Individuals or legal entities with average adjusted gross **farm income** greater than \$750,000 shall be ineligible for direct payments under the Direct and Counter-cyclical Program

Adjusted Gross Nonfarm Income is the difference for the year between the filer's *adjusted gross income* and the filer's *adjusted gross farm income*. The difference is computed separately for each year and then averaged. Individuals or legal entities with average adjusted gross **nonfarm income** that exceeds \$500,000 shall be ineligible for commodity program payments, price support benefits, disaster assistance programs, and for the Milk Income Loss Compensation Program. Additionally, individuals or legal entities with average adjusted gross **nonfarm income** exceeding \$1 million will be ineligible for new contracts or participation in conservation programs after October 1, 2008, unless at least 66.66% of their total average adjusted gross income (sum of farm and nonfarm income) is generated from activities related to farming.

HOW TO DETERMINE ADJUSTED GROSS INCOME

Individual – Internal Revenue Service (IRS) Form 1040 filers, specific lines on that form represent the adjusted gross income and the income from farming, ranching, or forestry operations.

Trust or Estate – the adjusted gross income is the total income and charitable contributions reported to IRS.

Corporation – the adjusted gross income is the total of the final taxable income and any charitable contributions reported to IRS.

Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity – the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members as reported to the IRS.

Tax-exempt Organization – the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities as reported to the IRS.

GENERAL INFORMATION ON CONSENT TO DISCLOSURE OF TAX INFORMATION – PART B

This consent allows IRS's access to, and use of, certain items of return information to perform calculations, using a methodology prescribed by the USDA, that will assist USDA in its verification of a program participant's compliance with the adjusted gross income (AGI) limitations necessary for participation in, and receipt of, commodity, conservation, price support or disaster program benefits. This consent also permits the USDA to receive certain items of return information for its eligibility determination.

This consent authorizes the disclosure of these items of return information for only the time period specified. Each item of information requested on this form is needed for the IRS to (1) locate, and verify, your tax information; (2) perform the requisite Average AGI calculations; and (3) provide the USDA with the legal entity's name and Taxpayer Identification Number (TIN), the type of return from which the specified items were located for use in the calculation, and whether or not the average AGI is above or below eligibility requirements. The IRS will not provide the USDA with any of the items specified on this consent form that it uses to perform the calculations or the average AGI figure.

This form can only be signed by the person authorized under state law to sign this consent for the legal entity identified in Item 2. **An approved Power of Attorney (Form FSA-211) on file with USDA cannot be used as evidence of signature authority when completing this form.**

INSTRUCTIONS FOR COMPLETION OF CCC-931

Item No./Field name	Instruction
1. Return Completed Form To	Enter the name and address of the FSA county office or USDA service center where the completed CCC-931 will be submitted.
2. Person or Legal Entity's Name and Address	Enter the person's or legal entity's name and address for commodity, conservation, price support, or disaster program benefits. <i>Enter the name and address as it appeared on the IRS tax returns filed for the taxable years specified in Item 4.</i>
3. Taxpayer Identification Number	In the format provided, enter the <u>complete</u> taxpayer identification number of the person or legal entity identified in Item 2. <i>This will be either a Social Security Number or Taxpayer Identification Number.</i>
4. Program Year	Select the year for which program benefits are being requested. The selection indicates the 3-year period used for the determination of the average adjusted gross income for payment eligibility and the years for which this consent allows access to tax information.
5. Average Adjusted Gross Income	Select the box next to the response that describes the average adjusted gross income for the applicable 3-year period for the program year selected in Item 4. Select only one response.
6. Average Adjusted Gross Income from Farming, Ranching or Forestry	Select the appropriate response to indicate whether or not at least 66.66 percent of the average adjusted gross income was derived from farming, ranching, or forestry operations during the applicable 3-year period selected in Item 4. Select "YES" or "NO" as applicable.
7. Average Adjusted Gross Farm Income	Select the box next to the response that describes the average adjusted gross farm income for the applicable 3-year period for the program year selected in Item 4. Select only one response.
8. Average Adjusted Gross Nonfarm Income	Select the box next to the response that describes the average adjusted gross nonfarm income for the applicable 3-year period for the program year selected in Item 4. Select only one response.
9. Signature	Read the acknowledgments, responsibilities and authorizations, <i>before</i> affixing your signature.
10. Title/Relationship	Enter title or relationship to the legal entity identified in Item 2.
11. Date	Enter the signature date in month, day and year. <i>This form must be returned to FSA within 90 days of the signature date for the consent to be valid.</i>

200.5 Average AGI Certification and Consent to Disclosure of Tax Information (Continued)

G Important Elements and References

The following CCC-931 shows important elements and references.

This form is available electronically.

CCC-931 U.S. DEPARTMENT OF AGRICULTURE
(12-07-11) Commodity Credit Corporation

AVERAGE ADJUSTED GROSS INCOME (AGI) CERTIFICATION AND CONSENT TO DISCLOSURE OF TAX INFORMATION

1. Return completed form to: [Name and address of recording County Office. (subparagraph 189 F)]

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for releasing the information is the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et. seq.), and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to determine eligibility for program benefits. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information collection is exempted from the Paperwork Reduction Act, as it is required for the administration of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, Title I, Subtitle F - Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. PLEASE RETURN COMPLETED FORM TO FSA AT THE ABOVE ADDRESS.

2. Name and Address of Individual or Legal Entity (Including Zip Code) [Name and address used for tax filing purposes if different than current FSA records. (subparagraph 200 C)]

3. Taxpayer Identification Number (TIN) (Social Security Number for Individual; or Employer Identification Number for Legal Entity)

4. Select the program year for payment eligibility (check only one)

A. 2009 The 3-year period for calculation of the average AGI will be the taxable years of 2007, 2006 and 2005.
 B. 2010 The 3-year period for calculation of the average AGI will be the taxable years of 2008, 2007 and 2006.
 C. 2011 The 3-year period for calculation of the average AGI will be the taxable years of 2009, 2008 and 2007.
 D. 2012 The 3-year period for calculation of the average AGI will be the taxable years of 2010, 2009 and 2008.

5. I certify that the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4) was:
 A. Less than (or equal to) \$1,000,000
 B. More than \$1,000,000

6. Of the average adjusted gross income (both farm and nonfarm income) of the individual or legal entity in Item 2 (for the year selected in Item 4), was at least 60% derived from farming, ranching or forestry (including timber production) (subparagraph 200 D):
 A. YES B. NO

7. I certify that the average adjusted gross farm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:
 A. Less than (or equal to) \$750,000 B. More than \$750,000

8. I certify that the average adjusted gross nonfarm income of the individual or legal entity in Item 2 (for the program year selected in Item 4) was:
 A. Less than (or equal to) \$500,000 B. More than \$500,000 but less than (or equal to) \$1,000,000 C. More than \$1,000,000

PART B - CONSENT TO DISCLOSURE OF TAX INFORMATION

Pursuant to 26 U.S.C. §6103, I hereby authorize the Internal Revenue Service (IRS) to review the following items of "return information" (as defined in 26 U.S.C. §6103(b)(2)) from the returns (as specified below) of the individual or legal entity identified in Item 2 for the taxable years indicated in Item 4:

Form 1040 and 1040NR filers: farm income or loss; adjusted gross income
 Form 1041 filers: farm income or loss, charitable contributions, income distribution deductions, exemptions, adjusted total income; total income
 Form 1065 filers: guaranteed payments to partners, ordinary business income
 Form 1120, 1120A, 1120C filers: charitable contributions, taxable income
 Form 1120S filers: ordinary business income
 Form 990T: unrelated business taxable income

I understand the IRS will review these items of return information in order to perform calculations, the results of which I authorize to be disclosed to officers and employees of the United States Department of Agriculture (USDA) for use in determining the individual's or legal entity's eligibility for specified payments for various commodity and conservation programs. The calculations performed by the IRS use a methodology prescribed by the USDA. In addition, I am aware that the USDA may use the information received for compliance purposes related to this eligibility determination, including referrals to the Department of Justice.

Specially, the IRS will disclose to the USDA the individual's or legal entity's name and TIN, and inform the USDA if, pursuant to its calculations, the average Adjusted Gross Income (AGI) is above or below eligibility requirements as prescribed by the Food, Conservation and Energy Act of 2008. The IRS will also disclose to the USDA the type of return from which the information used for the calculations was obtained.

If the IRS is unable to locate a return that matches the taxpayer identity information provided above, or if IRS records indicate that the specified return has not been filed, for any of the taxable years indicated, the IRS may disclose that it was unable to locate a return, or that a return was not filed, for those years, whichever is applicable.

An approved Power of Attorney (Form FSA-211) on file with USDA cannot be used as evidence of signature authority when completing this form.

By signing this form:

- I acknowledge that I have read and reviewed all definitions and requirements on Page 2 of this form;
- I certify that the information provided is true and correct; and is consistent with the information on my tax returns and return information of the individual or legal entity;
- I agree that the information provided is for compliance verification purposes by filing this form and return information of the individual or legal entity;
- I am aware that the information provided is for compliance verification purposes by filing this form and return information of the individual or legal entity;
- I certify that I execute this consent on behalf of the legal entity.

9. Signature (By) [Signature] 10. Title/Relationship of the Individual if Signing in a Representative Capacity for a legal entity [Title/Relationship] 11. Date (MM-DD-YYYY) [Date]

Restrictions on signature authorities. (subparagraph 200.5 C)

Signature date and validity of consent to disclosure. (subparagraph 200 E)

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of 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, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (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 to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

203.5 Average AGI Amounts Are Above Threshold Levels**A Average AGI Above Limitations**

A report will list participants with indicators that average AGI amounts exceed the limitations for:

- *--commodity (including direct, counter-cyclical, and ACRE payments), price support,--* and disaster assistance programs
- conservations programs.

B Producers Identified

Persons and legal entities identified on this report will be: * * *

- notified in writing by the reviewing authority of the results of the IRS data analysis
- required to provide within 30 calendar days of notification to the reviewing authority:
 - a third party verification from a certified public accountant or an attorney that demonstrates that average AGI does **not** exceed established limits
 - actual tax records for the years in question to demonstrate that average AGI does **not** exceed the established limits.

--See paragraphs 203.9 and 204 for procedure and examples of nonresponsible participants.--

203.6 Average AGI Amounts at or Below Threshold Levels**A Average AGI Within Limitations**

A report will list participants with indicators that average AGI amounts are within the limitations for all programs.

No further actions will be required of:

- participants identified for the applicable crop, program, and FY
- County Offices in regard to eligibility files of identified participants for the applicable crop, program, and FY.

203.7 FSA Review and Compliance Determinations**A Review of Questionable Average AGI Certifications Identified Through Using IRS Data**

The reviewing authority will:

- **not** be the local FSA office staff or COC
- **be SED**
- review tax data or other information supplied by the participant
- if necessary, calculate the average AGI values based on supplied information
- confer with the participant if questions arise in this process
- determine AGI compliance for the participant
- provide results and conclusions of the review.

Note: SED's are delegated authority to act on initial AGI review determinations referenced in subparagraph B, after performing the review actions specified in this subparagraph.

B Determination of Participant's Compliance With Average AGI

SED's will:

- issue written notice of determination, adverse or otherwise, to the participant
- include right to SED reconsideration, mediation, and appeal right to NAD according to 1-APP
- send a copy of determinations involving NRCS participants to the State Conservationist
- follow subparagraph 204 D for example notification letter for AGI compliance.

***--203.8 Beginning the Average AGI Compliance Review Process**

A Information collection and comparison

A review of average AGI compliance requires the following actions:

- collecting the copy of average AGI certification, either CCC-926 or CCC-931 or acceptable statement from CPA or attorney, submitted by the producer for the applicable year
- collecting complete tax returns for each of the 3-years qualification period; or acceptable financial documents if filing tax returns is not required; or an acceptable statement from CPA or attorney with all required items that illustrate and document income levels and average AGI compliance for the producer for the applicable year
- comparing both sets of information to the rules and regulations governing average AGI for payment eligibility for the applicable year subject to review
- verify the following, as applicable:
 - subsidiary flags are accurately set to reflect the certification of record
 - there is a valid CCC-926/CCC-931 on file to support the certification of record
 - the producer received program payments or benefits either directly or indirectly.

B Results and Findings

The results and findings of the review and evaluation are the basis to determine if program participant meets or exceeds 1 or more of the average AGI limitations.

C Worksheet for Calculating Average AGI for 2009 and Subsequent Years Based on the Submission of Tax Returns

Use the following worksheet to calculate the average AGI for a person or legal entity based on the submission of tax returns.

Step	Action	Result												
1	Enter the total AGI (both nonfarm and farm) for the 3 complete taxable years preceding the most immediately preceding complete taxable year of the year for which program benefits are requested. <div style="text-align: right; margin-right: 100px;">Specify From Where Information Was Obtained (for example, IRS Form 1040, Line 37)</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Year</td> <td style="width: 20%; text-align: center;">Amount</td> <td style="width: 60%;"></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">\$ _____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p>Note: See paragraph 191 for guidance.</p>	Year	Amount		_____	\$ _____	_____	_____	_____	_____	_____	_____	_____	
Year	Amount													
_____	\$ _____	_____												
_____	_____	_____												
_____	_____	_____												
2	Total the dollar amounts in step 1.	\$ _____												
3	Calculate the average AGI by dividing the result of step 2 by the number of years in step 1.	\$ _____												

--*

*--203.8 Beginning the Average AGI Compliance Review Process (Continued)

C Worksheet for Calculating Average AGI for 2009 and Subsequent Years Based on the Submission of Tax Returns (Continued)

Step	Action	Result												
4	Enter AGI for the same 3 years in step 1 that was derived from all activities related to farming, ranching, and forestry operations. <div style="text-align: right; margin-right: 100px;">Specify From Where Information Was Obtained (for example, IRS Form 1040, Line 37)</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Year</td> <td style="width: 30%; text-align: center;">Amount</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">\$ _____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p>Note: See paragraph 191 for guidance.</p>	Year	Amount		_____	\$ _____	_____	_____	_____	_____	_____	_____	_____	
Year	Amount													
_____	\$ _____	_____												
_____	_____	_____												
_____	_____	_____												
5	Total the dollar amounts in step 4.	\$ _____												
6	Calculate the average adjusted gross farm income by dividing the result of step 5 by the number of years in step 4.	\$ _____												
7	Calculate the average adjusted gross nonfarm income by subtracting the result of step 6 from the result of step 3.	\$ _____												
8	Calculate the percentage of the average adjusted gross farm income from the average AGI by dividing the result of step 6 by the result of step 3, and multiply by 100.	% _____												
	If step 8 is 66.66% or greater , and the person or legal entity has income for equipment sales or input services, go to step 14; otherwise, go to step 9.													
	Determination	Eligible Based on Determination in This Step Only												
9	If the result of step 7 is \$500,000 or less, the person or legal entity is eligible for all commodity (including direct, counter-cyclical, and ACRE payments under DCP and ACRE), MILC, marketing loan gains, LDP payments, disaster assistance, and conservation program benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No												
10	If the result of step 6 is \$750,000 or less and step 9 is yes, the person or legal entity is eligible for direct payments under DCP and ACRE.	<input type="checkbox"/> Yes <input type="checkbox"/> No												
11	For 2012 only , if the results of step 3 is \$1 million or less, step 6 is \$750,000 or less, and step 7 is \$500,000 or less, then the person or legal entity is eligible for 2012 direct payments under 2012 DCP and ACRE.	<input type="checkbox"/> Yes <input type="checkbox"/> No												
12	If the result of step 7 is \$1 million or less, the person or legal entity is eligible for all conservation program payments .	<input type="checkbox"/> Yes <input type="checkbox"/> No												
13	If the result of step 7 exceeds \$1 million, but the result of step 8 is at least 66.66%, the person or legal entity is eligible for all conservation program payments .	<input type="checkbox"/> Yes <input type="checkbox"/> No												

--*

*--203.8 Beginning the Average AGI Compliance Review Process (Continued)

C Worksheet for Calculating Average AGI for 2009 and Subsequent Years Based on the Submission of Tax Returns (Continued)

Step	Action	Result												
14	Enter the total AGI derived from equipment sales and input services for the 3 complete taxable years preceding the most immediately preceding complete taxable year of the year for which program benefits are requested. <div style="text-align: right; margin-right: 100px;">Specify From Where Information Was Obtained (for example, IRS Form 1040, Line 37)</div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Year</td> <td style="width: 30%; text-align: center;">Amount</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">\$ _____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table> <p>Note: See paragraph 191 for guidance.</p>	Year	Amount		_____	\$ _____	_____	_____	_____	_____	_____	_____	_____	
Year	Amount													
_____	\$ _____	_____												
_____	_____	_____												
_____	_____	_____												
15	Total the dollar amounts in step 14.	\$ _____												
16	Calculate the average AGI from equipment sales and input services by dividing the result of step 15 by the number of years in step 14.	\$ _____												
17	Enter adjusted gross farm income for the same 3 years in step 4 that was derived from all activities related to farming, ranching, and forestry operations, plus the amounts entered in step 14 for equipment sales and input services. <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Year</td> <td style="width: 30%; text-align: center;">Amount</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">\$ _____</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td></td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td></td> </tr> </table>	Year	Amount		_____	\$ _____		_____	_____		_____	_____		
Year	Amount													
_____	\$ _____													
_____	_____													
_____	_____													
18	Total the dollar amounts in step 17.	\$ _____												
19	Calculate the average adjusted gross farm income including equipment sales and input services by dividing the result of step 18 by the number of years in step 17.	\$ _____												
20	Calculate the average adjusted gross nonfarm income by subtracting the result of step 19 from the result of step 3.	\$ _____												
21	Calculate the percentage of the average adjusted gross farm income from the average AGI by dividing the result of step 19 by the result of step 3, and multiply by 100.	%												
	If step 21 is 66.66% or greater , and the person or legal entity has income for equipment sales and input services, go to step 22.													

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*--203.8 Beginning the Average AGI Compliance Review Process (Continued)

C Worksheet for Calculating Average AGI for 2009 and Subsequent Years Based on the Submission of Tax Returns (Continued)

Step	Action	Result
	Determination	Eligible Based on Determination in This Step Only
22	If the result of step 20 is \$500,000 or less, the person or legal entity is eligible for all commodity (including direct, counter-cyclical, and ACRE payments under DCP and ACRE), MILC, marketing loan gains, LDP payments, disaster assistance, and conservation program benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No
23	If the result of step 19 is \$750,000 or less, the person or legal entity is eligible for direct payments under DCP.	<input type="checkbox"/> Yes <input type="checkbox"/> No
24	For 2012 only , if the results of step 3 is \$1 million or less, step 19 is \$750,000 or less, and step 20 is \$500,000 or less, then the person or legal entity is eligible for 2012 direct payments under 2012 DCP and ACRE.	<input type="checkbox"/> Yes <input type="checkbox"/> No
25	If the result of step 20 is \$1 million or less, the person or legal entity is eligible for all conservation program payments .	<input type="checkbox"/> Yes <input type="checkbox"/> No
26	If the result of step 20 exceeds \$1 million, but the result of step 21 is at least 66.66 percent, the person or legal entity is eligible for all conservation program payments .	<input type="checkbox"/> Yes <input type="checkbox"/> No

--*

--203.8 Beginning the Average AGI Compliance Review Process (Continued)*D Instructions, Terms, and Conditions for CPA or Attorney Certifications**

Certifications will only be accepted from licensed CPA's and attorneys. Statements from enrolled agents will **not** be accepted. If a letter is submitted by CPA or an attorney to certify compliance with an average AGI limitation for which a person or entity received notification of possible noncompliance, the letter **must** include the following elements.

- CPA's or attorney's State license identification number.
- Explanation of the reason for the certification (see subparagraph 204 C example letter).
- Acknowledgement of having read, understood, and agreement to the terms and conditions of this subparagraph, including the following.
 - CPA/attorney acknowledges and agrees to having reviewed and being familiar with the average AGI limitations, definitions, and compliance requirements in 7 CFR Part 1400, with the programs involved, having made such inquiries as are necessary to apprise CPA/attorney of such matters, and understands that the tax years used to calculate the average AGI for program year 2009 are 2005, 2006, and 2007; for program year 2010 are 2006, 2007, and 2008.
 - The representations CPA/attorney makes in the certification may be relied on by the Government to allow benefits to be retained or received, and that a false certification can result in sanctions including criminal sanctions for persons associated with the false representations.
 - CPA/attorney **must** notify the Government of any material change in the facts or circumstances that would make the certification no longer accurate and that the failure to notify the Government of such a change will be considered of itself to be a false representation subject to sanction.
 - Additional information may be requested by USDA, an audit may be conducted by USDA, and further inquiry may be made of IRS to ensure that all information filed with USDA by all parties is accurate. USDA may request additional certifications as may be needed and may require certified copies of actual filings.
- Relevant information on the most recently filed tax returns for the period in question.

Note: See subparagraph 204 C for example letter.

- If applicable, a detailed explanation of how the applicable average AGI limitations were **not** exceeded, even though the information on tax returns indicates otherwise.

Note: The information in this subparagraph is what is referred to in the example letter displayed in subparagraph 204 C.--*

--203.8 Beginning the Average AGI Compliance Review Process (Continued)*E Admissions**

If a participant submits a revised CCC-931 or certification is received that the participant exceeds any of the average AGI limitations for any program, do the following:

- accept the written material and keep with the file
- acknowledge receipt and consider the AGI eligibility review complete
- ensure that the system is updated to reflect eligibility.

Note: If a participant affirms that the participant exceeds limitations, FSA is **not** required to issue a decision on ineligibility. No adverse decision is required for AGI eligibility. However, separate adverse overpayment letters may be required.

203.9 Payment Refunds and Collections**A Participant Fails to Timely Act or Is Determined AGI Noncompliant**

If a person or legal entity fails to timely respond to written notices on AGI compliance requirements, or has been determined noncompliant with the applicable AGI limitations, all payment refund determinations and collection efforts will be initiated by:

- NRCS for all payments under programs it administers subject to this AGI compliance determination
- FSA for all payments under programs it administers subject to this AGI compliance determination.

See paragraph 204 for example letters for AGI compliance.--*

--203.9 Payment Refunds and Collections (Continued)*B Errors in Recording Either Determinations or Admissions**

When errors are discovered in either determinations or in the recording of determinations, take applicable corrective actions that include, but are not limited to the following:

- reset the eligibility AGI values according to 3-PL
- document on the report that AGI values were reset according to this subparagraph.

Example 1: Participant A certifies compliance with the \$500,000 nonfarm AGI and the \$1 million nonfarm AGI conservation limitations but indicates the farm AGI exceeds \$750,000. When recording those values in web-based eligibility, FSA incorrectly entered all 3 values as “Compliant” resulting in DCP direct payments being inadvertently issued to Participant A.

Result 1: Set correct values and notify the participant of the amount of any overpayment issued. The notification of overpayment (receivable) must later have additional explanation entered into the record of this debt explaining that despite the participant’s certification that the participant was not eligible. FSA inadvertently paid the participant and the erroneous payment must be refunded.

Example 2: Participant B completed CCC-926 for program year 2011 as part of an EQIP application. Funds were not approved to fund the application. A review of Participant B’s records for 2011 finds that Participant B did not receive any other program payments or benefits either directly or indirectly.

Result 2: Even though Participant B should not become a recipient of an overpayment (receivable) letter because funds were not approved, Participant B could, if Participant B wants to, with CCC-926 and, subsequently, flags could be reset accordingly to avoid having additional AGI compliance communications or notifications sent to Participant B.

C FSA and NRCS Responsibilities

Each Agency will be responsible for all follow-up actions as required under the following:

- respective program procedures for payment refunds
- DCIA.--*

***--204 Example Letters for AGI Compliance**

A Example Letters

Use the example letters in subparagraphs B through G as guides when notifying individuals and legal entities of average AGI limitation requirements or determinations.

B Example of Letter When CCC-931 is Needed--*

The following is an example of a notification letter for an individual when CCC-931 is needed.

(Date)

Producer Name
(c/o)
Address 1
Address 2

Dear Producer:

The Food, Conservation, and Energy Act of 2008, commonly referred to as the 2008 Farm Bill, provides average adjusted gross income (AGI) limitations for participants who enroll in certain farm programs. The average AGI limitations are:

- \$500,000 nonfarm average AGI in order to receive commodity, price support or disaster program benefits;
- \$750,000 farm average AGI in order to receive direct payments under the Direct and Counter-Cyclical Program (DCP), or Average Crop Revenue Election Program (ACRE); and
- \$1 million nonfarm average AGI to receive conservation program benefits.

The Farm Service Agency (FSA) and Internal Revenue Service (IRS) formed a partnership to ensure that only those participants who comply with AGI requirements receive farm program benefits. This data-sharing process maintains the confidentiality and privacy of tax return information while providing FSA information necessary to verify and validate the average AGI certification you previously filed.

In order to verify that you are eligible for 2009 and 2010 farm program benefits, please complete the enclosed CCC-931's, Average Adjusted Gross Income (AGI) Certification and Consent To Disclosure Of Tax Information. The completion of these forms allows the IRS to average your AGI for the three applicable tax years and to provide FSA information on whether or not your average AGI for 2009 and 2010 appears to exceed one or more of the applicable limitation amounts. Individuals, legal entities, and all members of legal entities must complete the CCC-931. Please be sure to select 2009 and 2010 as appropriate for the years in which program benefits were requested or received, both directly and indirectly.

FSA records indicate that you have not provided completed consent forms as needed to maintain your eligibility to receive 2009 and 2010 program benefits. Failure to respond to this notice will result in a determination of ineligibility for 2009 and 2010 program benefits. Please complete the enclosed certification and consent forms and mail no later than 30 days from the date of this letter, to the following address:

**USDA - Farm Service Agency
PECD RM-4750-S Stop 0517
1400 Independence Ave SW Stop 0517
Washington, DC 20250-0517**

The certification and consent forms are also available on-line at <http://www.fsa.usda.gov/cc931> or at any FSA Service Center or Natural Resource Conservation Service (NRCS) Office.

FOR NON-TAX FILERS ONLY: If you were not required to file taxes with the IRS during the applicable three year period, or your organization was not in existence and did not file taxes during the applicable three year period used for the calculation of the 2009 or 2010 average AGI, please indicate (√) the program year(s) below, sign and date, and return this letter to the address listed above.

_____ 2009 program year (2005, 06 and 07 tax years) _____
Signature *Date*

_____ 2010 program year (2006, 07 and 08 tax years) _____
Signature *Date*

Thank you for your cooperation.

--204 Example Letters for AGI Compliance (Continued)*C Example With an Attachment Letter for Requesting Additional Information**

The following is an example notification letter where indications are average AGI limitations exceeded and additional information is requested for FSA review. This example letter is followed by an attachment.

[Date]

[Address Block]

Dear [Name]:

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) provides average adjusted gross income (AGI) limitations for participants who enroll in certain farm programs. These limitations apply to individuals and legal entities who receive payments, as well as to members of legal entities that receive payments.

The Farm Service Agency (FSA) and Internal Revenue Service (IRS) formed a partnership to ensure that only those participants who comply with AGI requirements receive farm program benefits. This data-sharing process maintains the confidentiality and privacy of tax return information while providing FSA information necessary to verify your average AGI certification.

You provided written consent allowing the IRS to average your AGI for the applicable tax years and to provide FSA information about whether or not your AGI exceeds limitation amounts.

The information received from the IRS indicates that for **[2009 and/or 2010]** program payment eligibility purposes, your average AGI may exceed the:

_____ **\$500,000 nonfarm AGI limitation** for commodity program benefits (including direct payments under the Direct and Counter-Cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program), price support or disaster program benefits

_____ **\$750,000 farm AGI limitation** for direct payments under the DCP or ACRE program

_____ **\$1 million nonfarm AGI limitation** for conservation benefits.

Note: If 1 or more of the limitations is checked, the statement could apply to 2009, 2010, or both the 2009 and 2010 years.

--*

*--204 Example Letters for AGI Compliance (Continued)

C Example With an Attachment Letter for Requesting Additional Information
(Continued)

[Name]

Page 2

Additional information is needed to assist FSA's review. Please provide **one** of the following:

- a signed statement from a CPA or an attorney that verifies your average AGI did not exceed the applicable AGI limitations;
- copies of the complete Federal tax returns that were filed with the IRS for the years [*applicable tax years*]; or
- a signed acknowledgement that your income exceeded the limitations, if your [*2009 and/or 2010*] [*certification was/certifications were*] in error.

If copies of Federal tax returns are provided, FSA will evaluate the information and re-calculate the average AGI. FSA will provide written notice of the results of this review.

If your average AGI exceeded the applicable limits because you filed a joint tax return but you would have been eligible if you had filed separately, you may provide a CPA or attorney statement certifying that your income, if you had filed separately, would have been within the AGI limits. If a CPA or attorney certification is not provided, the AGI shown on your joint tax return will be considered your AGI for FSA program purposes.

A signed statement from a CPA or attorney **must** include all of the items as shown in the sample letter.

A sample letter and copy of subparagraph 203.8 D are enclosed for your CPA or attorney's reference.

To avoid any delay or interruption in program payments and benefits, please provide all requested information to FSA within 30 days of the date of this letter. Information should be mailed to:

[*Insert State Office Address*].

Failure to timely respond to this notice will result in a determination of ineligibility for all [*2009 and/or 2010*] program benefits. Please be assured that all information provided will be held strictly confidential. If you have questions or concerns, please contact [*insert State Office contact number for AGI*].

Thank you for your cooperation.

Sincerely,

State Executive Director

Attachment

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***--204 Example Letters for AGI Compliance (Continued)**

C Example With an Attachment Letter for Requesting Additional Information (Continued)

The following is an example attachment from CPA/attorney that explains the reason for the certification.

John Doe & Associates
 1234 Main St.
 Anytown, TX 54321-1234

February 1, 2012

USDA, Farm Service Agency
 _____ State FSA Office
 P O Box 123456
 Springfield XX 65432-1234

To whom it may concern:

I, John Doe, am [*insert “a certified public accountant (CPA)” or “an attorney” as appropriate*], licensed to practice in the State of _____, and my state license identification number is _____.

I have been asked by Jane Farmer to certify that Jane Farmer is in compliance with the [*insert “\$500,000 nonfarm,” \$750,000 farm,” and/or “\$1 million nonfarm” as appropriate*] average adjusted gross income (AGI) limitations for [*insert 2009 and/or 2010 as appropriate*], pursuant to section 1604 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 1308-3a. I understand that an inquiry by USDA with the Internal Revenue Service (IRS) has indicated that Ms. Farmer, based on returns filed with the IRS, may be over one or more of the applicable AGI limits. This letter is a certification in response to such indication by IRS.

I acknowledge that I have read, understand, and agree to, the terms and conditions of AGI compliance received by Ms. Farmer.

I certify that the following are true:

- Ms. Farmer filed her federal tax returns for [*insert 2005, 2006, and 2007 for 2009 program eligibility; and/or 2006, 2007, and 2008 for 2010 program eligibility*] on the following dates:
 [*List tax year and filing dates of original and any amended returns.*]
- I understand that, consistent with the definitions in 7 CFR Part 1400, “farm income” means income or benefits derived from or related to sources and activities listed at 7 CFR § 1400.501, and “nonfarm income” is the total adjusted gross income minus the total “farm income.”

--*

*--204 Example Letters for AGI Compliance (Continued)

C Example With an Attachment Letter for Requesting Additional Information
(Continued)

[Name]

Page 2

- According to the most recent returns filed for the years identified above, Ms. Farmer's:
 - reported farm average AGI was \$_____ based on the following amounts:
[List each tax year and farm AGI amounts for each year.]
 - reported farm average AGI includes amounts represented on the following line(s) and Schedule(s):
[List lines and Schedules where farm income was reported for each tax year.]
 - reported nonfarm average AGI was \$_____ based on the following amounts:
[List each tax year and nonfarm AGI amounts for each year.]
- The federal income tax filings for Ms. Farmer are up to date with respect to the lines and Schedules cited above and the averages listed above are accurate, up to date, and in accordance with law to the best of my knowledge.

Include the following, if applicable:

- Although the calculated [*insert "average nonfarm AGI" or "average farm AGI" as applicable*] for Ms. Farmer indicated in this letter is over the applicable AGI limitation, I nonetheless certify that Ms. Farmer meets the average AGI limitation requirements for reasons that are set forth in detail in an attached document which lists what I believe that income for Ms. Farmer to be. I certify that any representations I make in that explanation are in accord with any and all filings of any kind with any other federal agencies and that those filings with other agencies are, to the best of my knowledge, accurate, up to date and in accordance with law.

Sincerely,

John Doe

John Doe, CPA

Enclosure [*Insert a copy of subparagraph 203.8 D with this example for use by CPA/attorney.*]

--*

*--204 Example Letters for AGI Compliance (Continued)

D Example of Initial Letter Notifying Participant of Ineligibility

The following is an example initial decision letter advising of ineligibility because of average AGI limitations.

[Date]

[Address Block]

Dear [Name of Participant]:

The Farm Service Agency (FSA) recently wrote you requesting additional information so that FSA could complete its review of your payment eligibility under the average adjusted gross income (AGI) provisions. We have not received a response from you regarding our previous inquiries; therefore, FSA has determined that you exceed the AGI limitation for [enter specific AGI limitation exceeded and year].

As a result of this determination, you are ineligible for program payments subject to that limitation. A refund of program payments is, therefore, required. A separate letter will be sent with the required refund amount and instructions for submitting the refund.

If you believe that FSA has not properly considered the facts related to the determination of your eligibility under the AGI provisions, you have the following options:

Reconsideration of the State Executive Director

You may request that I reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice according to FSA's appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to FSA at the following address and explain why you believe this determination is erroneous. The address is:

USDA – Farm Service Agency
 Attention: AGI Limitation Review
 [Enter address of the State Office for SED reconsideration.]

--*

*--204 Example Letters for AGI Compliance (Continued)

D Example of Initial Letter Notifying Participant of Ineligibility (Continued)

[Name]

Page 2

Mediation

Mediation is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address: *[Insert SED address or Mediation Program address, as applicable.]*

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *[Insert applicable NAD address.]*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

[Enter Name]

State Executive Director

--*

--204 Example Letters for AGI Compliance (Continued)*E Example of Letter Acknowledging Request for Reconsideration Review**

The following is an example letter acknowledging request for reconsideration.

<p>[Date]</p> <p>[Address Block]</p> <p>Dear [Name of Participant]:</p> <p>This letter acknowledges your request for reconsideration of the Farm Service Agency's (FSA's) decision concerning your eligibility under the average adjusted gross income provisions for the 2009 and 2010 program years.</p> <p>A representative of the [enter name] State FSA Office will review your request on [enter date which should be no earlier than 17 days from date of mailing], at [enter time]. The hearing will be in a room to be designated for the purpose of conducting a hearing. You, your authorized representative, or both, are invited to attend the hearing and submit any additional information in support of your request for reconsideration. If you choose to personally appear, please come to:</p> <p style="padding-left: 40px;">[Enter State Office address and contact phone number.]</p> <p>The hearings are informal and verbatim transcripts are not ordinarily made. However, if you want a transcript to be made at your expense, please let us know at least 7 calendar days before the hearing, and we will make the arrangements. Neither FSA nor the Department will reimburse you for any costs you may incur in connection with your request for reconsideration. Please note that a verbatim transcript will only be permitted if you choose to attend the scheduled hearing either in person or via telephone.</p> <p>Should you prefer to attend the scheduled hearing by telephone, in advance of the hearing date please provide us with a telephone number of where you and your authorized representative can be contacted on the day and time of the scheduled hearing. If you choose not to attend the hearing at all (either in person or via telephone) please let us know. However, whether you choose to attend the hearing or not, you may submit before the date of the scheduled review, any further facts or evidence you wish to have considered. The Deputy Administrator will consider your request and arrive at a decision based on the record and other available information. The review will include all of the information submitted by you, in addition to the complete file pertaining to your case. FSA's review determination will be in writing and sent to you and your representative as soon as possible after conclusion of the scheduled meeting or hearing.</p> <p>If you have any questions about this matter, you may contact the State FSA Office at [enter complete area code and phone number]. If you telephone us and receive a voice mail recording, please leave your contact information and we will return your call.</p> <p>Sincerely,</p> <p>[Name] State Executive Director</p>

--*

--204 Example Letters for AGI Compliance (Continued)*F Example of Letter Granting Reconsideration**

The following is an example of a letter approving the participant's eligibility on reconsideration.

[Date]

[Address Block]

Dear [Name of Participant]:

This letter is in further reference to the appeal of the Farm Service Agency's (FSA's) decision concerning your eligibility under the Average Adjusted Gross (average AGI) income provisions for the 2010 program years.

You submitted a form CCC-931, Average Adjusted Gross Income (AGI) Statement for the 2010 program year and affirmed on the form that your nonfarm and farm income, as applicable, for the period of years identified in section 4 of the form, was within the limitations set forth in questions 5 through 7. You also certified that your average adjusted gross farm income was NOT at least 66.66 percent of the average adjusted gross income for the 2008, 2007, and 2006 three year period applicable to 2010.

On May 1, 2011, FSA wrote you advising that information from the U.S. Department of Treasury, Internal Revenue Service (IRS), indicated that your average AGI may exceed the AGI limitations for particular programs. FSA requested additional information to assist in its review. In response, you furnished documents that, when examined without any explanation from you, showed that you exceeded the \$1 million nonfarm AGI limitation for 2010 conservation benefits. Accordingly, you were determined ineligible for program payments subject to that AGI limitation. A letter advising you of this decision was issued on October 27, 2011. Upon receipt of that decision, you subsequently sought reconsideration from FSA.

On December 20, 2011, FSA representatives spoke with you in a telephone hearing. In the hearing you explained that the tax documentation you submitted reflected not only your income, but also income of your spouse. You mentioned having provided additional documentation specifying the manner income of you and your spouse would have been declared and reported if you each had filed two separate returns. In addition, you affirmed that the calculations were consistent with the information supporting the joint return. At the time of the hearing, FSA had received your documentation but did not have a certified statement by a certified public accountant or attorney affirming the calculations on division of the joint return. On December 22, 2011, FSA received a September 19, 2011, letter from an attorney affirming your calculations and certification of not having income in excess of the \$1 million nonfarm AGI limitation for 2010.

--*

***--204 Example Letters for AGI Compliance (Continued)**

F Example of Letter Granting Reconsideration (Continued)

[Name]

Page 2

Based on all the information submitted, including the information submitted on reconsideration, FSA has determined that you do not exceed the \$1 million AGI limitation for 2010 conservation benefits.

This concludes FSA's reconsideration of this matter in accordance with 7 CFR parts 780 and 1400. A copy of this decision will be provided to local FSA offices.

Sincerely,

[Name]

State Executive Director

cc: CED, [Name] County FSA Office

--*

*--204 Example Letters for AGI Compliance (Continued)

G Example Letter for Disapproving Reconsideration

The following is an example of a letter disapproving the participant on reconsideration.

<p>[Date]</p> <p>[Address Block]</p> <p>Dear [Name of Participant]:</p> <p>This letter is in further reference to your appeal of the Farm Service Agency's (FSA's) decision concerning your eligibility under the Average Adjusted Gross Income Limitation Provisions for the 2009 and 2010 program years.</p> <p><u>BACKGROUND</u></p> <p>You submitted a form CCC-931, Average Adjusted Gross Income (AGI) Statement, for each of the 2009 and 2010 program years and affirmed on each form that your nonfarm and farm income, as applicable, for the period of years identified in section 4 of each form, was within the limitations set forth in questions 5 through 7. You also certified that your average AGI farm income:</p> <ul style="list-style-type: none"> • was at least 66.66 percent of the total average AGI for the 2007, 2006, and 2005, three year period applicable to 2009, and • was not at least 66.66 percent of the total average AGI for the 2008, 2007, and 2006, three year period applicable to 2010. <p>On May 1, 2011, FSA wrote you advising that information from the U.S. Department of Treasury, Internal Revenue Service (IRS), indicated that your average AGI may exceed the average AGI limitations for particular programs. FSA requested additional information from you to assist in its review. In response, you furnished documents affirming that your average AGI exceeded the \$750,000 income limitation applicable to direct payments under the Direct and Counter-Cyclical Program (DCP) or Average Crop Revenue Election Program (ACRE) Program for 2009 and 2010. Consequently, you were determined ineligible for program payments subject to that average AGI limitation. A letter advising you of the decision was issued on October 27, 2011. You subsequently appealed FSA's decision to the State committee.</p> <p><u>ISSUE</u></p> <p>Does [Name] have average AGI in excess of average AGI limitations for particular programs?</p>
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*--204 Example Letters for AGI Compliance (Continued)

G Example Letter for Disapproving Reconsideration (Continued)

[Name]

Page 2

GENERAL PROGRAM PROVISIONS

The regulations governing average AGI limitations appear at 7 CFR part 1400.

APPELLANT'S POSITION

You assert that FSA's decision is in error because it is based on one-time capital gains in 2006 of more the \$3 million which resulted from a sale of trailer parks. You indicate that income shown on previous and subsequent years was far below average AGI limitations.

FINDINGS OF FACT

1. [Name]'s average AGI farm income was not at least 66.66 percent of the average AGI for the 2007, 2006, and 2005 three year period applicable to 2009. (IRS information and copy of May 17, 2011, e-mail correspondence to you from Jason Accountant, CPA).
2. The majority of [Name]'s average AGI for each three year period applicable to each of the 2009 and 2010 program years, as applicable, was from nonfarm income (sale of trailer parks). (IRS information and copy of May 17, 2011, e-mail correspondence to you from Jason Accountant, CPA).
3. [Name]'s average AGI nonfarm income is in excess of the \$500,000 AGI nonfarm limitation for commodity programs (including direct payments under the DCP and ACRE Programs) specified at 7 CFR § 1400.1 for 2009 and 2010. [Name]'s November 15, 2011, letter to FSA with attachments.)

ANALYSIS

A review of the IRS information and copy of May 17, 2011, e-mail correspondence to you from Jason Accountant, CPA, indicate, contrary to your certification, that your average AGI farm income was not at least 66.66 percent of the average AGI for the 2007, 2006, and 2005 three year period applicable to 2009. Rather, the majority of your average AGI for each three year period applicable to each of the 2009 and 2010 program years, as applicable, was from nonfarm income (sale of trailer parks). You confirmed these facts in your correspondence to FSA and in the hearing with the FSA. Accordingly, you are ineligible for payments and benefits under the \$500,000 average AGI nonfarm limitation for commodity programs (including direct payments under the DCP and ACRE Programs) specified at 7 CFR § 1400.1 for 2009 and 2010.

--*

*--204 Example Letters for AGI Compliance (Continued)

G Example Letter for Disapproving Reconsideration (Continued)

[Name]

Page 3

If you believe that this decision is erroneous, you have the following options:

Mediation

Mediation is available as part of FSA's informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the time frame in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address: *[Insert SED address or Mediation Program address, as applicable.]*

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *(Insert applicable NAD address.)*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

[Name]

State Executive Director

--*

205 (Reserved)

216 Redelegating Authority

A Introduction

COC may redelegate their authority to CED to make actively engaged in farming and eligibility determinations in certain circumstances.

B Redelegating Circumstances

COC's authority to make actively engaged in farming and eligibility determinations may be redelegated to CED when the cases delegated are routine.

Note: Record all COC determinations in COC minutes, including determinations made by CED for COC.

C Spot-Checking Redelegated Determinations

Periodically, COC's and DD's shall review a sufficient number of redelegated cases to ensure that proper determinations are being made.

***--D AGI**

SED's are delegated authority to make AGI determinations.--*

217 * * * Relief and Incorrect Determinations

A Misaction or Misinformation

See 7-CP for cases involving misaction or misinformation.

*--B Incorrect Payment Limitation or Actively Engaged in Farming Determination Corrective Action

Use this table if a payment limitation or actively engaged in farming determination is--* found to be in error by any reviewing authority.

IF a determination is found to be in error...	THEN the...
within 60 calendar days of the date the producer filed a complete CCC-902	<ul style="list-style-type: none"> • producer shall be immediately notified of the corrected determination and advised of the right to appeal according to 1-APP • corrected determination shall be applicable for the current year, unless COC determines and DD concurs that both of the following apply: <ul style="list-style-type: none"> • error was not so great that the producer should have noticed the error • producer, relying on the erroneous written determination and acting in good faith: <ul style="list-style-type: none"> • materially changed plans because of the erroneous determination • was not notified in time to comply with the correct determination without suffering a loss.
but not within 60 calendar days of the date the producer filed a complete CCC-902	<ul style="list-style-type: none"> • initial determination shall be considered a default determination according to paragraph 208 for the current year and any previous year to which CCC-902 is applicable Exception: The correct determination shall apply for the current year if both of the following apply: <ul style="list-style-type: none"> • incorrect determination was made in a previous year and considered to be in effect for subsequent years • error was discovered and the producer was notified before a payment. • producer shall be notified of the correct determination according to paragraph 244.

--Note: The provisions of this paragraph are not applicable to average AGI determinations.--

218-225 (Reserved)

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None.

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026A	Supplemental to AD-1026		34
CCC-502	Farm Operation Plan for Payment Eligibility Review for _____		Ex. 10
CCC-509	2009-2012 Direct and Counter-Cyclical Program Contract		3, 119, 157
CCC-526	Payment Eligibility Average Adjusted Gross Income Certification		Ex. 10
CCC-580	Milk Income Loss Contract (MILC)		186
CCC-900-1	Payment Eligibility/Limitation Selection, Notification, and Information Collection Checklist 1	421	
CCC-900-2	Payment Eligibility/Limitation Documents Received From Producer Checklist 2	421	
CCC-900-3	Payment Eligibility/Limitation Contribution Worksheet	421	
CCC-900-4	Payment Eligibility/Limitation Substantive Change and Other Determinations Worksheet	421	
CCC-900-5	Payment Eligibility/Limitation Summary of Findings and Recommendations	421	
CCC-901	Member's Information - 2009 and Subsequent Years	99	Text
CCC-902 Automated	Farming Operation Plan for Payment Eligibility - 2009 and Subsequent Program Years	130.5	
CCC-902 Continuation	Continuation Sheet for Leased or Owned Land (Attach to Form CCC-902I or CCC-902E)	140	Text, Ex. 10
CCC-902E	Farm Operating Plan for an Entity - 2009 and Subsequent Program Years	120, 122, 140, 149, 158, 170	Text, Ex. 10
CCC-902E Continuation	Continuation Sheet for Farm Operating Plan for an Entity - 2009 and Subsequent Program Years	141	34
CCC-902EYR	End-of-Year Report of payment Limitation Review	441	
CCC-902I	Farm Operating Plan for an Individual - 2009 and Subsequent Program Years	130	Text, Ex. 10

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Forms (Continued)

Number	Title	Display Reference	Reference
CCC-902I Short Form	Farm Operating Plan for an Individual - 2009 and Subsequent Program Years	131	34, 74
CCC-902I Automated (Short Form)	Farm Operating Plan for an Individual - 2009 and Subsequent Program Years	132	
CCC-903	Worksheet for Payment Eligibility and Payment Limitation Determinations	207	33, 109
CCC-926 <u>1/</u>	Average Adjusted Gross Income (AGI) Statement		31, 32, 119, 203.8, 204, Ex. 10, 14
CCC-927 <u>1/</u>	Consent to Disclosure of Tax Information - Individual		Ex. 11-13
CCC-928 <u>1/</u>	Consent to Disclosure of Tax Information - Legal Entity		Ex. 11-13
CCC-929	Average Adjusted Gross Income (AGI) Supplemental	201	199, 200
CCC-931	Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information	200.5	Text, Ex. 10, 12
CRP-1	Conservation Reserve Program Contract		13, 187, 190, Ex. 10
FSA-211	Power of Attorney		200.5
I-151 <u>1/</u>	Alien Registration Receipt Card		107
I-551	Permanent Resident Card/Resident Alien Card	107	108, 120, Ex. 2
IRS-990	Return of Organizations Exempt From Income Tax		97
IRS-990-T	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))		191
IRS-1041	U.S. Income Tax Return for Estates and Trusts		191
IRS-1040	U.S. Individual Income Tax Return		191, 203.8
IRS-1065	U.S. Return of Partnership Income		191
IRS-1120	U.S. Income Tax Return for an S Corporation		191
IRS-1120S	U.S. Income Tax Return for an S Corporation		191
IRS-2848	Power of Attorney and Declaration of Representative		200.5
IRS-3210	Document Transmittal	Ex. 8	200

1/ Form is obsolete.

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are **not** listed in 1-CM.

Approved Abbreviation	Term	Reference
AMA	Agriculture Management Assistance	11, 187
AWEP	Agricultural Water Enhancement Program	11, 187
CBWP	Chesapeake Bay Watershed Program	11, 187
CCPI	Cooperative Conservation Partnership Initiative	11, 187
CPA	Certified Public Accountant	189, 200, 200.5, 203.8, 204
CSTP	Conservation Stewardship Program	11, 14, 187
EIN	employer identification number	136, 156, 168, 200
ELAP	Emergency Assistance Program for Livestock, Honey Bees, and Farm-raised Fish	11, 14, 186, 187
FRPP	Farm and Ranchland Protection Program	11, 187
IRA	individual retirement account	167
LLP	limited liability partnership	34, 52, 147, 148, 149, 191
LP	limited partnership	34, 52, 120, 147, 148, 149, 191, Ex. 2
MLG	marketing loan gain	3, 11, 12, 14, 186
SURE	Supplemental Revenue Assistance Payments Program	1, 11, 14, 186, 187
TAAF	Trade Adjustment Assistance for Farmers	14, 34, 187
WHIP	Wildlife Habitat Incentives Program	11, 14, 187

Redelegations of Authority

This table lists redelegations of authority in this handbook.

Redelegation	Reference
Making Determination Decisions	216
Monitoring Determinations	216

Definitions of Terms Used in This Handbook (Continued)**Default Determination**

Default determination means all persons or legal entities are considered actively engaged in farming.

***--Enrolled Agent**

Enrolled agent means someone who is authorized to deal with IRS on behalf of another; however, enrolled agent certifications are **not** acceptable for AGI eligibility purposes.--*

Embedded Legal Entity

Embedded legal entity means an entity that has an interest, directly or indirectly, as a stockholder, member, beneficiary, or heir, in another entity that is earning payments.

Equipment

For payment limitation purposes, equipment means the machinery and implements used by the farming operation to conduct activities of the farming operation.

This includes:

- machinery and implements for:
 - land preparation, planting, cultivating, or harvesting of the crops involved
 - establishing and maintaining conservation cover crops or conservation use of acreages
 - conducting livestock operations
- irrigation equipment that is:
 - **not** of a permanent nature
 - commonly used in the area.

Definitions of Terms Used in This Handbook (Continued)

Family Member

Family member means a person to whom another member in the farming operation is related as lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.

The term family member shall include:

- great grandparent
- grandparent
- parent
- child, including legally adopted children and stepchildren
- grandchild
- great grandchild
- sibling of the family members in the farming operation
- spouse of family members.

Farming Operation

Farming operation means a business enterprise engaged in production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation that is eligible to receive payments, directly or indirectly, under 1 or more programs specified in § 1400.1. A person or legal entity may have more than 1 farming operation if this person or legal entity is a member of 1 or more joint operations.

Foreign Entity

Foreign entity means a corporation, trust, estate, or other similar organization, that has more than 10 percent of its beneficial interest held by individuals who are **not**:

- citizens of the U.S.
- lawful alien possessing a valid Permanent Resident Card or Resident Alien Card (Form I-551).

Foreign Person

Foreign person means someone who is **not** a:

- citizen of the U.S.
- lawful alien possessing a valid Permanent Resident Card or Resident Alien Card (Form I-551).