

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income 4-PL	Amendment 19
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Approved by: Acting Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 1 B has been amended to include references to EFRP.

Subparagraph 11 A has been amended to include the rules that apply in this handbook to participants in EFRP.

Subparagraph 14 A has been amended to include the payment limitation of \$500,000 per disaster event for a person or legal entity as a participant in EFRP.

Subparagraph 34 D has been amended to include the general forms requirements for participants in EFRP.

Subparagraph 91 B has been amended to include that a grantor of a revocable trust who is operating the land held by the revocable trust will be considered to have met the cash rent tenant provisions, if both the trust and the grantor derive a benefit from the land.

Subparagraph 167 D has been amended to clarify the conditions that must be met for IRA or profit-sharing plans to be considered valid program participants.

Subparagraph 186 D has been amended to include that average AGI limitations apply to persons and legal entities that are participants in EFRP.

Subparagraph 189 I has been amended to include that average AGI certification and compliance information for multi-county producers will be shared by the recording county with other counties in which multi-county producers have an interest, **only** if requested.

Subparagraph 203.5 A has been amended to include that the \$1 million total average AGI limitation, applicable to 2012 and 2013 direct payments, is now referenced in the report that lists program participants, indicated with incomes that exceed such average AGI limitations.

Amendment Transmittal

A Reasons for Amendment (continued)

Subparagraph 203.5 C has been added to:

- illustrate the interactions between the \$500,000 nonfarm and \$750,000 farm AGI limitations applicable to the receipt of direct payments
- explain new procedures now available when compliance is questioned for **either** the \$500,000 nonfarm **or** \$750,000 farm AGI limitation.

Subparagraph 203.8 A has been amended to remove the requirement that the receipt of program payments and benefits, either directly or indirectly, must be verified for all persons and legal entities subject to an average AGI compliance review.

Subparagraph 203.8 E has been added to include the requirements and procedures to accommodate a person's or legal entity's request to withdraw an average AGI certification before FSA's issuance of any administrative determination of the person's or legal entity's average AGI compliance.

Subparagraph 204 C has been amended to include optional language in the example of a written notification of an average AGI compliance review issued to a participant who previously certified as compliant with 1 or more average AGI limitations, but to date, may **not** have received a payment or benefit under a program subject to the average AGI limitations.

Exhibit 9 has been amended to reference EFRP and the payment eligibility and payment limitation requirements applicable to all participants in EFRP and the years for which such requirements apply.

Page Control Chart		
TC	Text	Exhibit
5, 6	1-1, 1-2 2-1 through 2-20 2-39 through 2-50 2-171, 2-172 4-251, 4-252 6-1, 6-2 6-7, 6-8 6-40.5, 6-40.6 (add) 6-41, 6-42 6-43, 6-44 6-46.5, 6-46.6 (add) 6-47, 6-48 6-51, 6-52	1, page 3 9, page 1

Table of Contents (Continued)

Page No.

Part 6 Adjusted Gross Income (AGI)

186	Average AGI Limitations	6-1
187	Applying Average AGI Limitations	6-3
188	AGI Definitions and Determinations	6-5
189	Average AGI Compliance Certification	6-6.3
190	Rules for Special Cases.....	6-9
191	Determining AGI and Average AGI.....	6-11
192	Average AGI Limitations and Payment Eligibility	6-15
193	Average AGI Compliance Reviews.....	6-17
194	Commensurate Reductions	6-19
195	Average AGI and NRCS Programs	6-20
196	Waiving Average AGI Limitation for Conservation Programs Only.....	6-21
197	Calculating Average AGI for 2009 and Subsequent Years	6-23
198	(Withdrawn--Amend. 12)	
199	Verifying Average AGI Certifications.....	6-29
200	Disclosing Information	6-30
200.5	Average AGI Compliance Certification and Consent to Disclosure of Tax Information	6-34
201	CCC-929, Average Adjusted Gross Income (AGI) Supplemental	6-37
202	Review and Validation Process	6-38
203	Average AGI Compliance Reports	6-39
203.4	Reconciliation Process of Participants and CCC-931 or CCC-933	6-39
203.5	Average AGI Amounts Are Above Threshold Levels.....	6-40.5
203.6	Average AGI Amounts at or Below Threshold Levels.....	6-41
203.7	FSA Review and Compliance Determinations	6-42
203.8	Average AGI Compliance Review Process	6-43
203.9	Payment Refunds and Collections	6-47
204	Notification Letters for AGI Compliance	6-49
205	(Reserved)	

Part 7 Payment Eligibility and Payment Limitation Determinations

Section 1 COC Responsibilities

206	COC Determinations.....	7-1
207	Completing CCC-903's	7-3
208	COC Requirements to Make Timely Determinations.....	7-9
209-215	(Reserved)	
216	Redelegating Authority.....	7-17
217	Relief and Incorrect Determinations.....	7-18
218-225	(Reserved)	

Table of Contents (Continued)

Page No.

Part 7 Payment Eligibility and Payment Limitation Determinations (Continued)

Section 2 County Office Responsibilities

Subsection 1 Multiple State and County Producers

226	Responsibilities of County Office Receiving CCC-902	7-25
227	Control County Responsibilities	7-26
228	Interaction Between Counties	7-27
229	Producers With Multiple State Interests	7-29
230-235	(Reserved)	

Subsection 2 State Office Determinations

236	Required State Office Determinations	7-41
237	Required Documentation	7-44
238-240	(Reserved)	

Subsection 3 Notifying Producers of Determinations

241	Notifying Producers of COC Determinations	7-51
242	Payment Eligibility and Payment Limitation Determinations	7-52
243	Default Determinations	7-53
244	Proper Determinations	7-54
245	Notification Letters	7-56
246-250	(Reserved)	

Subsection 4 Filing

251	Filing Payment Limitation Documentation	7-65
252-255	(Reserved)	

Section 3 DD Responsibilities

256	Monitoring COC Determinations	7-71
257	Corrective Actions	7-73
258	DD Disagreement With COC Determinations	7-74
259, 260	(Reserved)	

Section 4 STC Responsibilities

261	STC Authority	7-79
262	State Office Specialist Responsibilities	7-81
263-265	(Reserved)	

Section 5 National Office Responsibilities

266	General Responsibilities	7-87
267-400	(Reserved)	

Part 1 Introduction

1 Handbook Purpose and References

A Purpose

This handbook provides instructions and uniform methods to:

- apply direct attribution for payment limitation purposes
- determine payment eligibility for each program participant.

The provisions of this handbook apply to various programs administered by State and County Offices for the 2009 and subsequent crop years, program years, and FY's.

B Related Handbooks

This table lists all handbooks related to payment eligibility and payment limitation.

IF the questions or concern is about...	THEN see...
acreage compliance determinations	2-CP.
appeals	1-APP.
audits and investigations	9-AO.
claims and withholdings	58-FI.
common land units	8-CM.
common management and operating procedures	1-CM.
cotton price support payments	7-CN.
crop disaster assistance	5-DAP.
CRP	1-CRP and 2-CRP.
DIPP	3-LD.
direct and counter-cyclical payments	1-DCP and 2-DCP.
directives management	1-AS.
ECP	1-ECP.
--EFRP	1-EFRP.--
farm, tract, and crop data	3-CM.
finality rule and equitable relief	7-CP.
grain and oil seeds price support programs	2-LP Grains and Oilseeds.

1 Handbook Purpose and References (Continued)

B Related Handbooks (Continued)

IF the questions or concern is about...	THEN see...
honey price support programs	2-LP Honey.
lamb meat adjustment assistance program	10-LD.
livestock assistance programs	*--1-LDAP.--*
--marketing assistance, loan, and LDP programs--	8-LP.
milk income loss contract programs	11-LD.
noninsured crop disaster assistance	1-NAP.
peanut price support programs	2-LP Peanuts.
person determination for 2008 prior years payment limitation	1-PL.
quality control	1-COR.
record operations	25-AS.
rice price support programs	2-LP Rice.
special programs and trade adjustment assistance	1-SP and 1-TAP.
State and County organization and administration	16-AO.
subsidiary files	2-PL.
*--SURE Program	1-SURE
web-based subsidiary files	3-PL (Rev. 1).--*

2 Sources of Authority

A Statutory Reference

Authority for administering payment eligibility and payment limitation provisions is provided by Food Security Act of 1985, Sections 1001, 1001A, 1001B, 1001C, and 1001 D, as amended.

B Regulatory Reference

Authority for administering payment eligibility and payment limitation provisions is provided by 7 CFR Part 1400. References from CFR applicable to each paragraph will be provided and updated through amendments.

Part 2 General Provisions

Section 1 Program Availability

11 Applicable Programs

A General Applicability

[7 CFR 1400.1 (a) and (b)] This table provides the rules in this handbook that apply to USDA-administered programs. See Exhibit 9.

Program or Payment	Applicable Rules				
	Actively Engaged in Farming	Cash-Rent Tenant	Direct Attribution	Foreign Person	AGI
Conservation Programs					
AWEP			X		X
CBWP			X		X
CCPI			X		X
CRP			X	X	X
CSTP			X		X
ECP			X		X ^{1/}
--EFRP			X		X--
EQIP			X		X
FRPP			X		X
GRP			X		X
WHIP			X		X
WRP			X		X
DCP/ACRE Payment	X	X	X	X	X
Disaster Assistance Programs					
ELAP			X		X
LFP			X		X
LIP			X		X
NAP			X		X
SURE			X		X
TAP			X		X
Price Support Programs					
LDP's				X	X
Loans				X	
MILC			X	X	X
MLG's				X	X
Other					
AMA			X		X
TAAF			X		X

Note: Foreign persons are ineligible for payment under certain programs. The procedure for these programs reference the definition of foreign person provided in 4-PL, Part 3. However, the foreign person rule, as provided in Part 3, **only** applies to the programs or payments listed in this table.

^{1/} Only for certain apportionments that specifically identify AGI as a requirement.

11 Applicable Programs (Continued)

* * *

12 Specific Rules for MAL's and MLG's

A Foreign Person Requirements

[7 CFR 1400.1 (a) (2)] Regular MAL's are denied if the producer does **not** meet the foreign person requirements in Part 3.

B AGI Provisions

LDP's and MLG's are subject to the AGI provisions of this handbook.

13 Specific Rules for CRP

A Applicability of this Handbook

The provisions in this handbook apply to participants with CRP-1's approved on or after October 1, 2008.

B Applicability of 1-PL

Persons and entities with CRP-1's that are **not** subject to the provisions of this handbook are subject to the provisions of 1-PL.

14 Payment Limits and Rules

A Person or Legal Entity Payment Limitations

[7 CFR 1400.1] This table contains the applicable limitations for a person or legal entity for programs that are subject to the provisions of this handbook.

Program Payment Type	Limitation (in Dollars)
	2009 Through 2013
Commodity Programs	
Counter-cyclical and ACRE payments on covered commodities except peanuts.	65,000 <u>1/</u>
Counter-cyclical and ACRE payments on peanuts.	65,000 <u>1/</u>
Direct payments on covered commodities except peanuts.	40,000 <u>2/</u>
Direct payments on peanuts.	40,000 <u>2/</u>
Conservation Programs	
CRP annual rental payment and incentive payment.	50,000
CSTP (all contracts for FY 2009-2013)	200,000
ECP (per disaster)	200,000
--EFRP (per disaster)	500,000--
EQIP (all contracts for FY 2009-2013)	300,000
GRP	50,000
WHIP	50,000
WRP	50,000
Disaster Assistance Programs	
ELAP, LFP, LIP, and SURE	100,000
NAP	100,000
TAP	100,000
Price Support Programs	
LDP, MAL, and MLG	No limits.
Other Programs	
TAAF	10,000 <u>3/</u>

- 1/ Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.
- 2/ If the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.
- 3/ TAAF payments and counter-cyclical payments received by a person or legal entity for the same program or FY are limited to combined total of \$65,000 if counter-cyclical payments are received for covered commodities or peanuts; or a total of \$130,000 if counter-cyclical payments are received for both covered commodities and peanuts.

15-20 (Reserved)

34 General Form Requirements (Continued)

D Forms for Conservation, Price Support, Disaster and Livestock Assistance, TAAF, and Other Program Payment Eligibility and Payment Limitation Purposes

For persons and legal entities who are participants in conservation, price support, disaster assistance, and other programs, CCC-901 and CCC-902 will be used to collect information for the application of the following:

- direct attribution
- minor child rules
- rules for foreign persons.

CCC-901 is required for all legal entities for the application of direct attribution of payments for payment limitation purposes.

Complete only the applicable parts of CCC-902I, CCC-902I Short Form, or CCC-902E for information on minor children and foreign persons who are applicants, or members of applicants, that request program benefits. Do **not** make a determination of “actively engaged in farming”.

Note: If using business file application, it is **not** necessary to complete manual form.

Designate these forms similarly to the following examples:

- “For CRP purposes only”
- “For ECP purposes only”
- *--“For EFRP purposes only”--*
- “For MAL and LDP purposes only”
- “For TAAF purposes only”.

Note: This requirement only applies to a new program participant who has **not** previously submitted these forms to FSA for participation in other programs.

COC will:

- make the required determinations based on this information
- provide written notification to the participant according to Part 7
- update subsidiary files according to 3-PL (Rev. 1), Part 3
- record entities and joint operations according to 2-PL.

35-40 (Reserved)

Section 7 Cash-Rent Tenant

91 Cash-Rent Tenant Rule

A Definition of Cash-Rent Tenant

Cash-rent tenant means a producer who rents land from another producer or landowner under either of the following conditions:

- for a fixed cash amount
- guaranteed crop share as the amount of the commodity to be paid in rent.

B Other Situations of Applicability

Cash-rent tenant provisions also apply to:

- tenants who rent land for zero dollars or farm the land in exchange for compensation other than cash, such as:
 - controlling weeds on land **not** owned
 - barter arrangements
- producers who have use of the land and there is **not** a lease agreement in place, such as:
 - individual operating land owned by his or her revocable trust
 - 1 spouse operating land owned by the other spouse.

***--Note:** In husband and wife operations, or if the grantor of a revocable trust is operating the land held by the trust, cash-rent tenant provisions will be considered to be met if--* both benefit from the land.

For these situations:

- record the arrangement in farm records as land leased for cash
- COC must determine whether the cash-rent tenant provisions have been met by the producer.

91 Cash-Rent Tenant Rule (Continued)***--C Payment Eligibility Requirements**

[7 CFR 1400.301(a)] In addition to meeting the requirements to be considered actively engaged in farming, a cash-rent tenant will be eligible to receive payments on cash-rented land if the cash-rent tenant makes either of the following:

- a significant contribution of active personal labor to the farming operation
- a significant contribution of equipment **and** a significant contribution of active personal management to the farming operation.

Note: The spousal provision in subparagraph 116 A for determining actively engaged in farming can also be used by spouses in meeting these requirements.

D Partial Eligibility

If a producer meets all requirements to be considered actively engaged in farming, but fails to meet the cash-rent tenant provisions in subparagraph C, the producer will be:

- eligible to receive payments on land in the farming operation that is **not** cash-rented
- subject to a reduction in payments with the application of a cropland factor according to paragraph 64.--*

Section 6 Trusts

166 Revocable and Irrevocable Trusts

A Types of Trusts

For payment limitation purposes, there are 2 types of trusts, as follows.

Trust Type	Characteristics
Revocable	<ul style="list-style-type: none"> • Can be modified or terminated by the grantor or the assets revert to the grantor after a specific period of time. • Does not meet the criteria for an irrevocable trust.
Irrevocable	<ul style="list-style-type: none"> • May not be modified or terminated by the grantor. • The grantor does not have any future, contingent, or remainder interest in the corpus of the trust. • For trusts established after January 1, 1987, does not provide for transferring the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established, except in cases where the transfer is contingent upon the remainder beneficiary achieving at least the age of majority or upon the death of the grantor or income beneficiary. <p>Note: All trusts not meeting these requirements shall be considered revocable trusts.</p>

B Trust Scrutiny

All trusts that receive payments shall be carefully scrutinized to ensure that the trusts are legitimate legal entities and have **not** been created solely for the purpose of evading payment limitation provisions.

County Offices shall:

- require producers to provide a copy of the trust agreement unless the trust is a revocable trust

* * *

- determine whether provisions are included in the trust that would require the trust to be considered a revocable trust for payment limitation purposes.

167 Trust Eligibility Determinations

A Revocable Trust and Grantor

A revocable trust is the same as the grantor.

B Trusts With Minor Children Beneficiaries

Program payments will be attributed **only** to the grantor of the revocable trust.

For revocable trusts with 1 or more minor children as beneficiaries, payments earned by the minor children's interest will be **not** be attributed to the parent's or court-appointed person's interest, if they are **not** grantors of the trust.

C Programs Not Requiring Actively Engaged in Farming Determinations

If a program requires eligibility determinations, but **not** actively engaged in farming determinations, the following are **required** to be eligible for payments or benefits:

- claimed share of the profits or losses of the farming operation **must** be commensurate with the contributions to the farming operation
- contributions **must** be at risk.

D IRA's and Employee Profit-Sharing Plans

--An IRA or employee profit-sharing plan may be considered a valid program participant, as-- a trust **only**, if the Regional Attorney determines the account:

- meets the definition of legal entity
- has full function of a trust
- is owner of the land on which program benefits are requested.

The minimum information submitted for an IRA or Profit Share Plan **must** include documentation that:

- discloses the full trust agreement, naming the trust and the trustee who will function for the trust regarding all FSA programs
- proves the land as an asset of the trust and properly deeded to the trust as evidenced by a deed or other document that FSA can review.

Note: Approval from the Regional Attorney is required **before** any eligibility determinations.

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 beginning with the 2009 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 2013 DCP direct payments.
income (both farm and nonfarm) exceeds \$1 million	2012 and 2013 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> / *--EFRP <u>1</u> / 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 Compliance Certification (Continued)

F Example of CPA or Attorney Statement for AGI Compliance for Joint Tax Filers (Continued)

- Although the calculated *[insert "average nonfarm AGI" or "average farm AGI", as applicable]* indicated in this letter exceeds the applicable AGI limitation, I believe that Jane Farmer *[insert name of producer]* complies with the average AGI limitation requirements for the reasons that are set forth in detail in the space below **and** the attached document. Jane Farmer *[insert name of producer]* has represented to me that the attached information is, to the best of *[his/her]* knowledge, true, correct, and complete. I am not aware of any discrepancies and do not have any reason to believe otherwise.

[Include the following, if applicable]

According to the most recent returns filed for the years identified above, *Jane Farmer's*:

- Reported average AGI would have been \$ _____ based on the following amounts had he/she and spouse filed separate tax returns for each of the applicable years:

[List the dollar amount of individual's share of total AGI from line 37 of tax return.]

Note: Salaries are **not** considered separate income in community property states.

Individual's Share of AGI reported on Line 37 in 2007 _____
 Individual's Share of AGI reported on Line 37 in 2008 _____
 Individual's Share of AGI reported on Line 37 in 2009 _____

- reported farm average AGI would have been \$ _____ based on the following amounts had *[he/she and spouse]* filed separate tax returns for each of the applicable years:

[List each tax year and farm AGI amounts for each year.]

Note: Farm income does not include wages earned from farming, dividends, oil & gas lease, oil & gas royalties or land damages.

Farm Income reported in 2007 _____
 Farm Income reported in 2008 _____
 Farm Income reported in 2009 _____

- 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.]

Lines and Schedules used to report Farm income in 2007 _____
 Lines and Schedules used to report Farm income in 2008 _____
 Lines and Schedules used to report Farm income in 2009 _____

- reported nonfarm average AGI was \$ _____ based on the following amounts had he/she and spouse filed separate tax returns for each of the applicable years:

[List each tax year and nonfarm AGI amounts for each year.]

Reported Nonfarm income for 2007 _____
 Reported Nonfarm income for 2008 _____
 Reported Nonfarm income for 2009 _____

I declare that the statements made herein, to the best of my knowledge and belief, are true, correct, and complete.

(Insert additional comments if needed.)

Signed

[insert name of CPA or attorney, as applicable], [insert title, "CPA" or "Attorney", as applicable]

Dated: *[insert date]*

Enclosure: (Attach documents or a spread sheet showing the method of how and why the income was divided between the individuals filing the joint return.)

--*

189 Average AGI Compliance Certification (Continued)**G 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.

H 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.

I 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
- *--if requested, share the information with other counties.--*

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

*--A report will list participants with indicators that average income amounts exceed the following limitations:

- \$500,000 nonfarm AGI limitation, applicable to commodity (including direct, counter-cyclical, and ACRE payments), price support, and disaster assistance programs
- \$750,000 farm AGI limitation, applicable **only** to direct payments
- \$1 million total AGI limitation (both farm and nonfarm), applicable **only** to 2012 and 2013 direct payments
- \$1 million nonfarm AGI limitation, applicable to all 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.

203.5 Average AGI Amounts Are Above Threshold Levels (Continued)

*--C \$500,000 Nonfarm and \$750,000 Farm AGI Limitation Compliance Reviews

Both the \$500,000 nonfarm and \$750,000 farm AGI limitations **must** be met by the person or legal entity to receive 2009 through 2013 direct payments. See paragraph 186.

The following table illustrates:

- interaction between the \$500,000 nonfarm and \$750,000 farm AGI limitations applicable to the receipt of direct payments
- procedures when compliance is questioned for **either** the \$500,000 nonfarm **or** \$750,000 farm AGI limitation.

IF the \$500,000 nonfarm AGI limitation is applicable and...	AND \$750,000 farm AGI limitation is applicable and...	THEN compliance review procedure includes completing...
the person or legal entity certified to be compliant and IRS indicates person or legal entity has average nonfarm income in excess of the \$500,000 nonfarm AGI limitation	IRS indicates the person or legal entity has average farm income that is less than the \$750,000 farm AGI limitation	both of the following actions: <ul style="list-style-type: none"> • initiate AGI compliance review for the applicable program year • follow procedures in subparagraph B.
the person or legal entity certified to be compliant and IRS indicates person or legal entity has average nonfarm income that is less than the \$500,000 nonfarm AGI limitation	IRS indicates the person or legal entity has average farm income in excess of the \$750,000 farm AGI limitation	both of the following actions: <ul style="list-style-type: none"> • initiate AGI compliance review for the applicable program year • follow procedures in subparagraph B.
the person or legal entity certifies that average nonfarm income exceeds the \$500,000 nonfarm AGI limitation Note: According to 2008 Act, Section 1001(b)(1)(C), a person or legal entity that exceeds the \$500,000 nonfarm AGI limitation is not eligible for ACRE, DCP, ELAP, LDP, LFP, LIP, marketing loan gain, NAP, SURE, or TAP benefits.	IRS indicates the person or legal entity has average farm income in excess of the \$750,000 farm AGI limitation	all of the following: <ul style="list-style-type: none"> • a compliance review for the applicable program year is not required for the \$500,000 nonfarm and \$750,000 farm AGI limitations • in the Direct Payment \$750,000 Farm Income Certification/COC Determination, record as “Not Met-SED” and the date of the recording (3-PL (Rev. 1), subparagraph 31 C), and consider all AGI compliance review and determination actions concluded for this person or legal entity for the applicable crop, program, and FY • update ARCT according to subparagraph 528 A.

--*

203.5 Average AGI Amounts Are Above Threshold Levels (Continued)

***--C \$500,000 Nonfarm and \$750,000 Farm AGI Limitation Compliance Reviews (Continued)**

IF the \$500,000 nonfarm AGI limitation is applicable and...	AND \$750,000 farm AGI limitation is applicable and...	THEN compliance review procedure includes completing...
the person or legal entity certifies that average nonfarm income does not exceed the \$500,000 nonfarm AGI limitation	both of the following apply: <ul style="list-style-type: none"> • the person or legal entity certifies that average farm income is less than the \$750,000 farm AGI limitation • IRS indicates the person or legal entity has average farm income in excess of the \$750,000 farm AGI limitation 	the following, as applicable: <ul style="list-style-type: none"> • verify that the person or legal entity requested commodity program benefits, initiate AGI compliance review for the applicable program year, and follow procedures outlined in subparagraph B • if the person or legal entity did not request commodity program benefits, then in the Direct Payment \$750,000 Farm Income Certification/COC Determination, record as “Not Met-SED” and the date of the recording (3-PL (Rev. 1), subparagraph 31 C), and consider all AGI compliance review and determination actions concluded for this person or legal entity for the applicable crop, program, and FY • update ARCT according to subparagraph 528 A.

--*

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 person or legal entity
- if necessary, calculate the average AGI values based on supplied information
- confer with the person or legal entity if questions arise in this process
- determine AGI compliance for the person or legal entity
- 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 Person's or Legal Entity's Compliance With Average AGI

SED's will:

- issue written notice of determination, adverse or otherwise, to the person or legal entity--*
- 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 an example notification letter for AGI compliance.

203.8 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 (CCC-926, CCC-931, CCC-933, or acceptable statement from CPA or attorney) submitted by the person or legal entity 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 person or legal entity 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 * * *:
 - subsidiary flags are accurately set to reflect the certification of record
 - there is a valid CCC-926/CCC-931/CCC-933 on file supporting record certification.

B Results and Findings

The results and findings of the review and evaluation are the basis to determine if person or legal entity 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: 50px;">Specify From Where Information Was Obtained (for example, IRS Form 1040, Line 37)</div> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 25%;">Year</th> <th style="text-align: left; width: 25%;">Amount</th> <th style="width: 50%;"></th> </tr> </thead> <tbody> <tr> <td>_____</td> <td>\$ _____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </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 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 1.	\$ _____												
8	If the result of step 3 and step 6 is greater than zero and not a negative number, 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 the result of either step 3 or step 6 is zero or a negative number enter zero in step 8.--*	%												
	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 and 2013 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 or 2013 direct payments under 2012 or 2013 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 Average AGI Compliance Review Process (Continued)**D Admissions**

If a person or legal entity submits a revised CCC-931 or CCC-933, or certification is received that the person or legal entity exceeds any of the average AGI limitations for any program, do the following:

- accept the written material and keep with the file
- consider the AGI compliance review complete
- reset the applicable coverage AGI values to “producer not met” in the web-based eligibility files. See 3-PL (Rev. 1), paragraph 31.

If a person or legal entity affirms that 1 or more of the average AGI limitations are exceeded, FSA is:

- **not** required to issue a decision on ineligibility
- **not** required to issue an adverse decision on average AGI noncompliance
- required to issue adverse overpayment notifications for all programs that FSA administers.

***--E Withdrawing Average AGI Certification**

If a person or legal entity requests to withdraw an average AGI certification submitted for an applicable year, the request must be submitted **before** FSA issues any administrative decision relative to the person’s or legal entity’s average AGI compliance and **all** of the following:

- in writing
- signed by the person or authorized representative of the legal entity
- attached to CCC-926, CCC-931, CCC-933, or to the CPA or attorney statement submitted for the applicable year
- placed in the person’s or legal entity’s eligibility file.--*

203.8 Average AGI Compliance Review Process (Continued)***--E Withdrawing Average AGI Certification (Continued)**

When the request to withdraw an average AGI certification is accepted, the recording County Office **must** do the following:

- reset the eligibility AGI values to “Not Filed” for all commodity, direct payment, and conservation programs for the applicable crop, program and FY according to 3-PL (Rev. 1) paragraph 31
- consider the AGI compliance review complete
- **not** issue an adverse decision on average AGI compliance
- issue adverse overpayment notifications for **all** programs that FSA administers.--*

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 (Continued)

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

*--

«Name»

Page 2

[Optional:

Note: *A cursory review of your application history indicates that you may not have applied for any benefit or payment that would be impacted by the AGI limitation. Accordingly, you may have no payments or benefits directly or indirectly impacted by our finding that you appear to have income in excess of the aforementioned AGI limitation. You may choose not to respond to this notification and your file will be updated to reflect you as ineligible with the aforementioned AGI limitation. Please note that the AGI compliance review is performed separately from any review of payments that you may or may not seek or have sought and only you know for certain whether or not you have sought or will seek payments directly or indirectly under any of the aforementioned programs. Still, if you have not made any application or sought benefits and do not believe you will seek benefits subject to the aforementioned AGI limitation, you can choose not to respond to this letter.]*

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 Farm Service Agency and/or Natural Resources Conservation Service program purposes, as applicable.

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

A sample letter with instructions are enclosed for your CPA or attorney's reference. [Enclose sample notification letters as shown in subparagraphs 189 D or 189 F, as appropriate.]

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 [insert applicable program year 2009 through 2012] 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,

[Name]

State Executive Director

Enclosures

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

Forms (Continued)

Number	Title	Display Reference	Reference
IRS-1041	U.S. Income Tax Return for Estates and Trusts		191, Ex. 21
IRS-1065	U.S. Return of Partnership Income		191, Ex. 21
IRS-1120	U.S. Income Tax Return for an S Corporation		191, Ex. 21
IRS-1120S	U.S. Income Tax Return for an S Corporation		191, Ex. 21
IRS-2848	Power of Attorney and Declaration of Representative		200.5
IRS-3210	Document Transmittal	Ex. 8	200

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
ARCT	AGI Review and Compliance Tracking System	203.5, Part 9
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, 203.7, 203.8, 204, Ex. 21
CSTP	Conservation Stewardship Program	11, 14, 187
EIN	employer identification number	136, 156, 168, 200, Ex. 2
EYR	End-of-Year Report	402, 441, 442, 476-479
EYRT	End-of-Year Review Tracking	441, 442, 445-449, 476-479
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
TAAF	Trade Adjustment Assistance for Farmers	11, 14, 34, 187
WHIP	Wildlife Habitat Incentives Program	11, 14, 187

Re delegations of Authority

This table lists redelegations of authority in this handbook.

Redelegation	Reference
Making Determination Decisions	216
Monitoring Determinations	216

Payment Eligibility and Payment Limitations for Disaster Assistance Programs

This is an example of the payment eligibility and limitations for Disaster Assistance Programs.

Program	Years	Payment Eligibility		Annual Payment Limitation		Payment Limitation Control	
		Gross Revenue	AGI	Regulation	Amount	Regulation	Method
CDP	2005 - 2007		\$2.5 million	7 CFR Part 760	\$80,000 total for all 3 years	7 CFR Part 1400	"Person" as defined.
ECP	2008		\$2.5 million ^{1/}	7 CFR Part 701	\$200,000 per disaster	7 CFR Part 1400	"Person" as defined.
	2009 forward		\$1 million nonfarm			7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.
--EFRP	2010 forward		\$1 million nonfarm	7 CFR Part 701	\$500,000 per disaster	7 CFR Part 1400 as revised for 2010 forward.	Direct attribution to person or legal entity.--
ELAP and SURE	2008		\$2.5 million	7 CFR Part 1480	\$100,000 total for ELAP, SURE, LFP, and LIP	7 CFR Part 1400	"Person" as defined.
	2009 - 2011		\$500,000 Nonfarm AGI	7 CFR Part 1439		7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.
LFP	2008		\$2.5 million	7 CFR Part 1439		7 CFR Part 1400	"Person" as defined.
	2009 - 2011		\$500,000 Nonfarm AGI			7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.
LIP	2008		\$2.5 million			7 CFR Part 1400	"Person" as defined.
	2009 - 2011		\$500,000 Nonfarm AGI			7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.
LCP	2005 - 2007		\$2.5 million	7 CFR Part 760	\$80,000 total for all 3 years	7 CFR Part 1400	"Person" as defined.
LIP	2005 - 2007		\$2.5 million	7 CFR Part 760	\$80,000 total for all 3 years	7 CFR Part 1400	"Person" as defined.
NAP	2008	\$2 million		7 CFR Part 1437	\$100,000	7 CFR Part 1400	"Person" as defined.
	2009 forward		\$500,000 Nonfarm AGI		\$100,000	7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.
TAP	2008		\$2.5 million	7 CFR Part 783	\$100,000	7 CFR Part 1400	"Person" as defined.
	2009 - 2011		\$500,000 Nonfarm AGI		\$100,000	7 CFR Part 1400 as revised for 2009 forward.	Direct attribution to person or legal entity.

^{1/} If applicable, see subparagraph 11 A.

