

Average Adjusted Gross Income, 2009-2013

Overview

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires the implementation of the average adjusted gross income (AGI) limitations for program eligibility for the 2009-2012 program years. The average AGI provisions are applicable to the majority of programs administered by the Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS). The American Taxpayer Relief Act of 2012 extends the required implementation of the AGI limitations for program eligibility for the 2013 program year.

Applicability

All persons and legal entities requesting certain program payments, either directly or indirectly, are subject to the average AGI provisions. If persons or legal entities whose average AGI for the three taxable years preceding the immediate taxable year exceeds the qualifying limits, they are ineligible for the applicable program payment. If program payments are issued to an entity, general partnership or a joint venture, they will be reduced by an amount that is commensurate with the direct and indirect interest of any member or interest holder who is non-compliant with the average AGI provisions.

Compliance and Verification Procedure

The 2008 Farm Bill, as amended, requires audits of persons and legal entities determined most likely to exceed the AGI limitations. The U.S. Department of Agriculture (USDA) and the Internal Revenue Service

(IRS) have developed an electronic information exchange process strictly for the purpose of average AGI verification. This process involves a series of calculations on certain line items on IRS tax forms for the applicable three-year period to arrive at the average amounts and then compares these values to the average AGI limitations. USDA receives indicators when a program participant appears to meet the AGI requirements. USDA does not receive any actual tax data. The cases that appear to exceed the average AGI limitations will be evaluated by FSA state office or headquarters personnel.

Average AGI Certification and Written Consent

Participants in Commodity Credit Corporation (CCC) programs subject to average AGI rules must annually certify their eligibility to receive program benefits. The IRS also requires written consent from the individual or legal entity to provide USDA verification of the average AGI. Such annual AGI certification and written consent are accomplished by completion of form CCC-931, Average Adjusted Gross Income (AGI) Certification and Consent To Disclosure of Tax Information for the 2009 through 2012 program years, or form CCC-933, Average Adjusted Gross Income (AGI) Certification And Consent To Disclosure of Tax Information for the 2013 program year.

The form allows for the selection of the appropriate year for which certification and consent must be completed for an individual or legal entity. Completion of Part A is required to provide the annual AGI certification.

In lieu of Part A, individuals or legal entities may choose to submit an acceptable statement from a certified public accountant or an attorney; however, all program participants are required to complete Part B. Completion of Part B authorizes the IRS to perform the average AGI calculations and to disclose this information to FSA. Failure to provide the certification and consent will require refund of applicable program payments received from FSA and NRCS. Form CCC-931 or CCC-933 may be obtained from local FSA and NRCS offices or online at:
www.fsa.usda.gov/cc931 and
www.fsa.usda.gov/cc933.

Definitions

Adjusted Gross Income: AGI is the legal entity's or individual's IRS-reported adjusted gross income, or a comparable measure as determined by CCC.

Adjusted Gross Farm Income: Income from activities related to farming, ranching or forestry is considered adjusted gross farm income. (See Table 1).

Adjusted Gross Nonfarm Income: The difference between adjusted gross income and adjusted gross farm income is considered the adjusted gross nonfarm income.

Legal Entity: The term "legal entity" includes a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable

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trust, or as a participant in a similar entity.

Multiple AGI Limitations

Different income thresholds will be used to determine eligibility for different CCC programs as described in Table 2.

A person or legal entity with:

- Average Adjusted Gross Nonfarm Income exceeding \$500,000 is ineligible for all commodity program payments and benefits
- Average Adjusted Gross Farm Income exceeding \$750,000 is ineligible for Direct Payments under the Direct and Counter-cyclical Program (DCP) and the Average Crop Revenue Election (ACRE) Program
- Average Adjusted Gross Income (all income, both farm and nonfarm) exceeding \$1 million is ineligible for 2012 and 2013 DCP direct payments
- Average Adjusted Gross Non-farm Income exceeding \$1 million is ineligible for conservation programs, unless at least 66.66 percent of total AGI was farm income.

Note: This limitation may be waived on a case-by-case basis for the protection of environmentally sensitive land of special significance.

Base Period for Determining Average AGI

A three-year average AGI will be used to determine whether an individual or legal entity qualifies to receive program benefits subject to AGI rules. Base years for computing average AGI are:

For Crop Year...	AGI Base Years Are...
2009	2005, 2006, 2007
2010	2006, 2007, 2008
2011	2007, 2008, 2009
2012	2008, 2009, 2010
2013	2009, 2010, 2011

Annual Certifications

Annual certifications of AGI compliance are required from each individual and legal entity requesting CCC program payments either directly or indirectly. Annual certifications are made on form CCC-931 or CCC-933 or by a statement from a certified public accountant or an attorney.

Tracking of AGI Through Entity Ownership

If the participant is a general partnership or a joint venture, AGI certifications are required from each member who is an individual or entity and from each embedded interest holder.

If the participant is an entity, AGI certifications are required from the participating entity and from each interest holder who is an individual or entity and from each embedded interest holder.

Compliance with AGI rules will be tracked through four levels of legal entity ownership. If individuals or entities within those four levels do not comply with average AGI provisions, payments will be reduced by an amount commensurate with the ineligible share.

Definition of Farm Income

General farm income includes income derived from the produc-

tion of crops and livestock from farming, ranching and forestry and other income reported on Schedule F of the IRS tax forms. See Table 1 for more information.

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Table 1. Source of Adjusted Gross Farm Income.

INCOME RELATED TO LIVESTOCK AND CROPS	OTHER TYPES OF INCOME
Production of livestock, including but not limited to: - cattle, sheep, goats, swine - elk, reindeer, bison, deer - horses - poultry - fish and other aquaculture products used for food - honeybees	The sale of land that has been used for agriculture The sale of, including the sale of easements and development rights to: - farm land, ranch land or forestry land - water or hunting rights - environmental benefits
The feeding, rearing or finishing of livestock	The rental or lease of land or equipment used for farming, ranching or forestry operations, including water or hunting rights
Products produced by or derived from livestock	
Production of crops, specialty crops and unfinished raw forestry products	Any payment or benefit, including benefits from risk management practices, crop insurance indemnities and catastrophic risk protection plans
The processing, packing, storing, shedding and transporting of farm, ranch and forestry commodities, including renewable energy	Payments and benefits authorized under any program made applicable to payment eligibility and payment limitation rules
	Production of farm-based renewable energy
Any other activity related to farming, ranching or forestry as determined by the Deputy Administrator.	
Any income reported on the Schedule F or other schedule used by the person or legal entity to report income from farming, ranching or forestry operations to the IRS.	
In addition to all of the above, and specifically when the average adjusted gross farm income is at least 66.66 percent of the average AGI: • The sale of equipment to conduct farm, ranch, or forestry operations • The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.	

Table 2. Applicability of AGI Thresholds to Various CCC Programs

PROGRAM	APPLICABLE AGI LIMITATION
Commodity and Disaster programs including: DCP, ACRE, SURE, ELAP, LFP, LIP, TAP, NAP	The three-year average Nonfarm AGI shall not exceed \$500,000.
DCP Direct Payments	The three-year average Nonfarm AGI shall not exceed \$500,000 and the three-year average Farm AGI shall not exceed \$750,000.
2012 and 2013 DCP direct payments	The three-year average Nonfarm AGI shall not exceed \$500,000; the three-year average Farm AGI shall not exceed \$750,000; and the three-year average AGI (all income, both farm and nonfarm income) shall not exceed \$1 million.
Price Support benefits including Market Gains, Loan Deficiency Payments and MILC payments.	The three-year average Nonfarm AGI shall not exceed \$500,000.
All Conservation Programs administered by FSA and NRCS including: CRP, AMA, AWEP, CSTEP, CCPI, EQIP, FRPP, WRP, WHIP	The three-year average Nonfarm AGI shall not exceed \$1 million, unless at least 66.66% of the total AGI was adjusted gross farm income. Note: This limitation may be waived on a case-by-case basis for environmental sensitive land of special significance.
All other programs	As determined by federal regulation for each program.