

For: State and County Offices

**Final Determination to Program Participants to
Provide Written Consent to IRS for 2009, 2010, and 2011 Payment Eligibility**

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview of Final AGI Reconciliation Process for 2009, 2010, and 2011 Payment Eligibility

A Background

The average AGI verification and compliance processes for 2009, 2010, and 2011 payment eligibility **require** that all persons and legal entities who are direct and indirect program participants provide written consent to IRS for the disclosure of certain information to FSA. All persons and legal entities who have not submitted the required written consent to IRS for 2009, 2010, and 2011 average AGI verification purposes have been identified as of May 1, 2012.

A determination letter (Exhibit 1) will be prepared and mailed **by the recording State or County Office** to persons and legal entities who have not filed the written consent as required for 2009, 2010, and 2011. The letter shall be issued by CED and will provide the person or legal entity with a right of appeal to COC according to 1-APP. As part of any appeal that may subsequently follow, the person or legal entity can submit CCC-931's. Offices should issue determination letters as soon as possible. **All determination letters must be mailed no later than July 31, 2012.**

Each recording State and County Office will have access to the list of persons and legal entities that have not provided a valid written consent to disclosure for 2009, 2010, and 2011, and that are to receive determination letters. This information will assist the recording State or County Office personnel in preparing the determination letters.

B Purpose

This notice:

- provides instructions for recording State or County Offices to notify participants using a determination letter (Exhibit 1), who have not filed a written consent to disclosure with IRS for 2009, 2010 and/or 2011
- provides an example of the determination letter (Exhibit 1)

Disposal Date	Distribution
December 1, 2012	State Offices; State Offices relay to County Offices and NRCS Offices

Notice PL-238

1 Overview of Final AGI Reconciliation Process for 2009, 2010, and 2011 Payment Eligibility (Continued)

B Purpose (Continued)

- provides the mailing date of the determination letters
- provides how the recipients were identified
- provides information on accessing the list of recipients
- provides actions required from the letter recipients
- provides actions required by the County Office for letter recipients who fail to respond timely
- **obsoletes Notice PL-237 to revise the notification letter in Exhibit 1.**

2 Reconciliation Reports

A Selection Process

A comparison of the average AGI certifications of FSA and NRCS program participants with IRS information resulted in reports that identified the following 2009, 2010, and/or 2011 program participants, both individuals and legal entities, who have **not** submitted the required written consent to disclosure (CCC-927, CCC-928, or CCC-931) to IRS with a 2009, 2010, and/or 2011 eligibility record that contains an AGI value of “Compliant-Producer” or “Compliant-Agent” for 1 of the following:

- Commodity Program Certification/COC Determination
- Direct Payment Certification/COC Determination
- Conservation Program Certification/COC Determination.

B Availability, Content, and Using Reconciliation Reports

The Reconciliation Reports are:

- located on the AGI Compliance SharePoint web site for State Office employees
- for FSA and NRCS **use only**
- separated by State (American Samoa, Guam, Northern Marianna Islands, Puerto Rico, and the Virgin Islands are included).

Notice PL-238

2 Reconciliation Reports (Continued)

C State Office Password Responsibility

State Office shall do the following:

- receive the password through e-mail to State Office employees who have been granted access to the web site
- provide a copy of the reports and passwords to all County Offices that have producers included on the reports
- provide a copy of reports to FLP staff who may have borrowers or loan applicants included on the reports.

3 Determinations, Responses, and Actions

A Participants Identified

Reconciliation Reports reflect data transfers from IRS as of May 1, 2012. The recording State or County Office will provide a written determination (Exhibit 1) from CED to persons and legal entities identified on the Reconciliation Reports who have not satisfied, completed, or submitted CCC-931 to maintain 2009, 2010, and/or 2011 payment eligibility. The determination letter will state that the person or legal entity receiving the determination letter may, as part of an appeal, submit a completed CCC-931.

Notes: The determination letter must be dated and mailed no later than **July 31, 2012**. State and County Offices should take action to mail the letters as soon as possible.

Instructions to merge the producer list and the determination letter are available on the AGI Compliance SharePoint site.

If the person's or legal entity's sole interest is as a member of a payment recipient legal entity, the County Office can elect to send the payment recipient legal entity a courtesy copy of the determination letter.

Postage costs associated with processing these determination letters will be covered by an additional allocation from the National Office to State Offices.

B Responses to Questions Received From Appellants

Suggested information when responding to questions from appellants include, but is **not** limited to, instructions about the following (as applicable or appropriate):

- that the time in which to file written appeal is **not** altered by telephone or other verbal inquiries

Notice PL-238

3 Determinations, Responses, and Actions (Continued)

B Responses to Questions Received From Appellants (Continued)

- all persons and legal entities, including members of legal entities, that certified to average AGI compliance for 2009, 2010, and/or 2011 payment eligibility **must** submit a completed CCC-931 to FSA regardless of whether they directly or indirectly received program benefits from CCC, FSA, or NRCS
- CCC-931 **must** be submitted with the same name, address, and TIN as used when Federal tax returns were filed with IRS for the years 2005 through 2009
- complete and submit the enclosed CCC-931 for 2009, 2010, or 2011 as instructed, even if the FSA or NRCS program participant believes they had previously submitted a written consent, or if they have previously received a rejection notice from IRS.

C Processing CCC-931's and Other Responses

For all CCC-931's received in connection with an appeal, CED will:

- review CCC-931 for completeness and accuracy
- forward all completed CCC-931's received for 2009, 2010, and 2011 to IRS for processing

Note: See 4-PL, paragraphs 199 and 200.

- take appeal to COC for processing according to 1-APP.

Note: If the person or legal entity chooses to submit CCC-931 as part of an appeal or during the 30-calendar-day period in which to appeal, CED can withdraw and rescind the adverse decision letter without any action by COC.

D Determination Letter Recipients Who Fail to Timely Appeal

For determination letter recipients who do not appeal or provide CCC-931 within 30 calendar days, the recording State or County Offices will do all of the following in the order listed:

- update the applicable average AGI values to "Not Met – COC", in the web-based eligibility file according to 3-PL (Rev. 1), paragraph 31
- issue demand letters as required for nonautomated programs

Note: See Notice PL-236.

Notice PL-238

3 Determinations, Responses, and Actions (Continued)

D Determination Letter Recipients Who Fail to Timely Appeal (Continued)

- move automated receivables to NRRS

Note: Currently, the system automatically transfers overpayments to NRRS 10 workdays from the date the overpayment is determined. Software is being modified to extend the number of days for the automatic transfers to 30 calendar days for receivables generated for 2009, 2010, and 2011 program years. This modification will allow participants additional time to respond before receiving the demand letter.

- all actions listed in this subparagraph must be completed by COB **September 14, 2012**
- record all actions completed on copies of the 2009, 2010, and 2011 AGI Reconciliation Reports.

E State and County Office Actions

State and County Offices shall:

- follow the content of this notice
- include CCC-931 as an enclosure with the determination letter
- make sufficient copies of CCC-931 available to all persons and legal entities
- emphasize to **all** FSA and NRCS program participants the requirement for persons and legal entities to timely submit a completed CCC-931 to FSA to maintain 2009 through 2012 payment eligibility
- ensure that FLP staff is aware of program participants on the Reconciliation Reports for potential cash flow implications
- send all CCC-931's, regardless of year, directly to IRS.

Note: Do **not** send CCC-931's to the National Office.

Example Determination Letter

The following is an example of the determination letter that will be sent to persons and legal entities identified on Reconciliation Reports for all 3 years (2009, 2010, and 2011).

<p><i>(Date)</i> Person or legal entity Address 1 Address 2</p> <p>Dear Person or Legal entity:</p> <p>In the Food, Conservation, and Energy Act of 2008, commonly referred to as the 2008 Farm Bill, Congress directs the United States Department of Agriculture (USDA) to institute average AGI limitations for participants who enroll in certain farm programs. In order to maintain the integrity of farm programs the Farm Service Agency (FSA) and Internal Revenue Service (IRS) created a simple process to ensure that only those participants who comply with AGI requirements set in the 2008 Farm Bill receive farm program benefits. This partnership enables a data sharing process that maintains the confidentiality and privacy of tax return information while providing information to verify and validate the average AGI of participants.</p> <p>As of the date of this letter, you have not submitted form CCC-931, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information". The CCC-931 is a consent form that allows the IRS to average your AGI for the three applicable tax years and to provide FSA information whether or not your average AGI appears to exceed one or more of the applicable limitation amounts. Since FSA cannot verify that you meet the average AGI limitations set in the 2008 Farm Bill, you are ineligible for 2009, 2010, and 2011 program benefits for failure to submit form CCC-931. Therefore, a refund is required of all 2009, 2010, and/or 2011 program payment benefits received. You and/or any legal entity in which you may have indirect payment interest will be notified by separate letter of the required refund amounts.</p> <p>According to the 2008 Farm Bill the average AGI limitations for participants who enroll in certain farm programs are:</p> <ul style="list-style-type: none"> • \$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. <p>If you believe that FSA has not properly determined the facts of this case regarding your AGI ineligibility, you may appeal this determination to the County Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. <u>If you choose to submit a complete CCC-931, FSA will withdraw and rescind this adverse decision.</u> We have enclosed form CCC-931, and request that you contact this office with any questions you may have regarding the completion of this form. We look forward to working with you through this process.</p> <p>If you do not timely file an appeal of this determination, this shall be the final administrative determination with respect to this matter in accordance with regulations at 7 CFR Part 780. Additionally, if you appeal this determination to the County Committee, you may later appeal an adverse determination of the County Committee to the FSA State Committee or the National Appeals Division. To appeal, write to the County Committee at the following address and explain why you believe this determination is erroneous.</p> <p><i>(Insert COC address.)</i></p> <p>Sincerely,</p> <p>County Executive Director</p>
