

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

<b>Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income 4-PL</b>	<b>Amendment 20</b>
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Approved by: Acting Deputy Administrator, Farm Programs



**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraphs 3 H, 3 K, 91 B, 116 B, 116 C, 148 C, 169 B, and 402 F have been amended to change references made to husband and/or wife to spouse and/or spouses.

Subparagraph 203.5 C has been amended 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 **both** the \$500,000 nonfarm and \$750,000 farm AGI limitations
- include new procedures when compliance is questioned for all average AGI limitations in 2009, 2010, 2011, 2012, or 2013, and the person or legal entity did not request payments or benefits under programs subject to 4-PL rules.

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### 3 Legislative History of Payment Eligibility and Payment Limitation Provisions (Continued)

#### E Food and Agriculture Act of 1977

The Food and Agricultural Act of 1977 extended and amended the payment limitation provisions to require that the amount of payments that a person could be entitled to receive under the:

- 1978 wheat, feed grains, and upland cotton programs could **not** exceed \$40,000
- 1978 rice programs could **not** exceed \$52,250
- 1979 wheat, feed grains, and upland cotton programs could **not** exceed \$45,000
- 1979 rice program could **not** exceed \$50,000
- 1980 and 1981 wheat, feed grains, upland cotton, and rice programs could **not** exceed \$50,000.

#### F Agriculture and Food Act of 1981

The Agricultural and Food Act of 1981 extended and amended the payment limitation provisions to require that the:

- amount of payments that a person was entitled to receive under the 1982 through 1985 wheat, feed grains, upland cotton, and rice programs could **not** exceed \$50,000
- total amount of disaster payments that a person was entitled to receive for wheat, feed grains, upland cotton, and rice could **not** exceed \$100,000 for each of the 1982 through 1985 crops.

### 3 Legislative History of Payment Eligibility and Payment Limitation Provisions (Continued)

#### G Food Security Act of 1985

The Food Security Act of 1985:

- extended and amended the payment limitation provisions
- required that the term payments **not** include the following:
  - MAL's
  - LDP's
  - NL ("Findley") payments.

#### H Omnibus Budget Reconciliation Act of 1987

The Omnibus Budget Reconciliation Act of 1987 amended the Food Security Act of 1985 to:

- define person
- provide that a State, political subdivision, and agencies thereof were to be considered 1 person
- ~~\*--~~provide that spouses could be separate persons if the spouses could show that each ~~--\*~~ spouse brought separate farming operations into the marriage and had maintained separate farming operations throughout the marriage
- include cash-rent tenant provisions that combined the cash-rent tenant with the landowner in certain situations
- require that producers be "actively engaged in farming" to be eligible for specific payments
- limit payment to foreign persons
- limit the creation of entities to qualify as separate persons for payments.

3 Legislative History of Payment Eligibility and Payment Limitation Provisions (Continued)

I Disaster Assistance Act of 1988

The Disaster Assistance Act of 1988 established payment limitation provisions for LFP.

\*--J Pub. L. 101-217

Pub. L. 101-217, dated December 11, 1989, amended the cash-rent tenant provisions of--\* the Food Security Act of 1985 for:

- 1989, to provide relief in cases where the cash-rent tenant provisions had been violated and the landowner did **not** consent to or knowingly participate in the cash-rent tenants failure to meet the cash-rent tenant provisions
- 1990, to **no** longer require that the landowner and cash-rent tenant be combined.

**Note:** Instead, the cash-rent tenant is determined ineligible for payment if the cash-rent tenant provisions are **not** met.

**3 Legislative History of Payment Eligibility and Payment Limitation Provisions (Continued)****K The Food, Agriculture, Conservation, and Trade Act of 1990**

The Food, Agricultural, Conservation, and Trade Act of 1990 extended and amended the provisions of the Omnibus Budget Reconciliation Act of 1987 to provide:

- a total \$75,000 limitation on “Findley” payments, MLG’s, and LDP’s, excluding honey
- a \$200,000 limitation on honey MLG’s and LDP’s
- a \$200,000 limitation on honey loan forfeiture
- separate limitations for wool and mohair payments of:
  - \$200,000 for the 1991 marketing year
  - \$175,000 for the 1992 marketing year
  - \$150,000 for the 1993 marketing year
  - \$125,000 for the 1994 and subsequent marketing years
- \*--the Secretary discretionary authority to implement a rule allowing spouses to be--\* considered separate persons if certain requirements were met
- greater scrutiny of irrevocable trusts
- that initial determinations be made by State Offices for farm operations consisting of 6 or more persons.

## 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 spousal 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.--\*

**Part 4 Eligibility Determinations for Farming Operations**

**Section 1 General Determinations**

**116 Spouses**

**A Actively Engaged in Farming Rule for Spouses**

Use this table for actively engaged in farming determinations involving spouses.

<b>IF the spouses are both...</b>	<b>THEN...</b>
farming together: <ul style="list-style-type: none"> <li>• in a joint operation</li> <li>• as an entity</li> </ul>	if 1 spouse is determined actively engaged in farming, the other is credited with significant contributions of active personal labor and active personal management to the same farming operation. The requirements of significant contribution of capital land, or equipment, commensurate share and risk remain applicable. <p><b>Note:</b> This also includes the spouse’s estate.</p>
involved in separate farming operations	<b>each</b> spouse <b>must</b> independently meet all applicable requirements to be considered actively engaged in farming.

**B Determinations for Spouses Example 1**

**\*--Situation:** Spouse A and Spouse B have a joint farming operation comprised of 500 acres of rented land. In addition, Spouse B has 100 percent interest in Corporation X that is participating in CRP and earning annual payments.

- Spouse A and Spouse B jointly own all the equipment and provide all the capital for their farming operation.
- Spouse A contributes at least 50 percent of the active personal labor and a significant contribution of active personal management for the joint farming operation. Spouse B does not provide active personal labor or active personal management.
- Spouse A’s and Spouse B’s share of the profits or losses from the farming operation are commensurate with their contributions and the contributions are at risk.

**Determination:** Spouse A is considered to be actively engaged in farming because he or she is making both a left hand and right hand contribution. Spouse B is also making a left hand contribution, but is not making a right hand contribution. However, by using the actively engaged rule for spouses, Spouse B is credited with contributing labor and management; therefore, Spouse B is considered to be actively engaged. Spouse A and Spouse B are each eligible to receive their respective share of the total program payments and benefits received by the joint operation and subject to limitation. Any contributions necessary for payment eligibility credited to Spouse B are **only** applicable to the joint operation and do **not** apply--\* to the Corporation X farming operation.

## 116 Spouses (Continued)

**C Determinations for Spouses Example 2**

**\*--Situation:** Spouse M and Spouse N have a joint farming operation comprised of 700 acres of owned and cash-rented land. Spouse N is an heir to the estate of his or her father who died in the previous year. Spouse N is a full-time employee at the local FSA office.

- Spouse M and Spouse N jointly own all of the equipment and provide all of the capital necessary for the farming operation.
- Spouse M contributes the majority of the active personal labor and the active personal management for the farming operation.
- Spouse N contributes active personal labor and active personal management, whenever able, to the farming operation, but the amount is **not** commensurate with his or her share.
- The estate owns land, of which Spouse N is an heir, and meets the requirements to be considered actively engaged in farming under the landowner provision.
- Spouse M and Spouse N's shares of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

**Determination:** Spouse M, Spouse N, and the estate are all considered actively engaged in farming. Through the special provision for spouses, Spouse N is credited as making significant contributions of active personal labor and/or active personal management to the farming operation since Spouse M is considered to have met the requirement of actively engaged in farming. Both Spouse M and Spouse N made significant contributions of capital and equipment, and consequently, both met the requirements of the cash-rent tenant rule as well. In addition to his or her share of the program payments received through this joint farming operation, Spouse N will also be attributed payments earned by his or her father's estate according to his or her share held as an heir.--\*

## 148 Corporation, LLC, LLP, and LP Case Examples (Continued)

**B Example 2**

**Situation:** Corporation AB consists of Father A and Son B, each having a 50 percent share. Corporation AB cash-rents land.

- Father A is a retired farmer who created the corporation for tax reasons and to aid in the transfer of the farm to Son B.
- The corporation contributes a significant amount of capital and equipment to the farming operation.
- Son B contributes both active personal labor and active personal management to the farming operation.
- Father A lives on the farm and contributes no active personal labor, but periodically advises Son B about farm related matters.

**Determination:** Corporation AB provides significant contribution of capital and equipment, and Son B makes a significant contribution of active personal labor and active personal management to the farming operation. Corporation AB is considered actively engaged in farming; however, because Father A who holds a 50 percent ownership interest failed to make a contribution of active personal labor and/or active personal management to the farming operation that met the requirement of subparagraph 147 B, Corporation AB will be subject to a 50 percent reduction in program payments received.

**C Example 3**

**\*--Situation:** Corporation GH consists of Spouse G owning 70 percent of the corporate stock and Spouse H owning 30 percent of the corporate stock.

- Corporation GH provides all the capital, equipment, and leased land for the farming operation.
- Spouse G provides all of the active personal labor and active personal management necessary for the farming operation.

**Determination:** Corporation GH is actively engaged in farming through the contributions of the corporation and of Spouse G. Even though Spouse H failed to make any contributions--\* of active personal labor, active personal management, or a combination thereof, the exception applicable to spouses in subparagraph 147 C applies. No payment reduction will be applied to Corporation GH.

## 148 Corporation, LLC, LLP, and LP Case Examples (Continued)

**D Example 4**

**\*--Situation:** Revocable Trust E is a stockholder in Corporation D with 2 other individuals. Member contribution requirements of subparagraph 147 B apply to Corporation D.--\*

- The 2 individuals provide significant contributions of active personal labor and/or active personal management to qualify the corporation as actively engaged in farming.
- The revocable trust's grantor makes no contributions.

\* \* \*

**\*--Determination:** Corporation D is considered actively engaged in farming because of the significant contribution of active personal labor and active personal management to the farming operation by the 2 individuals who are stockholders. However, because the remaining stockholder, Trust E, failed to make a contribution of active personal labor and/or active personal management to the farming operation that met the requirement of subparagraph 147 B, Corporation D will be subject to a reduction in program payments receive commensurate with the ownership interest held by Trust E.

If the grantor of Trust E were making contributions of active personal labor and/or active personal management to the farming operation on behalf of Trust E that met the requirement of subparagraph 147 B, a payment reduction would **not** apply for Corporation D.

**E Example 5**

**Situation:** Irrevocable Trust E is a stockholder in Corporation D with 2 other individuals. Member contribution requirements of subparagraph 147 B apply to Corporation D.--\*

- The 2 individuals provide significant contributions of active personal labor and/or active personal management to qualify the corporation as actively engaged in farming.
- The irrevocable trust's beneficiaries make no contributions.

\* \* \*

168 Trust Actively Engaged in Farming Determinations

A Rule

[7 CFR 1400.205] An irrevocable or revocable trust shall be considered to be actively engaged in farming if **all** of the requirements in this table are met.

Item	Requirement
1	The trust separately makes a significant contribution of capital, equipment, land, or a combination thereof.
2	Income beneficiaries that make contributions of active personal labor or active personal management, have a combined interest of at least 50 percent, and collectively make a significant contribution to the farming operation.
3	The trust’s share of the profits or losses from the farming operation is commensurate with the contribution to the farming operation.
4	The trust’s contributions are at risk.
5	The trust has provided TIN of the trust, <b>unless</b> the trust is a revocable trust and either of the following applies: <ul style="list-style-type: none"> <li data-bbox="391 848 967 886">• the grantor is the sole income beneficiary</li> <li data-bbox="391 926 1419 1031">• TIN for the trust is TIN for the co-granter and co-income beneficiary and the other grantor and income beneficiary is their spouse who is <b>not</b> requesting benefits under his/her TIN.</li> </ul>
6	The trust has provided a copy of the trust agreement to COC, <b>unless</b> the trust is a revocable trust.

B TIN’s

A single TIN, such as a Social Security number, may **not** be used to pay both a person and a trust in the same year.

**\*--Note:** See 1-CM, paragraph 121 and Exhibit 10 for EIN requirements for trusts.--\*

C Trustee Actions

The personal actions of a trustee, either labor or management, **cannot** be considered as contributions of the trust in meeting the requirement of actively engaged in farming.

**Only** the income beneficiaries of a trust can provide the required, at-risk contributions of active personal labor, active personal management, or combination thereof, for the trust to be considered actively engaged in farming.

**169 Trust Case Examples****A Irrevocable Trust Example 1**

**Situation:** EF Trust meets the requirements to be considered an irrevocable trust for payment limitation purposes. The trust, with Persons E and F each having a 50 percent interest, contributes a significant amount of capital to the farming operation. Each beneficiary contributes a significant amount of active personal management. All labor is hired. The land and equipment are leased. The trust's share of the profits or losses from the farming operation is commensurate with the trust's contributions to the operation and the contributions are at risk.

**Determination:** EF Trust is considered to be actively engaged in farming because the trust provides capital and the beneficiaries contribute a significant amount of active personal management.

**B Irrevocable Trust Example 2**

**\*--Situation:** The terms of a late spouse's will made certain specific bequests of cash and nonfarm property to persons other than his or her widow. The balance of the estate, including farmland, is distributed to a testamentary trust. The widow has the sole right to the income of the trust during his or her lifetime. At the time of his or her death, the trust is to be terminated and the property distributed to his or her heirs.

**Determination:** Because the widow has the sole right to income of the trust during his or--\* her lifetime, the widow is considered the sole beneficiary. The trust is considered actively engaged in farming because of the landowner provision.

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...
<p>the person or legal entity certifies that average nonfarm income <b>does not exceed</b> the \$500,000 nonfarm AGI limitation</p>	<p><b>both</b> of the following apply:</p> <ul style="list-style-type: none"> <li>• the person or legal entity certifies that average farm income is <b>less</b> than the \$750,000 farm AGI limitation</li> <li>• IRS indicates the person or legal entity has average farm income in <b>excess</b> of the \$750,000 farm AGI limitation</li> </ul>	<p>the following, as applicable:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• if the person or legal entity did <b>not</b> 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</li> <li>• update ARCT according to subparagraph 528 A.</li> </ul>
<p>*--either of the following:</p> <ul style="list-style-type: none"> <li>• the person or legal entity certifies that average income <b>exceeds</b> any of the following: <ul style="list-style-type: none"> <li>• the \$500,000 nonfarm AGI limitation</li> <li>• the \$750,000 farm AGI limitation</li> <li>• both limitations</li> </ul> </li> <li>• IRS indicates the person or legal entity has income in <b>excess</b> of any of the following: <ul style="list-style-type: none"> <li>• the \$500,000 nonfarm AGI limitation</li> <li>• the \$750,000 farm AGI limitation</li> <li>• both limitations--*</li> </ul> </li> </ul>		<p>the following, as applicable:</p> <ul style="list-style-type: none"> <li>• if the person or legal entity did <b>not</b> request commodity, price support, or disaster assistance program benefits, then in the Commodity Program \$500,000 Nonfarm Income Certification/COC Determination, and 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</li> <li>• update ARCT according to subparagraph 528 A.</li> </ul>

**203.5 Average AGI Amounts Are Above Threshold Levels (Continued)****C \$500,000 Nonfarm and \$750,000 Farm AGI Limitation Compliance Reviews (Continued)**

**\*--Note:** If a person or legal entity has been selected for review for any or all average AGI limitations in 2009, 2010, 2011, 2012, or 2013, and the person or legal entity did not request payments or benefits under programs subject to 4-PL rules, update all AGI values in web-based eligibility to “Not Met-SED” and consider all AGI compliance review and determination actions concluded for this person or legal entity for the applicable crop, program, and FY.--\*

**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.

**203.7 FSA Review and Compliance Determinations (Continued)****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.

**C AGI Compliance Review File for State Office Only**

An AGI Compliance Review File created for each person or legal entity and program year reviewed should contain the following after completing the review:

- all documentation (CPA or attorney statement, or tax information) received from the person or legal entity
- copy of subsidiary print **before** completing the review
- copy of the original AGI certification (CCC-926, CCC-931, CCC-933, or CPA or attorney certification)
- copy of the Average AGI Calculation Worksheet (subparagraphs 203.8 C and 541 C)
- copy of subsidiary print **after** the SED determination was updated in the web eligibility file, if applicable
- copy of the written notice of determination or completion of the review sent to the person or legal entity.

**Note:** See Exhibit 21 for AGI Compliance Review Checklists.



**402 Selection Process (Continued)****D Additional Cases**

In addition to cases that are judgmentally selected, or otherwise required to be selected, the following cases will also be selected for end-of-year review:

- any case which the reviewing authority has reason to believe the farm operating plan was not followed as represented
- any cases considered necessary by a State Office representative to maintain program integrity.

**E Timing End-of-Year Reviews**

Complete end-of-year reviews by the date established by STC, according to paragraph 261.

**F Waiver Authority for State Offices**

State Offices may waive judgmentally selected end-of-year reviews under the following circumstances:

- \*--farming operations involving **only** a spouse--\*
- farming operation was previously reviewed in the last 3 years, did **not** receive an adverse determination, **and** the reviewing authority has determined that there have been no changes that affect the original determinations
- farming operations with **all** land meeting the landowner exemption
- for 2011 and subsequent years, farming operation conducted by a legal entity with no embedded legal entities as members.

**Notes:** State Offices shall include the number of any waived judgmentally selected reviews in the remarks sections of the final CCC-902EYR.

Any waiver request not within State Offices' approval authority may be sent to DAFP, along with adequate justification to support the request.

**\*--403 Producer Notification**

**A Overview**

After being notified, the producer is responsible for providing requested documents in a timely manner. This paragraph contains information to be included in the producer notification letter and explains what the producer must do after receiving the notification letter.

**B Producer Notification**

Producers who are required to submit documents shall be notified about their selection for end-of-year review no later than 90 calendar days before the end-of-year review completion date established by STC according to paragraph 261.

The notification letter shall contain the following:

- purpose of the end-of-year review
- documents required to be submitted
- the requirement to submit documents to the County Office within 30 calendar days
- actions that will be taken if documents are not submitted
- notification that the producer will receive results of the end-of-year review when completed.

**C Producer Responsibility**

It is the responsibility of the producer to submit requested documents within 30 calendar days from the date requested.

**Note:** It is recognized that some requested documents, such as crop sales documents, may not be available when the producer submits other documentation. The producer must submit all documents that are available at the time. The reviewing authority shall schedule followup action to obtain additional information if necessary.--\*