

PAYMENT LIMITATIONS, PAYMENT ELIGIBILITY, and AVERAGE ADJUSTED GROSS INCOME PROVISIONS OF THE 2008 FARM BILL

Summary of 4-PL FSA Handbook
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The Food, Conservation, and Energy Act of 2008 modified many aspects of the previous payment limitations provisions enacted in past Farm Bills. Producers will need to be aware of these changes prior to initiating production or conservation program contracts with the USDA-Farm Service Agency or USDA-Natural Resources Conservation Service in order to be in total compliance.

This document is essentially a condensation of USDA-FSA 4-PL Handbook which provides the directions for the administration of the payment limitations provisions as legislated in the Farm Bill. It is intended only to provide an abbreviated reference for producers and interested individuals. *Consulting the document itself as well as obtaining professional guidance for interpretation and implementation of any farm operation changes is **strongly advised**.*

Program Payment Type	Limitation (in Dollars)			
	2009	2010	2011	2012
Commodity Programs				
Counter-cyclical payments on covered commodities (peanuts separate payment limit)	65,000			
ACRE payments on covered commodities (peanuts same separate payment limit)	65,000 + Direct Payment Reduction (max 73,000)			
Direct payments on covered commodities (peanuts separate payment limit)	40,000			
Direct payments with ACRE (peanuts same separate payment limit)	40,000 – 20% Reduction in Direct Payments on ACRE farms (min 32,000)			
Conservation Programs				
CRP annual rental payment.	50,000			
CSTP (all contracts for FY 2009-2012).	200,000			
EQIP (all contracts for FY 2009-2012).	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			
LDP, MAL, and MLG	No limits			

The 2008 Farm Bill eliminated the 3-entity rule. This means that persons can receive payments based on ownership in an unlimited number of entities, until the individual payment limits are reached. All payments will be traced through four levels of ownership for direct attribution to persons.

Any changes to the farming operation must be reported to county FSA office as soon as the changes occur or are anticipated.

DOCUMENTATION

Adequate documentation means whatever documentation is required by the reviewing authority to make proper actively engaged in farming, attribution, and average AGI compliance determinations.

It is not anticipated that amounts paid for land leases or equipment leases will be needed unless the equipment or land is leased from another member with an interest in the farming operation.

Supporting documents may include legal documentation concerning **corporations** (copies of the Articles of Incorporation are required with copies of stock certificates being optional, but may be requested for verifying shares and shareholders), **financial agreements** (including letters of credit), **land and equipment leases, land ownership, operating agreements, partnerships, trusts** (a copy of the trust agreement must be provided by the trust unless the trust is revocable), **any other information, including income tax returns, needed to apply the payment eligibility and payment limitation rules.**

FARMING OPERATION

A farming operation means a business enterprise engaged in producing agricultural products. A person's, legal entity's, or joint operation's farming operation consists of the acreage on all farms in all counties in which the person, legal entity, or joint operation has an interest in the agricultural products or proceeds from the agricultural products produced. This includes all acreage in which the person, entity, or joint operation is a producer, regardless of whether the acreage is:

- rented on a crop-share basis
- rented on a cash-lease basis
- owned by the producer.

A person or legal entity may have more than one farming operation if the person or legal entity has an interest in one or more joint operations. Each interest in a joint operation will be an additional farming operation for the person or legal entity. The following are considered interests in a farming operation:

- general partners of LP's when LP is a producer in the farming operation
- grantors of revocable trusts when the trust is a producer in the farming operation.
- landlords, including landowners, have an interest in the farming operation containing the acreage owned or leased, whether or not the landlord has an interest in the production or proceeds from the production
- landowners have an interest in the farming operation containing the land owned, whether or not the landowner has an interest in the production or proceeds
- members of a joint operation when the joint operation is a producer in the farming operation
- producers who share in the production or proceeds from the farming operation.

TOTAL VALUE OF A FARMING OPERATION

The total value of a farming operation must be computed when determining whether:

- the contributions made by the person or legal entity are significant
- contributions are commensurate with the claimed share of profits or losses from the farming operation. Total value of a farming operation means the total of the costs, excluding the value of active personal labor and active personal management that is contributed by a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

SUBSTANTIVE CHANGE REQUIREMENTS

Change	Requirement
Family Member	The addition of an adult family member to a joint operation
Land Rental	For a landowner only, a change from cash-rent to share-rent
Base Acres	<p>An increase through acquiring base acres not previously involved in the farming operation. The increase in base acres:</p> <ul style="list-style-type: none"> • must be at least 20 percent or more of the total base acres involved in the farming operation • will be applicable for the increase of only 1 person or legal entity to the farming operation <p>A State Office specialist may approve additional persons or legal entities based on the magnitude and complexity of the change</p>
Ownership	<p>A change in ownership by sale or gift of equipment or land from a person or legal entity previously engaged in the farming operation to a person or legal entity who has not been engaged in this operation is considered substantive, only if:</p> <ul style="list-style-type: none"> • the transferred amount is commensurate with the new person's or legal entity's share of the farming operation • the sale or gift of land or equipment was based on fair market value of the land or equipment • the former owner has no control over the sold or gifted land or equipment • the transaction was not financed by the former owner • preference was not given to the former owner to re-purchase the land or equipment at a later date.
Equipment	The addition of equipment not previously involved in the farming operation may be considered substantive, if the rental value of the additional equipment contributed is commensurate with the new person's or entity's share of the rental value of all equipment in the farming operation

ACTIVELY ENGAGED IN FARMING

PERSON OR LEGAL ENTITY

For a person or legal entity to be considered actively engaged in farming, the participant must make a significant contribution of certain farming inputs. In general, for a person or legal entity to be considered actively engaged in farming, all of the following requirements must be met:

1. Significant “**left-hand**” contributions to the farming operation of one or a combination of the following:
 - capital
 - equipment
 - land
2. Significant “**right-hand**” contributions to the farming operation of one or a combination of the following:
 - active personal labor
 - active personal management
3. A claimed share of the profits or losses from the farming operation that is commensurate with contributions to the farming operation
4. Contributions that are at risk.

For payment limitation purposes, **capital** means the funding provided by a person or legal entity to the farming operation for the operation to conduct farming activities.

Land means farmland consisting of cropland, pastureland, wetland, or rangeland that meets the specific requirements of the applicable program. **Equipment** means the machinery and implements used by the farming operation to conduct activities of the farming operation. This includes:

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

Active personal labor means personally providing physical activities necessary in a farming operation. These activities include physical activities:

- involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities
- required to establish and maintain conserving cover crops or conserving use acreages
- required in livestock operations.

Active personal management is personally providing:

- the general supervision and direction of activities and labor involved in the operation
- services, whether performed on-site or off-site, reasonably related and necessary to the farming operation, including any of the following:
 - supervision of activities necessary in the farming operation
 - business-related actions that include discretionary decision making
 - evaluation of the financial condition and needs of the farming operation
 - assistance in structuring or preparing financial reports or analyses for the farming operation

- consultations in or structuring of business-related financing arrangements for the farming operation
- marketing and promoting agricultural commodities produced by the farming operation
- acquiring technical information used in the farming operation
- any other management function necessary to conduct the farming operation and for which the operation would ordinarily be charged a fee.

LANDOWNER

A landowner shall be considered actively engaged in farming with respect to the owned land if all of the following requirements are met:

1. The landowner contributes owned land to the farming operation for which the landowner receives rent or income for the use of the land, based on the land's production or the operation's operating results.
2. The landowner's share of the profits or losses from the farming operation is commensurate with the landowner's contribution to the operation.
3. The landowner's contributions are at risk.

This applies to landowners who:

- are persons
- are persons with a life estate in the land
- are legal entities, such as corporations, trust, or estates
- have an undivided interest in the land
 - (For revocable or living trusts, the landowner exemption for actively engaged in farming cannot be extended to the grantor since only the trust has equitable interest in the land.)
- are members of a joint operation if the joint operation holds title to the land.
 - (This applies to joint operations with documentation to show the title to the land owned by the joint operation will revert to the individual members after dissolution of the joint operation according to each member's share in the joint operation or if the documentation provides that upon dissolution of the joint operation, the land will be sold and the proceeds divided according to each member's share in the joint operation or if there is no documentation otherwise and the Regional Attorney advises that State law provides that upon dissolution of the joint operation the land will be sold and the proceeds divided according to each member's share in the joint operation.)

A landlord who is not a landowner shall be considered to be actively engaged in farming under the same rules as any other person or legal entity that is not a landowner.

SIGNIFICANT CONTRIBUTION

General rules for determining when a significant contribution is provided to a farming operation by a person or legal entity:

Capital: must have a value equal to at least 50 percent of the person's or legal entity's commensurate share of the total capital necessary to conduct the farming operation, excluding outlays of capital for land or equipment.

Equipment: must have a rental value equal to at least 50 percent of the person's or legal entity's commensurate share of the total rental value of the equipment necessary to conduct the farming operation.

Land: must have a rental value equal to at least 50 percent of the person's or legal entity's commensurate share of the total rental value of the land necessary to conduct the farming operation. (Share-rented land is a contribution of the landlord, not the share-renter.)

Any combination of capital, equipment, and land: must have a value equal to 30 percent of the person's or legal entity's commensurate share of the total value of the farming operation.

CAPITAL

The capital must be contributed directly to the farming operation from a fund and account separate and distinct from that of any other person or legal entity with an interest in the farming operation. Capital contributions to a farming operation do not include the value of labor or management or outlays for land or equipment. The capital may be a direct out-of-pocket input of either a specified sum by the person, legal entity, joint operation, members of a joint operation, or combined State producer; or, an amount borrowed by the person or legal entity. Current year advance program payments, such as advance direct payments, are not considered a capital contribution for purposes of meeting the requirements of actively engaged in farming. The applicant is not eligible to receive advance program payments until a determination of actively engaged in farming is made.

EQUIPMENT

A significant contribution to the farming operation of owned or leased equipment must meet these requirements:

Leased Equipment: may be leased from any person, legal entity, or joint operation. If the equipment is leased from another person, legal entity, or joint operation that has an interest in the farming operation a joint operation that has one or more members in common with the producer to whom the equipment is leased; the producer must:

- be able to prove that the equipment was leased at a fair market value
- make the payment within the time determined to be customary for the area.

The restrictions on financing for equipment in this table apply to both owned and leased equipment contributed for credit as a significant contribution. If the farming operation is conducted by a person, a joint operation (but equipment is contributed by a member), or a legal entity; then the equipment must not have been acquired as a result of a loan made to any other person, joint operation, or legal entity that has an interest in the operation.

LAND

A significant contribution to the farming operation of owned or cash leased land must meet these requirements:

The land may be leased from any person, legal entity, or joint operation. If the land is leased from another person, legal entity, or joint operation that has an interest in any crop or crop proceeds in the farming operation, the producer must:

- be able to prove that the land was leased at a fair market value
- make the payment within the time determined to be reasonable and customary for the area. (Share-rented land is a contribution of the landlord, not the share-renter)

ACTIVE PERSONAL LABOR

The active personal labor must be an amount that is the smaller of:

- 1,000 hours per either FY or crop year
- 50 percent of the total hours that would be required to conduct a farming operation comparable in size to this person's or legal entity's commensurate share in the farming operation.

ACTIVE PERSONAL MANAGEMENT

The contribution of active personal management must be **critical** to the profitability of the farming operation, taking into consideration the person's or legal entity's commensurate share in the farming operation.

Any combination of labor and management: Combined contributions of active personal labor and active personal management must have a critical impact on the profitability of the farming operation in an amount at least equal to the significant contribution of either consideration when taken alone. *(If a member of a joint operation receives a guaranteed payment for any part of a contribution of labor or management, exclude all of the specific type of contribution for which payment is received.)*

It is difficult to measure a significant management contribution. The required hours of labor will be different in each type of farming operation. In some cases, it is difficult to distinguish between labor and management. The intent of significant contribution provisions is to provide program benefits to bona fide farmers, personally providing meaningful inputs on the farm

Total contributions that are "within reason" of being equal to the claimed share of profits and losses shall be considered commensurate.

DETERMINATIONS

1. The total amount of each farming input needed to conduct the farming operation.
2. The type and amount of farming inputs provided by the person or legal entity.
3. The percentage of each input required to conduct the farming operation provided by the person or legal entity.
4. Does the person or legal entity provide the same percentage of all inputs required

to conduct the farming operation? If yes, the person or legal entity provides that percentage of the farming inputs required to conduct the farming operation. If no, a determination of the value of the inputs provided by the person or legal entity relative to the total amount of farming inputs required to conduct the farming operation will be established.

5. The person's or legal entity's contributions to the farming operation are commensurate with the person's or legal entity's claimed share of the farming operation

A person, joint operation member, or legal entity providing contributions to the farming operation must be at risk.

ACTIVELY ENGAGED RULE FOR SPOUSES

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

IF the spouses are both...	THEN...
farming together: <ul style="list-style-type: none"> • in a joint operation ,OR • as an entity 	if one 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, <i>the requirements of significant contribution of capital land, or equipment, commensurate share and risk remain applicable</i>
involved in separate farming operations	each spouse must independently meet all applicable requirements to be considered actively engaged in farming.

ACTIVELY ENGAGED: PERSONS

Item	Requirement
1	The person makes a significant contribution to the farming operation of both of the following: <ul style="list-style-type: none"> • capital, equipment, land, or a combination thereof • active personal labor, active personal management, or a combination thereof.
2	The person's share of the profits or losses from the farming operation is commensurate with the person's contribution to the farming operation.
3	The person's contributions are at risk.

This rule also applies to a person who is a:

- partner in a general partnership
- participant in a joint venture.

ACTIVELY ENGAGED: SHARECROPPER

Item	Requirement
1	The sharecropper makes a significant contribution of active personal labor to the farming operation for which the sharecropper receives a specified share of the crop produced on the farm.
2	The sharecropper's share of the profits or losses from the farming operation is commensurate with the contribution to the operation.
3	The sharecropper's contributions are at risk.

To be considered actively engaged in farming under this provision, the person may not receive wages for labor and be considered a sharecropper. Sharecroppers may be provided housing and "draw" cash advances to be deducted later from proceeds of the crop.

ACTIVELY ENGAGED: JOINT OPERATION

Item	Requirement
1	Contributions to the farming operation of both of the following are made: the member or joint operation makes a significant contribution of capital, equipment, or land, or a combination thereof each member makes a significant contribution of active personal labor or active personal management, or a combination thereof, that are: <ul style="list-style-type: none"> • performed on a regular basis • identifiable and documentable • separate and distinct from contributions of any other member. exceptions for spouses (automatic right hand)
2	The member must provide satisfactory evidence that his or her contributions of land, labor, management, equipment, or capital to the joint operation are commensurate with the member's claimed share of the profits or losses of the joint
3	The member's contributions to the farming operation are at risk.

If a member provides active personal labor to the joint operation farm on a regular basis, and that is identifiable and documentable, the member has met the requirement of a separate and distinct contribution of labor to the joint operation's farming operation. For a member of a joint operation whose contributions of inputs are not equal to his or her claimed share:

- if the contribution is less than commensurate, that member is not considered "actively engaged in farming" and ineligible to receive any payment earned by the joint operation
- if the contribution is at least commensurate, that member may receive his or her share of the payment earned by the operation, but this share cannot be increased because of the ineligibility of another member.

ACTIVELY ENGAGED: FAMILY MEMBER

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

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

Item	Requirement
1	The family member makes a significant contribution of active personal management or active personal labor, or combination thereof, to the farming operation.
2	The family member’s share of the profits or losses from the farming operation is commensurate with the family member’s contribution to the operation.
3	The family member’s contributions are at risk.

ACTIVELY ENGAGED: CORPORATION, LLC, LLP, LP or LEGAL ENTITY

Item	Requirement
1	The legal entity independently and separately makes a significant contribution of capital, equipment, land, or combination thereof.
2	Each partner, stockholder, or member with an ownership interest makes a contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation; that are: <ul style="list-style-type: none"> • performed on a regular basis • identifiable and documentable • separate and distinct from contributions of any other partner, stockholder, or member.
3	The contribution of the partners, stockholders, and members is significant and commensurate.
4	The legal entity’s share of the profits or losses from the farming operation is commensurate with the contributions to the farming operation.
5	The legal entity’s contributions are at risk, with the level of risk being commensurate with the legal entity’s claimed share of the farming operation.

Spouses – If both spouses are interest holders in the same legal entity, the contribution of active personal labor and/or active personal management of one spouse to the farming

operation of the legal entity will also meet the other spouse's requirement to make a contribution of active personal labor and/or active personal management to the farming operation of the legal entity.

If a partner, stockholder, or member provides active personal labor to the entity's farming operation that is performed on a regular basis, and that is identifiable and documentable; that partner, stockholder, or member will be considered to have met the requirements of a separate and distinct contribution of labor to the entity's farming operation.

All partners, stockholders and members with an ownership interest must contribute active personal labor and/or active personal management to the entity's farming operation. Each partner, stockholder, and member must be able to show by reasonable means that such activities:

- are performed on a regular basis throughout the crop year
- are identifiable and documentable as to which partner, stockholder, or member made such contribution
- are separate and distinct from any other partner, stockholder or member with an ownership interest in the farming operation.

Reasonable records may include, but are not limited to, the following:

- appointment books
- calendars
- narrative summaries
- phone logs
- contemporaneous records
- activity logs with date, time, and description of activity performed
- documents for goods and services used by the farming operation signed only by the interest holder.

If any partner, stockholder, or member fails to meet the actively engaged requirements, all payments to the legal entity subject to the actively engaged determination will be reduced by an amount commensurate with the ownership share held by the partner, stockholder, or member.

Program Payment and Benefit Limitations

Program payments and benefits for commodity programs and conservation contracts are limited specified amounts (payment limits) to persons and legal entities. Program payments and benefits to a joint operation are limited by the total number of persons and legal entities that are members multiplied times the dollar amount of the limitation.

Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership of a person or legal entity that has otherwise reached the applicable maximum payment limitation.

Payments received directly or indirectly by a person may exceed the applicable limitation if all of the following apply:

- ownership interest in the land or commodity was transferred because of death

- the new owner succeeds to contract
- the new owner meets all other eligibility requirements.

The new owner determined eligible cannot exceed the following:

- amount the previous owner was entitled to receive under the applicable program contracts at the time of death
- applicable limitation the year following the year of death of the previous owner

Payments received by an estate will be:

- restricted by the amount applicable to any other legal entity
- attributed to the heirs.

Heirs of an estate will not be restricted to the applicable limitation if the estate succeeds to a contract of the deceased individual. If the estate meets all program and payment eligibility requirements, this provision will apply as follows:

- for DCP and ACRE, 1 program year
- for CRP and multi-year agreements and contracts, the term of the contract

Payment Attribution

Program payments made, directly or indirectly to a person, are combined with the pro rata interest held in any other legal entity that received payments, unless the payments to the legal entity were reduced by the pro rata share of the person. Program payments made directly to a legal entity are attributed to those persons that have a direct and indirect interest in the legal entity, unless the payments to the legal entity have been reduced by the pro rata share of the person.

Levels of Ownership	Payment Attribution
First	Any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in the amount that represents direct ownership in the payment entity.
Second	Any payment made to a legal entity that is owned in whole or in part by another legal entity at the second level will be attributed to this entity in the amount that represents the direct ownership in the payment entity. If the second level entity is owned in whole or on part by a person, the amount of payment made to the payment entity will be attributed to the person in the amount that represents the indirect ownership in the payment entity.
Third and Fourth	Any payments made to a legal entity at the third and fourth levels of ownership shall be attributed in the same manner as at the first and second levels of ownership.
Fourth Only	If any part to the ownership interest at the fourth level is owned by another legal entity, a reduction in payment will be applied to the payment entity in the amount representing the indirect of the fourth level entity

AGI LIMITATIONS

AGI will be calculated based on the average income for **the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested.**

IF average adjusted gross...	THEN the person or legal entity is ineligible for...
nonfarm income exceeds \$500,000	commodity, price support, and disaster assistance program benefits A person or legal entity with average adjusted gross nonfarm income that exceeds \$500,000 is not eligible for marketing loan gains and LDP payments. The person or entity is eligible for Marketing Assistance Loan's, which must be repaid at principal plus interest, or commodity certificates may be exchanged for the loan collateral.
farm income exceeds \$750,000	DCP direct payments.
nonfarm income exceeds \$1 million	conservation program benefits, unless 66.66 percent or more of the average AGI was derived from activities related to farming, ranching, and forestry operations.

Average AGI Programs and Limitations			
Program	Average AGI Amount	Income	Average AGI
Commodity and Price Support	\$500,000	Nonfarm.	Adjusted gross nonfarm income.
Conservation	\$1 Million	Nonfarm, unless 66 percent or more average AGI is farm.	Adjusted gross nonfarm income unless not less than 66 percent of the average AGI is average adjusted gross farm income. Note: May be waived on a case-by-case basis if environmentally sensitive land of special significance would be protected.
DCP Direct Payments	\$750,000	Farm.	Adjusted gross farm income.

Wages earned from farming are not considered farm income.

AGI compliance certifications are required for payment eligibility for all:

- persons or legal entities
- interest holders in a legal entity, including embedded entities to the fourth level of ownership interest, regardless of the level of interest held
- members of a general partnership or joint venture

Average adjusted gross farm income of a person or legal entity: income or benefits

Income Related to Livestock and Crops	Other Types of Income
<p>Production of livestock, including but not limited to:</p> <ul style="list-style-type: none"> • cattle, sheep, goats, swine elk, reindeer, bison, deer • horses • poultry • fish and other aquaculture products used for food • honeybees. 	<p>The sale of land that has been used for agriculture.</p> <hr/> <p>The sale of easements and development rights to:</p> <ul style="list-style-type: none"> • farmland, ranchland, or forestry land • water or hunting • environmental benefits.
<p>The feeding, rearing, or finishing of livestock.</p>	<p>The rental or lease of land or equipment used for farming, ranching or forestry operations, including water or hunting rights.</p>
<p>Products produced by or derived from livestock.</p>	
<p>Production of crops, specialty crops, and unfinished raw forestry products</p>	<p>Any payment or benefit, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans</p>
<p>The processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities, including renewable energy</p>	<p>Payments and benefits authorized under any program made applicable to payment eligibility and payment limitation rules.</p>
	<p>Production of farm-based renewable energy.</p>
<p>Any other activity related to farming, ranching, or forestry as determined by the Deputy Administrator.</p>	
<p>Any income reported on IRS Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to IRS.</p>	
<p>The sale of equipment to conduct farm, ranch, or forestry operations and the provision of production inputs and services to farmers, ranchers, foresters, and farm operations, if the average adjusted gross farm income is at least 66.66 % of the average AGI.</p>	

EXAMPLES

DETERMINING TOTAL VALUE OF FARMING OPERATION:

Example 1:

Partnership ABC has 3 equal partners, A, B, and C. Partnership ABC farms 2,000 acres of cropland growing corn and various vegetables. All of the land that Partnership ABC farms has a rental value equal to \$42 per acre. Partner A contributes land with a total rental value of \$24,000 to the partnership. Partner A cash-rents this land from a landowner with no interest in Partnership ABC's farming operation. Partner A's contributions to Partnership ABC also include equipment with a rental value of \$12,000 and \$12,000 of capital. None of Partner A's contributions are acquired as the result of a loan. Partner B contributes land with a total rental value of \$12,000 to the partnership. Partner B cash-rents this land from a landowner with no interest in Partnership ABC's farming operation. Partner B's contributions to Partnership ABC also include equipment with a rental value of \$12,000 and \$24,000 of capital. None of Partner B's contribution are acquired as the result of a loan. Partner C contributes land with a total rental value of \$12,000 to the partnership. Partner C owns this land. Partner C's contributions to Partnership ABC also include equipment with a rental value of \$12,000 and \$24,000 of capital. None of Partner C's contributions are acquired as the result of a loan.

Partnership ABC rents land from other landowners for a 1/3 share of the crop with a value of \$36,000. Partnership ABC contributes owned equipment with a rental value of \$21,000 and \$99,000 of capital to the farming operation.

Each of the partners share equally in the labor and management of this farming operation and no additional labor or management is hired.

This table shows the contributions made by the partners and Partnership ABC and the total value of the farming operation.

	Land	Capital	Equipment	Labor	Management	Total
Partner A	24,000	12,000	12,000	Active	Active	48,000
Partner B	12,000	24,000	12,000	Active	Active	48,000
Partner C	12,000	24,000	12,000	Active	Active	48,000
Partnership ABC		99,000	21,000			120,000
Total	84,000 1/	159,000	57,000	0	0	300,000

1/ Includes the rental value of the land contributed by the share-rent landlord. Crop-share rent for the land is valued at \$36,000.

The total value of the farming operation was determined as follows.

The rental value of all the land involved in this farming operation is \$84,000. This rental value is derived by the following inputs:

- Partner A's contribution of cash-rented land with a value of \$24,000
- Partner B's contribution of cash-rented land with a value of \$12,000

- Partner C's contribution of owned land with a rental value of \$12,000
- share-rented land with a value of \$36,000 that is not attributed to any 1 partner or to the partnership.

If land is owned, a rental value that is normal for the area must be used when determining its value.

The total amount of capital needed by this farming operation is equal to \$159,000. This figure is arrived at by taking the total expenditures necessary to conduct this farming operation and subtracting any equipment and land costs that will be expended by the partnership. The capital is derived by the following inputs:

- Partner A's contribution of \$12,000 of capital
- Partner B's contribution of \$24,000 of capital
- Partner C's contribution of \$24,000 of capital
- Partnership ABC's contribution of \$99,000 of capital.

The rental value of all of the equipment used on this farming operation is \$57,000. This rental value is derived by the following inputs:

- Partner A's contribution of owned equipment with a rental value of \$12,000
- Partner B's contribution of leased equipment with a rental value of \$12,000
- Partner C's contribution of owned equipment with a rental value of \$12,000
- Partnership ABC's contribution of owned equipment with a rental value of \$21,000.

If equipment is owned, a rental value that is normal for the area must be used when determining its value.

Each partner is equally providing active personal labor and active personal management; therefore, no value is affixed to these contributions in determining the total value of the farming operation.

The total value of this farming operation is equal to \$300,000

Example 2:

Partnership ABC has 3 equal partners, A, B, and C. Partnership ABC farms 1,500 acres of cropland growing cotton and soybeans. Partner A contributes land with a total rental value of \$5,000 to the partnership. Partner A cash-rents this land from a landowner with no interest in Partnership ABC's farming operation. Partner B contributes land with a total rental value of \$5,000 to the partnership. Partner B cash-rents this land from a landowner with no interest in Partnership ABC's farming operation. Partner C contributes land with a total rental value of \$5,000 to the partnership. Partner C owns this land.

Partnership ABC contributes land with a total rental value of \$69,000 to the farming operation. Partnership ABC owns this land. Partnership ABC contributes owned equipment with a rental value of \$57,000 and \$159,000 of capital to the farming operation. The capital is borrowed from a local bank and is not secured by any of the partners individually. Partnership ABC will hire all of the labor needed to conduct this farming operation. The labor cost for this operation will be \$30,000.

Each of the partners share equally in the management of this operation and no additional management is hired.

This table shows the contributions made by the partners and Partnership ABC.

	Land	Capital	Equipment	Labor	Management	Total
Partner A	5,000	0	0		Active	5,000
Partner B	5,000	0	0		Active	5,000
Partner C	5,000	0	0		Active	5,000
Partnership ABC	69,000	159,000	57,000	30,000		315,000
Total	84,000	159,000	57,000	30,000		330,000

The total value of the farming operation was determined as follows.

The rental value of all of the land involved in this farming operation is \$84,000. This rental

value is derived by the following inputs:

- Partner A's contribution of cash-rented land with a value of \$5,000
- Partner B's contribution of cash-rented land with a value of \$5,000
- Partner C's contribution of owned land with a rental value of \$5,000
- Partnership ABC's contribution of owned land with a rental value of \$69,000.

If land is owned, a rental value that is normal for the area must be used when determining its value.

The total amount of capital needed by this farming operation is equal to \$159,000. This figure is arrived at by taking the total expenditures necessary to conduct this operation and

subtracting any equipment, land, and labor costs that will be expended by the partnership.

The capital for this operation is being provided by Partnership ABC.

The rental value of all of the equipment used on this farming operation is \$57,000.

Partnership ABC is contributing owned equipment with a rental value of \$57,000.

If equipment is owned, a rental value that is normal for the area must be used when determining its value.

All of the labor for this farming operation is hired by Partnership ABC and will cost \$30,000. Each partner will equally provide active personal management; therefore, no value is affixed to this contribution in determining the total value of the farming operation. The total value of this farming operation is equal to \$330,000

SUBSTANTIVE CHANGE:

Example 1:

Situation: Three persons each have separate and unrelated farming operations, which if continued unchanged, qualify for 3 limits for payment limitation purposes. The 3 persons propose a farming operation by forming a corporation in which each are equal stockholders in the entity. The entity would lease, for cash, a portion of the cropland previously operated by each of the persons. A total of 4 limits would result for payment limitation purposes.

Determination: Forming this legal entity and leasing the land formerly operated by the persons would not constitute a bona fide and substantive change. Recognition would continue for the 3 persons as determined previously for payment limitation purposes. The new legal entity would not be considered eligible for payment.

Explanation: The same land is farmed by the same equipment and the same persons as the previous year. The stockholders hold total ownership of the legal entity and each stockholder produced agricultural products or participated in programs subject to limitation in the previous year.

Example 2:

Situation: A corporation operates land that it owns. A general partnership, consisting of the stockholders of the corporation, leases land owned by unrelated parties that was previously operated by the corporation. The corporation farm manager and other employees complete the farming activities for both operations with equipment owned by the corporation. Records are kept of time spent by the employees and equipment use for each of the farming operations. The corporation's bookkeeper prepares separate payrolls for the employees that reflect the time for each employee on each farming operation. Invoices prepared on behalf of the corporation are issued to the general partnership for the equipment use and cropping expenses to represent its share of the operating expenses. Separate limitation was requested for the corporation and each of the members of the general partnership.

Determination: Changes in bookkeeping for the manner records are kept does not constitute or demonstrate a substantive change. Continue to recognize only the corporation for payment limitation purposes.

Explanation: The members of the general partnership, who hold total ownership of the corporation, are farming the same land with the same equipment previously operated by the corporation. Only a single farming operation of the corporation exists even though separate books are kept in an effort to represent a separate farming operation of the general partnership.

Example 3

Situation: An existing three-member general partnership comprised of a Father B and children D and E. The farming operation is expanded for 2009 to include two newly formed LLCs, F and G, each of which are comprised of the individuals, B, D and E. The expansion is based on the rental of another farm. The increase in base acres held by the general partnership is over 50 percent.

Determination: A substantive change will be considered to have occurred in the farming operation with the increase in base acres of at least 20 percent. The bona fide and substantive change with the increase in base acres of more than 20 percent would initially qualify only one of the legal entities for payment limitation purposes. In this case, the increase in base acres is twice the minimum amount required. The partnership will be afforded the opportunity to submit a written request for the increase in one additional person or legal entity to the farming operation.

ACTIVELY ENGAGED LANDOWNER

Example 1:

Situation: Landowner A cash leases land to Person B. Person B subleases the land to Operator C. Person B contributes land and does not contribute a significant amount of active personal labor or active personal management to the farming operation.

Determination: Person B is not actively engaged in farming. Person B cannot be considered to be actively engaged in farming because of the landowner provision, since Person B is a landlord and not a landowner. Landowner A is not actively engaged on this farming operation since cash-rent is received for using the land. A separate determination will be made for Operator C.

Example 2:

Situation: Person D cash leases land from Landowner E. Person D subleases the land to Producer C on a share-rent basis. Person D contributes the land and active personal management to the farming operation.

Determination: Because Person D cash-rents the land from Landowner E, Person D:

- is a cash-rent tenant

(A cash-rent tenant is eligible to receive program payments on the cash-rented land, if the cash-rent tenant provides a significant contribution of either of the following:

- active personal labor and capital, equipment, or land
- active personal management and equipment)

- is not the landowner and cannot be considered actively engaged in farming because of the landowner provision. Because Person D has provided a significant contribution of land and management, Person D can be considered actively engaged in farming.

However, Person D is ineligible to receive program payments on the cash-rented land, because the necessary contributions for a cash-rent tenant were not made.

A separate determination will be made for Producer C. Landowner E is not considered actively engaged in farming for this farming operation.

SIGNIFICANT CONTRIBUTIONS/ELIGIBILITY

Spouse Determinations

Example 1:

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

Husband A and Wife B jointly own all the equipment and provide all the capital for their farming operation.

Husband A contributes at least 50 percent of the active personal labor and a significant contribution of active personal management for the joint farming operation. Wife B does not provide active personal labor or active personal management.

Husband A's and Wife B's share of the profits or losses from the farming operation are commensurate with their contributions and the contributions are at risk.

Determination: Husband A is considered to be actively engaged in farming because he is making both a left hand and right hand contribution. Wife 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, Wife B is credited with contributing labor and management; therefore, Wife B is considered to be actively engaged. Husband A and Wife 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 Wife B are only applicable to the joint operation and do not apply to the Corporation X farming operation.

Example 2:

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

Husband M and Wife N jointly own all of the equipment and provide all of the capital necessary for the farming operation.

Husband M contributes the majority of the active personal labor and the active personal management for the farming operation.

Wife N contributes active personal labor and active personal management, whenever able, to the farming operation, but the amount is not commensurate with her share.

The estate owns land, of which Wife N is an heir, and meets the requirements to be considered actively engaged in farming under the landowner provision.

Husband M and Wife 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: Husband M, Wife N, and the estate are all considered actively engaged in farming. Through the special provision for spouses, Wife N is credited as making significant contributions of active personal labor and/or active personal management to the farming operation since Husband M is considered to have met the requirement of actively engaged in farming. Both Husband M and Wife 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 her share of the program payments received through this joint farming operation, Wife N will also be attributed payments earned by her father's estate according to her share held as an heir.

Cash-Rent Tenant

Example 1:

Situation: Person A cash leases land from Landowner B. Person A subleases the land to Producer C on a share-rent basis. Person A contributes the land and active personal management to the farming operation.

Determination: Because Person A cash-rents the land from Landowner B, Person A is:

- a cash-rent tenant

- not the landowner and cannot be considered actively engaged in farming because of the landowner provision. Because Person A has provided a significant contribution of land and management, Person A can be considered actively engaged in farming. However, Person A is ineligible to receive program payments on the cash-rented land, because the necessary contributions for a cash-rent tenant were not made. A separate determination will be made for Producer C.

Explanation: Landowner B is not considered to be actively engaged in farming for this farming operation, but may be considered actively engaged in farming for another farming operation.

Example 2:

Situation: A joint operation consists of Persons A, B, C, and D; all with equal shares. All land is cash-rented by the joint operation. Members A and B provide all of the equipment, Members C and D provide all the capital, all necessary labor is hired by the joint operation, and active personal management is provided equally by the members.

Determination: Only Members A and B meet the cash-rent tenant rule requirements because they provide management and equipment. Therefore, payment to the joint operation is limited to the amount represented by the shares held by Members A and B.

Explanation: Since all labor is hired by the joint operation, significant contributions of both equipment and active personal management are required. Members C and D do not provide any contributions of equipment and; therefore, do not meet the requirements of the cash-rent tenant rule required for payment eligibility.

Sharecropper

Example:

Situation: Person Y provides labor for Landowner Z on 500 acres of rice in exchange for a share of the crop. Person Y only contributes active personal labor to the farming operation and receives a cash advance that will be set off from the proceeds of the crop after harvest. Landowner Z provides Person Y with housing.

Determination: Person Y is considered to be actively engaged in farming since Person Y is a sharecropper and the requirements are met. Landowner Z is considered to be actively engaged in farming since Landowner Z is a landowner.

Family Member

Example 1

Situation: In 2008, Partnership AB consists of Person A and Person B, 2 unrelated person members. In 2009, Person C, an adult son of Person A, will join the partnership.

- Persons A and B will each provide a significant contribution of active personal labor and active personal management.
- Person C will provide a significant contribution of active personal labor.
- The partnership will provide all of the capital and equipment. The land is share leased by the partnership from 5 different landowners.

Determination: A majority of the persons of the joint operation are family members. Based on the contributions of each member, Persons A, B, and C are each considered to be actively engaged in farming, if COC determines the contributions are at risk and claimed shares are commensurate with the contributions of each member. Person C is

actively engaged in farming because of the family member provision, since the joint operation consists of 3 persons, a majority of whom are persons that are family members.

Example 2

Situation: Father A has been farming owned land and rented land for many years. Son B, an adult, is starting to farm with his father. Son B contributes a significant amount of active personal labor. Father A contributes all of the farming operation's capital, equipment, and active personal management.

Determination: Father A and Son B are both considered to be actively engaged in farming, if COC determines the contributions are at risk and claimed shares are commensurate with the contributions of each member.

Example 3

Situation: In 2008, Partnership CD consisted of Person C and Grandfather D. In 2009, Grandson E is brought into the farming operation.

- Person C contributes all the capital and a significant amount of active personal management.
- Grandfather D contributes the use of a significant amount of equipment, owned land, and active personal management.
- Grandson E will provide all the active personal labor.

Determination: Person C, Grandfather D, and Grandson E will each be considered to be actively engaged in farming, if COC determines the claimed shares are at risk and commensurate with each partner's contribution to the farming operation.

Example 4

Situation: ABC Partnership is a family held partnership consisting of Father A, Son B, and Daughter C. In 2009, Father A brings Son-in-law D into the farming operation.

- Daughter C, who is married to Son-in-law D, does not provide a significant amount of active personal labor or active personal management to the farming operation.
- Son B contributes a significant amount of capital, active personal labor, and active personal management.
- Father A originally contributed his owned equipment to the partnership and contributes some capital and a significant amount of active personal management.
- Son-in-law D contributes a significant amount of both active personal labor and active personal management to the farming operation.

Determination: Father A, Son B, and Son-in-law D are considered to be actively engaged in farming, if COC determines the claimed shares are at risk and commensurate with each partner's contribution to the farming operation. Daughter C is considered to be actively engaged in farming as a spouse if at risk. Son-in-law D was brought into the farming operation using the family member provision.

Example 5

Situation: Mother A, Daughter B, and Son C are partners in a family partnership. Son D, a minor child, becomes a partner in 2009.

- Mother A contributes a significant amount of both capital and active personal management.
- Daughter B contributes a significant amount of both capital and active personal management.
- Son C contributes a significant amount of equipment, active personal labor, and active personal management.
- Son D contributes a significant amount of active personal labor.

Determination: Mother A, Daughter B, and Son C are considered to be actively engaged in farming. However, Son D is not considered to be actively engaged in farming because of the family member provision because he is not an adult family member.

Joint Operation

Example 1

Situation: Partnership AB farms 2,000 acres of land. The partnership owns the equipment and the partners provide at least 50 percent of their commensurate share of active personal labor and a significant amount of active personal management. Each partner's share of the profits or losses from the farming operation is commensurate with the partner's contribution to the operation and each partner's contributions are at risk.

Determination: Partners A and B are considered to be actively engaged in farming and each have a separate payment limitation.

Example 2

Situation: Partnership CD farms 2,000 acres of land. Each partner contributes a significant amount of both capital and active personal management to the farming operation. Labor is hired. Equipment and land are rented from third parties. Each partner's share of the profits or losses from the farming operation is commensurate with the partner's contribution to the operation and each partner's contributions are at risk.

Determination: Partners C and D are considered to be actively engaged in farming and each have their own respective payment limitation.

Example 3

Situation: Partnership EFG farms 2,000 acres of land. The contributions of capital, land, and equipment are acquired from loans from a banking institution. The bank requires that all partners sign to guarantee the loan. The partners provide at least 50 percent of their commensurate share of active personal labor and a significant amount of active personal management. Each partner's share of the profits or losses from the farming operation is commensurate with the partner's contributions to the operation and each partner's contributions are at risk. None of the partners have any other farming interests.

Determination: Partners E, F, and G are considered to be actively engaged in farming. The fact that the contributions of capital, land, and equipment are guaranteed by the members does not prevent the contributions from being considered for a significant contribution.

Corporation, LLC, LLP, LP, and Similar Legal Entity

Example 1

Situation: Corporation XYZ rents 3,000 acres of land for 1/3 share of the crop.

- Corporation XYZ contributes a significant amount of capital to the operation.
- Corporation XYZ hires the majority of all labor necessary for the operation.
- All 3 stockholders provide the balance of the labor needed.
- All 3 stockholders meet regularly during the crop year and all management decisions are made jointly during these meetings.
- Each stockholder has defined responsibilities, such as marketing, field operations and equipment, financing and daily business activities.
- Each stockholder is on-site almost everyday during the crop year.
- The corporation's share of the profits or losses from the farming operation is commensurate with the corporation's contributions and the contributions are at risk for a loss.

Determination: Corporation XYZ is considered actively engaged in farming. Each stockholder contributed active personal labor and active personal management to the farming operation on a regular basis, identifiable and documentable, and each stockholder's contributions were separate and distinct from contributions made by the other stockholders.

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
- Son B contributes both active personal labor and active personal management
- Father A lives on the farm and contributes no active personal labor, but periodically advises Son B about farm related matters.

Determination: Because the corporation provides at capital and equipment, and Son B contributes active personal labor and active personal management; Corporation AB is considered to be actively engaged in farming. However, Corporation AB will be subject to payment reduction commensurate with the 50 percent ownership interest held by Father A because COC determined the advice provided by Father A is not considered management.

Example 3

Situation: Corporation GH consists of Husband G owning 70 percent of the corporate stock and Wife H owning 30 percent of the corporate stock.

- Corporation GH provides all the capital, equipment, and leased land
- Husband G provide 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 Husband G. Even though Wife H failed to make any contributions of active personal labor, active personal management, or a combination thereof, the exception applicable to spouses applies. No payment reduction will be applied to Corporation GH.

Example 4

Situation: Corporation A is held equally by stockholders B, C, D and E. Corporation A provides all of the capital, leases all of the equipment, cash rents all of the land, and hires all of the labor necessary to farm. The stockholders claim they equally provide all of the active personal management necessary to successfully conduct this farming operation. Regular management meetings are held, but a division of active personal management that is documentable as separate and distinct exists. B is individually responsible for obtaining and purchasing all inputs for the farming operation for the Corporation evidenced by copies of signed purchase orders and invoices. C is individually responsible for the marketing of all commodities produced by the Corporation documented by signed contracts and delivery agreements with grain elevators and a cotton gin. D could is individually responsible for the supervision of all hired labor utilized by the Corporation represented through copies of payroll records that D maintains. Stockholder E has no claim of management that is separate and distinct from the other stockholders.

Determination: Stockholder E's failure to meet the requirements of actively engaged will cause the payments issued to Corporation A to be reduced by the percentage interest held by Stockholder E. If E is a 25% owner of Corporation A, then all payments will be reduced by 25%.